

PROPOSAL ON REGIONAL DATA PROTECTION FOR ASEAN

Central theme:

The central theme for this paper is to propose a regional data policy regulation that able to strike a balance between protecting the privacy of ASEAN's citizen and at the same time does not hinder the development of the digital economy in the region.

Research question:

1. ASEAN Economic Community 2025 and The ASEAN situation: What is ASEAN digital economy potential?
2. Is it possible for ASEAN to establish a regional data protection regulation through harmonization and guidance from multinational data privacy framework?

Introduction

The ten ASEAN (Association of South East Asian Nations) member states include some of the world's most rapidly developing economies and have high ambitions for economic integration¹. The ASEAN Economic Community (AEC), established in 2015, has as one of its e-commerce objectives the development in 2016-2025 of a 'coherent and comprehensive framework for personal data protection', including 'Regional Data Protection and Privacy Principles'. However, ASEAN's development on data protection has been patchy over the years, and as a whole, this region has been lagging when it comes to protecting the online privacy of its citizen in which some countries do not even recognize privacy as fundamental rights enshrined in their country's constitution².

Currently, ASEAN's digital economy is on the rise. Latest data has shown that the region has over 200 million internet users and its digital economy is expected to be worth US\$200 billion by 2025³. If the bloc wants to keep up with the rest of the world when it comes to data protection, data protection and privacy rights should be at the top of the agenda for economic development. ASEAN needs to realize the importance and value not only digital rights but

¹ ASEAN 50th 1967-2017 Celebrating ASEAN: 50 Year of Evolution and Progress (Statistical Publication), (https://asean.org/storage/2012/05/ASEAN50_Master_Publication.pdf)

² "Brunei's Constitution does not recognize any constitutional rights of citizens, let alone a right of privacy. Such rights would be inconsistent with the Sultan's unrestricted right to legislate. Nor have Brunei's courts recognized a right of privacy at common law, or the extended meaning of 'breach of confidence' which protects information of a confidential nature per se." Greenleaf, Graham. *Asian Data Privacy Laws: Trade & Human Rights Perspectives*. OUP Oxford, 2014, Pg. 483

³ "Advancing the ASEAN Economic Community, The Digital Economy and the Free Flow of Data", Deloitte, <https://www2.deloitte.com/content/dam/Deloitte/sg/Documents/about-deloitte/sea-about-aec-digital-economy-free-flow-of-data-2016.pdf>

also the privacy of its citizen. However, the region also needs to realize that while ASEAN should come up with a comprehensive and all-encompassing data protection law, this developing region is not yet ready for a stringent regulation with harsh punishment such as GDPR as it may impose the risk of damaging trade and digital economy potential.

The central theme of this paper is to propose a data protection regulation that able to strike a balance between protecting the privacy of citizen in ASEAN and still able to encourage the growth for digital economy for this region.

ASEAN Economic Community and ASEAN Digital Economy

ASEAN has a population of 634 million, a combined GDP of US\$2.55 trillion reported in 2016 and is currently the sixth largest economy in the world with total trade amounting to US\$3.7 trillion. The region's forecasted annual growth of five per cent sets expectations that it will become the fourth largest economy by 2030.⁴ These numbers portray a region that is full of potential. The ASEAN Economic Community (AEC), established in 2015 will allow businesses to capitalize on opportunities in the region as an integrated market with a market reach of over 600 million instead of 10 fragmented economies and lesser impact⁵.

Digital technology has been recognized as being key in achieving this bold 2025 vision. An estimated \$5.3 trillion¹ of global trade pass through ASEAN's waterways each year, and Internet and mobile penetration is one of the highest in the world - at about 80 percent of population using the internet and 100 percent ownership of mobile phones. This goes to show that the people in ASEAN are nearly ready to embrace the new economy. In September 2016, a Master Plan on ASEAN Connectivity 2025 (MPAC 2025) was developed to address this digital technology aspect of the 2025 vision focusing on five strategic areas: sustainable infrastructure, digital innovation, seamless logistics, regulatory excellence and people mobility⁶.

Opportunities abound for Southeast Asia in digital technology. To put it in context, Southeast Asia is the world's fastest growing Internet region with nearly four million new users coming online every month over the next five years. This translates into a user base of 480 million by 2020. There are over 700 million active mobile connections in Southeast Asia. Online spending is expected to reach US\$ 200 billion by 2025.

Proposal for Regional Data Protection for ASEAN

As a diverse region, ASEAN reached a milestone when it adopted a regional ASEAN Declaration on Human Rights that contained provisions

⁴ Deloitte, "Data and privacy protection in ASEAN What does it mean for businesses in the region?" (2018), Retrieved at <https://www2.deloitte.com/content/dam/Deloitte/sg/Documents/risk/sea-risk-data-privacy-in-asean.pdf>

⁵ ASEAN, "Investing in ASEAN" (2015-2016), Retrieved at <https://asean.org/storage/2016/06/38.-November-2015-Investing-in-ASEAN-2015-2016.pdf>

⁶ Masterplan on ASEAN Connectivity 2025, <https://asean.org/wp-content/uploads/2016/09/Master-Plan-on-ASEAN-Connectivity-20251.pdf>

concerning data privacy in 2012.⁷ Four years later, ASEAN Ministers adopted the ASEAN Framework on Personal Data Protection that indicates a set of principles to guide the implementation of data protection measures at both national and regional levels.⁸

Reading through the framework shows that it seeks to foster regional integration and cooperation, and to propel ASEAN towards a secure, sustainable and transformative digitally-enabled economy. It recognizes that to achieve this goal, it is essential to strengthen personal data protection and contribute to the promotion and growth of trade and flow of information within and among ASEAN member states in the digital economy. In turn, the participants to the framework endeavor to cooperate, promote and implement the Principles of Personal Data Protection set out in the Framework in their domestic laws and regulations, and facilitate the free flow of information among them.

