

#eu4digital

EU4Digital: supporting digital economy and society in the Eastern Partnership

Project number: ENI/2018/396-727

Legislation gap analysis report and recommendations for eTrade policy instruments

(draft version updated 3 June 2020)

R.3.1.2. Legislation gap analysis report and recommendations for eTrade policy

instruments.

Version: v1.00 **(draft version)**

Date: 3 June 2020



TABLE OF CONTENTS

List of Annexes	3
1. Introduction	4
2. Methodology	4
2.2. Supply Chain Reference Model.....	4
2.3. Critical policy areas.....	5
2.4. The EU baseline	5
2.5. State of play in the Eastern partner countries	5
2.6. Gap analysis and recommendations	5
3. Critical eTrade policy areas in the Eastern partner countries	5
4. EU baseline for critical policy areas	7
5. Gap analysis and recommendations addressing critical policy areas in the Eastern partner countries ..	14
5.1. Armenia.....	14
5.2. Azerbaijan	16
5.3. Belarus.....	18
5.4. Georgia	20
5.5. Moldova.....	21
5.6. Ukraine.....	23



List of Annexes

Annex	Title
Annex 1	HDM Study, overall state of play in eTrade
Annex 2	HDM Study - the EU baseline of e-Trade legislation
Annex 3	The EaP countries legal scan questionnaires
Annex 4	The legal scan recommendations for the EaP countries



1. Introduction

The main purpose of harmonisation in cross-border paperless trade between the EU Member States and the Eastern partner countries is implementation of electronic procedures in supply chains between the EU Member States and the Eastern partner countries. Harmonisation in the regulatory area requires national frameworks for paperless trade to be developed in the Eastern partner countries. This national framework should adopt essential legal provisions in the national legislation to create the legal basis of cross-border eTrade¹.

The goal of this report is to develop recommendations for the Eastern partner countries and suggest an effective approach for the harmonisation of paperless trade. To achieve this goal, this report includes three main components in its structure. First, the scan of eTrade related legal environment in the Eastern partner countries. Second, the status review of national legislations in terms of their harmonisation with the EU baseline for the most critical policy areas identified as the result of the previous HDM Study for eTrade/eLogistics conducted in 2017-2018 (hereinafter – HDM Study) . Third, the update to the EU baseline since the previous HDM Study of 2017-2018.

The practical outcomes of this report are:

- State of play analysis of the eTrade legal environment in the Eastern partner countries;
- Current level of harmonisation of the eTrade legal environment in the Eastern partner countries with the EU baseline;
- Recommendations to harmonise the eTrade legal environment in the most critical policy areas, which are essential to the Eastern partner countries.

2. Methodology

2.2. Supply Chain Reference Model

The scan of eTrade regulatory acts in the Eastern partner countries is performed in line with the Paperless Trade Supply Chain Reference Model (SCRM). Thus, the following main areas and procedures are analysed in all six Eastern partner countries:

- Buying procedures;
- Export procedures;
- Transport and logistics;
- Import procedures;
- Payment procedures.

The SCRM concept is originally used for the focused assessment of maturity of the paperless trade procedures in the study "Harmonisation of the Digital Markets in the Eastern Partnership: eTrade, eLogistics & Digital Transport Corridors" (hereinafter – HDM study) conducted in 2017. In this HDM Study the EU baseline in eTrade is set and consists of the best practices and solutions for harmonisation in paperless trade between the EU Member States and the Eastern partner countries. The baseline includes relevant EU legislation, policy areas and procedures, standards, electronic services and digital platforms.

¹ HIQSTEP project, Study on the "Harmonisation of the Digital Markets in the Eastern Partnership: eTrade, eLogistics and Digital Transport Corridors" (May 2018), <https://europa.eu/capacity4dev/hiqstep/documents/harmonisation-digital-markets-eastern-partnership-etrade-elogistics-digital-transport>.



2.3. Critical policy areas

To perform the SCRM-focused regulatory scan, the most critical policy areas in eTrade are identified for the Eastern partner countries by analysing the HDM Study results. Based on these critical areas, review of cross-border paperless trade procedures in each Eastern partner country is performed. The purpose of this review is to define the most immature and important areas, which were not addressed by the regulatory acts since the time of HDM study in 2017. As the result of this analysis, specific policy areas and SCRM procedures are identified as the most critical to facilitate cross-border eTrade in the Eastern partner countries.

2.4. The EU baseline

Next, the EU baseline is reviewed to identify updates in eTrade legislation adopted in 2018-2019 (since the time of the HDM Study). This analysis is focused on the identified critical policy areas and the EU best practices in eTrade frameworks, legislations and rules. As the result, additional recommendations are formulated for the Eastern partner countries to harmonise eTrade towards the EU acquis.

2.5. State of play in the Eastern partner countries

Based on the EU baseline, a questionnaire is developed by the EU4Digital Facility. It is also focused on the identified critical policy areas in the Eastern partner countries. Using the questionnaire, corresponding eTrade legislations in each Eastern partner country is scanned. The scan is focused on updates to legislation adopted between 2018 and 2019. The data collection is performed by the national eTrade experts.

2.6. Gap analysis and recommendations

Considering the set EU baseline and the legislation updates in the critical policy areas of the Eastern partner countries, gap analysis is performed. Then, recommendations for the Eastern partner countries are formulated in the following way.

First, the regulatory scans of the Eastern partner countries are used to find eTrade policies, which were adopted between 2018 and 2019, to address the gaps (G1) and follow the recommendations (R1) identified in the original HDM Study.

Second, new gaps (G2) are identified for the critical policy areas based on the EU baseline updates and newly adopted eTrade legislation in 2018 and 2019. As the result, additional recommendations (R2) are shaped.

Finally, the resultant gaps and the recommendations ($R = R2+R1-G1$) are formulated to harmonise eTrade legislations of the Eastern partner countries in the policy areas critical to facilitate cross-border eTrade.

3. Critical eTrade policy areas in the Eastern partner countries

In the HDM Study, the SCRM based analysis was performed in 2017. As the result, regulatory frameworks of paperless trade were analysed and recommendations developed for the essential legal provisions. These recommendations should have been adopted in the national legislations by the Eastern partner countries. Annex 1 presents the original assessment of eTrade state of play for each country.

Based on the HDM study findings, review of SCRM procedures in the Eastern partner countries is conducted. The purpose of the review is to identify the most important and immature areas to which the necessary legal provisions are not adopted. The result of this review is summarized below in Table 1 for the areas and cross-border paperless trade procedures (marked by X), which lacked regulations in the particular countries at the time of the HDM study.



