



ADVANCING ASEAN'S DIGITAL ECONOMIC LANDSCAPE

A Call for a Comprehensive &
Inclusive Digital Economic
Framework Agreement (DEFA)

February 2024



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INTRODUCTION

The EU-ASEAN Business Council (EU-ABC) and its members are grateful for the opportunity to contribute to the agenda-setting for an ASEAN Digital Economy Framework Agreement (DEFA) in 2024.

We laud ASEAN and the ASEAN Secretariat's efforts to include views from the private sector through consultation sessions in the development of the DEFA.

Through this paper, the EU-ABC offers recommendations that can contribute towards the realisation of a DEFA that is theoretically sound, practically viable, and addresses the diverse needs of the private sector, as well as being in line with regional economic objectives.

The EU-ABC recommends using three pillars towards the realisation of a meaningful DEFA:

1. Enhancing market access to create a level playing field for players across an integrated digital economy landscape.
2. Putting in place foundational rules and regulations that enable digital economy growth and integration of digital economies across borders.
3. Facilitation of paperless trade, digital ID and signatures, and digital payments.

BACKGROUND

ASEAN has emerged as a dynamic region at the crossroads of innovation, trade, and economic growth. A nexus of diverse cultures, economies, and ambitions, ASEAN stands poised to harness the potential of the digital economy to redefine its future.

The COVID-19 pandemic spurred this even further – digital technologies came to the forefront as social distancing measures forced consumers and businesses to change their behaviour to become more reliant on the internet. Within 18 months of the pandemic, 60 million more ASEAN citizens became digital consumers, propelling the growth of e-commerce, digital financial services, and digital means of interacting.

The oft-cited Google, Temasek, and Bain & Company annual e-Conomy SEA report estimates that the digital economy will increase intra-regional trade; by 2025, ASEAN's gross merchandise value will more than double what it recorded in 2021 to some 363 billion US Dollars in 2025, while the region's digital economy is projected to balloon to 1 trillion US Dollars by 2030.[1]





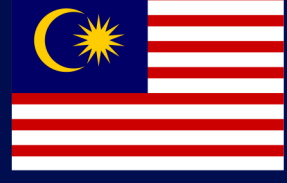






Recognising this immense opportunity, ASEAN has embarked on a journey to embrace digital transformation and undertaken several initiatives to attempt to foster a conducive environment for digital trade and innovation: Framework on Digital Data Governance (2018), ASEAN Digital Masterplan 2025, ASEAN Digital Integration Framework Action Plan (2019-2025), and ASEAN Agreement on Electronic Commerce to name a few. These mechanisms have laid the groundwork for facilitating cross-border digital trade and enhancing regulatory coherence across all 10 ASEAN Member States.

[1] <https://economysea.withgoogle.com/report/>

CHALLENGES

However, the current landscape remains fragmented, and it seems that the plethora of agreements and frameworks are often working in isolation. Often, each ASEAN Member State is doing their own thing – some are developing, or have developed, standards, regulations, and compliance requirements for their own digital ecosystem that are not necessarily interoperable across the region, while others are lagging so far behind they are barely playing catch up.

Results from the ASEAN Digital Integration Index (ADII), which measures digital integration based on several key pillars like infrastructure readiness and digital trade, have revealed huge disparities between ASEAN Member States in terms of technology development and adoption.

	Digital Trade & Logistics	Data Protection & Cybersecurity	Digital Payments & Identities	Digital Skills & Talent	Innovation & Entrepreneurship	Institutional & Infrastructural Readiness
	54.97*	67.46	87.56	53.31	42.99	71.42
	33.91	24.76	41.20	36.56	38.19	50.97
	49.67	78.43	59.73	45.64	48.81	62.44
	23.22	32.58	44.53	43.89	36.91	38.27
	67.35	91.27	79.20	57.85	59.22	82.18
	18.51	20.41	32.93	19.58	44.65	44.60
	60.61	72.49	31.89	53.13	46.93	58.89
	82.64	89.70	86.60	63.79	71.08	90.36
	83.34	87.91	69.73	43.76	56.09	62.61
	78.50	63.85	58.33	38.38	44.55	60.72
	55.27	62.81	58.84	48.21	49.32	62.85

This lack of cohesive and integrated digital economic framework means ASEAN cannot fully recognise its trillion-dollar potential. Beyond the opportunities that ASEAN will miss out on, such a fragmented digital economy is bad news for business.

CHALLENGES

01 — Complex Regulatory Landscape

Businesses have to allocate significant resources to understand and adhere to different rules in each market across the ASEAN region. In some cases, businesses are forced to operate as isolated entities within each market, rather than benefitting from the synergies and efficiencies of a unified regional approach. This also limits market access, cross-border expansion, and growth, particularly for micro, small and medium enterprises (MSMEs) that dominate the ASEAN market that do not have as many resources as multinational corporations (MNCs).

02 — Trade Barriers and Inefficiencies

Hurdles like inconsistent regulations and restrictions on cross-border data flows impede the smooth exchange of goods and services across ASEAN. Businesses report encountering delays, high costs, and inefficiencies in their operations. For companies working across multiple jurisdictions, this becomes a serious impediment to business growth and efficiency, impacting on productivity and potentially on future investments.

