



Work Plan on the Implementation of ASEAN Agreement on Electronic Commerce

Table of Contents

| | | |
|--|---------------------------------------|----|
| 1. | 11.1 OBJECTIVES | 1 |
| 1.2 AN ASEAN WORK PLAN FOR AGREEMENT IMPLEMENTATION | | 1 |
| <i>Definitions</i> | | 2 |
| 1.3 A COMMON VISION FOR THE IMPLEMENTATION OF THE AGREEMENT | | 3 |
| 2. | 52.1 ADDRESSING REGULATORY GAPS | 6 |
| 2.2 MSME FOCUS | | 6 |
| 2.3 DRIVING INCLUSIVE GROWTH AND NARROWING DEVELOPMENT GAPS IN ASEAN | | 7 |
| 2.4 INCREASING TRANSPARENCY AND STAKEHOLDER ENGAGEMENT | | 7 |
| 2.5 OVERLAP WITH OTHER ASEAN WORK PLANS AND INITIATIVES | | 8 |
| 3. | 83.1 HIGH LEVEL WORKSTREAM AND TOPICS | 9 |
| <i>Three Workstreams</i> | | 9 |
| <i>Connections Between Various Workstreams of the Work Plan</i> | | 9 |
| 3.2 WORK PLAN STRUCTURE | | 10 |
| <i>Desired Outcomes</i> | | 10 |
| <i>Objectives</i> | | 10 |
| <i>Activities</i> | | 10 |
| 4. | 124.1 GOVERNANCE AND OWNERSHIP | 12 |
| <i>Roles of ASEAN ministerial and sectoral bodies</i> | | 12 |
| <i>Coordinating role of the ACCEC</i> | | 12 |
| 4.2 WORK PLAN REVIEW | | 13 |
| <i>Key Performance Indicator (KPI) Measurements</i> | | 13 |
| <i>Review Approach</i> | | 13 |
| 4.3 WORK PLAN ENABLERS | | 14 |
| <i>National E-Commerce Development</i> | | 14 |
| <i>Domestic Capacity Building Initiatives</i> | | 14 |
| <i>Donor Partner Support and Financing</i> | | 14 |
| <i>Digital Infrastructure Connectivity</i> | | 15 |
| <i>Data Collection</i> | | 15 |
| 5. | 165.1 HORIZONTAL ACTIVITIES | 17 |
| <i>Laws Reporting Scheme and Associated Activities</i> | | 17 |
| | | 2 |

| | |
|--|------------|
| <i>Annual Business Survey</i> | 17 |
| <i>ASEAN Consumer Empowerment Index (ACEI)</i> | 18 |
| <i>Stakeholder Engagement Activities</i> | 19 |
| <i>Pilot Projects</i> | 19 |
| 5.2 CROSS BORDER FOCUS WORKSTREAM | 21 |
| <i>A.1 Trade Facilitation and E-Commerce Logistics</i> | 21 |
| <i>A.2 Paperless Trading</i> | 28 |
| <i>A.3 Customs Duties (Information Sharing)</i> | 32 |
| <i>A.4 Cross Border Transfer of Information</i> | 36 |
| <i>A.5 Data Centre Localisation</i> | 45 |
| 5.3 BUSINESS FOCUS WORKSTREAM | 49 |
| <i>B.1 Electronic Transactions</i> | 49 |
| <i>B.2 Electronic Authentication</i> | 55 |
| <i>B.3 Electronic Signatures</i> | 64 |
| <i>B.4 Electronic Payments</i> | 69 |
| <i>B.5 Intellectual Property Rights in an Online Setting</i> | 77 |
| <i>B.6 Technology Neutrality</i> | 82 |
| <i>B.7 Competition</i> | 86 |
| 5.4 CONSUMER FOCUS WORKSTREAM | 92 |
| <i>C.1 Consumer Protection</i> | 92 |
| <i>C.2 Alternative Dispute Resolution for E-Commerce</i> | 102 |
| <i>C.3 Data Protection/Privacy</i> | 109 |
| <i>C.4 Cybersecurity</i> | 117 |
| 6. WORK PLAN OVERVIEW | 123 |
| 7. WORK PLAN TIMELINE | 125 |

1. Introduction/ Background to the Agreement and Work Plan for its Implementation

1.1 Objectives

The completion of the ASEAN Agreement on Electronic Commerce (the “Agreement”) is a key step in the pursuit of a leading digital economy in the ASEAN region. The Agreement provides the framework for the implementation of measures that allow ASEAN Member States (AMS) to cooperate in advancing the development and use of e-commerce in the ASEAN region while considering various degrees of digital readiness across AMS. As a result, the Agreement strengthens the emergence of a cohesive, aligned, and inclusive environment that helps facilitate cross-border e-commerce transactions for goods and services.

The objectives for the Agreement are set out in Article 2 and are as follows: (a) facilitate cross-border e-commerce transactions in the ASEAN region; (b) contribute to creating an environment of trust and confidence in the use of e-commerce in the ASEAN region; and (c) deepen cooperation among Member States to further develop and intensify the use of e-commerce to drive inclusive growth and narrow development gaps in the ASEAN region.

ASEAN’s goals of inclusive growth and narrowing development gaps require sustained attention to e-commerce and the digital economy as well as the development of supporting policy frameworks. E-commerce and digital trade play critical roles in facilitating economic activities, reducing transaction costs, enhancing logistics, distribution, and retail services, and assisting businesses, especially micro, small and medium sized enterprises (MSMEs) in growing domestically and internationally. Indeed, a flourishing digital economy across ASEAN, built in an environment of trust and confidence, will be a key element of any future growth strategy for the region.

Since the signing of the Agreement on 22 January 2019, ASEAN and its Member States have made notable progress in its ongoing efforts to further the objectives of the Agreement. As revealed in the *Mapping Study* which was a foundational element of this project, AMS have already made significant advancements on the legislative and regulatory coverage of e-commerce related topics. The Mapping Study helped inform the basis of this Work Plan, which among other things, seeks to promote and establish a coherent regulatory framework for e-commerce in ASEAN.

1.2 An ASEAN Work Plan for Agreement Implementation

The cross-cutting nature of the digital economy is reflected in the myriad of topics presented within the Agreement itself. To meet the objectives noted above and to ensure successful implementation of the Agreement, ASEAN and AMS will need to communicate and coordinate to facilitate the creation of a leading digital community. This Work Plan draws upon existing ASEAN work across various sectoral bodies to help achieve stronger e-commerce growth in the region. Such integration of effort will likely be replicated at the domestic level as well, as AMS will need to actively engage with various stakeholders to accelerate digital growth and meet national level e-commerce goals.

Given the need to engage multiple sectoral bodies, the role of the ASEAN Coordinating Committee on Electronic Commerce (ACCEC) is critical in driving an inclusive Work Plan.

The ACCEC, as noted in Chapter 4 below, will be responsible for drawing attention to potential overlaps in coverage between projects identified in the included Implementation Workstreams and to manage close coordination across ASEAN's institutional bodies. The ACCEC will, as mandated in Article 16 of the Agreement, provide status reports to SEOM which will regularly report on progress at the ASEAN Economic Ministers Meetings.

This Work Plan for the Implementation of the Agreement outlines steps to be taken across the region over a five-year period to ensure continuing expansion of ASEAN's digital resilience and support future growth opportunities for Southeast Asia. It also makes clear recommendations for consideration, elaborated in Chapter 4 below, during a mid-term review or stocktake of the Agreement implementation which is scheduled to take place three years after entry into force (for the purposes of this Work Plan, this is assumed to be 2023). To ensure the successful implementation of the Agreement, the Work Plan recognises and stresses the importance of the alignment and coordinated efforts between the ACCEC and relevant sectoral bodies to achieve the objectives of the Agreement.

The proposals and activities noted in this Work Plan are non-binding and subject to further updates as necessary to reflect the fast and dynamic changes in e-commerce activities and digital innovation. The Plan provides sets of *desirable outcomes* to help ensure full implementation of the Agreement over the time frames noted in this document. Agreement on outcomes can facilitate the coordinated actions between and across ASEAN bodies and AMS. The Work Plan should be viewed as a **living document that can be adjusted as necessary**, particularly at review milestones noted in Section 4.2 Work Plan Review. Given the fast-moving nature of the digital economy and the rapid adjustments that AMS are making to better accommodate digital activities at the domestic levels and across ASEAN's activities, it is more important than ever to ensure that Work Plan activities, particularly towards the end of the planned implementation period, accurately reflect current conditions.

