- Recommendation for ensuring legally significant trusted trans-boundary electronic interaction
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Conten	ts	
Forewor	d	3
Executiv	e summary	3
trans-bo	undary electronic interaction	3
1.1.	Scope	3
1.2.	Benefits	3
1.3.	Use of International Standards	3
1.4.	Recommendation	
2. Gu	idelines on how to implement the recommendation	4
2.1.	Terms and Definitions	4
2.2.	Common Trust Infrastructure establishment principles	5
2.3.	Common Trust Infrastructures coordination approaches	6
2.4.	Trust infrastructures services technical interoperability ensuring approaches	8
2.5.	Trust infrastructures services levels of trust	8
2.6.	Communication with organizations in different areas of standardization	8
3. ANNEX 1		99
Terms	s and Definitions	و9
	Forework Executive 1. Reconstruction 1.1. 1.2. 1.3. 1.4. 2. Gut 2.1. 2.2. 2.3. 2.4. 2.5. 2.6. 3. AN	1.2. Benefits

#### **Foreword** 27

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#### **Executive summary** 29

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# 1. Recommendation № \_\_\_\_: Recommendation for ensuring legally significant trusted trans-boundary electronic interaction

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## **1.1. Scope**

This Recommendation seeks to encourage the use of electronic data transfer in international trade scenarios by recommending Governments the principles of establishing and operating regional and international coordination organizations for ensuring trust in international exchange of data and electronic documents between authorized bodies.

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### 1.2. Benefits

Harmonized regional and international coordination based on common principles will provide a smooth, transparent and liable environment for electronic activities in trans-boundary trade scenarios. This will make it possible to attach legal significance to an electronic interaction for legal bodies and economic operators regardless of their location and jurisdiction.

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### 1.3. Use of International Standards

The use of international standards can play a key role in larger acceptance of chosen solutions and eventually interoperability. Insofar as possible, legal and private actors who intend to use electronic data transfer in international trade scenarios should try to make use of existing international standards. Technical standards which were able to be identified during the development of this Recommendation are referenced in Annex B.

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### 1.4. Recommendation

The existing natural peculiarities (historical, cultural, political, economic, technical, etc) of different world regions cause also different level of trust within these regions concerning electronic interaction.

To Governments and entities engaged in the international trade and movement of goods, providing services and payment processing and willing a tighter, more transparent, effective and easier co-operation concerning electronic interactions, the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) recommends establishing and using a dedicated Common Trust Infrastructure (hereinafter CTI).

- 63 The primary objective of CTI is ensuring legally significant electronic interactions between 64 65 its users by providing trust services of different qualifications (basic, medium, high) to the
- 66 participants of electronic interaction.
- The CTI is a fundamental, easily scalable platform providing a unified access to trust services. 67
- Herewith, the existing electronic systems are taken into account, so the requirements to their 68 69 updating for connecting to the CTI are expected to be minimal.
- In order to achieve this objective, UN/CEFACT recommends: 70
- CTI establishment principles; 71
- 72 CTI coordination approaches;

approaches ensuring technical interoperability of CTI services; 73 levels of trust provided by CTI; 74 75 standardization organizations to co-operate with. 76 2. Guidelines on how to implement the recommendation 77 78 79 80 2.1. Terms and Definitions<sup>1</sup> 81 For the purposes of this document the following terms apply: 82 Common Trust Infrastructure (CTI) 83 infrastructure ensuring the legal significance of transboundary electronic interaction. CTI 84 provides a set of trust services harmonised on the legal, organisational and technical / technological levels to its users. 85 86 electronic interaction 87 88 a way of information interaction based on use of information and communication technologies (ICT). ICT refers to technologies that provide information processing 89 90 (creation, access, transformation, transmission, destruction, etc.) in the telecommunication context<sup>2</sup>. 91 92 legal significance (of an action) 93 a property of an action (of a process) to originate (to result in) documents (data unit) 94 possessing legal validity. 95 legal validity (of a document, or, generally, of data) 96 97 a property of a document (data unit) to be applicable for judicature, i.e. be deemed to have satisfied the requirements of applicable law. The legal validity is conferred to a document 98 99 by the legislation in force, by the authority of its issuer and by the established order of its 100 issuing (e.g. it shall be usable for a subsequent reference). level of qualification (of a service) 101 102 a property of a *service* to evidently fulfil a pre-defined set of requirements on it. 103 A service may be a trust service or an authentication service or any other kind of services,

<sup>1</sup> Italic face tags the terms defined in the current Recommendation

to which this term may be applicable.