Table 1. eTrade procedures to which the necessary legal provisions in the Eastern Partner countries were not adopted since the time of HDM study in 2017

No	Cross-border paperless trade procedures	AM	AZ	BY	GE	MD	UA
1	Legal framework for trade electronic transactions			x	x	x	x
2	Law on eTrade/eCommerce			x			
3	Framework for online platforms	x	x	x	x	x	x
4	National interoperability framework	x	x	x	x		x
5	Usage of electronic commercial invoices	x			x		
6	Contracts conclusion in electronic form	x					x
7	On-line applications for letter of credit	x	x	x	x	x	x
8	Delivering certificates of origin	x	x	x		x	x
9	Processing of export licenses, permits and transport documents	x	x	x		x	x
10	Processing of foreign certificates of origin, permits and transport documents	x	x	x	x	x	x
11	Delivering foreign payment receipt acceptable by tax authorities			x	x	x	x
12	Application for custom refunds	x	x			x	
13	VAT reimbursement			x		x	

In this Table above, the areas with less developed regulations and SCRM procedures in more than half of Eastern partner countries are marked in colour. The eTrade policy areas and procedures identified this way are considered to be the most critical for the regulatory development and harmonisation in the Eastern partner countries at the time of HDM study in 2017. In particular the most critical areas are:

- **Row 1 of the Table:** Regulatory framework for trade electronic transactions and cross-border electronic data exchange, including electronic identification, electronic documents, electronic signatures and electronic delivery services;
- **Row 3 of the Table:** Legal framework for online platforms including provisions for cross-border services covering specific aspects of online platforms and their components;
- **Row 4 of the Table:** National interoperability framework and strategies including cross-border interoperability for trade-related information services;
- **Rows 8-10 of the Table:** Regulatory framework for submission and processing of electronic documents at the main stages of cross-border trade processes including submission of export-import licenses, certificates of origin and export-import permits, commercial and VAT invoices, transport documents;
- **Rows 7-11 of the Table:** On-line applications for letter of credit and delivering foreign payment receipt.

It is assumed that the HDM Study findings and recommendations in these policy areas should be prioritized by the Eastern partner countries in their eTrade regulatory developments. Thus, it is decided to focus legal environment scan in the Eastern partner countries on these critical areas.

In the HDM Study, the EU baseline in eTrade is also set according to the paperless trade SCRM. The main procedures defined a similar number of indicators that described the key procedures in paperless trade. The list of these indicators and the EU baseline details at the time of HDM study in 2017 are summarized in Annex 2 of the report.



Since the completion of the HDM Study, new regulatory acts in eTrade areas have been adopted in the EU and in the Eastern partner countries. Thus, it is essential to update the EU baseline and state of play for the regulatory frameworks in the Eastern partner countries for the critical eTrade policy areas according to the recommendations of the HDM study. In particular, it was expected that the harmonisation of eTrade should be re-assessed in 2-3 years after implementation of the recommendations of the HDM Study.

4. EU baseline for critical policy areas

The EU baseline frameworks, legislations and rules are essential to harmonise eTrade in the Eastern partner countries. The focus of these regulations is electronic exchange of data and documents across the borders.

Chapter 3 presented the most critical regulatory areas in the Eastern partner countries. According to these areas, the EU baseline is formulated. It consists of the EU frameworks, legislations and rules, which are valid in the EU and may be considered by the Eastern partner countries to address the critical areas. These frameworks, legislations and rules are summarised below in Table 2.

Table 2. The EU frameworks, legislations and rules mapped with the most critical areas

No	Critical area	The EU frameworks, legislations and rules	Legal basis
1.	The regulatory framework for electronic trade transactions and cross-border electronic data exchange, including electronic identification, electronic documents, electronic signatures and electronic delivery services.	eID	Regulation (EU) 2015/1502
		eSignature	Regulation (EU) No 910/2014
		eDelivery	Regulation (EU) No 910/2014
		eDocument	AS4 messaging protocol
		GDPR	Regulation (EU) 2016/679
2.	Legal framework for online platforms including provisions for cross-border services covering specific aspects of online platforms and their components.	Fairness and transparency of online platforms	Regulation (EU) 2019/1150
		Legal basis for national legislation of Member States	Decision 70/2008/EC
		Digital Single Market Strategy	COM(2015)192
3.	National interoperability framework and strategies including cross-border interoperability for trade-related information services.	EIF	COM(2017)134
		EIS	COM(2010)744
4.	The regulatory framework for submission and processing of electronic documents at the main stages of cross-border trade processes including submission of export-import licenses, certificates of origin and export-import permits, commercial and VAT invoices, transport documents.	eCustoms	Directive 70/2008/EC
		eInvoicing	Directive 2010/45/EC
		eCMR	The protocol of eCMR to the Convention on CMR
5.	Online applications for the letter of credit and delivering foreign payment receipts.	eRules	eUCP Version 2.0

The most recent updates in the EU (from 2017 and later) legislation, have included several key documents:



- The Regulation on fairness and transparency of online platforms, which defines the proper functioning of the digital market;
- The EIF that offers specific recommendations on how to improve interoperability and cross-border relationship;
- eRules that specifies the submission of the letter of credit in electronic form.

The development of the EU baseline is still ongoing in several directions: application of interoperability and processing of eCMR in the EU.

These critical areas presented in the table above and the relevant EU legislation are discussed below:

1. The regulatory framework for electronic trade transactions and cross-border electronic data exchange, including automatic identification, electronic documents, electronic signatures and electronic delivery services

The legislations mentioned in the first critical area could be called as a legal institution,² which governs electronic transactions and electronic data exchange.

- 1.1. Electronic identification (eID). Regulation (EU) 2015/1502 valid from September 8th, 2015:
http://data.europa.eu/eli/reg_impl/2015/1502/oj.

The primary purpose of eID is mutual recognition that enables citizens and legal persons to interact with their national eID tools across borders. It sets out minimum technical specifications, procedures for electronic identification, trust services of electronic transactions and their assurance levels in the EU market.

As every Member State may have their specific system to manage electronic identities, a mechanism is needed to make these systems comparable and interoperable. The European Commission is implementing regulation on assurance levels, which includes detailed criteria that allows the Member States to compare their eID tools against the benchmark (low, essential and high).

- 1.2. eSignature. Regulation (EU) No 910/2014 defines eSignature and its legal effect from July 23rd, 2014:
<http://data.europa.eu/eli/reg/2014/910/oj>.

This Regulation verifies authenticity of the will of a legal person and individual and their consent with eDocument content. It covers the principles of establishment of electronic signature and its' three forms – Simple Electronic Signatures, Advanced Electronic Signatures (AdES), and Qualified Electronic Signatures (QES). Requirements for each form are built so that Qualified electronic signature meets the most of the requirements, while Simple electronic signature meets the least of the requirements. In respect to the regulatory environment, the national legislations of the Member States are aligned to comply with the eIDAS regulation.

- 1.3. eDocument. Regulation (EU) 910/2014 valid from July 23rd, 2014:
<http://data.europa.eu/eli/reg/2014/910/oj>.

This Regulation promotes authenticity and integrity of information in electronic documents. In addition to the mandatory elements, it must contain the data necessary to maintain the authenticity and integrity of the archived accounts. Only electronic documents that meet these requirements are used to prove transactions. The

² Term in legal language, i.e. the group of legal norms that regulates the same subject.



Regulation defines that the legal force and admissibility of an electronic document as evidence in legal proceedings are not excluded merely because it is in electronic form.

- 1.4. eDelivery. AS4 messaging protocol provided by OASIS Committee Specification under Connecting Europe Facility (CEF) from April 1st, 2010:
<http://docs.oasis-open.org/ebxml-msg/ebms/v3.0/profiles/200707/AS4-profile.pdf>.

eDelivery enables public administrations to exchange electronic data and documents with other public administrations, businesses and citizens in an interoperable, secure, reliable and trusted way. The standard is based on the AS4 messaging protocol available for all users. eDelivery also facilitates exchange of data across borders. In particular, data may be sourced by information systems that are developed independently and, therefore, do not have a common data structure and exchange protocol.

- 1.5. General Data Protection Regulation (GDPR). Regulation (EU) 2016/679 valid from April 27th, 2016:
<http://data.europa.eu/eli/reg/2016/679/oj>.