Definitions

At the point of the signing of the Agreement, the term 'e-commerce' often alluded to an all-encompassing term. However, since then the subject has evolved rapidly. The World Trade Organisation (WTO) defines e-commerce as the "production, distribution, marketing, sale or delivery of goods and services by electronic means".¹

Thanks to ASEAN and its Member States' perceptive foresight, the Agreement included elements of scope beyond trade and services by electronic means. This Work Plan is of the view that the term 'e-commerce' does not fully reflect the intent of the Agreement and the breadth and depth of the subject. In order for ASEAN to implement a Work Plan that is future proof, it needs to consider elements beyond "trade in goods and services enabled electronically." The Agreement sets out provisions for the different aspects of the digital economy which includes e-commerce as defined above. This suggests that the term e-commerce as it is understood now, does not refer to the all-encompassing term it once was. Instead, the term 'digital economy' might be more suitable.

Due to the rapid pace of the digital economy, there is so far no agreed fixed definition, however, there has been some consensus on a common understanding of the term.² The UNCTAD and OECD had previously adopted a definition by Bukht and Heeks (2017) and defined the 'digital economy' as "that part of economic output derived solely or primarily

¹ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/274.pdf&Open=True>

² https://unctad.org/system/files/official-document/der2019_en.pdf

from digital technologies with a business model based on digital goods or services.”³ Another definition of the digital economy includes all the possible ways in which digital technologies permeate into the economy. This is reflected in the definition suggested by Knichrehm et al which defines the term as “The share of total economic output derived from a number of broad “digital” inputs. These digital inputs include digital skills, digital equipment (hardware, software and communications equipment) and the intermediate digital goods and services used in production. Such broad measures reflect the foundations of the digital economy.”⁴

This Work plan makes reference to both ‘e-commerce’ and ‘digital economy’.

When using the term ‘e-commerce,’ it refers to the trade in goods and services by electronic means.

When using the term ‘digital economy’ it encompasses e-commerce (as defined above) and all other digitally enabled economic activities.

1.3 A Common Vision for the Implementation of the Agreement

Work Plan Vision: ASEAN as a region will aim to achieve an increase in the overall size of its digital economy by 2025 through facilitating cross border e-commerce transactions, creating an enabling environment of trust and confidence and deepening cooperation to embody a leading digital community that is competitive, inclusive, and forward looking.

This overarching Vision for the Work Plan aims to consolidate the objectives of the Agreement and create a simple, measurable and pragmatic vision for ASEAN to accomplish its goal of creating a leading digital community, where the flows of digitally enabled goods, services and data is underpinned by greater alignment of rules, regulations, talent and infrastructure.

As past independent reports from Google, Temasek and Bain & Company have indicated, ASEAN’s digital economy growth since 2015 has been impressive. The 2016 report noted the size of three elements of the digital economy (online media, online travel, and e-commerce) at US\$31 billion gross merchandise value (GMV).⁵ The 2020 report showed an increase to US\$105 billion GMV and includes 4 elements of the digital economy (online media, online travel, transport & food and e-commerce).

The pandemic and associated economic lockdowns have driven companies and consumers online as never before.⁶ To support recovery efforts after the pandemic, ASEAN must ensure that the digital economy continues to expand across borders, which particularly benefits

³ Rumana Bukht and Richard Heeks, *Paper No. 68: Defining, Conceptualising And Measuring The Digital Economy* (repr., Manchester, United Kingdom: Centre for Development Informatics Global Development Institute, SEED, 2017), 17.

⁴ <https://www.anupartha.com/wp-content/uploads/2016/01/Accenture-Strategy-Digital-Disruption-Growth-Multiplier.pdf>

⁵ https://storage.googleapis.com/gweb-economy-sea.appspot.com/assets/pdf/e-Conomy_SEA_2016_report.pdf

⁶

<https://www.mckinsey.com/~media/mckinsey/business%20functions/strategy%20and%20corporate%20finance/our%20insights/how%20covid%2019%20has%20pushed%20companies%20over%20the%20technology%20tipping%20point%20and%20transformed%20business%20forever/how-covid-19-has-pushed-companies-over-the%20technology%20tipping-point-final.pdf?shouldIndex=false>

smaller firms that form the bedrock of economic activity in the region.

To achieve the stated Vision, this Work Plan does not seek to add unnecessary obligations to AMS, but instead presents an opportunity to simplify and complement existing goals under other ASEAN Work Plans and Strategy Instruments, to ensure that ASEAN as a region maximises its potential to achieve a leading digital community under the timeframes indicated in the Agreement and this Work Plan.

Table 1.3: Relevant Vision Statements Embedded in the ASEAN Digital Economy Framework

| ASEAN Digital Economy Framework | Vision |
|---|---|
| ASEAN Digital Master Plan 2025 | ASEAN as a leading digital community and economic bloc, powered by secure and transformative digital services, technologies and ecosystem. |
| Master Plan on ASEAN Connectivity 2025 | To achieve a seamlessly and comprehensively connected and integrated ASEAN that will promote competitiveness, inclusiveness, and a greater sense of Community. |
| ASEAN Digital Integration Framework Action Plan 2019-2025 | Six priorities areas for the immediate term to address the critical barriers and accelerate existing ASEAN platforms to realise digital integration: (i) Facilitate seamless trade; (ii) Protect data while supporting digital trade and innovation; (iii) Enable seamless digital payments; (iv) Broaden digital talent base; (v) Foster Entrepreneurship and (vi) Coordinate Actions. |
| ASEAN Economic Blueprint 2025 | Five interrelated and mutually reinforcing characteristics (i) A Highly Integrated and Cohesive Economy; (ii) A Competitive, Innovative, and Dynamic ASEAN; (iii) Enhanced Connectivity and Sectoral Cooperation; (iv) A Resilient, Inclusive, People-Oriented, and People-Centred ASEAN; and (v) A Global ASEAN. |
| ASEAN Digital Data Governance Framework | Objectives: (1) Help policy makers in ASEAN promote a robust digital economy; (2) Help all businesses operating in ASEAN participate in the digital economy; (3) Help all businesses in ASEAN practise data governance throughout the data lifecycle. |

2. Work Plan Rationale

2.1 Addressing Regulatory Gaps

Prior to developing this Work Plan, the project began with a comprehensive assessment of the elements embedded across the Agreement. These elements, broken down into three broad Work Streams, were then mapped against AMS existing legislative, regulatory and policy activities. The final product, the **Mapping Study**, helped form the basis of this Work Plan and associated activities.

Given the varying degrees of legislative coverage among AMS identified in the Mapping Study, the implementation of the Work Plan aims to promote a coherent regulatory framework for e-commerce in the region. The activities and objectives under this Work Plan seek to address the gaps identified in the Mapping Study and put forward recommendations for AMS to align domestic legislative and regulatory frameworks with international standards and guidelines. A three-phase approach will allow for the activities to (i) address the regulatory gaps identified by the Mapping Study, (ii) strengthen implementation and operationalisation of such laws where they already exist, and (iii) increase coordination and cooperation among AMS to align regulatory coverage in ASEAN.

2.2 MSME Focus

To achieve the overarching vision of increasing the overall size of the region's digital economy by 2025, this Work Plan will play a crucial role in driving digitization and trade priorities, particularly for MSMEs. ASEAN's ability to increase the size of its digital economy, requires an approach which is fit for purpose for the smallest companies in the region. ASEAN is dominated by smaller firms, which make up to 97% of the companies in each ASEAN Member State (AMS) and account for significant employment. Getting trade integration to work for ASEAN requires arrangements that facilitate the engagement of MSMEs, especially for cross-border trade. Fortunately, the digital economy provides whole new opportunities for growth for smaller firms.

The objective of the Agreement seeks to create an enabling environment of trust and confidence for relevant players in the e-commerce ecosystem. Economic factors and conditions in individual AMS such as Information Communications Technology (ICT) affordability and accessibility, availability of reasonably priced logistics, and gaps in electronic payment options continue to affect MSME e-commerce options and abilities which, in turn, impacts the growth of the region's digital economy. Regulatory institutions, bodies and rules around data and consumer protection have a direct impact on MSME e-commerce behaviour by directly affecting the affordability, accessibility and growth of e-commerce activities. In Cambodia, Laos, and Myanmar (CLM) specifically, high levels of informality and the use of social commerce models over more established marketplaces, can make MSME onboarding and online selling even more challenging.

ASEAN has recognized the instrumental role that MSMEs play in the region's development and Post-COVID 19 recovery efforts through initiatives like the ASEAN Coordinating Committee on Micro, Small and Medium Enterprises (ACMSME) and the ASEAN Strategic Plan for SME Development. To ensure that the Work Plan supports MSME participation in

the region's e-commerce ecosystem, the objectives and proposed activities under the Work Plan takes into account the needs, priorities and resource constraints of MSMEs and helps build their capabilities to comply and participate in the digital economy. The Work Plan emphasizes and prioritises activities that address economic and regulatory factors affecting MSME participation in the digital economy. When trade works for the smallest firms, it works for companies of all sizes.

2.3 Driving Inclusive Growth and Narrowing Development Gaps in ASEAN

A holistic and inclusive approach is integral to achieving the goal of a leading digital economy. The Work Plan will address ASEAN and AMS priorities to foster inclusive growth within the digital economy. The Agreement recognises the importance of promoting inclusive growth and narrowing development gaps in the region. The accompanying and extensive Mapping Study that formed the basis for this Work Plan noted that AMS have already designed and implemented many e-commerce-related policies and activities in line with their priorities, resources and regulatory capabilities.

