

# FRAMEWORK AGREEMENT ON FACILITATION OF CROSS-BORDER PAPERLESS TRADE IN ASIA AND THE PACIFIC



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This publication has been issued without formal editing

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## PREFACE

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On 19 May 2016, the Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific was adopted as a UN treaty. The adoption was a result of dedicated and progressive efforts of a diverse group of more than 25 Asia-Pacific economies, who were engaged in four years of intensive consultations and negotiations. It is now open to 53 members of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP).

The Framework Agreement is fully dedicated to the digitalization of trade processes, aiming to enable the exchange and mutual recognition of trade-related data and documents in electronic form among national and subregional paperless trade systems. Trade digitalization, or the simplification and digitalization of international trade procedures, will help the Asia-Pacific region harness international trade for sustainable development. Indeed, moving from paper to electronic data and information exchange is expected to make international trade easier, more transparent, more efficient and, hence, more inclusive and less taxing on the environment.

Trade digitalization offers a great opportunity to reduce trade costs and increase trade volume for the region. Through paperless trade and seamless electronic exchange of trade data and documents, countries can enhance their competitiveness in global markets and increase their participation in global value chains. Enabling cross-border paperless trade together with full digital implementation of the WTO Trade Facilitation Agreement (TFA) could decrease trade cost by more than 25%, cutting international transaction costs in Asia and the Pacific by about \$0.6 trillion annually.<sup>1</sup> Annual export of the region could also expand by about \$250 billion.<sup>2</sup>

Despite existing efforts and initiatives, the region's progress towards trade digitalization have been challenging. In particular, the UN Global Survey on Digital and Sustainable Trade Facilitation reveals that the average implementation rate of cross-border paperless trade measures stands at less than 25%, compared to more than 50% for most other types of trade facilitation measures.<sup>3</sup> In order

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<sup>1</sup> United Nations, Economic and Social Commission for Asia and the Pacific (ESCAP) (2017). *Digital trade facilitation in Asia and the Pacific*. Studies in Trade, Investment and Innovation, No. 87. Sales No. E.18.II.F.10. Available at: <https://www.unescap.org/publications/digital-trade-facilitation-asia-and-pacific-studies-trade-investment-and-innovation-87>

<sup>2</sup> ESCAP (2014). Estimating the Benefits of Cross-Border Paperless Trade. Available at: <https://www.unescap.org/sites/default/files/Benefits%20of%20Cross-Border%20Paperless%20Trade.pdf>

<sup>3</sup> See: <http://untfsurvey.org>



to move forward on trade digitalization across the region, there is a need to: (1) harmonize technical and legal standards that apply to electronic trade data and documents; (2) reduce capacity gaps among countries in the region; (3) enhance collaboration between public and private sectors; and (4) establish a strong intergovernmental platform for coordination mechanisms among countries in the region.

Recognizing these potential benefits and challenges, the Framework Agreement has started and will continue to support the region's efforts by providing a dedicated institutional framework for countries with proven political will to develop legal and technical solutions for trade digitalization.

The Framework Agreement brings significant benefits to the region by providing a region-wide multilateral intergovernmental platform, where the neutral and dedicated space needed for development and testing of legal and technical solutions for cross-border paperless trade is provided. It builds upon existing national, bilateral and subregional initiatives, and also helping to achieve the full digital implementation of the WTO TFA.

The Framework also provides inclusive access to knowledge and capacity building opportunities, by allowing committed countries to fully participate in the Framework Agreement regardless of their digital or trade facilitation readiness, helping them to develop realistic action plans, and supporting their implementation through pilot projects and training activities.

All ESCAP members are welcome to join this forward-looking Framework Agreement, as they prepare to cope with the fourth Industrial Revolution and strive to more effectively engage in the digital economy. The more countries work together to achieve cross-border trade digitalization, the more international trade will become efficient and transparent, which is essential for ensuring that trade fully contributes to inclusive and sustainable development.



**Armida Salsiah Alisjahbana**

Under-Secretary-General of the United Nations and  
Executive Secretary, United Nations Economic and  
Social Commission for Asia and the Pacific





# Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific

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*The Parties to the present Framework Agreement (hereinafter referred to as “the Parties”),*

*Conscious* of the importance of trade as an engine of growth and development and the need to increase the efficiency of international trade transactions to maintain and enhance the competitiveness of the region,

*Noting* that unimpeded trade plays a crucial role in promoting comprehensive connectivity, which will lead to trade creation and new growth in the region,

*Recognizing* that paperless trade makes international trade more efficient and transparent while improving regulatory compliance, particularly if trade-related data and documents in electronic form are exchanged across borders,

*Noting* that the trade and supply chain security initiatives under implementation in major export markets will make it increasingly necessary for all actors in the international supply chain to exchange data and documents electronically,

*Considering* the fact that many countries of the Asia-Pacific region are currently engaged in implementing electronic systems at the national level to expedite processing of trade-related data and documents,

*Considering also* the fact that countries of the Asia-Pacific region increasingly include provisions for electronic exchange of information in their trade agreements,

*Recognizing* the conclusion of the negotiation of the Agreement on Trade Facilitation at the ninth Ministerial Conference of the World Trade Organization and the importance of the implementation of the Agreement,

*Aware* that facilitating mutual recognition and exchange of trade-related data and documents in electronic form between landlocked and transit countries would significantly reduce transit time and costs and enhance trade and development opportunities for the landlocked countries,

*Aware also* that facilitating exchange of trade-related data and documents in electronic form would particularly enable small and medium-sized enterprises to more effectively participate in international trade and enhance their competitiveness,

*Mindful* of the different levels of economic as well as information and communications technology development of the Parties,

*Acknowledging* that the availability of information and communications technology and related physical infrastructure is not sufficient in some countries to ensure sustainable business development,

*Noting* the necessity to establish an enabling legal environment in order to maximize the benefits associated with cross-border paperless trade,

*Desirous* of formulating a legal framework to deepen and broaden cooperation in cross-border paperless trade facilitation among the Parties and to chart the future developments in this area,

Hereby agree as follows:

## **Article 1**

### **Objective**

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The objective of the present Framework Agreement is to promote cross-border paperless trade by enabling the exchange and mutual recognition of trade-related data and documents in electronic form and facilitating interoperability among national and subregional single windows and/or other paperless trade systems, for the purpose of making international trade transactions more efficient and transparent while improving regulatory compliance.