<sup>&</sup>lt;sup>2</sup> ICT is similar to Information Technology (IT), but focuses primarily on communication technologies. This includes the Internet, wireless networks, cell phones, and other communication mediums

- There may be different, usually incremental qualification levels of a service like 'zero',
- 106 'basic', 'medium/advanced', 'high/qualified' etc. The lower is the level of trust between
- the participants of information interaction, the higher might be demand on the
- 108 qualification level of services used by them.

# 109 <u>levels of trust</u> (between the participants of information interaction)

- 110 a societal function determining the degree of trust between the participants of information
- interaction. Depending on an established or felt level of trust, the participants of
- information interaction are prepared to share a certain amount of resources and to jointly
- use certain infrastructures.
- For example, with conditionally 'high' or 'medium' level of mutual trust between the
- participants, they may be prepared to jointly use centralized international services applied
- according to the standards agreed upon. In case of conditionally 'low' level of trust, the
- participants may be prepared to use only services built according to the decentralized
- principle own services of each participant with a kind of link between them.

#### 119 trust service

- 120 (high level definition) an electronic service purposing to ensure a certain level of trust
- between the participants of *electronic interaction*.
- 122 or

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- 123 (lower level definition, will be clarified during Recommendation development) -
- 1. a service that is reasonably secure from intrusion and misuse; provide a reasonable
- level of availability, reliability, and correct operation; are reasonably suited to performing
- their intended functions; and enforce the applicable security policy.
- 2. trust service is a set of requirements and enforcement mechanisms for parties to
- authenticate and exchange information
- 129 3. eIDAS definition.

### 130 trusted electronic interaction

- 131 the exchange of any data in electronic form in such a way that a user of these data
- undoubtedly accepts them according to its Operational Policy. It is a matter of a concrete
- Operational Policy, which way is considered as a trusted one. Hence, the determination of
- the trustworthy of some data varies from one concrete case to another. Trusted electronic
- interaction is provided by using *trust services*.

# 2.2. Common Trust Infrastructure establishment principles

- **Scalability**. The CTI is established in such a way that it can be easily scaled. It broadens easily at any level of consideration due to the accession of new participants, such as new

- jurisdictions, new supranational participants, new operators of trust services, and register systems.
- Traceability. Any fact of electronic data exchange within the CTI should be fixed and
   available for conflict resolutions if necessary.
- Cost efficiency. While the CTI architecture variants comparison the risk analysis should
   be taken into account.
- Complexity. Coherent elaboration of legal, organizational and technological issues should
   be done within CTI establishment. A complex description allows correct functioning of
   the system as a whole and its single elements.
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# 2.3. Common Trust Infrastructures coordination approaches

- Identify the principles of establishing and operating regional and international coordination organizations for ensuring trust in infrastructures that satisfy organizational and administrative regulation of legally significant trans boundary electronic data exchange
- 157 Identify the underlying principles and content for Model MoUs/Agreements between two or 158 more countries regarding Mutual Recognition of Digital and Electronic Signature 159 Certificates

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There are three levels of coordination: legal, organizational and technological.

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#### Legal level

The CTI can be built on a single- or multi-domain basis. In the context of legal and organizational regulation, the multi-domain basis is the most complicated variant. Fig. 1 gives a general scheme of a legal regulation.