Differences in digital infrastructure, country-specific needs and regulatory capabilities across AMS must be taken into account in the development of inclusive and integrated regional digital economy plans. This is especially the case in CLM, where having in place the structures to comply with ASEAN regulatory requirements may require significant changes to budget allocations, target timelines and key performance indicators (KPIs) for government agencies. Acknowledging the varying levels of technical and capacity-building assistance needed for CLM countries, the Agreement addresses this and provides a 5-year transitional period, after the date of entry into force, for the implementation of certain obligations. This Work Plan reflects this and provides alternative timelines for CLM countries where relevant. Furthermore, given the existence of funding, capacity/resources and priority differences between AMS, the Work Plan takes into account the needs-based considerations for CLM which may include flexibility in the sequencing of proposed activities and technical assistance and capacity building programmes where required.

2.4 Increasing Transparency and Stakeholder Engagement

The increasing role of the private sector in the digital economy suggests a need for more transparent and inclusive decision-making processes that considers some of the practical challenges in the e-commerce ecosystem. Consumers and Businesses are the bread and butter of the digital economy. Including them in the various processes will allow for the development of an environment of trust and confidence in the use of e-commerce and drive greater participation and digital adoption.

The Work Plan recognises the integral roles of stakeholder engagement and transparency. Considering these principles will better ensure that the Work Plan's ongoing activities meet the needs of consumers, businesses and governments in order achieve holistic growth in the digital economy.

2.5 Overlap with Other ASEAN Work Plans and Initiatives

This Work Plan takes careful note of complementary actions taking place across ASEAN's various activities and attempts to ensure consistency in approaches. Wherever possible and relevant, the Work Plan for the Agreement builds on, and supports, existing ASEAN initiatives and activities. There is no need to reinvent the wheel, but rather to continue to drive economic recovery across all associated activities within ASEAN that combine to support, in a pragmatic way, expansion of digitally enabled trade and to accelerate progress towards the establishment of the ASEAN Digital Economy Framework.

ASEAN has in place multiple roadmaps and work plans that support the development of a leading digital community. To efficiently meet the work plan's vision, maximise synergies, and minimise duplication, this Work Plan is closely linked to key political commitments under other existing ASEAN frameworks, work plans, guidelines, and initiatives like the ASEAN Economic Blueprint 2025 (AEC), the ASEAN Digital Integration Index (ADII), the ASEAN Digital Integration Framework Action Plan 2019 – 2025 (DIFAP) and the ASEAN Digital Master Plan 2025 (ADM). All ASEAN members have also been actively involved in the negotiations related to the Regional Comprehensive Economic Partnership (RCEP) agreement, now moving towards entry into force, which contains a number of similar elements to ASEAN's own activities.

It would not be possible for ASEAN to achieve its vision of creating a leading digital community if each sectoral body were to work in silos. The cross-cutting nature of e-commerce presents an opportunity for the ASEAN Coordinating Committee on E-Commerce (ACCEC) to advance its coordinating function in collaborating with other sectoral bodies. The role that the ACCEC plays is vital for the implementation of Agreement by leading on new activities as well as increasing communication and transparency between relevant sectoral bodies to ensure that ongoing efforts are impactful and not duplicative. A collaborative approach will allow ACCEC to seek support and leverage the expertise of relevant sectoral bodies to address any emerging challenges and maximise synergies in the implementation of the Work Plan.

This Work Plan will enable the ACCEC to guide discussions, bring about improved alignment of regulatory policies, and increase coherence as it tracks the timely and effective implementation of the Agreement. To this end, the Work Plan will assist ACCEC in delivering results, facilitate exchange of best practices among AMS, and share regional and global practices on topics of common interest embedded in the Agreement.

3. Implementation of the Agreement

3.1 High Level Workstream and Topics

Three Workstreams

This Work Plan on the Implementation of the ASEAN Electronic Commerce Agreement identifies priority areas contributing to the overall objective of achieving the work plan’s vision.

While this Work Plan aims to wholly operationalise the Agreement’s contents, it adopts a different structure from how the Agreement was presented. To simplify and streamline the activities proposed for the purpose of the Work Plan’s implementation, substantive issues derived from the Agreement have been organised into three ‘High Level Workstreams:’

- **Cross-Border Focus**, or leading e-commerce sector policies, plans and initiatives at the national level that contributes to greater coherence across borders in ASEAN;
- **Business Focus**, or issues that directly impact e-commerce businesses; and
- **Consumer Focus**, or issues that directly impact e-commerce consumers.

Connections Between Various Workstreams of the Work Plan

For clarity, the Workstreams primarily serve an organisational function and do not segment the substantive Work Plan commitments into exclusive silos. There are cross-Workstream relationships between the topics across all of the three Workstreams. For instance, personal data protection concerns (under Consumer Focus) are not only of interest to consumers, but also vitally important to businesses. Businesses that fail to protect consumer privacy can lose customer trust and face impact on their business operations, as well as possible compliance repercussions. Personal data protection concerns are also relevant in cross-border settings across ASEAN, as transparency and regulatory harmonization of the data policies will enable, facilitate and drive between e-commerce and digital economy players (businesses, including MSMEs, and consumers) located in the different AMS.

Table 3.1.1 illustrates the ways in which the high-level Workstreams were used to classify key components of the Agreement and structure Work Plan activities. It also includes the reference label for each topic (e.g. A.1, B.1, etc.) used within this Work Plan.

Table 3.1.1: High Level Workstreams

| Cross-Border Focus | Business Focus | Consumer Focus |
|---|---|---|
| A.1 Trade Facilitation and E-Commerce Logistics | B.1 Electronic Transaction | C.1 Consumer Protection |
| A.2 Paperless Trading | B.2 Electronic Authentication | C.2 Alternative Dispute Resolution for E-Commerce |
| A.3 Information Sharing on Revenue Aspects of Digital Trade | B.3 Electronic Signatures | C.3 Personal Data Protection/Privacy |
| A.4 Cross-border Transfer of Information | B.4 Electronic Payment | C.4 Cybersecurity |
| | B.5 Intellectual Property Rights in Online Settings | |
| | B.6 Technology Neutrality | |
| | B.7 Competition | |

| | | |
|--------------------------------------|--|--|
| A.5 Location of Computing Facilities | | |
|--------------------------------------|--|--|

3.2 Work Plan Structure

Desired Outcomes

Each topic in this Work Plan contains a “desired outcome.” The desired outcome is a **topic-specific, non-binding aspirational statement** which AMS shall strive to give effect at the conclusion of the Work Plan’s implementation in 2025. For clarity, the desired outcome is not a goal *in place* of the actual E-Commerce Agreement commitments already agreed upon by all AMS.

The desired outcomes *operationalise* the Agreement’s commitments of AMS in respect of a particular topic by additionally considering, among other things, (1) the relevant text of the actual Agreement; (2) relative regulatory coverage of AMS for that topic as demonstrated by the Mapping Study; (3) scope and extent of existing ASEAN initiatives; (4) the relevant contribution of the topic towards achieving the Work Plan’s goals; (5) the feasibility of prospective AMS cooperation and collaboration on the matter; and (6) international developments and practices. The customised desired outcome statements help ensure that activities embedded in each topic remain sensitive to the on-the-ground realities. Each desired outcome is also paired with its own “rationale” addendum explaining how the desired outcome was drafted in consideration of any of the abovementioned factors.

Objectives

Each topic also includes at least one objective which reflects a **subsidiary goal or constituent element** of the topic’s desired outcome and categorises the topic’s activities (e.g. Objective A.1.1 is the first objective under Topic A.1). Example objectives could include, but are not limited to, updating relevant legislation, promoting multilateral cooperation, or facilitating socialisation with stakeholders.

Activities

Activities in this Work Plan advance the respective objectives under each topic, giving effect to the topical desired outcomes and the broader vision of a leading digital community. Activities are designed based on the following non-exhaustive considerations: (1) compatibility of the type of activity with the topic; (2) ASEAN’s track record or familiarity in respect to the particular type of each recommended activity; (3) whether there are existing ASEAN initiatives which could be included in the Work Plan, in recognition of the multi-sectoral nature of e-commerce; and (4) adaptation of suitable elements of international practices.

Based on the above approach of formulating this Work Plan’s activities, a number of existing ASEAN initiatives under the purview of other ASEAN sectoral bodies have been referenced as part of the proposed activities. This Work Plan does not seek to duplicate the efforts of other ASEAN sectoral bodies nor impose on other ASEAN sectoral bodies extrinsic deliverables. Instead, other ASEAN initiatives are referenced to **increase their visibility** and **highlight the importance of communication and coordination** between ACCEC and other sectoral bodies. Such processes should aim to encourage other ASEAN sectoral bodies to actively incorporate e-commerce elements or align their seemingly disparate outcomes with the objectives of the Agreement while implementing the activities cross-referenced in this Work Plan.