## **Article 2**

### **Scope**

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The present Framework Agreement applies to cross-border paperless trade between the Parties.

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## **Article 3**

### **Definitions**

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For the purpose of the present Framework Agreement:

(a) “Cross-border paperless trade” means trade in goods, including their import, export, transit and related services, taking place on the basis of electronic communications, including exchange of trade-related data and documents in electronic form;

(b) “Electronic communication” means any communication that the parties involved in trade make by means of data messages;

(c) “Data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange;

(d) “Trade-related data” means data contained in or transmitted in connection with a trade-related document;

(e) “Trade-related documents” means documents, both commercial and regulatory, required in completing commercial transactions;

(f) “Commercial transactions” means transactions relating to the trade in goods between parties whose places of business are in different territories;

(g) “Mutual recognition” means reciprocal recognition of the validity of trade-related data and documents in electronic form exchanged across borders between two or more countries;

(h) “Single window” means a facility that allows parties involved in a trade transaction to electronically lodge data and documents with a single entry point to fulfil all import, export and transit-related regulatory requirements;

(i) “Interoperability” means the ability of two or more systems or components to exchange information and to use the information that has been exchanged.

## **Article 4**

### **Interpretation**

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Any interpretation of the present Framework Agreement must have due regard for the general principles on which it is based, for its international character and for the need to promote uniformity in its application.

## **Article 5**

### **General principles**

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1. The present Framework Agreement shall be guided by the following general principles:
  - (a) Functional equivalence;
  - (b) Non-discrimination of the use of electronic communications;
  - (c) Technological neutrality;
  - (d) Promotion of interoperability;
  - (e) Improved trade facilitation and regulatory compliance;
  - (f) Cooperation between the public and private sectors;
  - (g) Improving transboundary trust environment.
2. The Parties agree that implementing national legislation and regulations that apply these principles to the exchange of trade-related data and documents in electronic form will establish common levels of trust and increase interoperability.

## **Article 6**

### **National policy framework, enabling domestic legal environment and paperless trade committee**

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1. The Parties shall endeavour to establish a national policy framework for paperless trade, which may define targets and implementation strategies and allocate resources, and a legislative framework.

2. The Parties shall endeavour to create an enabling national legislation on paperless trade, in particular addressing the functions of the national operators for cross-border paperless trade, taking into consideration international standards and best practices, if applicable.
3. The Parties may establish a national committee, comprising relevant representatives of government and private sector parties, in accordance with their domestic environment. The committee will promote a legally enabling domestic environment for exchange of trade-related data and documents in electronic form as well as facilitate interoperability of cross-border paperless trade. The Parties may alternatively rely on a similar body already functioning domestically in lieu of establishing a separate committee and may designate that body, or an appropriate organizational unit or working group within it, as the national committee for the purpose of the present Framework Agreement.

## **Article 7**

### **Facilitation of cross-border paperless trade and development of single-window systems**

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1. The Parties shall endeavour to facilitate cross-border paperless trade by enabling exchange of trade-related data and documents in electronic form, utilizing the existing systems in operation or creating new systems.
2. The Parties are encouraged to develop single-window systems and use them for cross-border paperless trade. In developing single-window systems or upgrading existing ones, the Parties are encouraged to make them consistent with the general principles provided in the present Framework Agreement.

## **Article 8**

### **Cross-border mutual recognition of trade-related data and documents in electronic form**

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1. The Parties shall provide for mutual recognition of trade-related data and documents in electronic form originating from other Parties on the basis of a substantially equivalent level of reliability.

2. The substantially equivalent level of reliability would be mutually agreed upon among the Parties through the institutional arrangement established under the present Framework Agreement.
3. The Parties may enter into bilateral and multilateral arrangements to operationalize cross-border mutual recognition of trade-related data and documents in electronic form, in a manner consistent with the principle of the transboundary trust environment and all the other general principles, provided that the provisions of these bilateral and multilateral arrangements do not contradict the present Framework Agreement.

### **Article 9**

#### **International standards for exchange of trade-related data and documents in electronic form**

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1. The Parties shall endeavour to apply international standards and guidelines in order to ensure interoperability in paperless trade and to develop safe, secure and reliable means of communication for the exchange of data.
2. The Parties shall endeavour to become involved in the development of international standards and best practices related to cross-border paperless trade.

### **Article 10**

#### **Relation to other legal instruments enabling cross-border paperless trade**

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1. The Parties may, where appropriate, adopt relevant international legal instruments concluded by United Nations bodies and other international organizations.
2. The Parties shall endeavour to ensure that the cross-border exchange of trade-related data and documents in electronic form is consistent with international law as well as regional and international regulations and best practices, as identified by the institutional arrangements established under the present Framework Agreement.