165 166 167 **Примечание [s1]:** From the project proposal

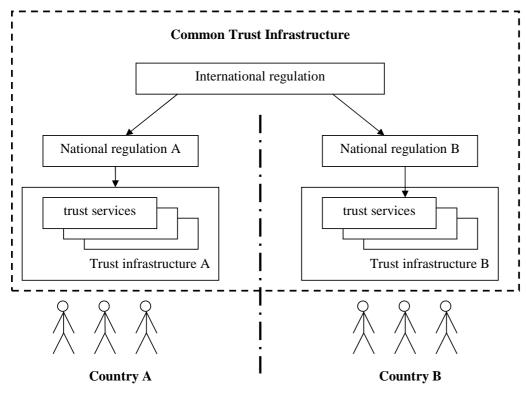


Fig.1. Legal level

Legal regulation of CTI interaction can be divided in two parts: international and national. The international legal regulation is carried out on the basis of the following types of documents:

- international treaties/agreements;
- 175 acts of different international organizations;
  - international standards and regulations;
  - agreements between participants of transboundary information interaction on given issues;
  - model acts.

The national legal regulation is built on a complex of normative documents that are standard in each particular jurisdiction.

We recommend a tight cooperation with UNCITRAL in order to harmonize the effort of this Recommendation concerning the necessary coordination on the legal level, see sec. 2.6.

## Organizational level

Mutual legally significant recognition of trust services provided under jurisdiction of various states is reached through creation and operation of the dedicated body (let call it International Coordination Body or ICB) that includes national regulation bodies. The activity of ICB is regulated by the ICB Statute which is to be recognized and signed by all its authorized members – that is the Regulation Bodies of the Electronic Data Interchange represented primarily by the National Regulators of the CTI.

#### 195 Technological level 196 197 There can be a great number of technological options for trust services' realization. The main 198 requirement to the CTI elements is interoperability. Regulation at this level is carried out with 199 application of different standards and instructions set forth by the ICB documents. 200 201 2.4. Trust infrastructures services technical interoperability ensuring approaches 202 Identify approaches to ensuring interoperability of technical systems, infrastructures of trans 203 boundary electronic data exchange and end users including functional requirements and 204 information security requirements. 205 Identify appropriate trust services types provided by the trusted infrastructures for ensuring Примечание [s2]: From legally significant trans boundary electronic data exchange. project proposal 206 207 2.5. Trust infrastructures services levels of trust 208 Identify the possible levels of trust afforded by the trusted infrastructures and mechanisms by 209 which these levels can be provided. For example, lower levels of trust may not require 210 government directives for achieving a legally significant electronic interaction. UN/CEFACT 211 recognizes that guidance for required levels (possibly higher) of trust and for desired levels of 212 authentication depends on specific circumstances but such guidance does not constitute the 213 scope of this recommendation. For these different levels of trust identify: 214 - common set of requirements trust services must comply with. Such requirements are to cover 215 the following aspects: security, accessibility, and interoperability Примечание [s3]: From 216 - best practices for trust services initiation, certification and audit procedures. project proposal 217 2.6. Communication with organizations in different areas of standardization 218 Identification of international organizations in different areas of normative and legal 219 regulation and policies (such as WTO, UNCITRAL, WCO and others) for participation in the 220 defining conditions for establishing necessary level of trust between the participants of the 221 trusted infrastructure that will ensure legal significance of transboundary electronic 222 exchange of data issued in different jurisdictions. 223 Identification of international organizations in different areas of standardization (such as 224 ISO, W3C, ETSI and others) for participation in all the technical aspects of forming and Примечание [s4]: From 225 functioning transboundary trust space. project proposal

#### ANNEX 1 227

#### Terms and Definitions<sup>3</sup> 228

#### 229 authentication

230 Anders Tornqvist: means an electronic process that allows the confirmation of the 231 electronic identification of a natural or legal person; or of the origin and integrity of an 232 electronic data.

Примечание [AN5]: I agree.

Igor Furgel: a process of the verification of authenticity. A successful authentication 233 234 (along with other factors) can be a necessary condition for the determination of the legal 235 validity (of an entity).

236 Eric (http://www.isaca.org/Knowledge-

Код поля изменен

237 Center/Documents/Glossary/glossary.pdf):

1. The act of verifying identity (i.e., user, system) 238

Scope Note: Risk: Can also refer to the verification of the correctness of a piece of data 239

2. The act of verifying the identity of a user and the user's eligibility to access 240 241 computerized information

Scope Note: Assurance: Authentication is designed to protect against fraudulent logon 242 243

activity. It can also refer to the verification of the correctness of a piece of data.