Coming back to the central theme for this proposal is to establish a potential regional data privacy and cross border data flows regulation for ASEAN and to do so, this paper is planning to seek guidance from multinational data privacy frameworks.

Through a preliminary research, the proposed options are:

- 1) Joint requirement to formal equivalence mechanisms for instance, MoU and MRAs between ASEAN and other multinational data privacy framework.
- 2) This region may also draw on some of the cross-regional adequacy models that have been agreed elsewhere and adapt them to an ASEAN context.

Propose roadmap overview:

- 1) Landscape analysis – to get an idea where a country currently stands in terms of data protection and privacy and subsequently give the idea how ASEAN performing as a whole
- 2) Planning and goal setting – focus on where this region wants to go when it comes to data protection regulations

List of multinational data protection data privacy frameworks that will be examined for this research:

- 1) APEC Privacy Framework (2004,2015)
- 2) OECD Privacy Framework (1980, 2013)
- 3) General Data Protection Regulation (2018)
- 4) EU-U. S Privacy Shield 2016

Conclusion

As for conclusion, let's highlight once again that ASEAN, the world's fastest growing internet region have boundless opportunities in digital economy. As a developing region, ASEAN should take an approach where the

⁷ ASEAN, "ASEAN Human Rights Declaration" (November 2012), <http://asean.org/asean-human-rights-declaration/>, Article 21: Every person has the right to be free from arbitrary interference with his or her privacy, family, home or correspondence including personal data, or to attacks upon that person's honor and reputation.

⁸ ASEAN Framework on Personal Data Protection, 16 November 2016, <http://asean.org/storage/2012/05/10-ASEAN-Framework-on-PDP.pdf>.

data protection and privacy rights should be at the top agenda for economic development and in the same able to balance it out with the possibility to encourage the growth of digital economy instead of becoming a hinder. This proposal is proposing two options worth exploring which is joint requirement to formal equivalence mechanisms for instance, MoU and MRAs between ASEAN and other multinational data privacy framework. Apart from that, this region may also draw on some of the cross-regional adequacy models that have been agreed elsewhere and adapt them to an ASEAN context.

Literature

1. ASEAN 50th 1967-2017 Celebrating ASEAN: 50 Year of Evolution and Progress (Statistical Publication), (https://asean.org/storage/2012/05/ASEAN50_Master_Publication.pdf)
2. Greenleaf, Graham. Asian Data Privacy Laws: Trade & Human Rights Perspectives. OUP Oxford, 2014, Pg. 483
3. Deloitte, “Data and privacy protection in ASEAN What does it mean for businesses in the region?” (2018), Retrieved at <https://www2.deloitte.com/content/dam/Deloitte/sg/Documents/risk/sea-risk-data-privacy-in-asean.pdf>
4. Deloitte, “Advancing the ASEAN Economic Community, The Digital Economy and the Free Flow of Data”, Deloitte, <https://www2.deloitte.com/content/dam/Deloitte/sg/Documents/about-deloitte/sea-about-aec-digital-economy-free-flow-of-data-2016.pdf>
5. ASEAN, “Investing in ASEAN” (2015-2016), Retrieved at <https://asean.org/storage/2016/06/38.-November-2015-Investing-in-ASEAN-2015-2016.pdf>
6. Masterplan on ASEAN Connectivity 2025, <https://asean.org/wp-content/uploads/2016/09/Master-Plan-on-ASEAN-Connectivity-20251.pdf>
7. ASEAN, “ASEAN Human Rights Declaration” (November 2012), <http://asean.org/asean-human-rights-declaration/>,
8. ASEAN Framework on Personal Data Protection, 16 November 2016, <http://asean.org/storage/2012/05/10-ASEAN-Framework-on-PDP.pdf>.

УДК 342.7(043.2)

Андрусяк І. П., к.ю.н.,

Національний університет «Львівська політехніка», м. Львів, Україна

СОЦІАЛЬНІ ОЧІКУВАННЯ У ФОРМУВАННІ «СПРАВЖНЬОГО» ЧОЛОВІКА, «СПРАВЖНЬОЇ» ЖІНКИ ТА ПРАВОВЕ РЕГУЛЮВАННЯ ГЕНДЕРНОЇ РІВНОСТІ

Культурні приписи (гендер) пояснюють, чому жінка має бути слабкою, а чоловік мужнім, чому жінка може плакати, а «справжній» чоловік ні, чому чоловік керівник, а жінка підлегла, чому чоловік думає, а жінка відчуває і так далі, і тому подібне. Суспільство вибудовує рівні