Each activity shown in Chapter 5 of this Work Plan follows the format shown below: an outline of each the activity, its rationale, outcomes, and target timeline for completion.

| Activity | Rationale | Outcome | Target Timeline for Completion |
|---|---|--|---|
| <p><i>The name or title of the activity with a brief description.</i></p> <p><i>If the activity involves other ASEAN initiatives, the name of the activity is similar to how it has already been referenced in the relevant ASEAN work plan or action plan.</i></p> | <p><i>A justification for the activity and how it advances the objective and desired outcome of the topic.</i></p> <p><i>Where relevant, this section explains how other ASEAN initiatives or relevant international best practices have been incorporated as part of the activity.</i></p> | <p><i>The relevant deliverables and milestones at every stage of the activity.</i></p> | <p><i>The target timeline for completion outlines when the activity shall commence and conclude.</i></p> <p><i>If the activity incorporates other ASEAN initiatives, the target timeline may require adjustment to align with existing timelines.</i></p> |

4. Work Plan Oversight and Implementation

4.1 Governance and Ownership

The successful completion of this Work Plan for the implementation of the Agreement requires that the specific roles and responsibilities of the implementing and monitoring bodies be well-defined. A good Work Plan enables impactful decision making from key bodies in securing political and sectoral support, mobilising skilled teams, and fostering a conducive environment to advance the goals of the Agreement.

Roles of ASEAN ministerial and sectoral bodies

To this end, groups across three levels of operationalisation will interact to ensure comprehensive national and regional level mechanisms to govern the implementation of the Work Plan. At the ministerial level, AMS Economic Ministers convene regularly at ASEAN Economic Ministers Meetings at which the ASEAN Senior Economic Officials (SEOM) present updates on the implementation process. At the sectoral level, the SEOM is broadly in charge of managing and monitoring the implementation of the Agreement.

Coordinating role of the ACCEC

As the designated working body for the Agreement, the ASEAN Coordinating Committee on Electronic Commerce (ACCEC) is critical in driving an effective, inclusive and holistic Work Plan. The ACCEC derives its mandate from Article 16 of the Agreement which requires it to regularly report on progress to the SEOM. The ACCEC has an important **supervisory role** by ensuring that it is apprised of the annual growth in the size of the e-commerce sector in ASEAN to measure the efficacy of the Work Plan, as well as the mid-term and final review of the Work Plan. The specific details of this three-pronged review process can be found in Chapter 4.2 (Review Approach).

Most important, as the coordinating body, it is crucial that the ACCEC acknowledge the variety of work which has been implemented and is ongoing in ASEAN with the view to monitor their progress and efficacy under the wider banner of e-commerce. For the purpose of implementing this Work Plan, it is important that the ACCEC leverage on progress made across specific areas in ASEAN. For instance, ACCEC may harness ASEAN's long track record on trade facilitation or extensive efforts on competition law and policy. The reproduction of these existing ASEAN initiatives in this Work Plan highlights the importance of cross-sectoral collaboration and affords ACCEC the responsibility to adopt an outward-looking perspective and undertake effective communication with other sectoral bodies. The ACCEC, as noted in the Work Plan, has the lead role in implementing many activities that are specific to the Agreement.

As the ACCEC meets at least twice a year, appropriate time and resources should also be reserved in these meetings for the ACCEC to discharge the respective responsibilities mentioned above. These meetings also provide a monitoring and evaluation opportunity for ACCEC to ensure that vision, objectives and activities under the Work Plan are aligned, adhere to the desired timelines, and are successfully completed.

4.2 Work Plan Review

Key Performance Indicator (KPI) Measurements

To provide clear goals or benchmarks against which the successful implementation of each activity can be measured or quantified, KPIs are attached to each activity. The proposed KPIs include, among other things, the **ASEAN Digital Integration Index (ADII)** which is a cross cutting monitoring tool that is integral to help track and assess ASEAN’s progress in achieving the vision of this Work Plan. Additionally, the inclusion of clearly defined roles and lead implementing bodies should allow for better monitoring of performance across objectives and activities. The respective KPIs and lead implementing bodies for each proposed activity in this Work Plan can be found in the overview table in Chapter 6.

Review Approach

To foster continuous alignment on the implementation activities embedded across this Work Plan, three specific reviews have been incorporated: (i) Review of Alignment with Objectives, (ii) Mid-term Review (in roughly 2023) and (iii) Final Review (set for 2025). This Work Plan is a **living document which can be adjusted** as necessary during the various points of review. The details of the review approach can be found in the table below:

Table 4.2.1: Review Approach

| Review of Alignment with Objectives | Mid-Term Review (2023) | Final Review (2025) |
|--|---|--|
| <p>Based on the approved objectives and activities of this Work Plan, an annual stocktake report on the implementation progress should be assessed.</p> <p>In order to ensure the successful delivery of objectives and activities, ASEAN may wish to collaborate with independent assessors like Google, Temasek and Bain & Company. This will ensure that the annual SEA e-Economy report remains relevant and accurately tracks the growth of ASEAN’s digital economy across all members.</p> | <p>The mid-term review presents an opportunity to increase coherence and alignment at the halfway point of the Work Plan. This Work Plan review will run in tandem with a planned review of the Agreement as mandated by Article 17, under which AMS must undertake a joint review of the Agreement and consider the need for additional commitments under it.</p> <p>Based on the annual stocktake reports, AMS should have a grounded understanding of some of the challenges to the implementation of the work plan. The review will allow AMS to make necessary and pragmatic adjustments to address identified and emerging obstacles.</p> | <p>The final review should include: (i) a review of the initial Mapping Study compared to an updated assessment at the end of the implementation period, (ii) an assessment of the implementation progress against the original (and potentially revised) objectives of the Work Plan and (iii) consideration of future activities to ensure the continuation of growth for the ASEAN digital economy beyond 2025.</p> |

4.3 Work Plan Enablers

Recognising the importance of external considerations which will be instrumental for the

successful implementation of the Work Plan and achievement of the Work Plan's vision statement, these considerations are outlined below as '**workstream enablers**' applicable across all three workstreams.

National E-Commerce Development

In order for the objectives of the Work Plan to be achievable, AMS should ensure that there is coordination, communication and alignment between domestic ministries for holistic e-commerce growth. Relevant ministries and agencies should not operate in silos but instead regularly foster strategic collaboration across different subject matter expertise and levels of authority. Similarly, any new legislation, regulations or policy frameworks should be comprehensively assessed to remove obstacles to the development of regional e-commerce or the harmonisation of regulatory standards across AMS. Where possible, periodic assessments of possible challenges for the promotion of e-commerce latent in domestic law or policy should be undertaken to smoothen the implementation of the Work Plan and its activities.

Domestic Capacity Building Initiatives

Beyond the prescribed capacity building activities found in this Work Plan, there should be sustained capacity building initiatives targeting not only the enforcement and implementing bodies, but also other private sector stakeholders such as MSMEs and trade associations. The introduction and implementation of activities in the Work Plan should be paired with sufficient capacity building resources at the local level depending on each AMS' needs. It is important that such capacity building activities enable more competent coordination and communication across different stakeholders by ensuring that relevant conversations around the Work Plan involve informed and well-resourced participants from both the public and private sector.

In CLMV, existing Government - Private Sector and Government - Development Partner consultative mechanisms for digital transition should be enhanced to include public-private dialogue on key aspects of this Work Plan, awareness raising among business associations and federations on commitments made under the Agreement and training for both government officials and private sector on operationalising the different topics found in the Agreement. The recently created e-commerce associations in CLMV could catalyse the adoption of e-commerce by the private sector and sensitisation on the opportunities created by ASEAN, the Agreement, but also the RCEP chapter on e-commerce and the WTO JSI on e-commerce. Sub-regional activities involving several AMS should be promoted as well, in particular, activities related to cross-border e-commerce. While needs in CLMV might be greater than in other AMS, horizontal capacity building activities should be open to all AMS.

Donor Partner Support and Financing

To ensure that the Work Plan's vision is attainable and that the Work Plan's activities remain feasible up until its intended completion in 2025, there should be sufficient and robust donor partner support and financing. Some activities in this Work Plan may not incur significant costs due to the nature of the activity or how they build on existing ASEAN initiatives and the attendant financial support arrangements. Nonetheless, other activities introduced in this Work Plan may require significant or sustained financial backing. ACCEC should at the outset identify priority areas or activities which may require significant financing and strategically seek suitable donor partner support or relevant financing options at every stage of implementation of the Work Plan.

