

The ASEAN Approach to Digital Trade

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Digital Trade and Inclusive Growth



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Overview

1. Issues confronting digital trade negotiations
2. ASEAN Member State considerations
3. The ASEAN approach to e-commerce and data integration
4. Ways Forward

Issues confronting digital trade negotiations

What do we mean when we talk about digital trade?



Definitions

A lack of standard nomenclature on digital trade and digital economy



Measurements

Current measurements do not adequately capture digital economic and trade activities



Regulations

How do existing regulations affect digital trade; where and how do we regulate for the digital economy?



Objectives

What do AMS want to achieve through digital trade? What considerations do AMS have when negotiating?

ASEAN Member State considerations

What is important to AMS on their digital trade agenda



Data Privacy and Protection

Refining regulations to ensure data protection safeguards when data is transferred across borders.

Taking into account international principles and guidelines, e.g. APEC CBPR, EU GDPR.



Cybersecurity

Enhancing cybersecurity capabilities to protect national, economic, and social interests.

Cooperating on cybersecurity, e.g. CERTS collaboration



Competition Policy

“Levelling the playing field” for brick and mortar companies and locally registered firms versus “borderless” OTT and digital companies.

New regs versus outdated regs



Taxation

Ensuring fair and efficient taxation policies.

- Where service providers do not ‘shift’ tax obligations
- Appropriately assessing value of data



SMEs

Enabling SMEs to go digital and become more competitive and productive as they expand globally.

Fostering the next unicorn.

What's been happening in ASEAN?

This is evident in what's been happening recently

THAILAND

NBTC backtracking on plans to impose surcharges on OTT services after public backlash

VIETNAM

Cybersecurity law's data localization requirements

MALAYSIA

6% digital tax in 2020 on digital service providers

SINGAPORE

Online falsehoods bill and how/who defines "fake news"

INDONESIA

E-commerce tax backpedal due to confusion and uncertainty

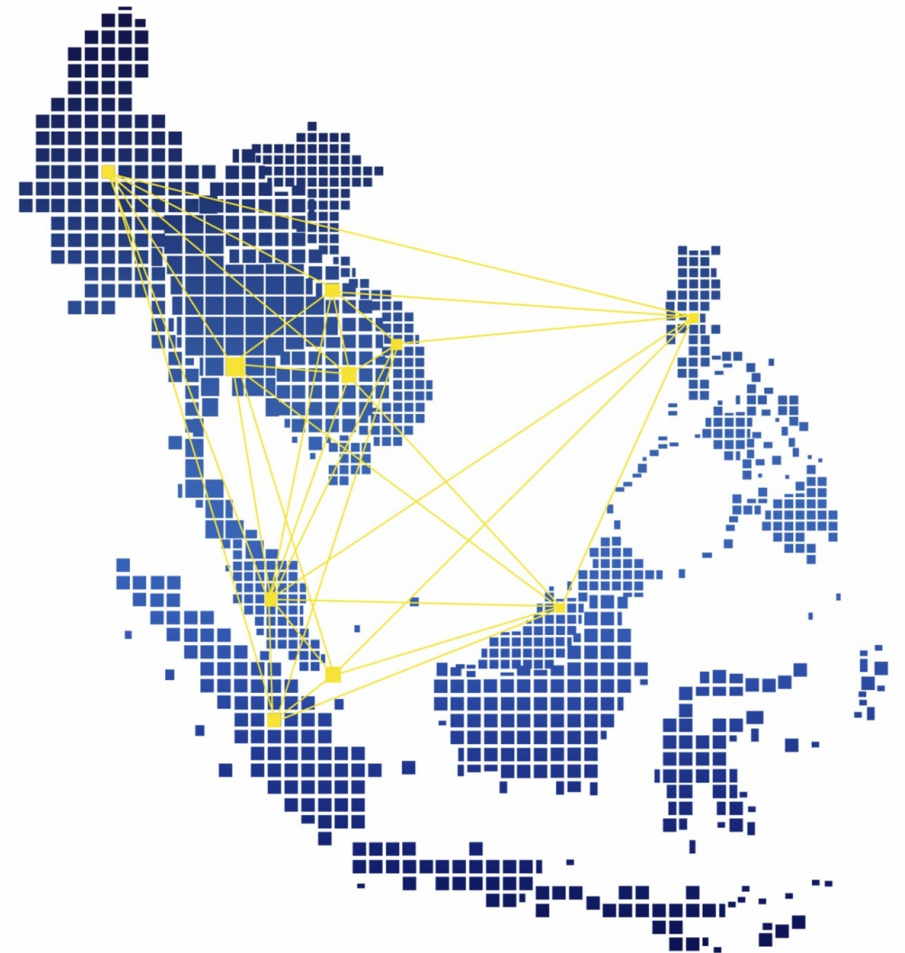
GR82 relaxing data localization requirements through use of data classification