GDPR is the horizontal privacy legislation to process personal data in the EU, which includes the consent of data subject, legitimate interest and contractual obligation. It applies across businesses in different industries. GDPR is a complex concept with dedicated set of regulations on trust and security for transactions, which makes it important particularly for eTrade and eCommerce. GDPR enforces confidentiality of information that must exist in eTrade transaction, in particular, during registration, online ordering and processing of payments. It means that information about a buyer, both during and after the purchase, must be protected by encryption (code) or other solution.

2. Legal framework for online platforms including provisions for cross-border services covering specific aspects of online platforms and their components

This legislation mentioned in the second critical area could be called as a legal institution³, which governs cross-border services covering specific aspects of online platforms. Intermediaries (e.g. online platforms) should meet certain list of criteria to be accessible, fair and as quick, efficient and effective as possible. Legal basis for this list is presented below. Countries can appoint a national authority, which is responsible to establish these criteria and assess how these defined criteria are followed.

- 2.1. Fairness and transparency of online platforms. Regulation (EU) 2019/1150 valid from June 20th, 2019:
<http://data.europa.eu/eli/reg/2019/1150/oj>.

The Regulation promotes fairness and transparency of online platforms when legal entities perform eTrade transaction with consumers by applying intermediation services. The Regulation contributes to the proper functioning of the digital market by laying down rules to ensure that business users of online intermediation services and corporate website users are granted appropriate transparency, fairness and effective redress possibilities.

- 2.2. Legal basis for national legislation of Member States. Decision 70/2008/EC on paperless environment for customs and trade, valid from January 15th, 2008: <https://op.europa.eu/en/publication-detail/-/publication/a42d974d-e43a-4ce6-bac3-1ed71985fc87/language-en>.

The EU regulatory framework for online platforms enforces measures to increase efficiency in customs controls. This regulation prescribes electronic customs systems for import, export and transit. Also, it enables seamless flow of data from one customs system to another. Besides, it envisages the single-window approach to identify

³ Term in legal language, i.e. the group of legal norms that regulates the same subject.



and register economic operators, which enable them to register only once for all their interactions with customs authorities. National components of the electronic customs systems comprise connectivity between customs authorities and economic operators, between customs authorities and other administrations or agencies within the same Member State. Thus, using the single-window approach traders have access to information portals and single electronic access points to customs transactions and security-related procedures.

2.3. Digital Single Market Strategy. Communication COM(2015)192 on a Digital Single Market Strategy valid from May 6th, 2015:

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015DC0192&from=it>.

The Communication (from the European Commission to the European Parliament, the Council, the European Economic and Social Affairs Committee and the Committee of the Regions) highlights five issues such as:

1. transparency, covering data search;
2. platforms using collected information;
3. relationships connecting platforms and their users;
4. restrictions on ability of individuals and businesses to switch between platforms;
5. combat of illegal content online in the best way.

Also, the Communication of COM(2016)288 outlines the critical issues identified during assessment of online platforms, as well as sets up the main principles to develop such platforms in the EU:

- Comparable digital services;
- Protection of core values;
- Transparency and fairness forward consumer confidence and innovations;
- Open and non-discriminatory data-based markets.

3. National interoperability framework and strategies including cross-border interoperability for trade-related information services

The EU legal frameworks govern the cross-border interoperability, which is important to improve interaction, exchange and cooperation across borders and sectors.

3.1. European Interoperability Framework (EIF). Communication COM(2017)134 valid from March 23rd, 2017: <https://ec.europa.eu/transparency/regdoc/rep/1/2017/LT/COM-2017-134-F1-LT-MAIN-PART-1.PDF>.

The framework gives guidance on how to set up interoperable digital public services and establish cross-organizational relationships. The EIF principal roles are to guide public administrations on the design and updates of the national interoperability frameworks (NIFs), and development of the national policies and strategies. Together these actions contribute to establishment of the single digital market by fostering cross-border and cross-sectoral interoperability to deliver public services in the EU. The EU and the national policies (e.g. NIFs) are expected to build upon the EIF, by adding new or fine-tuning the existing elements. The domain-specific interoperability frameworks (DIFs) should remain compatible with and, if necessary, extend the scope of the EIF to capture specific interoperability requirements of a particular domain. There are 12 principles of interoperability that should be applied.

Also, the EIF provides recommendations for governance of integrated public services. These recommendations often require different public administrations to work together to meet end-users' needs and cooperate to provide public services in an integrated way. Public services should be governed to ensure integration, seamless execution, reuse of functions and data, development of new services and *building blocks*. To ensure the integrated



approach organisations involved in delivery of public services in the EU should make formal arrangements for cooperation through interoperability agreements. The EIF identifies four layers of interoperability - legal, organizational, semantic and technical - and provides the conceptual model to deliver integrated public services. In the legal layer, interoperability agreements are made specific and binding at the EU and/or national level or via bilateral and multilateral agreements. In the organizational, semantic and technical layers, interoperability agreements usually include standards and specifications, including identification and development of business processes and the best practices.

3.2. European Interoperability Strategy (EIS). Communication COM(2010)744 is announced by December 16th, 2010: <https://ec.europa.eu/transparency/regdoc/rep/1/2010/LT/1-2010-744-LT-F1-1.PDF>.

It is a practical tool with stated interoperability priority – to improve interaction, exchange and cooperation across borders and sectors – when delivering public services in the EU. This priority is linked to a high value-added set of actions with measurable results in selected areas to be implemented by 2020. It focuses on layers of interoperability and ensures coordination and common standards of this implementation to provide secure and borderless interoperability in public services delivered in the EU. To measure the level of implementation of EIS and to help Member States identify areas for improvement, the National Interoperability Framework Observatory (NIFO) team held a webinar in April 2020. Implementation is in progress.

4. The regulatory framework for submission and processing of electronic documents at the main stages of cross-border trade processes including submission of export-import licenses, certificates of origin and export-import permits, commercial and VAT invoices, transport documents

This legislation mentioned in the fourth critical area could be called as a legal institution⁴, which governs submission and processing of eDocuments during cross-border trade transactions.

4.1. eCustoms. Directive 70/2008/EC valid from January 15th, 2008: [http://data.europa.eu/eli/dec/2008/70\(1\)/oj](http://data.europa.eu/eli/dec/2008/70(1)/oj).

The European Commission determines strategic goals to develop eCustoms⁵ in Europe. eCustoms refers to process organisation to deliver electronic customs clearance procedures. The law that regulates eCustoms aims to implement the single-window customs procedures. In particular, the Directive supports paperless environment for customs and trade. The European Commission and the Member States should develop secure, integrated, interoperable and accessible electronic customs systems to exchange data contained in customs declarations, documents and certificates accompanying customs declarations and other relevant information. The adoption and application of the Union Customs Code (UCC) from May 1st, 2016 integrates all electronic documents and builds interconnected environments between customs authorities. The UCC is the new legislation in the EU, which helps to set-up movement from paper-based customs procedures to electronic ones and supports implementation of the single-window framework in the EU.

4.2. eInvoicing. Directive 2014/55/EC valid from April 16th, 2014: <http://data.europa.eu/eli/dir/2014/55/oj>.

This Directive on electronic invoicing in public procurement came into force by amending the Directive 2006/112/EC on the common system of value-added tax. The Directive suggests establishing common procedures to generate and store electronic invoices by electronic means and to handle over issuing of electronic invoices and related procedures to third parties⁶. The EU Directive on electronic invoicing aims to ensure

⁴ Term in legal language, i.e. the group of legal norms that regulates the same subject.