Several on-going regional and bilateral initiatives are supporting AMS acceleration of e-commerce adoption. Those initiatives funded by, inter alia, Australia, the Enhanced Integrated Framework, the European Union and the United Nations System, can be tapped to accelerate the implementation of the Work Plan. CLMV have strong Government-Donor mechanisms in place to ensure that Aid-for-Trade support to the countries contribute to countries' efforts to mainstream their digital transition into national development plans.

Last, the ASEAN Initiative for ASEAN Integration (IAI) that aims to narrow the development gap among ASEAN members and between ASEAN and the rest of the world with infrastructure, human resource development, information and communications contains provisions in its Work Plan IV to address the needs of CLMV in terms of MSME development and trade facilitation, among others.

Digital Infrastructure Connectivity

Reaching the Work Plan's vision relies on the continuing expansion of internet access to all parts of ASEAN. The digital economy requires connectivity, and the Work Plan recognises the need for further infrastructure integration efforts that include digital connectivity in all associated workstreams across ASEAN. As far as possible, the promotion of digital infrastructure connectivity should be encouraged alongside the implementation of this Work Plan.

Data Collection

For the AMS' progress towards achieving the Work Plan's vision of a leading digital community to be measurable and quantifiable, data is paramount. Throughout the implementation of the Work Plan, frequent data collection and analysis should broadly guide the ACCEC's possible decisions on identifying priority areas or issues to focus on to achieve the desired growth of the ASEAN digital economy. This should include the measurement of the extent of implementation (%) of the proposed activities. Data collection and analysis should also guide any relevant decisions made by the lead implementing bodies of the respective activities in order to meet the prescribed KPIs found in the Work Plan. The data, whether it comes from existing ASEAN indices or third-party sources, should be updated, reliable and trustworthy. Supplementarily, there should also be capacity building initiatives focused on data collection and information sharing between AMS and the private sector that evaluates the consistency and reliability of AMS and third-party data.

Given the overlapping scope, data collected as part of this Work Plan will also be useful to inform the updates of the **ADII**. Information sharing between this Work Plan and the ADII, will allow for a holistic assessment of priority areas and allow for ACCEC to strengthen digital integration efforts whilst at the same time growing its digital economy.

In addition, the ongoing developments of the EU- ASEAN Digital Index should also be monitored as it will provide comprehensive data on global digital developments once implemented.⁷

⁷ <https://digital-strategy.ec.europa.eu/en/library/eu-asean-digital-economy-dialogue-2nd-workshop-measuring-digital-economy-society>

5. Workstream Objectives and Activities

5.1 Horizontal Activities

The sections below describe and explain the types of recurring activities which are included in multiple sections of the Work Plan. While these horizontal activities are aggregated and shown here, they are also repeated across the Work Stream activity list to provide greater transparency and additional clarity on horizontal commitments attached to specific desired outcomes.

Laws Reporting Scheme and Associated Activities

The **Laws Reporting Scheme** is a recurring activity featured in most of the topics across the three Workstreams of the Work Plan. The Mapping Study is the first iteration of the Laws Reporting Scheme. The Scheme requires yearly submissions of “national plans” by AMS to the ACCEC for the former to report on any ongoing domestic legislative or consultative procedures undertaken to update or maintain its laws or regulations in accordance with the prescribed regional standards for that respective topic (e.g. ratify Convention X for the topic of Y). The recurring inclusion of this activity recognises the value of transparency and the necessary establishment of enforceable laws and regulations for the relevant evolving topic matters.

As part of the scheme, the ACCEC in collaboration with AMS, should also develop **guidelines for the notification on laws and regulations on e-commerce related laws**. This will allow ACCEC to track AMS’s progress in addressing the legislative and regulatory gaps identified in the Mapping Study and increase alignment with international standards and guidelines. The regular submissions as part of the Laws Reporting Scheme will facilitate a smoother and less onerous final assessment of the Mapping Study at the end of the Work Plan. Communication between AMS and the ACCEC on the collective progress of AMS towards regulatory harmonisation ensures a consistent regional bedrock on which further collaborative activities on the digital economy can be successfully implemented for ASEAN to achieve a leading digital economy.

Besides advancing transparent communication, the Scheme also assists with the ACCEC’s identification of topic matter-specific legal or regulatory gaps between AMS. Upon the submission of the national plans under the various Schemes, ACCEC should seek to identify common legal/regulatory challenges or gaps among AMS. For these common challenges, ACCEC may choose to coordinate specific technical assistance such as model laws, policy briefs to support development of laws, legal drafting expertise and sharing of best practices. This may be supported by Donor Partners (refer to Section 4.3 on Work Plan Enablers).

The relevant technical assistance shall be rendered as decided by ACCEC through the **Law Incorporation Workshops**. These Workshops are also included concurrent with the Scheme in this Work Plan (i.e. Laws Reporting Scheme for Topic X runs in tandem with Law Incorporation Workshops for the same topic). The outcomes of this specific technical assistance will be measured against the final assessment of the Mapping Study during the final review (refer Section 4.2 on Work Plan Review), to show advancement since the 2021 baseline.

Annual Business Survey

The proposed Annual Business Survey is a recurring activity which is featured primarily in the Business Focus Workstream. This Survey provides two main cross-cutting functions for the issues which predominantly intersect with businesses' and MSME's interests and concerns.

First, the Survey allows ACCEC and the relevant lead implementing bodies of the Work Plan activities to capture the sentiment of businesses and private sector entities (across the categories of MSMEs, mid-sized and large firms) on matters which include but are not limited to: (1) the clarity and enforceability of laws and regulations; (2) relevant concerns regarding ease of cross-border operations or interoperability; and (3) emerging commercial or technology trends or innovative practices. Such insights may allow the ACCEC and the relevant lead implementing bodies to enhance the scope and coverage of the Work Plan activities in the future or to continuously assess the compatibility of the activities with evolving expectations of the private sector.

Second, the Survey provides an educative function by raising awareness among private sector entities (particularly MSMEs) on the relevant resources available for that particular topic. For instance, the dissemination of the annual Survey may be accompanied with explanatory compendiums with updated regulatory notes, recommended best practices or technical information about a range of topics and issues. The educative aspect of the Survey ensures that the solicitation of businesses' views is matched with a mutually beneficial impact for the intended respondents.

The ASEAN Business Advisory Council (ASEAN-BAC) is the most suitable body to be the lead implementing body for this proposed Survey. As the apex private sector body of ASEAN, it has the mandate to assist relevant ASEAN bodies to institutionalise within each body a consultative process with lead private sector entities, while promoting economic integration in ASEAN.⁸ Under this Work Plan, the ACCEC is encouraged to coordinate closely with the **ASEAN-BAC** for the successful establishment and implementation of this Survey.

The Survey may also be posted on the **ASEAN Access Portal** (a flagship initiative of the **ASEAN Coordinating Committee on Micro, Small and Medium Enterprises (ACCMSME)**) or sent to registered businesses on the platform.

ASEAN Consumer Empowerment Index (ACEI)

The ASEAN Consumer Empowerment Index (ACEI) appears as a recurring activity for all of the topics found in the Consumer Focus Workstream. For clarity, the ASEAN Consumer Empowerment Index is **not a new activity** proposed under this Work Plan. The Index is a key ongoing initiative as part of the **ASEAN Strategic Action Plan on Consumer Protection (ASAPCP)** under the purview of the **ASEAN Committee on Consumer Protection (ACCP)**.⁹

As a composite index comprising 27 key indicators (at its first cycle), the Index is a suitable mechanism for the collection and analysis of evidence to guide the development of appropriate consumer protection policies and effective law implementation. For the purposes of this Work Plan, findings related to the existing or prospective indicators of the Index

⁸ <https://www.asean-bac.org/asean-bac>

⁹ <https://asean.org/storage/2012/05/ASAPCP-UPLOADING-11Nov16-Final.pdf>

(which overlap with e-commerce) will allow lead implementing bodies to enhance the scope and coverage of the Work Plan activities or continuously assess the compatibility of the activities with evolving expectations of the consumer base.

This Work Plan thus harnesses the Index as a dynamic vehicle to continuously gauge consumer sentiment on consumer-centric issues relating to e-commerce. At the date of the confirmation of this Work Plan, the ACCP had concluded the development and first pilot implementation of the Index. The first Index will act as the baseline and subsequent cycles are expected to track developments and changes on consumer protection across AMS. As noted in the report of the ACEI 2020, **“the current construct of the Index does not yet sufficiently account for new-generation consumer issues”** relating to the “digital economy.”¹⁰ This Work Plan acknowledges and re-emphasises the need to integrate these new-generation issues into the revised questionnaire for future Index cycles, chiefly through **cross-sectoral collaboration and close cooperation** between the ACCEC and ACCP.

Stakeholder Engagement Activities

Stakeholder engagement activities such as dialogues, conferences and forums appear as recurring activities throughout the Work Plan. Where possible, existing ASEAN fora established for the use by other ASEAN sectoral bodies or pertaining to specific issues have been included as part of this Work Plan’s activities. The inclusion of existing stakeholder engagement activities in this Work Plan seeks to primarily expand or review their agenda or scope of engagement to facilitate targeted and sustained discussion on e-commerce elements. In this regard, ACCEC shall actively coordinate with the relevant bodies convening these events to ensure that relevant matters on e-commerce, related to this Work Plan or otherwise, should be added to the agenda for discussion.