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## **Article 11**

### **Institutional arrangements**

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1. The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) shall, for the purposes of the present Framework Agreement, establish a paperless trade council comprising one (1) high-level nominee from each Party. The Council shall meet upon request but at least once a year.
2. In the performance of its functions, the Paperless Trade Council shall be supported by a standing committee, which shall supervise and coordinate the implementation of the present Framework Agreement and submit its recommendations to the Council for review. The Standing Committee shall be composed of senior representatives of each Party and will meet at least once a year.
3. For the purposes of implementing the present Framework Agreement, the Standing Committee may establish working groups which shall report to the Standing Committee on the implementation of the related action plan under the present Framework Agreement.
4. The ESCAP secretariat shall be designated the secretariat of the present Framework Agreement and shall also be the secretariat of the bodies established under the present Framework Agreement. It shall provide support in coordinating, reviewing and supervising the implementation of the present Framework Agreement and in all related matters.
5. The Council shall, by a two-thirds majority vote, adopt such rules of procedure as may be required for the performance of its functions, including for the Standing Committee and the Working Groups. Except as otherwise provided for in the present Framework Agreement, decisions by the Council shall be taken by a majority of votes cast by members present and voting, provided that at least two thirds of the participating States are present.
6. The Council and the Standing Committee may, under their competence determined in the rules of procedure, adopt protocols on specific legal, technical and organizational matters. The requirements for entry into force of any protocol shall be established in that instrument.



## **Article 12**

### **Action plan**

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1. The Standing Committee, under the supervision of the Paperless Trade Council, shall develop a comprehensive action plan, which shall include all concrete actions and measures with clear targets and implementation timelines necessary for creating a consistent, transparent and predictable environment for the implementation of the present Framework Agreement, including the implementation schedules of the respective Parties. The Parties shall implement the action plan in accordance with the schedule, and the implementation status of each Party shall be reported to the Standing Committee.
2. The implementation schedule for each Party shall be developed as part of the action plan based on a self-assessment of their readiness.

## **Article 13**

### **Pilot projects and sharing of lessons learned**

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1. The Parties shall endeavour to initiate and launch pilot projects on cross-border exchange of trade-related data and documents in electronic form, in particular among customs and other regulatory agencies. The Parties shall collaborate on such pilot projects through the institutional arrangements established under the present Framework Agreement.
2. The Parties shall report to the Standing Committee on the progress of pilot projects to facilitate the sharing of experience and lessons learned and to establish a collection of best practices for interoperability of cross-border exchange of trade-related data and documents in electronic form. The exchange of experience and lessons learned would extend beyond the Parties to the present Framework Agreement, to the extent possible and as appropriate, in an effort to promote paperless trade implementation throughout the region and beyond.

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## **Article 14**

### **Capacity-building**

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1. The Parties may cooperate to provide technical support and assistance to each other in order to facilitate the implementation of the present Framework Agreement.
2. The Parties may collaborate on capacity-building through the institutional arrangements established under the present Framework Agreement.
3. The Parties shall give special consideration to requests from least developed and landlocked developing countries for technical assistance and cooperation arrangements designed to assist them in developing their paperless trade capacity and in taking full advantage of the potential benefits of the present Framework Agreement.
4. The Parties may invite development partners for more effective technical and financial assistance in the implementation of the present Framework Agreement.

## **Article 15**

### **Implementation of the present Framework Agreement**

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Each Party shall endeavour to implement the provisions of the present Framework Agreement by creating a legally enabling environment and developing the necessary technical infrastructure to facilitate the cross-border exchange of trade-related data and documents in electronic form. The Parties recognize that least developed and landlocked developing countries may need technical and financial assistance to develop technical infrastructure and to create a legally enabling environment, which are essential for facilitating the cross-border exchange of trade-related data and documents in electronic form.

## **Article 16**

### **Other agreements in force**

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The present Framework Agreement or any action taken under it shall not affect the rights and obligations of the Parties under any existing agreements or international conventions to which they are also parties.

## **Article 17**

### **Dispute resolution**

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1. Any dispute that may arise among the Parties regarding the interpretation and application of the present Framework Agreement shall be settled by means of negotiation or consultation among the Parties concerned.
2. In the event that the Parties involved in a dispute relating to the present Framework Agreement are unable to settle it by negotiation or consultation, they shall be referred for conciliation if any of them requests such a referral.
3. The dispute shall be submitted to one or more conciliators selected by the Parties involved in the dispute. If the Parties involved in the dispute fail to agree on the choice of a conciliator or conciliators within three (3) months of the request for conciliation, any of those Parties may request the Secretary-General of the United Nations to appoint a single conciliator to whom the dispute shall be submitted.
4. The recommendation of the conciliator or conciliators appointed, while not binding in character, shall become the basis of renewed consideration by the Parties involved in the dispute.
5. By mutual consent, the Parties involved in the dispute may decide in advance to accept the recommendation of the conciliator or conciliators as binding.
6. The provisions of the present article shall not be construed as excluding other measures for the settlement of disputes mutually agreed between the Parties involved in the dispute.

7. Any State may, at the time of depositing its instrument of ratification, acceptance, approval or accession, deposit a reservation stating that it does not consider itself bound by the provisions of the present article relating to conciliation. Other Parties shall not be bound by the provisions of the present article relating to conciliation with respect to any Party which has deposited such a reservation.

## **Article 18**

### **Procedure for signing and becoming a Party**

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1. The present Framework Agreement shall be open for signature by ESCAP member States at United Nations Headquarters in New York from 1 October 2016 to 30 September 2017.
2. ESCAP member States may become Parties to the present Framework Agreement by:
  - (a) Signature, followed by ratification, acceptance or approval; or
  - (b) Accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.

## **Article 19**

### **Entry into force**

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1. The present Framework Agreement shall enter into force ninety (90) days after the date on which the Governments of at least five (5) ESCAP member States have deposited their instruments of ratification, acceptance, approval or accession to the present Framework Agreement pursuant to article 18, paragraphs 2 and 3.
2. For each ESCAP Member State that deposits its instrument of ratification, acceptance, approval or accession after the date upon which the conditions for the entry into force of the present Framework Agreement have been met, the present Framework Agreement shall enter into force for that Party ninety (90) days after the date of its deposit of the said instrument.