⁵ eCustoms is specified in Directive 70/2008/EC.

⁶ Council Directive 2010/45/EU of 13 July 2010 amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1582568728501&uri=CELEX:32010L0045>.



interoperability and enable consistent management of information between business systems, regardless of their technology, application or platform. These are significant milestones for electronic invoicing implementation.

In the Communication COM(2010)245 from August 26th, 2010 on digital agenda for the EU, the aspiration was formulated for making supply of commercial content and services in other countries free, foreseeing facilitation of electronic payment and invoicing (the Article 1 (11)). After realizing that only subjects (both, legal entities and consumers) operating in the integrated payment market may have access to safe and efficient methods of payment, it was decided to create the single euro payment area (SEPA). This area was to evolve to the European electronic Invoicing system⁷.

Additionally, the European Union, on April 16th, 2014 adopted, the legal act to standardise requirements for the existing and practically applicable standards of content. The act addresses the problem of different format of electronic invoicing across the EU Member states. It is the Directive 2014/55 of the European Parliament and the Council on use of electronic invoices in public procurement (hereinafter referred to as "Invoicing Directive" or "the Directive"). This Directive seeks to achieve the objective of avoiding confusion and legal uncertainty for economic operators, in particular, for cross-border procurement activities.

The Directive identifies essential requirements for the content of electronic invoice (Article 6 of Invoicing Directive). It formulates conditions to create the European electronic invoice standard (the Articles 2 and 3 of Invoicing Directive). In this way, the Directive prevents the continuous misalignment between the latest invoicing standards and syntaxes existing in the Member States, which complicates cross-border interoperability.

As stated in the Directive, the key elements of electronic invoice are the essential information components that are to be presented in electronic invoices to allow cross-border interoperability, including the information necessary to ensure compliance with the legislation (the Article 2 (2) of Invoicing Directive). According to the Paragraph 5 of Invoicing Directive, to achieve the objectives of this act, the single European standard for the semantic data model for the essential elements of the electronic invoice should be established (the European standard on electronic Invoicing). Before applying the standard, the European Commission is instructed to assess the costs to implement innovations that increase practicality and user-friendliness.

This Directive requires the European standard on electronic invoicing to be based on the existing technical specifications developed within the framework of the European standardization organizations such as CEN. It should take into account other relevant technical specifications developed within the framework of international standardization organizations, such as UN/CEFACT and ISO. Since electronic invoices may contain personal data, the Directive also requires that the European standard on electronic invoicing addresses protection of personal data and the principles of corporate data protection (stated under GDPR). The European standard on electronic invoicing should be suitable for use in commercial transactions between enterprises. To follow this, a sender of electronic invoice should have possibility to guarantee authenticity of origin and integrity of the content of this invoice. In particular, this can be proven by using electronic signature solutions.

In addition to the Directive on electronic invoicing in public procurement, other legal instruments facilitate and inspire using electronic invoicing in the private sector. In particular, there is the Directive 2000/31/EC (on electronic commerce), the Regulation (EU) 910/2014 (on credibility of electronic identification and electronic transactions), the Directive 2015/2366/EU (on payment services in the internal market) and other legal documents. Moreover, the obligation to use eInvoices for the private sector is separately provided in the national laws of the Member States.

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social committee and the committee of the regions, "A Digital Agenda for Europe" (August 2010), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52010DC0245R%2801%29>.



4.3. eCMR. The Protocol of eCMR to the Convention on CMR developed by the World road transport organisation and valid from June 5th, 2011:

<https://www.unece.org/fileadmin/DAM/trans/conventn/e-CMRe.pdf>.

The main legal document “Additional Protocol to the Convention on the contract for the international carriage of goods by road (CMR) concerning the electronic Consignment note” requests that CMR document could be managed electronically, via eCMR and adds it to the CMR Convention. It means that the Contract for the International Carriage of Goods by Road in electronic form refers to Additional protocol to the Convention implementation. The Protocol states that the Electronic Consignment note shall be authenticated by parties of contract of carriage through electronic signature solutions (Article 3). Also, the Electronic Consignment note should include the same content as its paper version. Processing of eCMR is not yet enforced by the EU law, but some Member States of the EU and some of the Eastern partner countries access the Protocol of eCMR.

5. Online applications for the letter of credit and delivering foreign payment receipts.

This legislation mentioned in the fifth critical area could be called as a legal institution,⁸ which governs submission of the letter of credit in electronic form.

5.1. eRules for the letter of credit are issued by the International Chamber of Commerce (ICC) on July 1st, 2019:

<https://cdn.iccwbo.org/content/uploads/sites/3/2019/06/icc-uniform-customs-practice-credits-v2-0.pdf>.

These rules⁹ are valid for all ICC members countries¹⁰. In addition, national commerce laws can suggest higher requirements ensuring higher degree of security concerning electronic signatures and authentication than it is stated under the eRules. Also, commercial agreements may integrate clauses, ensuring issuing of the letter of credit, authentication and provision of electronic signatures.

Further steps must be taken to ensure the integrity of eTrade transactions among the EU Member States and the Eastern partner countries. The EU regulations for the critical areas could be considered by the Eastern partner countries to prove validity of eTrade documents. Also, harmonisation provisions could be made for data exchange between the EU and the Eastern partner countries. For this particular topic, international contracts or Protocols on more intense cooperation between countries are recommended. In case no specific regulations exist between countries, it is suggested to align on the legal frameworks and regulations, which are developed by the EU authorities and/or are valid in the EU.

⁸ Term in legal language, i.e. the group of legal norms that regulates the same subject.

⁹ Supplement to the ‘Commentary on eUCP Version 2.0 and eURC Version 1.0 (eRules).

¹⁰ In terms of the Eastern partner countries, only Armenia, Georgia, Ukraine have ICC national committees. More information: <https://iccwbo.org/about-us/global-network/regional-offices/#1483450013310-2f13f3f9-d678>



5. Gap analysis and recommendations addressing critical policy areas in the Eastern partner countries

The scan of eTrade related regulatory acts in the Eastern partner countries is carried out using the SCRM based questionnaires developed by the EU4Digital Facility. These questionnaires focus on the identified critical policy areas. The eTrade legislation in each of the Eastern partner country is scanned by the national eTrade experts and the updates in these policy areas were analyzed for the period of 2018-2019. The result of these scans for every Eastern partner country are presented in Annex 3.

The regulatory scans help to identify eTrade policies that had been developed by the Eastern partner countries in 2018-2019 to address the original HDM Study recommendations. Then, gap analysis for the identified critical policy areas is conducted taking into consideration the updated EU baseline with the new eTrade EU legislation adopted in 2018-2019. Finally, additional recommendations were formulated for the harmonisation with the EU *acquis*.

Consolidated result of this gap analysis and summarized recommendations are presented in this chapter for each of the Eastern partner country in the following structure:

- The original recommendations from the HDM study with description of the gaps addressed in the Eastern partner countries in 2018-2019 (R1¹¹, G1);
- New gaps G2 for the identified critical policy areas according to the updated EU baseline and eTrade legislation adopted in 2018-2019 (G = G2 + R1- G1);
- Resultant recommendations addressing specific national challenges in the Eastern partner countries for cross-border eTrade facilitation (R = R2+ R1-G1).

The summary of these recommendations for each Eastern partner country is provided in Annex 4 of this report.