Generally, stakeholder engagement activities recognise the need for input and suggestions from key actors on issues pertaining to the e-commerce industry. Whether relating to laws and regulations on specific e-commerce issues, technical issues of interoperability or the formulation of consensus on contentious matters, this Work Plan ensures that views from different stakeholder groups at different levels of authority are considered. Such stakeholders may include MSMEs, other sectoral bodies, trade associations, academics, e-commerce platforms, cross-border service providers, or law enforcement agencies.

Pilot Projects

Pilot projects appear as activities for some of the topics across the Workstreams. Where appropriate, other planned ASEAN initiatives which overlap with the relevant topics in this Work Plan have been adopted in this Work Plan, with a pilot project proposed as an associated activity.

Pilot projects in this Work Plan achieve two primary objectives. First, pilot projects allow for progressive stepwise transition to complete region-wide implementation or interoperability across all AMS. Recognising the different levels of preparedness of AMS to commit to a cross-border initiative which may require baseline regulatory or infrastructure coverage, pilot

¹⁰ <https://aseanconsumer.org/file/The%20Report%20of%20ACEI%202020%20-%204Nov20.pdf>

projects allow AMS with adequate preparation to participate while keeping the doors open to other AMS in the future. This approach ensures that full AMS participation, especially where cross-border interoperability is concerned, is feasibly attained. The piloting method has previously worked for the ASEAN Single Window (ASW), where the Memorandum of Understanding on the Implementation of the ASW Pilot Project in 2013 progressively led to the full live operation of e-documents exchange among all AMS in 2019.¹¹ Second, pilot projects allow the lead implementing bodies and participating AMS to assess the benefits and challenges of implementing the piloted initiative as well as review the processes and procedures to enhance its effectiveness and operability. Resolving implementation challenges is crucial to ensure that future associated activities in the Work Plan (e.g. socialisation of initiative with other stakeholders) can be effectively carried out.

Additional pilot projects and other phased implementation activities may also be considered for inclusion at the time of the midterm review (roughly 2023). As a living document, this Work Plan is meant to be adjusted, if necessary, based on unfolding activities within and across ASEAN.

¹¹ <https://asw.asean.org/index.php/news/item/all-10-asean-member-states-exchange-the-atiga-e-form-d-through-the-asean-single-window>

5.2 Cross Border Focus Workstream

Growing cross-border e-commerce is at the heart of the ASEAN Agreement on E-commerce. It calls on members to address the “need to facilitate cross-border e-commerce transactions in the ASEAN region to maximise the benefits of regional economic integration.” Achieving growth in regional e-commerce will rely on a significant portion of cross-border trade, which brings into focus the opportunities, costs and delays in facilitating e-commerce trade across ASEAN borders.

AMS stand to gain a 9-10 percent reduction in trade costs with complete implementation of the World Trade Organization’s (WTO) Trade Facilitation Agreement (TFA) commitments, and up to 20 percent reduction in trade costs when seamless paperless trade initiatives are fully implemented.¹² At the same time, it is important to prevent the implementation of new barriers (such as those on cross-border data) which may inhibit trade and investment in the ASEAN region.

While the Cross-border Focus Workstream is primarily targeted, as the name suggests, on activities and initiatives embedded within the Agreement related to the movement of goods, services and data across borders, it is important to recognize that elements of the Work Plan located in the Business and Consumer Focus may also have cross-border elements. Hence all elements of the Work Plan need to be read and considered in relation to one another.

The Cross Border Focus workstream focuses on practical measures to drive implementation of trade cost and time reductions and to facilitate the growth of e-commerce-related trade and investment. Five particular aspects of the Agreement are considered in this section of the report: Trade Facilitation & E-commerce Logistics (A.1), Paperless Trade (A.2) Customs Duties (A.3), Cross-border Transfer of Information (A.4) and Location of Computing Facilities (A.5). The implementation activities for each are addressed in turn.

A.1 Trade Facilitation and E-Commerce Logistics

Desired Outcome: By 2025, ASEAN will have identified and quantified key obstacles to efficient e-commerce logistics across the region, and will have commenced impactful collaborative initiatives among e-commerce facilitators including customs agencies, postal agencies and private sector stakeholders.

The desired outcome outlines practical steps to achieve the objectives of the agreement and facilitate cross-border e-commerce transactions in the ASEAN region. As recognised in the text of the Agreement, cooperation plays an integral role in trade facilitation and logistics to facilitate e-commerce. Growing ASEAN’s e-commerce cross-border trade in goods requires continued collaboration and alignment between public and private stakeholders, as well as deeper insights on current trade facilitation bottlenecks. E-commerce relies on a chain involving public (customs, postal) and private (logistics, express couriers) facilitators to fulfil the promise of fast, low-cost and reliable delivery. Establishing new collaborative

¹²https://www.unescap.org/sites/default/d8files/knowledge-products/Trade%20Facilitation%20and%20Paperless%20Trade%20Implementation%20in%20ASEAN_8%20Nov%2017.pdf

projects between these stakeholders will bring tangible benefits to consumers and establish a platform for further cooperation. Quantifying and identifying the challenges across the e-commerce fulfilment chain will allow better targeting of support and collaborative initiatives.

Trade Facilitation and Logistics: Background

What the Agreement says:

Article 6.1

Each MS shall cooperate in areas including:

- (g) trade facilitation
- (k) logistics to facilitate e-commerce

Article 10

1. MS recognise the importance of efficient cross-border logistics.
2. Each MS shall endeavour to lower the cost and improve the speed and reliability of supply chains.

What the Mapping Study showed:

The Mapping Study has highlighted a relatively strong level of coverage for laws and initiatives related to the key e-commerce drivers of the broader Trade Facilitation agenda: (i) an Authorised Economic Operator scheme, (ii) a de minimis regime, and (iii) a risk-based approach to customs clearance.

However, there is wide variability in the level of implementation of the schemes and, in some cases, unclear or inconsistent implementing regulations or standard operating procedures. Therefore, activities in the Work Plan will have the most impact where they go beyond legal frameworks to address regulatory and substantive implementation challenges and seek to address trade facilitation priorities of e-commerce firms.

To drive e-commerce in the ASEAN region, the Work Plan must directly work with Customs agencies and Postal agencies, with highly visible initiatives on fulfilling existing regulatory commitments and real private sector engagement.

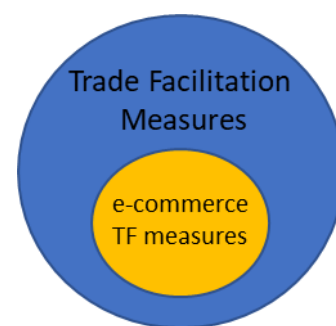
What ASEAN has done:

ASEAN has undertaken extensive work in the field of trade facilitation and e-commerce logistics, from high level objectives in the **AEC Blueprint 2025** to the **ASEAN Work Programme on Electronic Commerce 2017-2025** to more detailed cooperative activities under the **ASEAN Trade Facilitation Framework** and its **AEC 2025 Trade Facilitation Strategic Action Plan** and the **ASEAN Digital Integration Framework Action Plan 2019 - 2025**. Many of these are focused on cooperative efforts to implement AMS obligations under the WTO's Trade Facilitation Agreement and beyond. Regional measures have also been developed such as the **ASEAN Seamless Trade Facilitation Indicators (ASTFI)**. There are specific trade-facilitative initiatives such as the **ASEAN-wide Self-Certification (AWSC)**, the **ASEAN Customs Transit System (ACTS)** the **ASEAN Authorized Economic Operator Mutual Recognition Arrangement (AAMRA)** and others which are all making important contributions to seamless logistics in ASEAN.

This Work Plan presents the opportunity to **more directly target a subset of trade facilitation cooperation activities that are particularly impactful to cross-border e-commerce**. The Work Plan will complement existing ASEAN and national activities on trade facilitation to address specific e-commerce needs.

These initiatives are intended to be visible and practical. By bringing together government agencies, postal agencies and the private sector, the Work Plan will create a lasting and sustainable model for collaboration.

The Work Plan also recognises the critical role of cooperation between postal agencies in ASEAN, which has not been a particular focus, in keeping with the growth of e-commerce. Most MSMEs rely on postal delivery of e-commerce goods packages, especially for products ordered directly by consumers. Reinvigorating the Postal cooperation track will target some of the key logistics challenges and confidence building measures for consumers, including track & trace, last mile and rural/regional delivery best suited to ASEAN's unique challenges.