## **Article 20**

### **Procedures for amending the Framework Agreement**

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1. The text of the present Framework Agreement may be amended by the procedure specified in the present article.
2. Amendments to the present Framework Agreement may be proposed by any Party.
3. The text of any proposed amendment shall be circulated to all members of the Paperless Trade Council by the secretariat at least sixty (60) days before the Council meeting at which it is proposed for adoption.
4. An amendment shall be adopted by a two-thirds majority of the Parties present and voting at the meeting of the Paperless Trade Council. The amendment as adopted shall be communicated by the secretariat to the Secretary-General of the United Nations, who shall circulate it to all Parties for acceptance.
5. An amendment adopted in accordance with paragraph 4 of the present article shall enter into force for those Parties that have accepted it three (3) months after the amendment has been accepted by two thirds of the number of Parties at the time of its adoption. For any Party that accepts the amendment after its entry into force, the amendment shall enter into force three (3) months after the Party's acceptance of the amendment.

## **Article 21**

### **Reservations**

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Reservations may not be made with respect to any of the provisions of the present Framework Agreement, except as provided in article 17, paragraph 7.

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## **Article 22**

### **Withdrawal**

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Any Party may withdraw from the present Framework Agreement by written notification addressed to the Secretary-General of the United Nations. The withdrawal shall take effect twelve (12) months after the date of receipt by the Secretary-General of such notification.

## **Article 23**

### **Suspension of validity**

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The operation of the present Framework Agreement shall be suspended if the number of Parties becomes less than five (5) for any period of twelve (12) consecutive months. In such a situation, the secretariat shall notify the Parties. The provisions of the present Framework Agreement shall again become operative if the number of Parties reaches five (5).

## **Article 24**

### **Limits to the application**

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Nothing in the present Framework Agreement shall be construed as preventing a Party from taking such action, compatible with the provisions of the Charter of the United Nations and limited to the exigencies of the situation, as it considers necessary for its external or internal security.

## **Article 25**

### **Depositary**

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The Secretary-General of the United Nations shall be designated the depositary of the present Framework Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present Framework Agreement, in a single copy in the Chinese, English and Russian languages, the three texts being equally authentic.





## **Explanatory note to the Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific**

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This explanatory note is an edited version of the note reviewed at the 3<sup>rd</sup> Intergovernmental Steering Group Meeting on Cross-Border Paperless Trade Facilitation.<sup>1</sup> It was prepared to clarify relevant technical and legal terms and topics referred to in the various articles of the Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific. Explanations have been provided for the various articles, under the relevant article number and title of the text. This note is intended to help readers understand the content of the text and how it has been developed. However, it is not intended to be part of the text of the Framework Agreement.

### **Preamble**

1. With reference to the term “ESCAP member States”, the full list of 53 ESCAP member States can be found at [www.unescap.org/about/member-states](http://www.unescap.org/about/member-states).

### **Article 1: Objective**

2. The term “subregional” used in Article 1 is generally in alignment with the United Nations geoscheme, devised by the United Nations Statistics Division. In this geoscheme, Asia comprises five subregions: Central Asia; Eastern Asia; Southern Asia; South-Eastern Asia; and Western Asia. In this context, the membership of ESCAP covers all except Western Asia but also covers the Pacific subregion.
3. In the context of this Framework Agreement, any economic community comprising more than two countries, such as a customs union, may also be considered a subregion. With the contexts given above, the term

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<sup>1</sup> See <https://www.unescap.org/events/third-meeting-interim-intergovernmental-steering-group-cross-border-paperless-trade>

“subregional” as used in Article 1 conforms to the definition of “subregion” given in the Oxford English Dictionary: “a division or part of a region”.

### **Article 3: Definitions**

4. For those terms whose definitions are taken, in part or as a whole, from other sources, original sources are provided. In addition, definitions of and/or explanations on additional terms are provided for the clarity of understanding on some terms listed in Article 3.
5. The formation of the term “Cross-border paperless trade” is the outcome of extended discussion and fine-tuning among the members of the Legal Working Group of the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation in the process of negotiation. The term resulted from an attempt to incorporate a few key concepts, such as “cross-border”, “paperless” and “trade”, of the current Framework Agreement, while ensuring clarity in its application scope and purpose.
6. The definition of the term “trade” is embedded in the definition of “Cross-border paperless trade” and draws attention to two elements: (a) the international character of trade, meaning that the Framework Agreement does not cover domestic (internal) trade, and the scope of the Framework Agreement is limited to “trade between the Parties” (ref. Article 2); and (b) the focus of the Framework Agreement on trade in goods, meaning that the Framework Agreement does not cover other forms of commercial activity, such as leasing, construction of industrial works, engineering, licensing or investment.
7. “Trade” means sales of goods originating from a Party and destined for another Party. The term “trade” specifies that the provisions of the Framework Agreement will apply to trade in goods originating from a Party and destined for another Party. Such an approach is used in the framework of the World Trade Organization (WTO) and in regional trade agreements.
8. “Goods” means any commodity included in the nomenclature governed by the International Convention on the Harmonized Commodity Description and

Coding System<sup>2</sup> except goods bought for personal, family or household use. With this definition of goods, the Framework Agreement excludes transactions with consumers. However, any Parties to the Framework Agreement that would like to have consumer transactions covered may do so voluntarily by making additional arrangements separately. Any commodity not included in the nomenclature governed by the Convention can be covered by the Framework Agreement through an additional agreement among the Parties.

9. The meaning of “transit” is paraphrased from Article V of the General Agreement on Tariffs and Trade (GATT).<sup>3</sup> Transit means the passage of goods across the territory of a Party, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, when such passage is carried out to or from the territory of any other Party. Customs transit is defined by Specific Annex E of the revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures<sup>4</sup> as the customs procedure under which goods are transported under customs control (and without imposing customs duties) from one customs office to another; the national transit operations included in this definition of customs transit are out of the scope of this Framework Agreement. As to transit, it is understood that the provisions of the Framework Agreement will apply between Parties, one of which is the party of transit and the other is the party from whose territory goods arrive in the party of transit (first option) or the party to whose territory goods go from the party of transit (second option).
10. “Related services” means all services associated with international trade (sales of goods), including payment, insurance, carriage, trans-shipment and warehousing, etc.
11. The definition of “electronic communication” is wholly adopted from the United Nations Convention on the Use of Electronic Communications in International Contracts,<sup>5</sup> in particular Article 4 (b).