5.1. Armenia

In the chapter of the HDM Study report that describes the country, the following main areas of the eTrade regulatory framework of Armenia were recognized in December 2017:

- The Law on 'Trade and Services' and the Law on e-documents/e-signatures are regulating trade procedures via electronic communication;
- The national legal framework includes the requirements for legal recognition of trade-related data and electronic documents;
- The Civil Code includes specific provisions related to services delivery and acceptance in electronic communication, warranty conditions, electronic trade platforms and trading via online platforms;
- The country has got the National Single Window System for the external trade which was built on the base of the national electronic interoperability framework.

In addition, an initiative to establish the regulatory framework with Iran and Georgia was initiated by the State Revenue Committee and the agreements have been drafted. There were no agreements in place with the EU Member States or the other Eastern partner countries on the legal recognition of trade-related data and electronic documents.

¹¹ For a more detailed explanation of the coding, please refer to the "Methodology" part of the report.



5.1.1. Recommendations from HDM Study

As the result of the HDM study, the following recommendations were made by the expert team to fill the gaps with the EU baseline in 2017 and harmonise the regulatory framework of Armenia with the EU *acquis*:

1. Improve the legal framework to include cross-border electronic data exchange. The good practice in this area is the EU eDelivery Regulation on electronic identification and trust services (eIDAS) that creates appropriate conditions for the EU digital single market. Armenia was encouraged to adopt legal provisions for the mutual recognition of key enablers across borders, such as electronic identification, electronic documents, electronic signatures and electronic delivery services and for interoperating electronic services.
2. Extend the national interoperability strategy and implementation plan for cross-border interoperability with the EU. The European Interoperability Strategy and the new European Interoperability Framework should be used as a model to extend the national interoperability strategy in cross-border interoperability for trade-related information services with the EU. The harmonisation with its provisions would allow interaction, exchange and cooperation with the European public administrations to deliver electronic trade services across national borders and sectors.
3. Further development of the National Single Window for foreign trade. Among the most important recommendations is the integration of information systems of other government and non government bodies involved in foreign trade. The Single Application Form can allow traders to submit trade-related data only once and enable validation of supporting electronic documents or records contained in the information systems of state agencies.

5.1.2. Results of the legal scan

The detailed result of the regulatory scan performed in Armenia for the main cross-border paperless trade procedures is provided in Annex 3. This result proves that the majority of the SCRM areas are covered by the existing legislation in the country. This result also indicate that the following new regulatory acts and measures have been adopted in Armenia in 2018-2019:

- Decree of the Prime Minister #606-A dated 27 May 2019 on the appointment of the members of the commission to deploy the interoperability platform between state bodies and one stop, one window system of external trade system modernization;
- Decree # 37-N dated 24.01.2019 of the Government of Armenia on amendments in the Decree #1093-N dated 31.08.2015 of the Government of Armenia on setting common technical requirements, security of electronic systems and interoperability for electronic services provided by state and territorial self-administration bodies;
- Decision of the Prime Minister of Armenia # 185-A, dated 26.02.2019 on the appointment of working group to improve national platform of external trade “One stop, one window”.

The first two decrees from the above list address the original recommendation number two from the HDM study. The third decision in the list above addresses the original recommendation number three of the HDM study. As the result, the major part of cross-border paperless trade procedures and the critical policy areas are currently covered in Armenia by the national legislation.

5.1.3. Gaps and recommendations updated



According to the eTrade related regulatory acts lately adopted in the EU (see chapter 4 for the details), the following additional gaps are revealed during this analysis:

- There is a need to stipulate the requirements to eDelivery access points for the country Single Window System to exchange information in the external trade;
- There is a need for the regulation to establish single digital gateways which can help citizens and businesses to navigate the internal market and to provide effective market tools for their cross-border activities.

Combining the gaps (G1) and recommendations (R1) of the HDM Study, with the regulatory scan and the updated gap analysis (G2), the following recommendations (R2) can be made for Armenia to address the policy areas that are critical for cross-border eTrade facilitation:

A. To improve the legal framework for cross-border electronic data exchange and documents between the Eastern partner countries and the EU, adopt the regulatory acts for implementation of the national modules eID, eSignature, eDelivery and eInvoicing, as well as the corresponding international agreements. It is required to make Armenia ready for regional cross-border eTrade transactions.

B. To develop and adopt the regulation and requirements for eDelivery access points for the country Single Window System in terms of preparations for G2G and B2G cross-border information exchange.

C. To consider the eRules requirements and ensure the proper degree of security by using electronic signatures and authentication for foreign payments.

5.2. Azerbaijan

In the chapter of the HDM Study report that describes the country, the following main areas of Azerbaijan eTrade regulatory framework were recognized in December 2017:

- The Law On E-Commerce, № 908-IIQ, regulating all spheres of eTrade excluding financial market, insurance and securities market;
- Decree of the President of the Republic of Azerbaijan on the implementation of the Law No 460-VQD of the Republic of Azerbaijan dated 16.12.2016 “On amendments to the Law of the Republic of Azerbaijan ‘On Electronic Trade’”;
- The Civil Code includes specific provisions related to eTrade activities;
- The Law on Electronic Signature and Electronic Documents;
- Decree No 27 of the Cabinet of Ministers of the Republic of Azerbaijan on approval of some regulatory legal acts related to electronic signature and electronic document in Azerbaijan;
- The Decree of the President dated 22 February 2017 on Additional Measures for the Strengthening of Azerbaijan’s Position as a Digital Trade Hub and the expansion of foreign trade operations;
- Decree of the President on Application of the Single Window Principle during the Inspection of Goods and Cargo Vehicles moving across the Border Crossing Points;
- The country has got Azexport web portal (titled Digital Trade Hub) which is integrating the most popular eCommerce platforms but has not build yet the National Single Window System for external trade.

The Presidential Decree defines the framework for the National Single Window for the external trade. It allows parties involved in trade and transport to exchange unified information and documents using single-entry point to fulfil all import, export and transit-related regulatory requirements. The information system for the National Single Window is under development involving the core governmental agencies, ministries and the Central Bank.



5.2.1. Recommendations from HDM Study

As the result of the HDM study, the following recommendations were made by the expert team to fill the gaps with the EU baseline in 2017 and harmonise Azerbaijan regulatory framework with the EU *acquis*:

1. In alignment with the EU Regulation on electronic identification and trust services (eIDAS), Azerbaijan needed to extend the legal framework with provisions for the mutual recognition of key enablers across borders. This includes electronic identification, electronic documents, electronic signatures and electronic delivery services, and interoperating electronic services.
2. Develop the national interoperability strategy and implementation plan harmonised with the European Interoperability Framework (EIF). The harmonisation with its provisions would allow interaction, exchange and cooperation with the European public administrations to deliver electronic trade services across national borders and sectors.
3. Extend the legal framework for online platforms, including provisions for cross-border services. In alignment with the Decision on paperless environment for customs and trade (Decision 70/2008/EC), the legislation should include provisions for the national Single Window system. Also, it should include regulations on access to information portals and single electronic access points for import and export transactions. Finally, the legal framework should include specific aspects of online platforms such as electronic contracts concluded by parties having different nationalities and based in different countries.