Useful international guidelines and/or standards

There are countless international initiatives on trade facilitation, with the principle international agreement remaining the **World Trade Organisation's Trade Facilitation Agreement (TFA)**. The in-built cooperative and technical assistance agenda provides a platform for "offer and request" capacity building and assistance in implementation. The World Customs Organisation (WCO) has developed a range of standards and technical guidelines on e-commerce aspects of Customs agencies' role in the trade facilitation process. The **Revised Kyoto Convention¹³ (2006)** sets out key principles that support trade facilitation and cross-border e-commerce. The principles are elaborated in **Annexed Guidelines**, such as those for Risk Management.¹⁴ These principles have then been developed into practical guides, such as the **WCO Risk Management Guide** and its associated **e-learning module on Risk**. These global standards should form the basis for implementation at the national level, with ASEAN regional support and coordination as required.

Recommended guidelines from existing ASEAN or international efforts:

The World Customs Organisation's **Guide to Measure the Time Required for the Release of Goods (v.3, 2018)** could be adapted for the Rapid Time Release Studies to focus on low value, expedited consignments.

The proposed **Arrangement on Mutual Recognition of Authorized Economic Operators** will follow the completed Feasibility Study.¹⁵ The Arrangement should be built for consistency with emerging global practice and should seek consistency with the **WCO's Strategy Guide for AEO Mutual Recognition**.¹⁶

For Postal cooperation, a range of Universal Postal Union standards will guide implementation. **UPU's Operational Readiness for E-Commerce (ORE)** assessment and

¹³ http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx

¹⁴ <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/wto-atf/dev/rkc-guidelines-ch-6.pdf>

¹⁵ <https://asean.org/storage/2019/06/DG-28-50-Joint-Media-Statement.pdf>

¹⁶ <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/strategy-guide-for-aeo-mutual-recognition.pdf?la=en>

implementation of its **International Postal System for Track & Trace** are important technical programs for implementing programs among postal agencies. AMS will need to consider mandating technical standards such as **GS1 labelling** in order to ensure consistent data capture. In addition, the **Asia Pacific Post Cooperative’s (APP) ‘e-packet’¹⁷** has established a standard package of features to power e-commerce in the region, including tracking, with economical shipping prices for packages up to 2kg. Such an initiative is especially important in helping smaller firms in the e-commerce space.

The Logistics Institute APAC **White Paper on E-Commerce Trends and Challenges (2016)** presents a useful description of key challenges and opportunities for the postal component, especially a helpful typology of last mile and open standards.

A.1 Trade Facilitation and E-Commerce Logistics: Objectives & Activities

As the topic is one of the priority areas and pillars identified under the **ASEAN Digital Integration Index (ADII)**, the recommended focus areas, based on the results of the Index, have been taken into consideration in developing the following objectives and activities.

| <p>Desired Outcome: By 2025, ASEAN will have identified and quantified key obstacles to efficient e-commerce logistics across the region, and will have commenced impactful collaborative initiatives among e-commerce facilitators including customs agencies, postal agencies and private sector stakeholders.</p> | | | |
|--|--|--|--------------------------------|
| <p>The desired outcome outlines practical steps to achieve the objectives of the agreement and facilitate cross-border e-commerce transactions in the ASEAN region. As recognised in the text of the Agreement, cooperation plays an integral role in trade facilitation and logistics to facilitate e-commerce. Growing ASEAN’s e-commerce cross-border trade in goods requires continued collaboration and alignment between public and private stakeholders, as well as deeper insights on current trade facilitation bottlenecks. E-commerce relies on a chain involving public (customs, postal) and private (logistics, express couriers) facilitators to fulfil the promise of fast, low-cost and reliable delivery. Establishing new collaborative projects between these stakeholders will bring tangible benefits to consumers and establish a platform for further cooperation. Quantifying and identifying the challenges across the e-commerce fulfilment chain will allow better targeting of support and collaborative initiatives.</p> | | | |
| <p>A.1.1 Identify and quantify impact of customs procedures on efficient cross-border e-commerce.</p> | | | |
| Activities | Rationale | Outcomes | Target Timeline for Completion |
| <p>1. Information Sharing Forum on e-commerce logistics best practices including exploring prospects for a new rapid e-commerce Time Release Study (TRS) for e-commerce goods (low value, express consignments)</p> | <p>The Forum will allow customs agencies from AMS to share their experiences and best practices in facilitating e-Commerce transactions, and also in identifying any customs-related challenges in managing such transactions.</p> | <p>Sharing best practices to facilitate e-commerce transactions, including exploration of prospects for a new methodology for a rapid Time Release Study for e-commerce goods developed.</p> | <p>2022 -2025</p> |

¹⁷ <https://www.app.coop/Web/Projects/APP-ePackets/APP-ePacket.aspx>

| | | | |
|---|---|---|------------------|
| <p>For convenience, this may be coordinated alongside CPTFWG meetings.</p> | <p>Among the best practices shared, the Forum may wish to explore whether an adaptation of the Time Release Study (TRS) methodology can be developed to produce data, insights on processing and release of e-commerce goods (low value, high volume express consignments).</p> | | |
| <p>2. ASEAN E-commerce Mystery Shopper Initiative</p> <p>Survey comparing the customer experience of purchase and shipment/delivery of a set of low-value products from AMS to AMS to assess time, cost and other real-world conditions. All purchases are conducted under single protocol to ensure comparative assessment.</p> | <p>A survey on results from an e-commerce ‘mystery shopper’ initiative will supplement findings on e-commerce time release by focusing on the ‘real world’ consumer experience.</p> <p>These will be used to identify bottlenecks including last mile and customer ‘real world’ experiences across AMS.</p> | <p>Mystery Shopper Survey developed.</p> <p>Initiative rolled out.</p> <p>Outcomes shared as a baseline for future assessment</p> | <p>2024-2025</p> |

A.1.2 Support Establishment of the ASEAN Authorized Economic Operator Mutual Recognition Arrangement (AAMRA).

| Activities | Rationale | Outcomes | Target Timeline for Completion |
|--|--|--|--------------------------------|
| <p>1. Support for the Establishment and Operation of ASEAN Authorized Economic Operator Mutual Recognition Arrangement (AAMRA)</p> <p>Supporting the work of the Sub-Working Group on ASEAN AEO MRA (SWG-AAMRA)</p> | <p>The establishment of the MRA on Authorised Economic Operators can be phased, to allow AMS to opt-in as they are ready. A support package may assist all AMS to fully participate.</p> | <p>Support package and technical assistance provided for AMS to expedite participation in the AAMRA.</p> | <p>2025</p> |

A.1.3 Improve collaboration among Public-Private e-commerce facilitators

| Activities | Rationale | Outcomes | Target Timeline for Completion |
|---|--|---|--------------------------------|
| <p>1. Feasibility Study on Track & Trace Pilot Program</p> | <p>An effective track & trace program is a priority objective under the Universal Postal Union’s E-commerce Guide, as it delivers certainty and confidence for consumers.</p> <p>It can become a primary collaborative initiative between public and private e-commerce facilitators across ASEAN.</p> <p>The study will establish the basis for a pilot program and may include (i) a Stakeholder map to identify e-commerce facilitators to implement (ii) Identification of requirements, standards and expected outcomes of this initiative. The study may also include a Needs Assessment for AMS readiness to participate.</p> | <p>Study conducted to assess the feasibility of a Track & Trace program.</p> | <p>By H1 2024</p> |
| <p>2. ASEAN Public-Private Forum on e-commerce collaborative initiatives</p> <p>To discuss existing and prospective initiatives such as those on Track & Trace, ASEAN Locker Alliance and related initiatives</p> <p>Encourage the participation of ASEAN Postal Agencies</p> | <p>A public-private forum will consider and share experiences public and private initiatives to facilitate domestic and cross-border e-commerce across ASEAN.</p> <p>The forum will be an opportunity to assess findings from the Feasibility Study on Track & Trace Pilot and the ASEAN Locker Alliance, among others.</p> <p>Engagement with ASEAN Postal Agencies (perhaps through involvement of already-established ASEAN Postal Business Meeting) will support MSME e-commerce companies who are more frequent users of postal services.</p> | <p>Shared experiences on existing initiatives and pathway forward on potential ASEAN Track & Trace Pilot Program.</p> <p>Collaborative engagement between public and private e-commerce facilitators.</p> | <p>H1 2024</p> |

A.2 Paperless Trading

Desired Outcome: By 2025, ASEAN will expand the volume and type of electronic documents accepted through ASEAN Single Windows, and determine a pathway to technical interoperability with ASEAN partners.

A focus on single windows technical standards and private sector awareness will allow AMS to deliver on their commitments under the Agreement to expand the use of digital trade documents. Ensuring the expanded use of paperless trading will reduce delays and costs and increase interoperability to accelerate ASEAN's vision to establish a single digital community.

Paperless Trading: Background

What the Agreement says:

Article 7.1

Each MS shall expand the use of electronic version of trade administration documents and facilitate the exchange of electronic documents through the use of ICT consistent with the provisions of the ASEAN Agreement on Customs signed on 30 March 2012 in Phnom Penh, Cambodia, and other international agreements on paperless trading to which MS are parties.