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<sup>2</sup> United Nations, *Treaty Series*, vol. 1503, No. 25910.

<sup>3</sup> United Nations, *Treaty Series*, vol. 55, No. 814.

<sup>4</sup> United Nations, *Treaty Series*, vol. 2370, No. 13561.

<sup>5</sup> General Assembly resolution 60/21, annex.

12. The definition of “data message” is wholly adopted from Article 2 (a) of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce<sup>6</sup> and Article 4 (c) of the United Nations Convention on the Use of Electronic Communications in International Contracts, with the exclusion of the words “electronic mail, telegram, telex or telecopy”.
13. Regarding the term “data and documents in electronic form”, it should be understood that, in contrast to paper documents and data presented within such paper documents, a document in electronic form can be either an electronic message or an electronic document. What distinguishes an electronic message from an electronic document is whether an information system can process the information contained within it or not; an information system can interpret and process the former but not the latter. Examples of electronic messages include electronic data interchange (EDI) or Extensible Markup Language (XML) messages, the information within which can be interpreted and processed by an information system. Examples of an electronic document are Microsoft Word files, image files and portable document format (PDF) files, which require human intervention before the information contained within them can be interpreted or processed.
14. In the term “commercial transactions”, the notion of “place of business” is taken from Article 10 of the United Nations Convention on Contracts for the International Sale of Goods.<sup>7</sup> The notion of “transactions relating to sales of goods” should be interpreted as excluding transactions related to supply of services.
15. “Mutual recognition” is established by the Parties agreeing that different national requirements are equivalent and mutually acceptable in order to fulfil the requirements of domestic legislation in a specific field. Each Party to the Framework Agreement would be required to recognize the validity of any trade-related data and documents in electronic form as well as electronic signatures received from another Party and vice versa.

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<sup>6</sup> General Assembly resolution 51/162, annex.

<sup>7</sup> United Nations, *Treaty Series*, vol. 1489, No. 25567.

16. The definition of “single window” is partly adopted from United Nations Economic Commission for Europe (UNECE) Recommendation No. 33.<sup>8</sup> Some modification has been made from the definition given in UNECE Recommendation No. 33 to suit the objective and scope of this Framework Agreement. For the purpose of reference, the definition of this term in UNECE Recommendation No. 33 is “a facility that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfil all import, export, and transit-related regulatory requirements. If information is electronic, then individual data elements should only be submitted once.”
17. The definition of “interoperability” is wholly adopted from the *IEEE Standard Computer Dictionary: A Compilation of IEEE Standard Computer Glossaries*.<sup>9</sup>

## Article 4: Interpretation

18. The aim of Article 4 is to increase the level of uniformity in the interpretation and implementation of the Framework Agreement. The source of inspiration for the article is Article 7 of the United Nations Convention on Contracts for the International Sale of Goods.

## Article 5: General principles

19. In the process of negotiations, members of the Legal Working Group of the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation have discussed extensively the advantages and disadvantages of defining general principles. In line with generally accepted practices in treaty drafting (e.g. UNCITRAL conventions), a consensus

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<sup>8</sup> Economic Commission for Europe, United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), *Recommendations and Guidelines on establishing a Single Window to enhance the efficient exchange of information between trade and government, Recommendation No. 33* (United Nations publication, Sales No. 05.II.E.9).

<sup>9</sup> New York: Institute of Electrical and Electronics Engineers, 1990.

was reached among the Legal Working Group members to not define the general principles in the text of the Framework Agreement, but to provide an explanation of each principle in this note.

20. “Technological neutrality” is a principle that legislation should neither impose nor discriminate in favour of the use of a particular type of technology to achieve its objectives.
21. “Functional equivalence” is a principle that encourages an analysis of the functions of paper documents and determining how those functions could be fulfilled through electronic means. Using the functional equivalence approach involves singling out basic functions of paper-based documents with a view to articulating criteria which, once met by electronic communications, would enable such electronic communications to enjoy the same level of legal recognition as corresponding paper documents performing the same function. Each Party shall give the same treatment to data and documents received in electronic form as to data and information received in paper documents.
22. “Non-discrimination of the use of electronic communications” is a principle requiring that there should be no disparity of treatment between electronic communications and paper documents. Information should not be denied validity or enforceability solely because it is in the form of an electronic communication.
23. The principle of “promotion of interoperability” encourages the Parties to work towards ensuring that their paperless trade systems, including single windows, are interoperable for the purpose of cross-border data exchange. Thus, these systems would be enabled to provide and receive trade-related data and documents in electronic form to and from the paperless trade systems of other Parties.
24. The principle of “improved trade facilitation and regulatory compliance” is meant to ensure that cross-border paperless trade mechanisms to be developed by the Parties under the Framework Agreement contribute to a higher level of transparency, predictability and efficiency in the trade in goods (that is, trade facilitation), as well as enhanced regulatory compliance through better risk assessment and integrity of data and documents.

25. The principle of “cooperation between the public and private sectors” calls for the Parties to ensure cooperation in implementing the Framework Agreement; joint efforts between the public and private sectors, based on shared perspectives, would result in shared benefits and bring about a balance between the needs of trade facilitation and regulatory compliance.
26. The principle of “improving transboundary trust environment” refers to the aim of ensuring trust (confidence in authenticity) in the international exchange of trade-related data and documents in electronic form between electronically interacting parties through a combination of legal, organizational and technical conditions recommended by relevant specialized United Nations agencies and international organizations.