5.2.2. Results of the legal scan

The detailed result of the regulatory scan performed in Azerbaijan for the main cross-border paperless trade procedures is provided in Annex 3. This result proves that the majority of the SCRM areas are covered by the existing legislation in the country. This result also indicate that the following new regulatory acts and measures have been adopted in Azerbaijan in 2018-2019:

- Decree of the President of the Republic of Azerbaijan on amendments to Decree No 1255 dated 22.02.2017 “On additional measures for strengthening of the position of the Republic of Azerbaijan as a Digital Trade Hub and expansion of foreign trade operations”, 25.06.2018;
- Rules of formation, implementation, integration and archiving of state information resources and systems, endorsed by the Decree of the President of the Republic of Azerbaijan dated 12.09.2018;
- Decree of the President of the Republic of Azerbaijan on measures for electrification of internal governance processes in government agencies, 27.10.2018;
- Order of the President of the Republic of Azerbaijan on the amendments to Order No 508 dated 26.09.2018 “On approval of the State Program for expansion of digital payments in the Republic of Azerbaijan in 2018-2020”, 14.06.2019.

The result of the regulatory scan proves that newly adopted acts address mainly the original recommendation number one of the HDM Study. Currently, not all of the eTrade critical policy areas are addressed.

5.2.3. Gaps and recommendations updated

According to the eTrade related regulatory acts lately adopted in the EU (see chapter 4 for the details), one additional gap is revealed during this analysis:

- There is a need for the regulations and requirements to the national Single Window System and its access points to exchange information in the external trade.



Combining the gaps (G1) and recommendations (R1) of the HDM Study, with the regulatory scan and the updated gap analysis (G2), the following recommendations (R2) can be made for Azerbaijan to address the policy areas that are critical for cross-border eTrade facilitation:

A. To accelerate the creation of the national Single Window System to adopt the Electronic Trade Facilitation Act in the form of the Decree of the President or the Cabinet of Ministers Resolution with a detailed implementation plan, stakeholders and responsibilities for the project.

B. To develop the national interoperability framework on the basis of the EIF and the best international practices and extend the legal framework for online platforms including provisions on cross-border services.

C. To improve the legal framework for electronic data and documents exchange between the Eastern partner countries and the EU, adopt the regulatory acts for implementation of the national modules eID, eSignature, eDelivery and eInvoicing, as well as the corresponding international agreements. It is required to make Azerbaijan ready for regional cross-border eTrade transactions.

D. To develop and adopt the regulation and requirements for eDelivery access points for the country Single Window System in terms of preparations for G2G and B2G cross-border information exchange.

5.3. Belarus

In the chapter of HDM Study report that describes the country, the following main areas of Belarus eTrade regulatory framework were recognized in December 2017:

- The Law № 231- 3 of 28 July 2003 “On Trade” with provisions dedicated to Electronic Trade;
- The Law № 113-3 of 28 December 2009 “On Electronic Document and Digital Signature”;
- The Law № 455-Z" On information, informatization and protection of information" (2008);
- The Cabinet of Ministers Resolution № 1074 of 9 August 2011 “On Electronic Services provision and implementation of governmental duties in the electronic form”;
- The Cabinet of Ministers Resolution № 599 of 9 July 2013 “On particular tasks for creation of Transport and Commercial documents in the electronic form”;
- The Law № 10-3 “On Commodity Exchanges” (last update 08.07.2015 N 284-3);
- The Law № 129-3 “On customs regulation in the Republic of Belarus “ (last update 19.06.2017 N 32-3);
- Decree of the President of the Republic of Belarus No. 124 of April 5, 2016 "On State Regulation of Foreign Trade Activities";
- Resolution of the Council of Ministers №599 of 9.07.2013 “On some issues concerning drawing up of bills of landing and consignment notes in the form of electronic documents”.

The government of Belarus included the National Paperless Trade System (NPTS) project in the State Programme for digital economy development in 2016-2020. In 2015-2017, the NPTS feasibility study and road map development project were implemented in Belarus and supported by the World Bank. In 2017-2018, experts of Belarus implemented a study project for the development of the Single Window etalon model for the countries of Eurasian Economic Union. However, the Single Window platform has not been deployed in Belarus yet.

5.3.1. Recommendations from HDM Study

As the result of the HDM study, the following recommendations were made by the expert team to fill the gaps with the EU baseline (in 2017) and harmonise Belarus regulatory framework with the EU *acquis*:

1. To develop and adopt the national law on Electronic Trade and eCommerce and create a legal framework supporting and regulating paperless trade environment, cross-border electronic data exchange and trade transactions, as well as operations of online platforms in countries harmonised with. Explore opportunities



for signing bilateral agreements with the EU Member States and the Eastern partner countries to pilot cross-border electronic trade transactions.

2. To adopt the Council of Ministers resolution on Electronic Trade Facilitation to approve the Single Window concept for foreign trade in Belarus aligned with the etalon model recommended by the Eurasian Economic Commission and to endorse organisational and financial models for NPTS development in the country. At the NPTS development stage, it should include the regulations ensuring the interoperability of Belarus Single Window with the international paperless trade systems in accordance with the UNECE recommendations, the European Interoperability Framework and the EU Decision on paperless environment for customs and trade.

5.3.2. Results of the legal scan

The detailed result of the regulatory scan performed in Belarus for the main cross-border paperless trade procedures is provided in Annex. This result indicates that there was one new regulatory act adopted in eTrade area in Belarus in 2018-2019:

- The Law № 143-3 of 8 November 2018 “On making amendments and additions into the Law of Electronic Document and Digital Signature”.

This regulatory act is considered to be highly important. This act opens legal opportunities to accept cross-border paperless trade transactions, like foreign electronic documents, if they are signed by digital signatures proved by the Third Trusted Party.

The result of the regulatory scan proves that currently the major part of the cross-border paperless trade SCRM procedures are addressed by the existing national legislation. However, the original HDM Study recommendations have not been addressed so far.

5.3.3. Gaps and recommendations updated

According to the eTrade related regulatory acts lately adopted in the EU (see chapter 4 for the details), the following additional gaps are revealed in Belarus during this analysis:

- There is a need for the regulations and requirements to the national Single Window System and online platforms, as well as its access points for the purpose of exchanging information in the external trade;
- There is a need for the regulations on establishing single digital gateways and platforms, which can help citizens and businesses to navigate the internal market and to provide effective market tools for their cross-border activities;
- There is a need for the National Interoperability Framework and its implementation plan.

Combining the gaps (G1) and recommendations (R1) of the HDM Study, with the regulatory scan and the updated gap analysis (G2) the following recommendations (R2) can be made for Belarus to address the policy areas that are critical for cross-border eTrade facilitation:

A. To initiate the development of the national law on Electronic Trade and eCommerce which is considered to be a critical regulatory act to facilitate paperless trade in the country.

B. To accelerate the creation of the national Single Window System and adopt the Electronic Trade Facilitation Act in the form of the Decree of the President or the Cabinet of Ministers Resolution with the detailed implementation plan, stakeholders and responsibilities for this project.

C. To develop and adopt the regulation and requirements for eDelivery access points for the country Single Window System in terms of preparations for G2G and B2G cross-border information exchange.



D. To improve the legal framework for cross-border electronic data and documents exchange between the Eastern partner countries and the EU, implement the national modules for eDelivery and eInvoicing, as well as the corresponding international agreements. It will be required to make Belarus ready for regional cross-border eTrade transactions.

E. To develop the national interoperability framework on the basis of the EIF and the best international practices and extend the legal framework for online platforms including provisions on cross-border services.