03 — Lack of Interoperability

There is a clear lack of harmonisation in digital infrastructure, systems, and governance across ASEAN, making it difficult for businesses to offer seamless services and products across borders. This limits their ability to scale and serve diverse customer base.

04 — Limited Innovation

Fragmentation stifles innovation as it creates barriers for the adoption of new technologies and digital solutions. Businesses are also deterred from introducing innovative products and services as there is high uncertainty around regulatory approval and compatibility issues. Even if developed for one economy, the uncertainty about whether it can be deployed on a region-wide basis is itself a deterrent to full development potential.

05 — Unpredictable Investment Environment

Fragmentation can create uncertainty for investors, as inconsistent regulations and standards may impact the predictability of business environments. This could deter foreign direct investment and hinder economic growth.

CHALLENGES

The establishment of a DEFA, which was a child of the Bandar Seri Begawan Roadmap that was officially endorsed by ASEAN Leaders in 2021, presents a timely opportunity for the region to build a secure and interconnected ASEAN digital economy so that the region can unlock its fullest potential as a leading digital community and economic bloc it so desires.

Under the DEFA, ASEAN is expected to achieve “seamless and secure flow of goods, services and data” that are “underpinned by enabling rules, regulations, infrastructure, and talent.”[2] It also aims to be an overarching document that integrates existing digital action plans into a single comprehensive strategy. More importantly, the DEFA is expected to be formalised into a legally binding agreement – a move that is lauded by businesses, given that many ASEAN mechanisms are voluntary, and as a result largely ineffective in achieving their stated objectives.

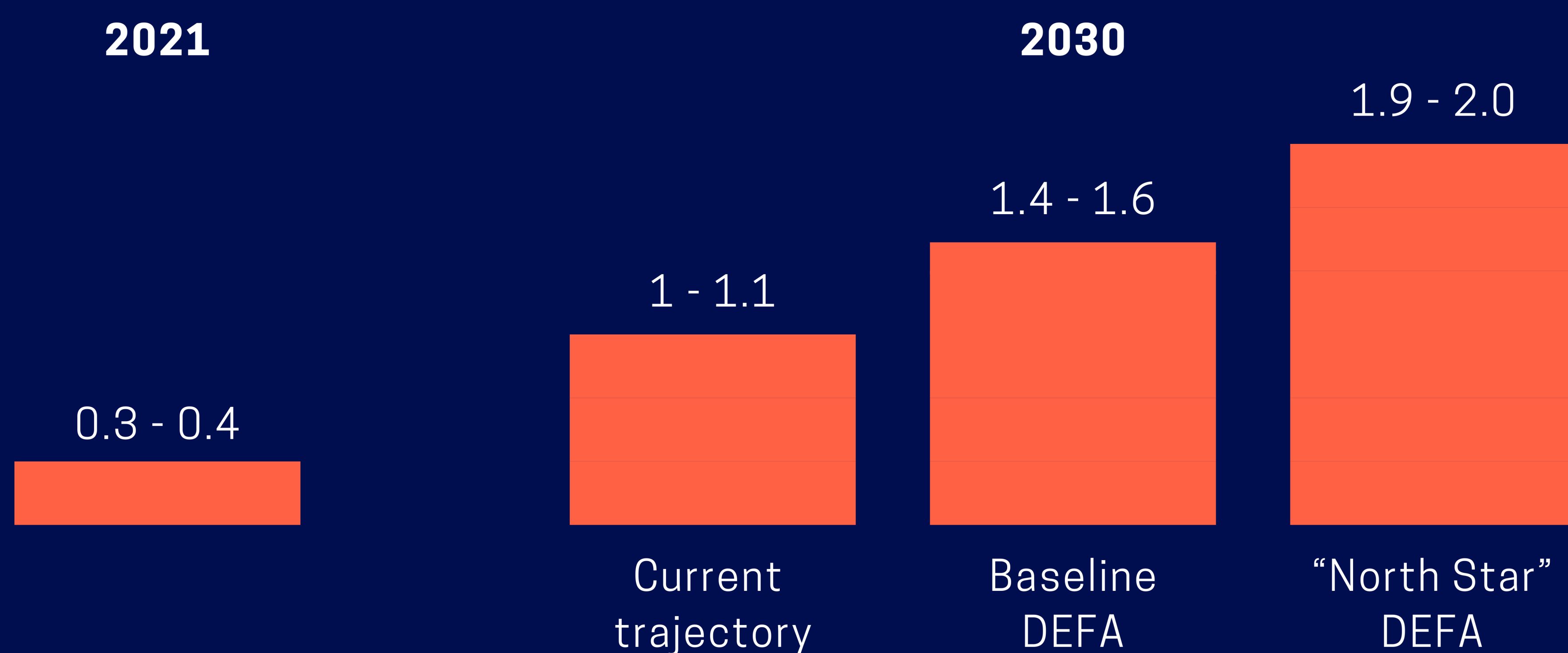
At the time of writing, ASEAN is negotiating the terms of the DEFA, following extensive scoping exercises with key stakeholders and engaging with the private sector to work out what a comprehensive DEFA will look like. This paper outlines recommendations from the European private sector with long and deep experience of doing business in the Southeast Asian region, of what elements we hope DEFA will cover. It is by no means a criticism of ASEAN and its mechanisms – it is offered precisely because businesses believe in the potential of ASEAN and recognise its pivotal role in shaping the future of the region’s digital landscape.