## **Article 6: National policy framework, enabling domestic legal environment and paperless trade committee**

27. Electronic communications afford the possibility of connecting anywhere anytime and are unfettered by physical borders. Having different parameters for domestic and international electronic transactions creates obstacles to the broadest use of electronic communication. Hence, it is highly recommended that the same legislation be adopted for both domestic and international transactions.
28. For paperless trade to be conducted in the best possible manner, trade-related data and documents in electronic form should ideally be subject to the same requirements for use in domestic or international trade. Otherwise, traders would have to comply with different requirements, which would include cases in which the final destination of the goods is not clear at the beginning of the transaction.
29. Article 6 is aimed at creating an enabling domestic legal environment fully aligned with the international ones. The use of international legal instruments in the domestic legal and regulatory environment ensures that domestic legal and regulatory requirements will not hinder cross-border paperless trade. Examples of recommended international legal instruments



and best practices include the UNCITRAL Model Law on Electronic Commerce, the UNCITRAL Model Law on Electronic Signatures,<sup>10</sup> the *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data* of the Organisation for Economic Co-operation and Development (OECD),<sup>11</sup> and the Asia-Pacific Economic Cooperation (APEC) *Data Privacy Framework*.<sup>12</sup>

30. Representatives of government and private sector parties participating in a national paperless trade committee would include representatives from trade, logistics service providers, port and airport authorities, IT service providers, national standard bodies, customs and other regulatory agencies that participate in export, import and transit functions. The scope of participation should be decided by each Party depending on national rules, regulations and environment.

## **Article 8: Cross-border mutual recognition of trade-related data and documents in electronic form**

31. At an operational level, additional technical agreements (such as memorandums of understanding and service level agreements) between public and/or private parties would be necessary to implement this provision practically. It is also desirable to have commonly accepted standards for interoperability; countries whose electronic signature/information technology laws are based on UNCITRAL model laws have many commonalities, and such commonalities can facilitate mutual or multilateral agreements.
32. Various forms of electronic signatures, such as digital signatures, biometrics-based signatures, clickable “I Agree” boxes and signature images, are being used for authentication of documents in electronic form. However, legal recognition of such forms differs from one

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<sup>10</sup> General Assembly resolution 56/80, annex.

<sup>11</sup> See [www.oecd.org/sti/ieconomy/2013-oecd-privacy-guidelines.pdf](http://www.oecd.org/sti/ieconomy/2013-oecd-privacy-guidelines.pdf).

<sup>12</sup> Singapore: APEC Secretariat, 2005. Available from [www.apec.org/Groups/Committee-on-Trade-and-Investment/~/\\_media/Files/Groups/ECSG/05\\_ecsg\\_privacyframewk.ashx](http://www.apec.org/Groups/Committee-on-Trade-and-Investment/~/_media/Files/Groups/ECSG/05_ecsg_privacyframewk.ashx).

country to another. Digital signatures, based on asymmetric key cryptography, are a type of commonly used and legally recognized form of electronic signature in certain countries. A document is digitally signed using a “private key”, which is in the sole possession of the signing entity and verified using a corresponding “public key”. The public key for an entity is certified by a certifying authority, which issues a Digital Signature Certificate (DSC) after carrying out necessary verification, and acts as a trust anchor.<sup>13</sup> In most countries, documents signed using a DSC issued by a licensed certifying authority are legally recognized. However, a certifying authority recognized in one country may not be recognized in the other, which creates problems in cross-border paperless transactions. Hence, it is desirable that certifying authorities or trust anchors should have cross-border legal recognition.

33. The criterion of “a substantially equivalent level of reliability” is taken from Article 12, paragraph 3, of the UNCITRAL Model Law on Electronic Signatures. This means that data and documents will be recognized when they offer a level of reliability similar, though not identical, to that of the recognizing parties. The “substantially equivalent level of reliability” should be mutually agreed by the Parties. Examples of factors that may be considered in assessing the level of reliability are as follows:
- a. Existence of financial and human resources and assets of the trust anchors;
  - b. Trustworthiness of the hardware and software systems used;
  - c. Security and vulnerabilities of the algorithms and/or mechanisms used for signing;
  - d. Procedures for processing signature certificates, applications for the certificates and retention of relevant records;
  - e. Availability of information to subscribers and/or relying parties;
  - f. Regularity and extent of audits by an independent body.

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<sup>13</sup> See ECE/TRADE/C/CEFACT/2010/14, Sect. 3.

34. Article 8.3 aims at ensuring that arrangements concluded between the Parties to implement the Framework Agreement do not go against the spirit and general principles of the Framework Agreement. The Article provides for flexibility in how the Framework Agreement - in particular 8.2 - may be implemented, noting the possibility that this may be done through either bilateral or multilateral arrangements. The “bilateral and multilateral arrangements” referred to in this article are only those concluded among State parties to the Framework Agreement in order to implement the Framework Agreement and do not include agreements involving States that are not parties to Framework Agreement. These arrangements are also limited to the scope of the Framework Agreement (Article 2), i.e., the exchange of electronic trade-related data and documents between the Parties. Article 30 (“Application of successive treaties relating to the same subject-matter”) of the Vienna Convention on the Law of Treaties may be relevant to clarify the relationship between the Framework Agreement, on the one hand, and pre-existing and future trade agreements covering paperless trade issues, on the other hand.

## **Article 9: International standards for exchange of trade-related data and documents in electronic form**

35. “International standards” in this Framework Agreement refer to standards developed by international standards organizations or bodies and which have been widely adopted as good practices. Examples of such international standards include the International Organization for Standardization country code standard (ISO 3166), the United Nations Code for Trade and Transport Locations (UN/LOCODE), the United Nations Trade Data Element Directory (UNTDDED), Codes for Units of Measure used in International Trade (UNECE Recommendation No. 20),<sup>14</sup> the United Nations Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT), etc.