How then can ASEAN align policies for an ASEAN Digital Economy?

An ASEAN Single Digital Market requires open discussions and commitment on aligning rules including for:

- Trade rules for online transactions
- Cross-border data flows
- Data privacy frameworks
- Consumer protection and online dispute resolution
- Taxation policies

Focused on enabling and fostering an ASEAN digital economy to drive regional growth



The ASEAN approach to e-commerce

ASEAN Agreement on E-commerce (18 November 2018) is a step in the right direction ...

- To create a conducive environment for the growth of e-commerce and advancing trade rules in e-commerce.
- Emphasis is on paperless trading, e-authentication and e-signatures, online consumer protection, **cross-border transfer of information, online personal information protection, cybersecurity**, and e-payments.



However the current language therein still creates limitations and restrictions ...

Paragraph 4: Cross-border Transfer of Information by Electronic Means

(a)

Member States recognise the importance of allowing information to flow across borders through electronic means, provided that such information shall be used for business purposes, and *subject to their respective laws and regulations.*

(b)

Member States agree to facilitate cross-border e-commerce by working towards eliminating or minimising barriers to the flow of information across borders, including personal information, subject to appropriate safeguards, to ensure security and confidentiality of information, and *when legitimate public policy objectives so dictates.*

(c)

Subparagraphs (a) and (b) shall not apply to financial services and financial service suppliers as defined in the Annex on Financial Services of GATS

... including on data localization

Paragraph 6: Location of Computing Facilities

(a)

Members States recognise that each Member State may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

(b)