It is important to highlight here that without the implementation of DEFA, ASEAN's digital economy is expected to grow from 300-400 billion US dollars to only approximately 1 trillion US Dollars by 2030, missing the potential of reaching 1.6 trillion US Dollars achievable with the adoption of a baseline DEFA across the region. With a “North Star” DEFA, or the most optimal version of the Agreement, ASEAN can expect a growth reaching 2 trillion US Dollars in 2030 – that is double the current trajectory.

The case for a “North Star” DEFA then becomes evidently clear. An initial scoping exercise by the Boston Consulting Group has shown that this is especially so for low to middle income ASEAN Member States, who can expect to reap even more benefits than their neighbours. Therefore, while it might be initially challenging to adopt a forward-looking and aspirational DEFA, we hope its substantial benefits will spur the participation of these emerging nations.

[2] https://asean.org/wp-content/uploads/2022/10/Tender-ToR_ASEAN_DEFA-Study.pdf

Size of ASEAN Digital Core and Digitally-Enabled Economy (US\$ Trillion)



Boston Consulting Group

The EU-ABC and its Members have been actively contributing to private sector consultations organised by the ASEAN Secretariat, demonstrating our commitment to ASEAN's integrated and seamless digital economy. We believe that a well-crafted and comprehensive framework has the power to catalyse economic growth, drive innovation, and foster a conducive environment for sustainable business expansion across ASEAN's diverse markets. By bringing to the table real-world examples of challenges and opportunities, insights into market trends, recommendations on minimising compliance burden especially for MSMEs and so on, we hope to collaboratively build a DEFA that is theoretically sound, practically viable, addresses the diverse needs of the private sector, and is supportive of businesses' growth and success.

[2] https://asean.org/wp-content/uploads/2022/10/Tender-ToR_ASEAN_DEFA-Study.pdf

RECOMMENDATIONS

The EU-ABC recommends that DEFA's commitments cover **three main pillars** of activities to effectively address challenges and capitalise on opportunities presented within a rapidly evolving digital ecosystem.

We should not lose sight of the difference between the **core drivers of digital economy integration** and the **practical outcomes** that manifest at the level of digital applications and services like e-commerce, digital payments, data sharing etc. Essentially, there is a need to balance attention between the higher-level strategies and policies that shape ASEAN's digital economy integration and tangible, real-world results that emerge from these strategies. These pillars are:

01

Enhancing market access to create a level playing field for players across an integrated digital economy landscape

- Digitalisation of processes & procedures
- Non-discriminatory treatment of, and non-tariff barriers for, digital products
- Promote international standards & certification
- Digital skills & talent to enable market access and digital economy success
- Improving infrastructure
- Tackling local ownership requirements & related restrictions

02

Putting in place foundational rules and regulations that enable digital economy growth and integration of digital economies across borders

- Regulations & mechanisms for secure & trusted cross-border data flows
- Avoiding imposts on data flows
- Internationally recognised cybersecurity protection standards
- Harmonised data classification & governance
- Interoperable privacy & personal data regimes
- Governing Intellectual Property (IP) rights
- Governance model for emerging technologies
- Regional talent development & ease of cross-border movement
- Management & regulation of cloud services for financial sector

03

Facilitation of paperless trade, digital ID and signatures, and digital payments

- Driving adoption of paperless trade
- Interoperability of digital IDs
- Reforming electronic & digital signature laws
- Enhance facilitation of digital payments across borders

01 **Enhancing market access to create a level playing field for players across an integrated digital economy landscape**

Core to any agreement aiming at an integrated market that offers opportunity and benefits to all is an environment that promotes fair competition and a level playing field for all players, both local and multinational. This includes the removal of both tariff and non-tariff barriers and the harmonisation of standards and certifications across markets. Additionally, the human element cannot be forgotten. The DEFA must ensure that people benefit from an integrated digital economy.

Digitalisation of processes and procedures

The Digital Economy grows, broadly, in two ways: by the digitalisation of existing analogue or offline products, processes and procedures, and by the entry of native digital products, processes and procedures. ASEAN Member States (AMS) must continually promote digital reforms, in line with regional objectives. Often this means reviews of existing laws, regulations and procedures, removal of unwanted or unnecessary instruments and rules, and process re-engineering. Government administrations need to be able to function interoperably at least within each AMS' market. Without digitalisation or digital transformation, regional interoperability is not possible. A regional model relying on manual processes will always be sub-optimal and in many cases would not work at all.