5.4. Georgia

In 2014, Georgia signed with the EU the Association Agreement (AA) and the Deep and Comprehensive Free Trade Area (DCFTA). As the result, the country managed to harmonise some of the core regulatory acts related to the digital market development with the EU *acquis*. In the chapter of the HDM Study report that describes the country, the following main areas of Georgian eTrade regulatory framework were recognized in December 2017:

- The Law on “Electronic Document and Electronic Trust Services” is in effect since April 2017 and defines a general framework for the legal recognition of electronic documents and electronic signatures. This law is harmonised with the EU eIDAS Regulation (Regulation (EU) N°910/2014)) enabling the recognition of Georgian Qualified Trust Service in the EU Member States;
- The Civil Code and several by-laws regulate the relations between citizens, businesses and public authorities as well as the legal force of trust services;
- The draft of Law on Electronic Commerce was elaborated by the Ministry of Economy and Sustainable Development and aligned with the EU eCommerce Directive and the obligations taken from DCFTA;
- Order No. 12858 dated August 1, 2012 (updated on 22.07.2019) of the State Revenue Service “On Implementation of Procedures for importation and exportation on Customs territory of Georgia” – State Revenue Service is a tax and customs administration in Georgia;
- The Order No. 290 (26 July 2012) of the Ministry of Finance on ‘Instruction on Movement and Clearance of Goods across the Customs Territory of Georgia’ specifies the requirements regarding forms of customs declarations, supporting documents and permits used in the international trade.

There is no national strategy or plans to implement initiatives in the area of paperless trade. Also, there are no specific legislation regulating use of the single window for the external trade. However, there are initiatives that support, but do not directly enforce, implementation of paperless trade. These initiatives were considered by the Georgian institutions when developing new EU oriented policies and strategies.

5.4.1. Recommendations from HDM Study

As the result of the HDM study, the following recommendations were made by the expert team to fill the gaps with the EU baseline in 2017 and harmonise the regulatory framework of Georgia with the EU *acquis*:

1. Improve the legal framework to include cross-border electronic data and documents exchange. The cross-border enforcement of provisions of the Law on ‘Electronic Document and Electronic Trust Services’ requires mutual cross-border recognition of electronic trust services.
2. Develop the national strategy and the implementation plan for cross-border interoperability. The European Interoperability Strategy and the new European Interoperability Framework should serve as a basis for the development of the national overarching strategic plan in the field of cross-border interoperability for trade-related services.
3. Extend the legal framework for online platforms, including provisions of cross-border services. Following the development of cross-border eCommerce and electronic trade, the legislation of Georgia should be extended to regulate access to online platforms for cross-border electronic transactions.



5.4.2. Results of the legal scan

The detailed result of the regulatory scan performed in Georgia for the main cross-border paperless trade procedures is provided in Annex 3. The majority of the SCRM areas are addressed by the national legislation. This result also indicates that the following new regulatory acts and measures have been adopted in Georgia in 2018-2019:

- Order №257 dated 29 August, 2019 of the Minister of Finance of Georgia on “Instructions on Movement and Clearance of Goods across the Customs Territory of Georgia”;
- Law of Georgia “Customs Code of Georgia” dated 28 June 2019. The new Customs Code defines communication between parties and the customs administration in electronic format as the main channel. Also, it limits exchange of hard copy documents to special cases only. However, the new Customs Code and subordinated instructions allow electronic submission of documents through eCustoms system for only Georgian residents. It does not provide regulations for the cross-border document exchange as well.

The result of the regulatory scan indicates that Georgia has partially addressed the original HDM Study recommendations.

5.4.3. Gaps and recommendations updated

According to the eTrade related regulatory acts lately adopted in the EU (see chapter 4 for the details), the following additional gaps in the Georgian legislation are revealed during this analysis:

- There is a need for the regulations and requirements to the national Single Window System and online platforms, as well as its access points for the purpose of exchanging information in the external trade;
- There is a need for the regulations on establishing single digital gateways, which can help citizens and businesses to navigate the internal market and to provide effective market tools for their cross-border activities;
- There is a need for the National Interoperability Framework and its implementation plan.

Combining the gaps (G1) and recommendations (R1) of the HDM Study, with the regulatory scan and the updated gap analysis (G2) the following recommendations (R2) can be made for Georgia to address the policy areas that are critical for cross-border eTrade facilitation:

A. To accelerate the creation of the national Single Window System and adopt the Electronic Trade Facilitation Act with a detailed implementation plan, stakeholders and responsibilities for such project.

B. To develop and adopt the regulation and requirements for eDelivery access points for the country Single Window System in terms of preparations for G2G and B2G cross-border information exchange.

C. To ensure the provision of cross-border eTrade services and electronic data exchange between the Eastern partner countries and the EU, implement the national modules for eDocument, eDelivery, eInvoicing, eID, eSignature, as well as the corresponding international agreements. It will be required to make Belarus ready for regional cross-border eTrade transactions.

D. To develop the national interoperability framework on the basis of the EIF and the best international practices and extend the legal framework for online platforms including provisions on cross-border services.

5.5. Moldova



In 2014, Moldova signed with the EU the Association Agreement (AA) and the Deep and Comprehensive Free Trade Area (DCFTA). As the result, the country has been actively harmonising its national legislation with the EU directives in the eTrade related fields, such as customs administration, transit trade, food safety, plant protection and quarantine, veterinary measures, technical standards, accreditation and conformity assessment. In the chapter of the HDM Study report that describes the country, the following main areas of the eTrade regulatory framework of Moldova were recognized in December 2017:

- The Law on “Access to Information” (#982-XIV of 11.05.2000);
- The Law on “State Information Resources” (#467-XV of 21.11.2003);
- The Law on “E-commerce” (#284-XV of 22.07.2004);
- The Law on “Electronic communications” (241-XVI of 15.11.2007);
- The Law on “Protection of personal data” (133 of 08.07.2011);
- The Law on “Payment services and electronic currency” 114 of 18.05.2012;
- The Law on “Electronic signature and electronic documentation” (91 of 29.05.2014);
- The Law on “Electronic Commerce” (284 of 22.07.2004);
- Governmental Decision Nr.857, of 31.10.2013 “National Strategy for the development of the digital society “Digital Moldova 2020”
- Governmental Decision Nr.254 of 14.05.2015 “Strategy on the increasing competitiveness of information technology industry for the period 2015-2021”.
- Governmental Decision Nr.710 of 20.09.2011 “On approval of the Strategic Program of the technological modernization of the Government “e-Transformation”.
- Governmental Decision Nr. 700 of 25.08.2014 “on Open Governmental Data”

Besides, important infrastructure components and digital platforms have been created in the country, such as MCloud, MPay and MConnect. The Trade Facilitation Study undertaken in 2016 by the UN Economic Commission for Europe made the strong recommendation to the government to adopt gradual approach to the Single Window development in Moldova and conduct detailed business process analysis within and across the State agencies involved to support export and import activities.

5.5.1. Recommendations from HDM Study

As the result of the HDM study, the following recommendations were made by the expert team to fill the gaps with the EU baseline in 2017 and harmonise the regulatory framework of Moldova with the EU *acquis*:

1. Modernise and develop the national regulations for eTrade/eCommerce and digital platforms to create the paperless trade legal environment, and to ensure that cross-border electronic data exchange and trade transactions are harmonised with the EU and the eIDAS Regulation.
2. Update the relevant national legislation with components related to the regulations of the national Single Window in Moldova.
3. Revise the customs code and its implementing provisions to ensure harmonisation with the Union Customs Code (UCC) of the EU.
4. Develop and adopt the Council of Ministers Decision dedicated to electronic trade facilitation in Moldova aligned with the European Commission Decision on paperless environment for customs and trade (Decision 70/2008/EC) and based on the WTO TFA provisions.
5. Ensure the interoperability of the national Single Window with the international paperless trade systems in accordance with the latest UNECE recommendations and the European Interoperability Framework.