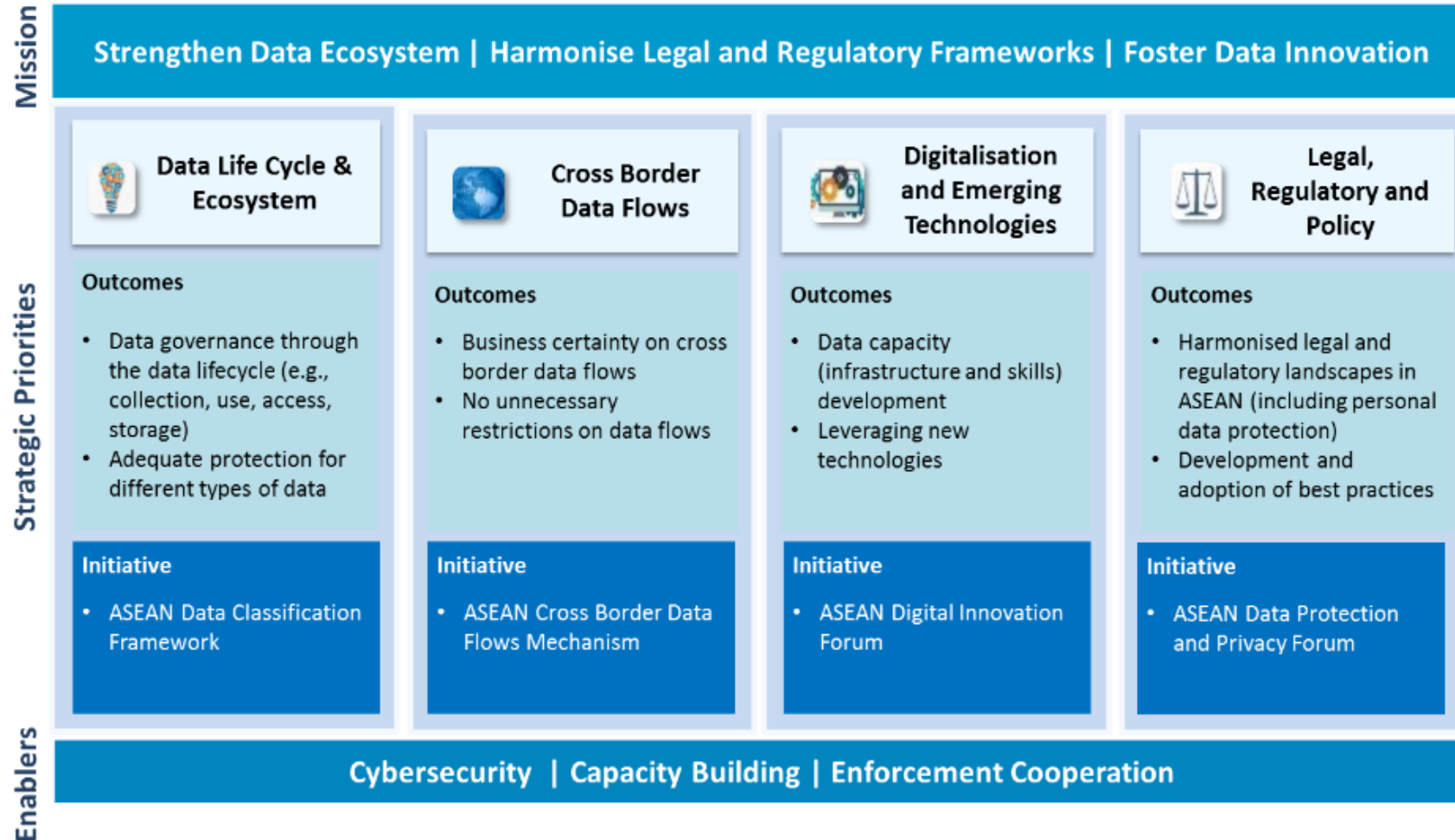
Member States agree not to require, *subject to their respective laws and regulations*, a juridical person of another Member State and its affiliated companies to locate their computing facilities in their respective territories as a requirement for operating a business in their respective territories.

(c)

Subparagraphs (a) and (b) shall not apply to financial services and financial service suppliers as defined in the Annex on Financial Services of GATS

The ASEAN approach to data integration

ASEAN Framework on Digital Data Governance (6 December 2018)



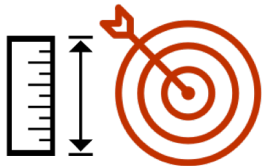
- To enhance data management, facilitate harmonization of data regulations, promote intra-ASEAN data flows with four initiatives identified to support the four strategic pillars
- But still respecting exclusion of matters relating to national sovereignty, national security, public safety ... all govt activities deemed by AMS to be exempted



Alignment on definitions to ensure clear understanding of “what” is at stake



Develop a new set of **metrics** – consistent and comparable – for the digital economy to better take stock and keep track of progress



Identify clear priorities and **objectives** – which can be measured and tracked



Alignment on regulatory **frameworks**, e.g. privacy and cybersecurity to enhance cross-border data flows



Begin discussions on **digital tax alignment** in the region



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About TRPC:

TRPC is a boutique consulting and research firm with over 30 years experience in the telecommunications and ICT industries in the Asia-Pacific. We offer specialised advisory, research, and training services, with a focus on regulatory and strategic business issues, and possess an extensive network of industry experts and professionals throughout the region.