Non-discriminatory treatment of, and non-tariff barriers for digital products

To embrace an inclusive approach to digital trade can unleash the full potential of digital technologies, ensuring fair access and opportunities for businesses including SMEs, unicorns, and consumers alike, AMS needs to promote non-discriminatory treatment and reduce non-tariff barriers for digital products and services. By eliminating discriminatory practices and streamlining regulations, we can create a level playing field.

Promote international standards and certification

Technology standards are crucial in enabling regional trade in software-enabled services and IT. However, some ASEAN nations have introduced country-specific standards, which create de facto market access barriers and increase costs for businesses and consumers. ASEAN is encouraged to actively engage in collaborative efforts with industry stakeholders to promote and co-create internationally accepted standards and certifications. These standards, developed through voluntary and industry-led processes, should be widely adopted across markets to foster mutual growth and innovation.

01 Enhancing market access to create a level playing field for players across an integrated digital economy landscape

Digital skills and talent to enable market access and digital economy success

ASEAN should acknowledge the importance of digital skills development to unlock digital trade opportunities and emphasise the need for collaboration with the private sector to build a steady pipeline of digital talent in the region. Achieving this necessarily has two elements:

1. Education and training (and research) in each market and increasingly to regionally compatible curricula and objectives
2. Infusion of foreign skills to cover areas where there are shortages

ASEAN Member States could collaborate in research and development to build a truly regional digital talent pool that will be in a position to fill digital economy roles that are increasingly transnational in scope. Other ways for ASEAN to develop digital skills is to promote consistent digital literacy and skills training programmes across the region, and to encourage tertiary institutions to offer subsidised courses for ASEAN talents in fields like data science, AI, cybersecurity, and software development.

Further, ASEAN should support and foster cross-border innovation ecosystems by providing funding and mentorship to startups, incubators, and accelerators, aiming to promote entrepreneurship and innovation in the digital space throughout the region. The DEFA should also cover capacity-building of public services in ASEAN. This will ensure a sensitisation of policymakers on the structure and programmatic infusion of digital technologies.

Driving an agenda around promoting digital entrepreneurship may be connected to the job creation perspective. While programmes to fund entrepreneurship are a question of national investment and innovation and viewed as AMS capacity builders, concerted regional effort to align the core DEFA provisions with an overall environment that promotes digital entrepreneurship success should be a horizontal view as well.

Lessons from the Agriculture industry

There are 70 million smallholder farmers in ASEAN who typically grow on less than one hectare of land. Smallholders often lack access to enhanced knowledge about agronomic practices that can help them ensure proper soil health and larger yields in a sustainable manner. They usually have difficulty being approved for loans and insurance (risk mitigation for natural or manmade disasters that can wipe out their crops), lack of access to technology, and offtakers/markets.

Agriculture technology (agtech) and related digital technology solutions being developed around the world are helping connect smallholders to other parts of the supply chain, provide them with knowledge on the best agronomic practices, de-risk them for lenders and insurers, and help them identify offtakers and retailers for their products.

In many rural areas across ASEAN, lack of a digital infrastructure can inhibit smallholder empowerment and access to these solutions. This will directly impact on local, regional, and national food security.

In the agriculture and food sectors, digital technologies are the great enabler. While agriculture is seen as a non-interesting career option, especially for youths, future food security is at risk as young people turn to other industries for their careers. Programs like Generation Africa (<https://genafrika.org/>) help promote farming and create greater opportunities for youth, and women, in farming and in building their own agri-related MSMEs.

01 Enhancing market access to create a level playing field for players across an integrated digital economy landscape

Improving infrastructure

The soft and hard infrastructure that enables digital economies need greater investment. The telecoms sector (which underpins the Digital Economy) regulation is included in the World Trade Organisation's General Agreement on Trade in Services (GATS) and regional free trade agreements (FTAs), but market access effectiveness and freer movement of skilled people vary. Under-investment in hard infrastructure should be examined to identify those areas which have provided reasonable investment and those where more is needed.

Tackling local ownership requirements and related restrictions

Allow companies legally registered in ASEAN (whether local or foreign) to be able to implement digital solutions without being required to use a local third party.

Reassess, align, and standardise regulatory frameworks across ASEAN on how digital solutions are classified – for example, in some countries they are labelled as “advertising,” which results in digital solutions providers needing to appoint local companies to distribute their solutions to end-customers.

Standardise licensing requirements for all local and foreign-owned companies. In some ASEAN markets, foreign-owned companies who are legally registered to operate there must get a foreign business license in order to operate their digital solutions locally, even if they are developing those solutions in that market.

02 Putting in place foundational rules and regulations that enable digital economy growth & integration of digital economies across borders

It is crucial for AMS and relevant stakeholders to engage in an open dialogue to highlight the potential negative impact of overly restrictive rules and regulations on the following issues of digital trade and data access and work towards finding mutually beneficial solutions. The DEFA framework must recognise that several foundational policy and regulatory elements are critical to the realisation of many expected induced benefits of a robust and integrated regional digital economy.