5.5.2. Results of the legal scan

The detailed result of the regulatory scan performed in Moldova for the main cross-border paperless trade procedures is provided in Annex 3. This result indicates that the following new regulatory acts and measures have been adopted in Moldova in 2018-2019:

- Updated Law on Electronic Commerce no. 284 from 22.07.2004 adopted in February 2018. Following this modification of the current legislation, the existing gaps were eliminated and the provisions of the law were aligned in accordance with the Association Agreement between the Republic of Moldova and the EU;
- Adopted Law Nr. 142 of 19.07.2018 on the data exchange and interoperability;
- Government Decision Nr. 211 of 03.04.2019 on the interoperability platform MConnect.

The first act from the above list addresses the original recommendation number one. The other two acts address the original recommendation number five of the HDM study.

5.5.3. Gaps and recommendations updated

According to the eTrade related regulatory acts lately adopted in the EU (see chapter 4 for the details), the following additional gap in the legislation of Moldova is revealed during the analysis:

- There is a need for the regulations and requirements to the national Single Window System and online platforms, as well as its access points for the purpose of exchanging information in the external trade.

Combining the gaps (G1) and recommendations (R1) of the HDM Study, with the regulatory scan and the updated gap analysis (G2), the following recommendations (R2) can be made for Moldova to address the policy areas that are critical for cross-border eTrade facilitation:

A. To accelerate the creation of the national Single Window System and adopt the Council of Ministers Decision dedicated to electronic trade facilitation in Moldova aligned with the European Commission Decision on paperless environment for customs and trade.

B. To revise the customs code and its implementing provisions to ensure harmonisation with the Union Customs Code (UCC).

C. To develop and adopt the regulation and requirements for eDelivery access points for the country Single Window System in terms of preparations for G2G and B2G cross-border information exchange.

D. To ensure the provision of cross-border eTrade services and electronic data exchange between the Eastern partner countries and with the EU, implement the national modules for eDelivery and eInvoicing, as well as the international agreements. It will be required to make Moldova ready for regional cross-border eTrade transactions with Eastern Partner countries.

5.6. Ukraine

In 2014, Ukraine signed the Association Agreement (AA) with the EU and the Deep and Comprehensive Free Trade Area (DCFTA). Since that time Ukraine has got the national implementation plan for harmonising its national legislation with the EU directives in the eTrade related fields. In the chapter of the HDM Study report that describes the country, the following main areas of Ukrainian eTrade regulatory framework were recognized in December 2017:



- The Law on Foreign Economic Activity of 16 April 1991, No. 959-XII admits the use of electronic invoice in certain types of transactions;
- The Law on Electronic Commerce of 3 March 2015 № 675-VIII, which relates directly or indirectly to electronic trade and introduces key changes to other legislative acts related to the general status of electronic transactions;
- The Customs Code of 13 March 2012 No 4495-VI;
- The Decree of the Cabinet of Ministers No. 364 of 25 May 2016 on selected issues related to the implementation of the "Single Window" procedure for customs, sanitary, epidemiological, veterinary, phytosanitary, ecological, radiological and other kinds of state control;
- Resolution of the Cabinet of Ministers of Ukraine of 05/10/11 No 1030 "Some issues of Performing Preliminary Documentary Control at the border control points on the State border of Ukraine".
- Resolution of the Cabinet of Ministers of Ukraine of 25/05/16 No 364 «Some issues of implementing the principle of a "single window" in the implementation of customs, sanitary-epidemiological, veterinary-sanitary, phytosanitary, environmental, radiological and other types of state control".

Besides, in 2011–2012 the Ukrainian National Committee of the International Chamber of Commerce (ICC Ukraine) initiated the implementation of the 'Single Window- local solution' project in the ports of Odesa region. This regional project was undertaken to gain expertise and experience necessary to create the national Single Window system.

5.6.1. Recommendations from HDM Study

As the result of the HDM study, the following recommendations were made by the expert team to fill the gaps with the EU baseline in 2017 and harmonise the regulatory framework of Ukraine with the EU *acquis*:

1. Amend and develop national regulations supporting paperless trade environment, and to ensure that cross-border electronic data exchange and trade transactions, as well as operation of online platforms is harmonised with the EU *acquis* and eIDAS Regulation.
2. Explore opportunities of signing additional agreements with the EU to pilot cross-border electronic trade transactions.
3. Update and approve the national Single Window concept for foreign trade in Ukraine aligned with the European Commission Decision on paperless environment for customs and trade (Decision 70/2008/EC), and based on the WTO TFA provisions.
4. Ensure at the country Single Window development stage the interoperability of the national system with the international paperless trade systems in accordance with the latest UNECE recommendations and the European Interoperability Framework.

5.6.2. Results of the legal scan

The detailed result of the regulatory scan performed in Ukraine for the main cross-border paperless trade procedures is provided in Annex 3. This result indicates that the following new regulatory acts and measures have been adopted in Ukraine in 2018-2019:

- The Law of Ukraine "On Amendments to the Customs Code of Ukraine and Some Other Laws of Ukraine Regarding the Introduction of the Single Window Mechanism and Optimization of Control Procedures for the Movement of Goods Across the Customs Border of Ukraine" of September 06, 2018 No. 2530-VIII;



- The Law of Ukraine “On the regime of joint transit and introduction of the national electronic transit system” of September 12, 2019 No. 78-IX;
- The Law of Ukraine "On Amendments to the Customs Code of Ukraine on Certain Issues of Functioning of Authorized Economic Operators" (Registration No. 1048 dated 29.08.2019) - adopted by The Parliament of Ukraine on October 02, 2019;
- The Law of Ukraine “On the regime of joint transit and introduction of the national electronic transit system” of September 12, 2019 No. 78-IX. By March 2020 – the national electronic transit system is to be implemented and be compatible with NCTS.

The result of the regulatory scan indicates that the laws listed above mainly address the original HDM Study recommendations number three and four.

5.6.3. Gaps and recommendations updated

According to the eTrade related regulatory acts lately adopted in the EU (see chapter 4 for the details), the following additional gaps in the legislation of Ukraine were revealed during this analysis:

- There is a need for the regulations and requirements to access points for the country Single Window System with the purpose of exchanging information in the external trade;
- There is a need for the National Interoperability Framework and its implementation plan;
- There is a need for the regulations on establishing single digital gateways and online platforms, which can help citizens and businesses to navigate the internal market and to provide effective market tools for their cross-border activities.

Combining the gaps (G1) and recommendations (R1) of the HDM Study, with the regulatory scan and the updated gap analysis (G2), the following recommendations (R2) can be made for Ukraine to address the policy areas that are critical for cross-border eTrade facilitation:

- A. To accelerate the creation of the national Single Window System aligned with the European Commission Decision on paperless environment for customs and trade.
- B. To adopt the regulation and requirements for eDelivery access points for the country Single Window System in terms of preparations for G2G and B2G cross-border information exchange.
- C. To improve the legal framework for cross-border electronic data exchange between the Eastern partner countries and the EU, adopt the regulatory acts for implementation of the national modules for eDelivery, eInvoicing, eID, eSignature, as well as the corresponding international agreements. It will be required to make Ukraine ready for regional cross-border eTrade transactions with the Eastern partner countries.
- D. To develop the national interoperability framework on the basis of the EIF and the best international practices and extend the legal framework for online platforms including provisions on cross-border services.



EU 4 Digital