

Reaction to Inception Impact Assessment Revision of eIDAS Regulation

Presentation to DG CNECT



August 2020

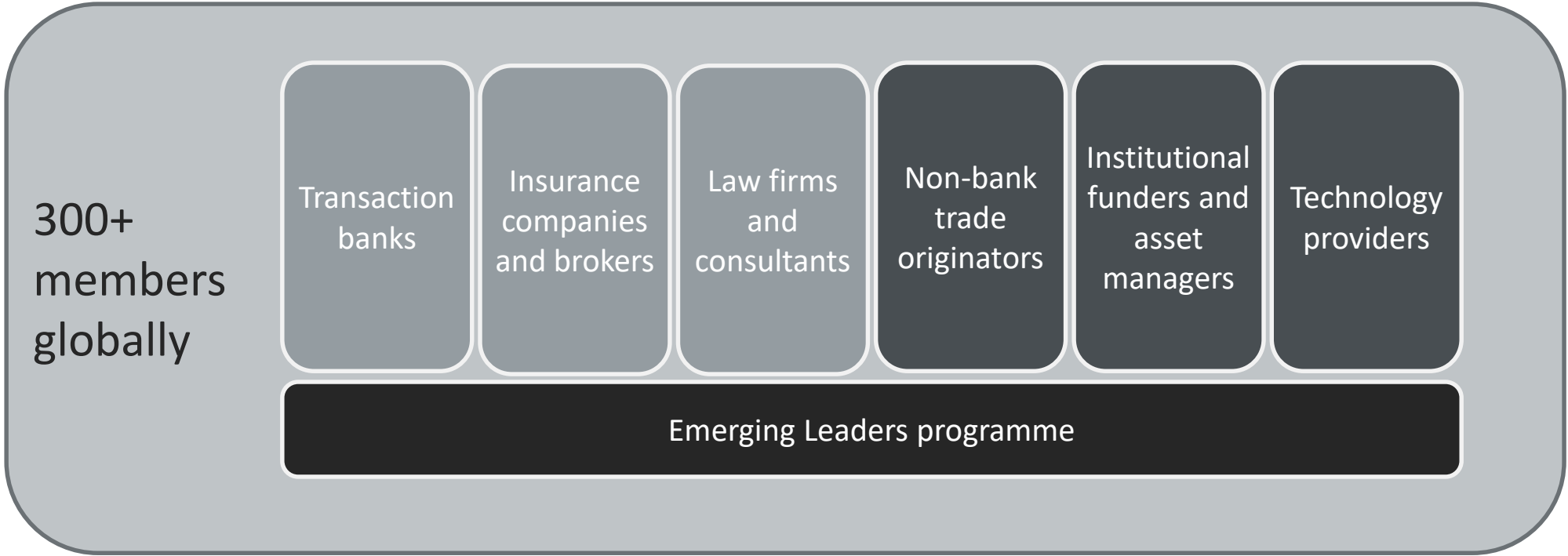


Founded in 1999, the International Trade and Forfaiting Association (ITFA) is an association of nearly 300 banks, finance houses, insurers, law firms and consultants who are engaged in originating and distributing trade-finance related assets and risks across the industry all over the world.

Expanding from its original focus on the purchase and discounting of simple but robust payment instruments, such as drafts and letters of credit, the forfaiting industry has embraced new instruments and created new structures for risk mitigation becoming a prominent part of both international and local supply chain finance.

Find more information on ITFA and its members on www.itfa.org/about-us.

MEMBERSHIP EXPANSION FOLLOWS MARKET TRENDS



Traditional membership

Recent growth

THE ITFA FINTECHS



☐ Bills of Lading (“Connaissance”)

- Contract of carriage
- Receipt for goods
- Title to goods

☐ Promissory Note (“Billet à ordre”)

- Simple unilateral and unconditional obligation to pay from one person to another but must respect certain formalities

☐ Bills of Exchange (“Lettre de change”)

- An order from one person to another to pay the ordering party and accepted by the other person the form of which must respect certain formalities

➤ **ALL OF THESE INSTRUMENTS MUST BE SIGNED
AND GENERALLY BE IN PAPER FORM**

LEGAL UNCERTAINTY ABOUNDS – EXTRACT FROM 2020 ICC GLOBAL SURVEY ON TRADE FINANCE



Country	Letter of Credit	Bill of Exchange	Commercial Invoice	Order Form	Insurance Policy	Promissory Note	Bill of Lading	Certificate of Origin	Payment Confirmation	Import/Export Declaration
Western Europe										
Belgium	●	●	●	●	●	●	●	●	●	●
France	●	●	●	●	●	●	●	●	●	●
Germany	●	●	●	●	●	●	●	●	●	●
Italy	●	●	●	●	●	●	●	●	●	●
Serbia	●	●	●	●	●	●	●	●	●	●
Spain	●	●	●	●	●	●	●	●	●	●
Sweden	●	●	●	●	●	●	●	●	●	●
UK	●	●	●	●	●	●	●	●	●	●

● Must be paper ● Paper or digital ● Unsure

IMPORTANCE TO TRADE (1): BILLS OF LADING



- ❑ Bills of Lading underpin most imports – conservatively 90%
- ❑ Next slide sets out EU import /export data for 2010-2019 in trillion USD
- ❑ Usage is massive as can be seen
- ❑ Bills of lading are used in both the physical carriage of goods and their financing
- ❑ They are therefore an ideal bridge between the two worlds and support real trade
- ❑ Recent frauds in Singapore show their vulnerability to forgery and misuse