Cross-border data flows

DEFA should prioritise the facilitation of cross border data flows and advocate against unnecessary data transfer restrictions, except in specific and well-justified instances. It should work toward prohibiting data localisation requirements and the mandate of in-country computing facilities. These measures are crucial in many sectors especially in the financial services to promote seamless cross-border transactions, agriculture, supply chain and logistics to foster digital trade, etc.

DEFA should advocate for a risk-based approach in regulating data transfers, framing initiatives along the lines of developing interoperable mechanisms that facilitate secure and trusted cross-border data flows. Encouraging AMS to assess potential risks and benefits associated with cross-border data flows will ensure that policies are effective and proportionate, as well as ensuring that rules and regulations are evidence-based and balanced. AMS should avoid imposing blanket restrictions that may hinder legitimate data transfers and instead focus on targeted measures that address specific concerns is necessary while allowing for the seamless flow of data across borders.

AMS should promote the development of data protection agreements or mutual

recognition arrangements to ensure that data transfer restrictions are based on shared standards and principles.

These could be enhanced by including that restrictions to cross-border data flows should be justified and overseen via an agreed multilateral governance mechanism. This should involve counterparty governments and regulators, and relevant stakeholders should be able to make representations as part of this process.

It is crucial that governments develop a consistent approach to data connectivity in bilateral and multilateral agreements. Existing arrangements like the 2022 UK-Singapore Digital Trade Agreement, which among others, provision the ban on unjustified restrictions on the cross-border flow of data in a wide range of sectors, should serve as a model for the DEFA.

Efforts to enhance data protection and cybersecurity in some ASEAN countries should be supported. This can help address legitimate concerns about data transfers while promoting digital innovation and cross-border collaboration. ASEAN should promote digital literacy and empower users to make informed decisions about data sharing and data protection. This can help build trust in cross-border data transfers and alleviate concerns about the misuse of personal information.

02 Putting in place foundational rules and regulations that enable digital economy growth & integration of digital economies across borders

Avoiding imposts on data flows

A WTO Moratorium on customs duties for electronic transmissions is due to expire in the first quarter of 2024. Keeping such data flows free of any customs duties or similar imposts has supported the free flow of such data, and seen positive economic and social consequences. Services are valuable to all economies, including developing economies whose relative share of global services exports is expanding.

Among other benefits, the share of global commercial exports from developing economies jumped from 24% to 34% between 2005 and 2022, according to a joint report by the WTO and World Bank published in 2023.[3] Introducing tariffs, duties, or other imposts on data flows would lead to complex and expensive administrative arrangements. Such data flows should be kept clear, and the EU-ABC advocates for the WTO Moratorium to be extended.

Internationally recognised cybersecurity protection standards

AMS should seek to adopt pre-existing internationally recognised standards for cybersecurity protection, reducing compliance costs for companies. ASEAN regulators should also work closely with industry, not just for the harmonisation of these cybersecurity standards, but to regularly update them. Further, public and corporate awareness of cybersecurity practices should be a focal point.

As many government-endorsed studies have shown, including an annual report by the EU Agency for Cybersecurity ENISA on the state of the cybersecurity threat landscape, various kinds of attacks online threats have a debilitating effect on businesses and potentially any economy. Far greater investment in protection practices and protocols is needed, as well as a much more co-ordinated effort towards finding perpetrators and meting out appropriate punishments.

[3] https://www.wto.org/english/res_e/booksp_e/trade_in_services_and_development_e.pdf

Lessons from Financial Institutions (FIs)

There are a number of collaborative fora and policy initiatives in which FIs are active participants, with one of the outcomes being the development of the Financial Services Sector Cyber Security Profile (FSSCP). Based on the US National Institute of Standards and Technology (NIST) Cyber Framework, the FSSCP attempts to harmonise bank responses to regulatory assessments by mapping regulation globally and providing a single, standardised document demonstrating compliance. If regulators adopted the FSSCP, it would become the accepted supervisory baseline for cybersecurity regulatory assurance upon which national variations could then be established, reducing considerably the regulatory burden for both firms and supervisors.

Regulations should not be overly prescriptive and instead should take an agile risk-based and outcomes-focused approach that would cover aspects such as risk management, system resilience and operational continuity, to accommodate the nuances of new technologies.

As corporations and their customers increasingly review their cost base and move to an Operating Expense model of how business is conducted, more and more is outsourced to third parties. In the era of FinTech, this does mean being selective with the vendors and new technologies which might seem promising, but also need time to mature a stronger governance. At the same time, it is clear that the transition to Cloud Technology is crucial. This means ensuring that Cybersecurity controls are consistent, or at least equivalent, across different markets.

02 Putting in place foundational rules and regulations that enable digital economy growth & integration of digital economies across borders

Harmonised data classification and governance

Data classification involves organising data into relevant categories to enhance its usability and protection. This process simplifies data retrieval, avoids redundant processing, and holds particular significance for risk management, compliance, and data security. For ASEAN, the development of a comprehensive and transparent data classification framework is essential to ensure seamless interoperability across sectors. The framework should adopt an outcome-based approach to cyber risk management. Ideally, data should be classified using consistent tiers and standards across various sectors, with allowances for specific sectors that may require unique approaches. A coherent and standardised data classification system will strengthen data governance and facilitate effective data management practices throughout the region. Further, standardised and structured data will help reduce friction in supply chains and promote better transparency, quality, and reconciliation.