Ramachandran: the process of validating the identity of someone or something. Generally authentication requires the presentation of credentials or items of value to really prove the claim of who you are. The items of value or credential are based on several unique factors that show something you know, something you have, or something you are.

A process used to confirm the identity of a person or to prove the integrity of specific information. Message authentication involves determining its source and verifying that it has not been modified or replaced in transit.

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authenticity

- Anders Torngvist: means that the data can be checked for its authenticity in a certain context.
- 255 Igor Furgel: the property of an entity to evidence the identity of its issuer.
- 256 Ramachandran:
  - 1. The authenticity is an auditable process that ensures a high level of quality in the results by maintaining evidence of trustworthiness of the identity and integrity of data messages
  - 2. Authenticity is the status of being dependable in regard to evidence of identity and integrity in accordance with the agreed level of assurance.

,authorization', but not ,authentication', see below

Примечание [IF6]: This is

Примечание [AN7]: -Cf the VAT Directive 2010/45 where in relation to the "authenticity" of an invoice the following is commented: "The supplier must be able to provide assurance that the invoice was indeed issued by him or in his name and on his behalf.'

Примечание [IF8]: .authentic ity' is defined by using ,authenticity'; it is a dead loop

<sup>&</sup>lt;sup>3</sup> Italic face tags the terms defined in the current Recommendation

- 3. *Authenticity* is generally understood in law to refer to the genuineness of a document or record, that is, that the document is the "original" support of the information it contains, in the form it was recorded and without any alteration." Authenticity is the property of being genuine and able to be verified and trusted.
  - 4. Authenticity in the electronic environment, further to the high levels of identification, evidentiary and attribution functions may be able to be established through an "authentication framework." This "authentication framework" would involve legal infrastructure, some technical infrastructure and some organizational infrastructure.

271 | authorization (as a process)

- 272 <u>Eric E Cohen:</u> the approval, permission, or empowerment for someone or something to do something.
- 274 <u>Igor Furgel:</u> approving a subject (a person, an IT component or a process acting on behalf
   275 of them) for the execution of a certain action.

276 certificate

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- 277 Jari Salo (http://www.uncitral.org/pdf/english/texts/electcom/ml-elecsig-e.pdf):
  - means a data message or other record confirming the link between a *signatory* and signature creation data.

280 data unit

a set of digits or characters treated as a whole.

282 digital certificate

- 283 <u>Aleksandr Sazonov:</u> means a data message or other record confirming the link between a public key (validation data) to a particular distinguished name in the X.500 tradition.
- 285 <u>Igor Furgel:</u> means an electronic attestation which links signature validation data of an entity to the entity and confirms the identity of that entity.

287 digital signature

288 - <u>Eric E Cohen</u> (http://www.isaca.org/Knowledge-289 <u>Center/Documents/Glossary/glossary.pdf</u>):

A piece of information, a digitized form of signature, that provides sender authenticity, message integrity and non-repudiation.

A digital signature is generated using the sender's private key or applying a one-way hash function.

294 - <u>Igor Furgel</u> (<u>ISO 7498-2 (1989)</u>: '<u>Information processing systems - Open Systems</u>
 295 <u>Interconnection - Basic Reference Model - Part 2: Security Architecture'</u>):

Data appended to, or a cryptographic transformation of, a *data unit* that allows a recipient of the *data unit* to prove the source and integrity of the *data unit* and protect against forgery, e.g. by the recipient.

Примечание [s9]: Eric E
Cohen This is in contrast to when
you care not whether the agent is
authorized, only that they are who
they say they are - authentication.
The two are usually considered
orthogonal; you normally only
wish to check one or the other. I
believe in transboundary efforts,
authorization is more important
than authentication.