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<sup>14</sup> Revision 6 (CEFACT/ICG/2009/IC011). Available from [www.unece.org/fileadmin/DAM/cefact/recommendations/rec20/Rec20\\_Rev6e\\_2009.pdf](http://www.unece.org/fileadmin/DAM/cefact/recommendations/rec20/Rec20_Rev6e_2009.pdf).

36. For exchange of trade-related data and documents in electronic form, the Parties may use common international standards. The standards to be applied and the data and documents in electronic form to be exchanged need to be discussed and mutually agreed upon by the Parties during the implementation of the Framework Agreement, after its entry into force.
37. As part of ensuring interoperability and enhancing mutual recognition of trade-related data and documents in electronic form, the Parties would collaborate on international standard implementation strategies through the institutional arrangement established under this Framework Agreement. International standard implementation strategies are primarily concerned with, though not limited to, technical standards.

## **Article 10: Relation with other legal instruments enabling cross-border paperless trade**

38. The Framework Agreement operates in a complex legal environment, in which a number of international legal texts and other legislative and regulatory standards are present. The Framework Agreement is aimed at interacting with them and actually promotes further harmonization of the law on electronic transactions. It is worth noting that international instruments may support implementation of the Framework Agreement, while the Framework Agreement itself may also support their implementation. However, the Framework Agreement does not entail any legal obligation to adopt other international agreements.
39. In paragraph 1 of Article 10, the Parties are called upon to take into account and adopt available international legal instruments, for example the United Nations Convention on the Use of Electronic Communications in International Contracts, a treaty that contains the most modern restatement of electronic transactions law with respect to both general principles and operational rules.

40. Paragraph 2 of Article 10 is a blanket provision referring to all applicable international standards, regional or global which may be considered in implementing the Framework Agreement. Those may include, for instance, guidelines on privacy and data retention, intellectual property treaties and other texts that have not yet been elaborated.
41. An illustrative reference list of instruments relevant to Art. 10 Para 1 and 2 will be made available at: <http://www.unescap.org/resources/framework-agreement-facilitation-cross-border-paperless-trade-asia-and-pacific>

## **Article 11: Institutional arrangements**

42. In the performance of their functions, working groups under the Standing Committee may establish liaison with relevant regional and global entities involved in facilitation of cross-border data exchange for cooperation and avoidance of possible duplication of efforts.
43. The secretariat's support in the implementation of the Framework Agreement would consist of the following:
  - a. Administrative support for meetings of institutions at all levels, including the Council, the Standing Committee and working groups;
  - b. Support to the activities of institutions at all levels, including the Council, the Standing Committee and working groups;
  - c. Support to the development and implementation of action plans, pilot projects and capacity-building programmes;
  - d. Maintenance of relevant databases and references;
  - e. Coordination of cooperation between the Parties and development partners in capacity-building, including financial and technical assistance;
  - f. Mobilization of external resources;
  - g. Any other matters necessary for implementing the Framework Agreement.

44. Art 11.6 intends to allow development of specific legal and technical protocols necessary for cross-border paperless trade data exchange through the institutional arrangements of the Framework Agreement. As specified in the provision, any protocols developed under the Framework Agreement shall be another separate legal instrument (treaty). Article 17 of the UN Framework Convention on Climate Change has a provision on protocols <sup>15</sup>.

## Article 12: Action plan

45. The action plan would comprise both collective and individual action plans. A collective action plan is a regional-level action developed and adopted by the Standing Committee for joint implementation among all the Parties. An individual action plan is a national-level action to be developed and implemented by each Party based on a self-assessment. Individual action plan along with a schedule of implementation would be shared with other Parties through the Standing Committee. Parties would report on the implementation status of the individual action plan regularly and inform adjustments to their implementation schedule as necessary.
46. The action plan would include a mechanism to review and assess the readiness of the Parties and any gaps in policy, legal and technical frameworks, whose primary purpose is to facilitate the participatory process and not to engage in measurement (comparisons between Parties), so that subsequent actions, in particular capacity-building programmes, can be designed to support the Parties effectively.
47. The action plan, in particular the capacity-building component, may be customized at the national, subregional and regional levels, considering the different levels of awareness and preparedness of different Parties and subregions.

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<sup>15</sup> Article 17 of the UN Framework Convention on Climate Change on "Protocols" has the following provisions: The Conference of the Parties may, at any ordinary session, adopt protocols to the Convention. The text of any proposed protocol shall be communicated to the Parties by the secretariat at least six months before such as session. The requirements for the entry into force of any protocol shall be established by that instrument. Only Parties to the Convention may be Parties to a protocol. Decisions under any protocol shall be taken only by the Parties to the protocol concerned.

## **Article 13: Pilot projects and sharing of lessons learned**

48. Under its institutional arrangement, the Framework Agreement would develop technical and legal reference frameworks to be used for pilot projects, and for actual projects, whenever possible. Such reference frameworks include model memoranda of understanding for arranging bilateral/multilateral exchanges of cross-border data, implementation models/scenarios, mutual recognition protocols, authentication procedures and lists of technical standards to be used.
49. Lessons learned and the results of successful pilot projects would be used to develop actual projects for live cross-border paperless trade to be included in action plans.

## **Article 14: Capacity-building**

50. The secretariat would provide necessary support to the Parties in implementing the capacity-building provisions of the Framework Agreement, including the coordination of cooperation with development partners in financial and technical assistance.

## **Article 16: Other agreements in force**

51. This provision is to ensure that a party is not affected in their bindings to other treaties by becoming a party to this treaty. The ASEAN Framework Agreement on the Facilitation of Goods in Transit, among many other treaties, contains a similar provision (Article 32).<sup>16</sup>

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<sup>16</sup> See: [www.asean.org/communities/asean-economic-community/item/asean-framework-agreement-on-the-facilitation-of-goods-in-transit-2](http://www.asean.org/communities/asean-economic-community/item/asean-framework-agreement-on-the-facilitation-of-goods-in-transit-2).