The EU-ABC in 2020 published a paper on data governance in ASEAN, where the Council set out several recommendations on data governance, including data classification, implementing local laws that ensures a level of protection comparable and compatible with the European General Data Protection Regulation (GDPR), and developing technical standards. Private sector recommendations from that paper remains relevant to this day.[4]

Interoperable privacy and personal data regimes

DEFA should set out a clear direction of travel and roadmap for the interoperability of legal frameworks to protect personal information and privacy. This roadmap should consider the global context and best practices that would enable ASEAN's regime to be interoperable globally and support digital economy integration both regionally and globally.

This approach could be aligned with GDPR, CBPR, and the OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data (2013). These regimes should align with principles as outlined above in the cross-border data flows comments, especially ensuring that these regimes do not directly or indirectly introduce mandatory data localisation as part of a privacy regime.

[4]<https://www.eu-asean.eu/wp-content/uploads/2022/02/DATA-GOVERNANCE-IN-ASEAN-FROM-RHETORIC-TO-REALITY-2020.pdf>

02 Putting in place foundational rules and regulations that enable digital economy growth & integration of digital economies across borders

Governing Intellectual Property (IP) rights

DEFA's role in fostering a vibrant digital economy should also encompass robust guidelines and enforcement mechanisms for intellectual property (IP) rights. In the face of challenges posed by artificial intelligence (AI) and the widespread use of social media in content creation, it is crucial to strike a delicate balance between innovation and IP protections. The legal framework, institutional processes, and dispute mechanisms embedded in DEFA should be designed to address the evolving landscape of copyright and data protection in today's evolving context.

In the realm of e-commerce and the sale of counterfeit goods, there should be a concerted effort in dealing with IP infringement through mechanisms like fast take-down requests and permanent blocking of repeat infringers. Memorandums of Understandings (MoUs) can be a good tool, and are already in place between authorities, online platforms, and brand owners in ASEAN countries like Thailand and the Philippines. More of such MoUs should be in place across the region, working towards an ASEAN-wide MoU. Such a uniform framework will level the playing field for all platforms and also enhance the region's fight against illicit trade.

A governance model for emerging technologies

DEFA should identify the direction to accelerate and maximise the digital economy potential in the context of today's technology environment, but should equally keep an eye on future technology integration into the digital economy – particularly AI and its implications for enabling or blocking regulatory and policy regimes. This should be viewed more as a horizontal that impact other must-have enablers, than necessarily its own pillar, as these are technologies that will be integrated across all areas.

There are many developments globally around AI governance codes and frameworks. ASEAN itself has a draft. DEFA should ideally seek to align the definition of AI across the ASEAN region, which can balance both between ensuring legal precision and promoting innovation, and to explore and align with internationally accepted definitions of AI. This could begin by identifying a set of core characteristics for riskier AI – this would help future-proof any regime by focusing on specific use cases and models, rather than trying to define AI more broadly, which will likely become outdated.

The DEFA should implement principles that can ensure the responsible and trustworthy use of AI without restricting future development and innovations in the technology. This could be done by conducting a mapping of existing laws and regulations that may be relevant or applied to AI. This will increase clarity and understanding on how existing regulations apply, promote targeted and proportionate laws and regulations, and avoid overlap and duplication. There are views that the rush by some AMS to implement AI laws seems premature.

Particular to the financial services sector, AI has the potential to exacerbate existing risks, both in terms of speed and scale, and new issues may arise as the use of AI in financial services grows. Authorities should work with counterparts in other jurisdictions and industries, as well as with financial services firms, to undertake a gap analysis of existing regulation. This would enable any subsequent remediation to be delivered using highly targeted guidance on the specific use cases and models in question.

The Veritas Consortium, led by the Monetary Authority of Singapore (MAS), is a case in point and offers some very insightful outcomes. 31 financial services and technology firms developed an open-source software toolkit to implement Assessment Methodologies for the MAS principles of Fairness, Ethics, Accountability and Transparency ('FEAT'). The Veritas approach has enabled a deeper understanding of emerging risks across different use cases; the need for a globally consistent, risk-based approach to determine appropriate governance for responsible AI and the creation of more appropriate guidance and oversight.

Finally, the all-important area of entrepreneurship in terms of creating an ecosystem for innovating digital solutions for ASEAN need to be added and covered.

Governance – rather than regulation – of these emerging technologies should be the focus. While important to have, it should not be over-prescriptive at this stage. Agreed guidelines and codes should be a minimum criteria.

Regional talent development and ease of cross-border movement

The DEFA should work towards eliminating restrictions on the ability of companies in ASEAN to hire talent – particularly ASEAN residents (i.e., ASEAN nationals or foreigners with relevant work/visa residency status).