EU 28 external trade: imports and exports (USD trillion)

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
imports	2.47	2.89	2.79	2.72	2.71	2.30	2.29	2.55	2.89	2.44
exports	2.05	2.43	2.45	2.58	2.55	2.26	2.20	2.41	2.61	2.34

Source:

Coriolis Technologies using data from publicly available sources: UN Comtrade, OECD, Eurostat and government sources

- The data presented here are the freight on board (FOB) values for exports (seller costs) and Cost, Insurance and Freight (CIF) for imports (buyer costs).
- Values include insurances, which, according to the Berne Union, represent approximately 10% of world trade
- Since FOB and CIF are the "shipped on board" values of a Bill of Lading, these values are, effectively, the same as total values as bills of lading (with 10% deductible for insurance potentially)

IMPORTANCE TO TRADE (2): PROMISSORY NOTES AND BILLS OF EXCHANGE



Funding model	Sum of value for current values in some EU countries – stocks (EUR billion) ²⁵	Top countries ²⁶
Receivable discounting	481.6 ²⁷	UK; France; Germany
Factoring	1,067.6 ²⁸	France; Italy; Germany
Forfaiting	78.3 ²⁹	France; UK; Italy
Payables finance	84.3 ³⁰	Spain; UK
Dynamic discounting	701.2 ³¹	Italy; France; Germany
Loan or advance against receivables	229.6 ³²	Italy; France; UK
Distributor finance	0.7 ³³	UK
Loan or advance against inventory	446.5 ³⁴	Italy; France; Germany
Pre-shipment finance	3,658.3 ³⁵	Germany; Netherlands; UK

- ❑ Importance to Supply Chain Finance – 2018 figures
- ❑ These instruments underpin much of the receivables discounting and forfaiting industries in Europe and would provide greater security to much of the European SCF industry

Source:
European Commission Study on Supply Chain Finance: [Final Report](#) and [Executive Summary](#)

IMPORTANCE TO TRADE (2): PROMISSORY NOTES AND BILLS OF EXCHANGE



- ☐ Bills of exchange and promissory notes are (when in valid paper form) unconditional and simple payment obligations capable of easy transmission, registration and potentially listing on an exchange
- ☐ New investors are interested in these assets as trade is safe and yields more than cash
- ☐ Much of this potential market relates to MSME financing
- ☐ Trade assets are safe, as successive ICC Trade Register results show (0.06% for trade loans during 2014-2018 for example)
- ☐ Operationally, such investors are accustomed to bonds, the features of which can be replicated by notes and bills

IMPORTANCE TO TRADE (3): USE IN INTERNATIONAL TRADE RULES



- ☐ International trade rules (UCP 600 and URC 522) published by the ICC are used in almost all letters of credit (28% of global trade finance for 2018 according to the most recent ICC Trade Register) and collections respectively
- ☐ Both sets of rules require the presentation of documents which are in paper form
- ☐ New electronic versions of these rules permit the presentation of electronic documentation but, as shown above, the main documents used in trade must, in too many cases, be paper-based
- ☐ Allowing these documents to be digitised would ensure success of these rules in the digital age with enormous attendant operational and financial savings

EIDAS REVIEW

SUGGESTED AMENDMENTS (1) - EIDAS TO DEAL WITH DOCUMENTS



- ☐ All the above trade instruments must be signed but are subject to other legal challenges as illustrated above
- ☐ Article 25 provides for apparent non-discrimination of e-signatures but is of limited effect when the signed document is ineffective in other than paper form
- ☐ eIDAS framework could be amended to provide for a general rule that *an electronically signed document should not be denied effect because it is in electronic form*
- ☐ Such an amendment would unburden trade documentation from out of date laws which never envisaged digital instruments, but which otherwise work well and are used all over Europe (and have global counterparts)
- ☐ UK will introduce fast-tracked legislation next year to overcome these issues
- ☐ Article 7 of the UNCITRAL Model Law on Electronic Transferable Records :“An [electronic transferable record] shall not be denied legal effect, validity or enforceability on the sole ground that it is in electronic form.” [whole document [here](#)]



- ☐ In case of the commercial documentation referred to above, the simple electronic signature is sufficient to satisfy legal requirements.
- ☐ In some EU countries (e.g. Sweden) no qualified trust service provider exist. The need for speedy transaction times favours simple signatures.
- ☐ The extra benefits of advanced and qualified signatures are desirable but take-up should be a commercial decision and simpler options should not be “second-best”.
- ☐ Article 25(1) could be amended to confirm that a simple electronic signature is sufficient to denote consent or give agreement. A new subparagraph could be added to say that: “*An electronic signature shall not be deemed incapable of denoting consent or agreement solely on the grounds that it is in electronic form or that it does not meet the requirements for qualified electronic signatures.*”



- ❑ The digitalisation of commercial documents used in international trade is important for trade parties as it reduces operational risks and linked costs - the technology exists but the law needs to catch up
 - If we can achieve this goal, the documents can be used more widely and become more liquid.
 - The ultimate beneficiaries are the exporters and other companies involved in supply chain financing.
 - Thanks to that, supply chain financing can become more affordable for the companies, particularly for MSMEs.
 - Consequently, the digitalisation of these documents could be considered a building block to support MSME financing.
- ❑ The digitalisation of trade documents would also help making regulatory supervision more efficient and effective as it facilitates use of digital platforms. This is critical for customs and other public authorities involved in trade.