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299 Ramachandran: a digital signature is made when the owner of a key pair uses its private 300 key to "sign" a message. This signature can only be verified by the corresponding key. 301 electronic signature 302 Anders Tornqvist & DIRECTIVE 1999/93/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 1999 on a Community framework for 303 304 electronic signatures: means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication. 305 306 (http://www.isaca.org/Knowledge-Eric Center/Documents/Glossary/glossary.pdf): 307 308 Any technique designed to provide the electronic equivalent of a handwritten signature to 309 demonstrate the origin and integrity of specific data. 310 Digital signatures are an example of electronic signatures. 311 Igor Furgel: 312 data in electronic form which are attached to or logically associated with other electronic 313 data. Electronic signature documents a relationship between the signatory and these other 314 electronic data and enables (also) a third party to subsequently ascertain this relationship. Jari Salo (http://www.uncitral.org/pdf/english/texts/electcom/ml-elecsig-e.pdf): 315 316 data in electronic form in, affixed to or logically associated with, a data message, which 317 may be used to identify the signatory in relation to the data message and to indicate the 318 signatory's approval of the information contained in the data message. 319 Ramachandran: Data in electronic form in, affixed to or logically associated with, a data 320 message, which may be used to identify the signatory in relation to the data message and to indicate the signatory's intention in respect of the information contained in the data 321 322 message. An electronic signature should not be discriminated because of its origin. But 323 may be discriminated because of their intrinsic qualities 324 325 entity 326 Igor Furgel: can be a document, a record, an identifier etc (generally: a *data unit*). 327 genuineness (in IT) 328 <u>Igor Furgel:</u> *integrity* + *authenticity* = the property of an *entity* to evidence: 329 (a) not having been altered from that created by its issuer 330 (b) the identity of its issuer. 331

Ramachandran: the quality that ensure document's property of being genuine.

"Authenticity is generally understood in law to refer to the genuineness of a document or

record, that is, that the document is the "original" support of the information it contains, in

(<u>130201+Rec14+survey+on+def\_levels+consolidated+responses</u>):

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genuineness (in law)

Примечание [IF10]: This definition is not a full one, there are also other services of electronic signature.
The main services of a signature are (i) perpetuation function (a signature can be verified by anybody later on at any time), (ii) the determinability of the identity of signatory.
Additionally, there are warning

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Примечание [IF11]: There is a quite controversial discussion on it.

and consciousness functions

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**Примечание [IF12]:** Not unconditionally an approval, but, generally, a relationship between the signatory and the message

Примечание [AN13]: The UNCITRAL definition is not uncontroversial. We should also look at the new definitions of esignature and e-seal of the EU EIDAS Regulation, rather than the -99 Directive referenced above.

Примечание [IF14]: The foot note No. 5 in the REC. 14 may also be helpful here: "In general, signature and authentication in an Information Technology (IT) environment often encompass some inherent functions which can vary from integrity, genuineness, proof, security, etc. Again, all of these terms can have differing interpretation based on environment and geography. This Recommendation has been prepared to align itself with the works of UNCITRAL while remaining consistent with the use of these terms in other UNECE trade recommendations. When reading or drafting any text on the subject, clear identification of which approach is being used, is recommended. For legislators who will probably use a legal definition, reference to UNCITRAL documents on the subject is recommended in order to clearly identify the legal use of these terms.