A model like the EU, where someone with relevant EU residency/visa status can work anywhere in the economic bloc, should be considered for the DEFA (e.g., through visas and work permit regulation). A “digital nomads” policy should welcome such movement. This would foster greater innovation and growth, and where those skills are lacking locally, to attract the world’s top talent, not only to help develop new solutions, but to also mentor local teams to eventually take over their roles.

02 Putting in place foundational rules and regulations that enable digital economy growth & integration of digital economies across borders

Management and regulation of cloud services for the financial sector

The demand for data about Cloud projects for operational management, internal reporting and external reporting to regulators has significantly grown, stretching the ability of FIs to provide reports that are timely and consistent. Against this backdrop, ASEAN should allow for platform-level approval that would allow FIs to treat individual IT applications moving to Cloud as unique outsources, and instead, manage outsourcing at the Cloud Service Provider (CSP) platform level.

Moreover, experience so far indicates that FIs cannot achieve the highest levels of resilience on Cloud unless there is understanding on how these platforms operate, and to design and build accordingly. Thus, there is hope that ASEAN regulators can support efforts towards developing an informed and appropriate approach to exit planning and switching, which should be relied upon for stressed scenarios. Given that no CSP is as yet systemic for the financial services industry, authorities should also develop a full analysis of both technological and regulatory options towards concentration risk.

There is a growing need regionally for an aligned approach for the regulation of public cloud to better serve consumers and markets without compromising the core regulatory objectives of protecting consumers and systemic stability.

ASEAN should look at harmonising their regulatory approaches using a set of high-level principles. To this end, the EU-ABC recommends leveraging international best practices, such as the 2021 Proposed ASIFMA Principles for Public Cloud Regulation.

What is more, the limited availability of public cloud services in ASEAN countries may increase resilience risk and high cost of secured cloud connectivity establishment. ASEAN regulators need to encourage reputable public CSPs to build more data centers in multiple ASEAN countries and enable multi-region offline backup mechanisms.

Lastly, ASEAN should review and consider CSPs as partners and extensions of on-premises data centers to address concerns such as cybersecurity exposure and scalability.

03 Facilitation of paperless trade, digital ID and signatures, and digital payments

Paperless trade

DEFA should set out a clear path to drive paperless trade. This should include a commitment to eliminate paper-based exchanges of documents with a set timeline for implementation as a part of the improved operationalisation of the ASEAN Single Window. This should be aligned with the provisions planned in the upgraded version of the ASEAN Trade in Goods Agreement (ATIGA) whilst considering other decentralised technologies and interoperable frameworks. The WTO Trade Facilitation Agreement could be taken as a reference point for this element, which requires signatories to 'provide for advance lodging of documents in electronic format for pre-arrival processing' import documentation and other required information.

One recommendation is to consider and adopt electronic Bills of Lading (eBL). Bills of Lading are important legal documents used in international trade and shipping, but have long been associated with manual processes and inefficiencies, and are at risk of document loss and fraud. The adoption of eBL, which can be stored on digital platforms and shared between industry players on a real-time basis, will help address these challenges and move trade digitisation forward.

It is crucial to acknowledge the importance of fostering collaboration between government and private sector business networks. Recognising this, DEFA should not only address the elimination of paper but also emphasise the collaborative participation of both government entities and private sector businesses. This collaborative approach aims to create a symbiotic relationship that facilitates the smooth exchange of electronic records used in commercial trading activities across businesses operating within ASEAN member states.

In addition, DEFA should recognise the importance of facilitating, where relevant in each jurisdiction, the exchange of electronic records used in commercial trading activities between business operating within ASEAN member states. DEFA should endeavour to develop systems and frameworks to support the exchange of data relating to trade administration between member states authorities and electronic records used in commercial trading activities between business operating in member states. Data exchange systems should be compatible and interoperable with one another and there is transparency of the development and governance of data exchange systems. ASEAN member states should collectively promote the advance use and adoption of the data exchange systems.

DEFA should be consistent with the principles of the UNICITRAL Model Law on Electronic Commerce (1996) and/ or the United Nations Convention on the Use of Electronic Communication in International Contracts (2005).

03 Facilitation of paperless trade, digital ID and signatures, and digital payments

Digital IDs

With the proliferation of Digital ID schemes across ASEAN, interoperability should be prioritised for the region (with consideration beyond ASEAN), and mutual recognition should be a target. Technology developments and the wider digital ID ecosystem is of critical importance to the private sector to ensure that public and private systems are integrated for the benefit of AMS citizens and businesses. Regulatory regimes should be aligned with the trends and developments in the digital ID ecosystem and technology landscape.

Digital signatures

In keeping with comments on digital trade, a commitment to reforming electronic and digital signature laws to enable digital trade should be included in the DEFA negotiations given the importance of this element of a paperless digital trade environment. Any law governing digital signatures should permit a variety of use cases to be relevant to citizens and businesses, be recognised by a wide number of institutions, and not require physical or paper-based registration. The laws governing digital signature should thereby also be aligned with UNCITRAL Model Law on Electronic Signatures (MLES).