## Article 17: Dispute resolution

52. The provision contains a standard dispute resolution clause common to all treaties deposited with the Secretary-General of the United Nations. For more information on this clause, see the “Final Clauses Handbook” prepared by the Treaty Section of the Office of Legal Affairs.<sup>17</sup>
53. Parties may declare that they will not be bound by the conciliation mechanism contained in article 17 by depositing a reservation with the depositary of the treaty (see article 21).
54. The dispute resolution mechanism contained in article 17 applies only to disputes that may arise among the Parties (i.e., ESCAP member States) regarding the interpretation and application of the Framework Agreement. Commercial disputes relating to business transactions that may be facilitated by the Framework Agreement will continue to follow the standard dispute resolution procedures.

## Article 18: Procedure for signing and becoming a Party

55. Only ESCAP member States may become a party to the Framework Agreement. The procedures for becoming a party to the Framework Agreement are identical to those established for other treaties deposited with the Secretary-General of the United Nations.
56. Signature of the Framework Agreement was possible until 30 September 2017. However, those States that signed the Framework Agreement would not be bound by it, and would need to deposit an instrument of ratification in order to become a party to the agreement.

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<sup>17</sup> United Nations, Final Clauses of Multilateral Treaties Handbook, New York, 2003, United Nations Publication Sales No. E.04.V.3, pages 88-94. Available at: [https://treaties.un.org/Pages/Resource.aspx?path=Publication/FC/Page1\\_en.xml](https://treaties.un.org/Pages/Resource.aspx?path=Publication/FC/Page1_en.xml).

57. States that have not signed the Framework Agreement need to deposit an instrument of accession to become a Party to the Framework Agreement. There is no time limit to become a party to the agreement by depositing an instrument of accession or ratification.<sup>18</sup>
58. Instruments of accession and of ratification need to comply with certain international law requirements, including the fact that they must be signed by the Head of State, the Head of Government or the Minister of Foreign Affairs. The Treaty Section of the Ministry of Foreign Affairs and the Permanent Mission at the United Nations in New York may assist with the preparation and deposit of those instruments.
59. Additional information on the procedures for becoming a party to a treaty deposited with the Secretary-General of the United Nations, and therefore applicable to the Framework Agreement, is available in the “Treaty Handbook”.<sup>19</sup>

## **Article 19: Entry into force**

60. The Framework Agreement will enter into force ninety days after the fifth State has expressed their consent to be bound by it, i.e. five instruments of accession or ratification have been deposited.
61. For each additional State, the Framework Agreement will enter into force ninety days after the deposit of the instrument of accession or ratification.

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<sup>18</sup> The difference between accession and ratification is that accession is not preceded by signature, but ratification is. The content of the instrument is otherwise similar. In some States, the action of becoming a party to a treaty may be referred to as acceptance or approval (see article 18(2)).

<sup>19</sup> United Nations, Treaty Handbook, New York, 2012, United Nations Publication Sales No. E.12.V.1. Available at: [https://treaties.un.org/Pages/Resource.aspx?path=Publication/TH/Page1\\_en.xml](https://treaties.un.org/Pages/Resource.aspx?path=Publication/TH/Page1_en.xml).

## **Article 20: Procedures for amending the Framework Agreement**

62. The Framework Agreement spells out the procedures for its amendment, in line with the practice of the Secretary-General of the United Nations as Depositary of Treaties. Amendments are not automatically binding on State parties but need to be specifically accepted.
63. More precisely, an amendment to the Framework Agreement is adopted when approved by a two-thirds majority of the State parties present and voting at the relevant meeting of the Paperless Trade Council. However, the amendment will enter into force only three months after it has been accepted by two thirds of the number of State parties to the Framework Agreement at the time of its adoption, and only for those accepting State parties.

## **Article 21: Reservations**

64. The only reservation possible with respect to the Framework Agreement is the one relating to conciliation procedures provided in article 17(7). Such reservation is to be deposited together with the instrument expressing consent to be bound and will normally be contained in that instrument.

## **Article 22: Withdrawal**

65. States may withdraw from treaties to terminate their treaty obligations. Article 22 contains a standard withdrawal clause to that effect. If, as an effect of the withdrawal, the number of State parties to the Framework Agreement will be less than five for a period of more than twelve consecutive months, the validity of the Framework Agreement will be suspended (article 23).

## **Article 23: Suspension of validity**

66. The Framework Agreement must have a minimum of five State parties to operate (see also article 19). If, due to the withdrawal of a State party, the number of State parties is less than five for a period of more than twelve consecutive months, the operation of the treaty is suspended until the number of five State parties is reconstituted.

## **Article 24: Limits to the application**

67. This is a safety clause that is included in ESCAP treaties for the sake of clarity.<sup>20</sup>

## **Article 25: Depositary**

68. This is the standard provision designating the Secretary-General of the United Nations as depositary of the treaty. In practice, the depositary functions are discharged by the Treaty Section of the Office of Legal Affairs.<sup>21</sup> Detailed information about those depositary functions may be found in the “Summary of Practice of the Secretary-General of the United Nations as Depositary of Treaties”.<sup>22</sup>

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<sup>20</sup> See article 15(1) of the Intergovernmental Agreement on the Asian Highway Network, 2003

<sup>21</sup> The Treaty Section maintains a website at <https://treaties.un.org/>. For the contact information of the Treaty Section, see [https://treaties.un.org/Pages/Contact.aspx?clang=\\_en](https://treaties.un.org/Pages/Contact.aspx?clang=_en).

<sup>22</sup> United Nations, Summary of Practice of the Secretary-General of the United Nations as Depositary of Treaties, New York, 1999, United Nations Publication Sales No. E.94.V.15. Available at: [https://treaties.un.org/doc/source/publications/practice/summary\\_english.pdf](https://treaties.un.org/doc/source/publications/practice/summary_english.pdf).

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