337 338	the form it was recorded and without any alteration." <i>Authenticity</i> is the property of being <i>genuine</i> and <i>able to be verified and trusted</i> ".			
339	'Genuineness' in law is equivalent to 'authenticity'.			
340	40 information interaction			
341	<ul> <li>Igor Furgel: the interchange of any data between the participants of interaction</li> </ul>			
342	integrity			
343 344	<ul> <li>Igor Furgel: the property of an <i>entity</i> to evidence <b>not having been altered from that</b> created by its issuer.</li> </ul>			
345	- Eric E Cohen (http://www.isaca.org/Knowledge- Код поля изменен			
346	Center/Documents/Glossary/glossary.pdf):			
347 348	Guarding against improper information modification or destruction, and includes ensuring information non-repudiation and authenticity.  Thumewahue [AN15]: Perhap information non-repudiation and authenticity.  The proper information modification or destruction, and includes ensuring information non-repudiation and authenticity.			
349	- Ramachandran:			
350 351 352 353 354 355	<ol> <li>DATA INTEGRITY—A condition in which data has not been altered or destroyed in an unauthorized manner</li> <li>Integrity is a state of information that assure that it is accurate, complete, consistent and has been protected from errors or unauthorized modification.</li> <li>integrity refers to the resource is untampered with, uncorrupted and complete in all its essential respects after the act of signature is carried out.</li> </ol>			
356	6 levels of access			
357 358 359	<ul> <li><u>Igor Furgel</u>: permission for a subject (a person, an IT component or a process acting on behalf of them) to get a specified kind of access (e.g. write, read, etc.) to specified objects (e.g. data, processes, information, other resources).</li> </ul>			
360 361 362 363	A successful <i>authentication</i> (along with other factors) can be a necessary condition for granting a certain <i>access level</i> . The terms 'access level' and 'authorization level' are used as synonyms in the context of the current Recommendation.			
364 365	levels of authentication			
366	- <u>Aleksandr Sazonov:</u> a synonym for levels of qualification of authentication service.			
367 368 369 370	<ul> <li>Ramachandran: a guidance concerning control technologies, processes, and management activities, as well as assurance criteria that should be used to mitigate authentication threats in order to achieve the required level of security based on the sensitivity of data or a service.</li> </ul>			
371	non-repudiation			
372 373 374	<ul> <li>Eric E Cohen: the ability for a system to prove that a specific user and only that specific user sent a message and that it hasn't been modified. A user cannot deny/repudiate that they signed/sent a message.</li> </ul>			

Примечание [AN16]: Should we deal with "privacy" or "personal data" rather? 375 privacy 376 Cohen (http://www.isaca.org/Knowledge-Код поля изменен Center/Documents/Glossary/glossary.pdf): 377 378 Freedom from unauthorized intrusion or disclosure of information about an individual and Примечание [s17]: Eric E 379 an organization. Cohen My personal interpretation includes information about both individuals (people) and 380 signatory organizations Код поля изменен <u>Jari Salo</u> (http://www.uncitral.org/pdf/english/texts/electcom/ml-elecsig-e.pdf): 381 382 a person that holds signature creation data and acts either on its own behalf or on behalf of the Примечание [IF18]: Not just acts, but creates an electronic 383 person it represents. signature Igor Furgel (Proposal for a Regulation of the European Parliament and of the Council on 384 Примечание [AN19]: Possibl 385 electronic identification and trust services for electronic transactions): y only "creates", not necessarily "acts on behalf". 386 a natural person who creates an electronic signature. Удалено: stamping 387 time stamp Eric E Cohen: a trusted indication of when an action, particularly the application of a 388 Примечание [s20]: Eric E Cohen Time stamping is vital in 389 digital signature, took place. cryptography as people change roles and signatures expire; it is important to know whether the 390 Igor Furgel (Proposal for a Regulation of the European Parliament and of the Council on signature was valid and the signer 391 electronic identification and trust services for electronic transactions): was authorized or could be authenticated at the point of signing rather than the point of 392 data in electronic form which binds other electronic data to a particular time establishing 393 evidence that these data existed at that time. 394 transboundary trust space 395 Aleksandr Sazonov: a set of normative, organizational and technical conditions for 396 establishing trust in transboundary electronic interaction between public governmental 397 authorities, public non-budgetary funds, local authorities, organizations and citizens. 398 Ramachandran: a technological and legal framework for trust establishment in 399 transboundary electronic informational interaction of entities in different legal 400 frameworks' subjects. 401 Eurasian Economic Community Agreement: an aggregate of legal, organizational and 402 technical conditions, harmonized by the member-states in order to ensure trust in international exchange of data and electronic documents between authorized bodies. 403 404 trust domain 405 - Igor Furgel: informational and legal space using the same CTI 406 what-you-see-is-what-you-sign 407 Aleksandr Sazonov: is a desirable property of electronic signature systems meaning that 408 the semantic interpretation of a electronically signed message cannot be changed, either 409 by accident or by intent.

410 XML Signature