Digital payments

Current ASEAN regulations around funds repatriation are a patchwork. Funds transfer restrictions hinder businesses from harnessing cross-border intra-ASEAN partnerships, especially MSMEs solutions providers, due to the high-risk of payments for services being delayed or restricted. DEFA should work towards eliminating all cross-border funds transfer restrictions, as long as funds are being remitted to other ASEAN markets.

On this note, the EU-ABC commends ASEAN's commitment to promote local currency transactions within member countries, and to implement a QR code digital payment service across the region. The development of low-cost or free instant transfer for individuals and SMEs amongst the ASEAN-5 is encouraging. This should eventually be fully scaled up to cover all ten countries in the region.

Further, DEFA should ensure that financial rules and regulations around payments in the digital sector are consistent and compatible across all ASEAN markets. This includes for fintech solutions that can be a critical empowerment tool for the unbanked. In some markets, constantly changing regulations are a compliance burden and restricts the ability of ASEAN-based companies to develop innovative, cross-border solutions.

There are also calls by the financial services sector for ASEAN regulators to harmonise trade regulatory requirements and currencies restriction (e.g., requirement to submit trade documents, foreign currency exchange/receipt quota, purpose of payment indication, various regulatory/tax/customs disclosure requirements), striking a balance between protecting currency stability and efficiency of cross-border payments.

New forms of digital money such as Central Bank Digital Currency (CBDCs) are being explored and tested in ASEAN countries and beyond. CBDCs will likely co-exist and be integrated with other, more traditional payment systems to ensure continued accessibility to the financial system for all. This is especially important in the current stage of innovation and in the near future, where different systems are likely to operate side by side.

Ensuring that there is interoperability between different systems would promote competition and make it easier for market participants to compare systems. It is important to design interoperability into CBDCs from the outset, rather than retrospectively, which will prevent future re-design or redundancy, which could be costly and technically challenging. Further, the scope of consideration of interoperability should encompass both domestic and international payments.

CONCLUSION

A comprehensively negotiated DEFA provides a rare opportunity for AMS to create a truly powerful regional digital economy that offers benefits to all ASEAN citizens and businesses and positions the region for greater integration into global digital value chains. It must be stressed that the induced benefits and specific program/service outcomes that have been highlighted in the DEFA scoping exercises will only flow from a permissive and innovation-focused policy and regulatory environment. Interoperability is key at all levels, but without foundational interoperability it will be difficult to see the benefits at the application and service level.

The DEFA must recognise that there are certain enabling regulations upon which the the physical layer infrastructure and application layer infrastructure will rely to deliver induced benefits of a vibrant digital economy. Without these enabling regulations (such as appropriate cross-border data flow mechanisms, interoperable cybersecurity standards, harmonised data classifications and data governance processes) it will be challenging to accelerate the region-level development of Digital IDs, cross-border e-commerce, payments and invoicing, and digital trade facilitation efforts.

The lack of an integrated regional approach to these enabling regulations will also block the growth of emerging technologies at a regional level, such as the practical adoption of artificial intelligence technologies at a business level and the adoption of cloud technologies for business efficiency. This, in turn, can place regional technology and innovation developers and MSMEs across sectors at a disadvantage in the global market.

Due to varying stages of development among AMS, it is crucial to establish a framework to guide the transition of AMS to a digital economy, especially those that are least prepared for digital economy integration. The framework should include flexible provisions for certain countries and should also offer technical assistance, that is like the approaches taken in the Regional Comprehensive Economic Partnership (RCEP), for example. This framework would be helpful for countries that have not yet had a legal framework on a particular subject, such as personal data protection.

CONCLUSION

Further, there should be provisions to develop MSMEs for their participation in the digital economy. For MSMEs to thrive in the future they must be equipped with relevant skills and awareness of opportunities to digitalise and participate in the regional digital economy. This includes focused efforts on digital skilling relevant for the business realities of these enterprises, and support to adopt relevant technologies to allow them to plug into regional value chains and access regional markets. For example, cloud-based software and digital tools help MSMEs manage inventory, finances, and customer relationship more efficiently, optimising their overall operations, and leading to cost savings.

A digital economy must also be sustainable, both in terms of considering the environmental impact of digitalisation at scale and ensuring that the implementation of digital solutions will reduce the carbon intensity of AMS economies. This concept should be recognised as an important induced benefit, but also a driver of digitalisation in key sectors (including paperless digital trade regimes, digital ID, digital signatures, and data transfers).

The DEFA presents a timely opportunity to consolidate essential and terms into a mandatory and binding agreement. It need not be overly comprehensive such that it would take years to finalise, and it must also avoid unnecessary administrative burdens. We hope that the DEFA is not overly prescriptive, but relies on fundamental rules and guidelines. Further, such a multinational agreement must mandate inclusion in every ASEAN Member States' domestic legislation around digital economy. At the end of the day, the DEFA should move the dial towards harmonisation.

We hope that the DEFA is not just another token document conjured up by ASEAN as a big picture idea with no tangible outcomes, but one that is truly transformative and will compel ASEAN Member States to genuinely embrace its principles – even those that are least prepared for a regionally integrated digital economy. This moment is ripe for urgent and resolute action. If not now, then when?