What the Mapping Study showed:

The Mapping Study has highlighted a relatively strong level of coverage for laws related to paperless trading. Similar to trade facilitation, however, there is wide variability between AMS in implementing procedures. For example, ATIGA Form D acceptance through ASEAN Single Window (and national Single Windows) is now widely adopted, although there is substantially less coverage for other key trade documents.

Activities in the Work Plan will have most impact where they assess laws and regulatory frameworks, and then place an emphasis on genuine expansion of utility. This involves both technical and legal readiness plus engagement of the trading community to drive growth in engagement of digital trade tools.

What ASEAN has done:

Paperless Trading has been a particular focus of cooperation among AMS. The **ASEAN Single Window (ASW)** Agreements and protocols are a landmark example of binding cooperation. The challenge for ASEAN now is to widen the range of documentation facilitated through ASW and to deepen utilisation among the trading community. Objectives to expand ASW are found across different agreements and work plans, from the key measures in the **AEC Blueprint 2025**, to the **ASEAN Digital Integration Framework Action Plan 2019-2025**, to the **ASEAN Strategic Action Plan for SME Development 2016-2025**. Work also continues to expand the range of documentation exchangeable through ASW, including e-phyto, ASEAN Customs Declaration Document and others. Initiatives to expand interoperability between ASW and Dialogue Partners (starting with Japan and Republic of Korea) are also underway, with technical implementation coordinated through the ASW TWG.

Useful international guidelines and/or standards:

ASEAN members have also made commitments under the **Regional Comprehensive Economic Partnership (RCEP)** for paperless trade. **APEC’s Digital Economy Steering Group** has been tasked to implement the **APEC Internet and Digital Economy Roadmap (AIDER)**¹⁸ which includes **Individual Action Plans** on reducing or eliminating mandated paper-based documents for cross-border trade.¹⁹ While this initiative had traction in the early 2000s, the methodology used to create individual member country plans could assist ASEAN now in tracking and transparency at a regional level.

Recommended guidelines from existing ASEAN or international efforts:

UNESCAP Legal and Technical Readiness Assessments for Paperless Trade²⁰ could be adapted for AMS use, on an opt-in basis. Cambodia and the Philippines have signed UNESCAP’s Framework Agreement on Cross-border Paperless Trade. Implementation of paperless trade across ASEAN holds the promise of reducing trade costs by 20 percent, in contrast to five (5) percent trade cost savings for full implementation of the WTO Trade Facilitation Agreement.²¹

A.2 Paperless Trading: Objectives & Activities

| Desired Outcome: By 2025, ASEAN will expand the volume and type of electronic documents accepted through ASEAN Single Window, and determine a pathway to technical interoperability with ASEAN partners. | | | |
|---|---|---|--------------------------------|
| A focus on single windows technical standards and private sector awareness will allow AMS to deliver on their commitments under the Agreement to expand the use of digital trade documents. Ensuring the expanded use of paperless trading will reduce delays and costs and increase interoperability to accelerate ASEAN’s vision to establish a single digital community. | | | |
| A.2.1 To expand the use of paperless trade by driving Single Windows interoperability across ASEAN and beyond. | | | |
| Activities | Rationale | Outcomes | Target Timeline for Completion |
| 1. Paperless Trade Legal and Technical Readiness Assessment AMS to opt-in for assessment using UNESCAP checklist | AMS can utilise UNESCAP’s existing best practice mechanisms for legal and technical readiness to identify pathways to acceleration of paperless trade, on a national level. | UNESCAP Legal and Technical Guides to be completed on an opt-in basis. Review outcomes and identify common challenges among AMS. | 2022-2024 |
| 2. AMS Alignment to UNESCAP Framework Agreement on | A coordinated effort for AMS to accede to the UNESCAP Framework | Review of ASEAN readiness on trade facilitation and paperless | 2022-2025 |

¹⁸ http://mddb.apec.org/Documents/2017/SOM/CSOM/17_csom_006.pdf

¹⁹ <https://www.apec.org/Groups/Committee-on-Trade-and-Investment/Digital-Economy-Steering-Group/Paperless-Trading-Individual-Action-Plan>

²⁰ <https://readiness.digitalizetrade.org/>

²¹ https://www.unescap.org/sites/default/files/publications/Trade%20Facilitation%20and%20Paperless%20Trade%20Implementation%20in%20ASEAN_13%20Nov%202017.pdf.pdf

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| <p>Facilitation of Cross-Border Paperless Trade</p> <p>ASEAN to negotiate access to technical support for common challenges</p> | <p>Agreement will send a strong global signal of ASEAN’s intention to accelerate paperless trade.</p> <p>The effort could be supported by exploring the possibility for ASEAN countries to adopt the UNCITRAL Model Laws on Electronic Transferable Records.</p> | <p>trade concludes substantial benefit for accession and implementation.²²</p> <p>ASEAN to coordinate support for AMS to align practices with the Framework Agreement and technical assistance for common challenges identified in readiness assessments. AMS may be encouraged to accede to the Framework Agreement on an opt-in basis.</p> | |
| <p>3. Technical Study on ASW Interoperability with ASEAN Dialogue Partners</p> <p>Complementing progress by ASW TWG to lay the technical foundation for facilitating interoperability with ASEAN Dialogue Partners</p> | <p>To support the work of the ASW TWG on interoperability with ASEAN Dialogue Partners, a Technical Study to map technical standards for interoperability between ASW and ASEAN Dialogue Partner single windows will lay the foundation for technical engagement.</p> <p>It will also bring together the ad hoc bilateral interoperability discussions which are currently conducted on the basis of individual requests.</p> | <p>Study on Interoperability with Single Windows of ASEAN Dialogue Partners, based on UNECE Recommendation 36 on Interoperability, and OECD Specialised Indicators on Single Windows completed.²³</p> | <p>Technical Study delivered by end H1 2023</p> <p>*To be coordinated with ASEAN Single Window Steering Committee</p> |
| <p>4. Supplement on Interoperability to Technical Guide for ASW</p> <p>Based on standards identified in Study on AWS Interoperability</p> | <p>A Supplement on Interoperability for the ASW Technical Guide will lay out objectives for standards that will open interoperability with ASEAN Dialogue Partners.</p> | <p>A Supplement on Interoperability to the Technical Guide of ASEAN Single Window and National Single Windows Implementation (ASW Technical Guide) to specify technical standards for single windows interoperability with ASEAN Dialogue Partners developed (as</p> | <p>By end 2024</p> <p>*To be coordinated with ASEAN Single Window Steering Committee</p> |

²² <https://www.unescap.org/sites/default/d8files/knowledge-products/UNTF%20ASEAN%20Report%20%282019.12.27%29.pdf>

²³ <https://www.oecd-ilibrary.org/sites/9789264277571-6-en/index.html?itemId=/content/component/9789264277571-6-en>

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| | | per findings from the Study). | |
| <p>5. Annual Business Survey to include questions on Paperless Trade Tool Utilisation</p> <p>Provide annual quantitative data on utilisation to complement ASW TWG’s existing Awareness and Visibility initiatives</p> | <p>The Survey is a recurring or horizontal activity in the Work Plan and may be implemented by the ASEAN Business Advisory Council (ASEAN-BAC) with close coordination by the ACCEC.</p> <p>The Survey will inform policymakers on utilisation of paperless trade tools and obstacles preventing adoption across ASEAN.</p> <p>The survey will cover larger/multinational enterprises and MSMEs in ASEAN over multiple years to assess utilisation trends, obstacles to increased utilisation and priorities for additional modules/documentary capability. The methodology could survey the same sample each year to track developments. The quantitative insights will support ASW TWG’s existing Awareness & Visibility initiatives.</p> | <p>Annual Business Survey conducted.</p> <p>Survey reports describing and analysing trends, if any, identified from the annual surveys.</p> <p>Socialisation of Business Survey results with competent authorities, private sector and relevant stakeholders. Could also be facilitated through ASEAN Access Portal.</p> | <p>2022 – 2025</p> <p>*To be coordinated with the ASEAN Business Advisory Council (ASEAN-BAC)</p> |

A.3 Information Sharing on Revenue Aspects of Digital Trade

Desired Outcome: By 2025, ASEAN Member States will explore avenues to exchange information on cross-border digital trade revenue matters.

To facilitate cross-border e-commerce in the region, business will seek transparency and improved clarity on e-commerce related issues such as customs duties and VAT. Exchanging information will support greater transparency and certainty to accelerate progress of the ASEAN leading digital community.

Information Sharing on Revenue Aspects of Digital Trade: Background

What the Agreement says:

The text of the Agreement does not address the issues of imposition of customs duties on electronic transmissions.

What the Mapping Study showed:

According to the consolidated findings of the study, most ASEAN Member States do not have laws that impose duties on electronic transmissions and digital products. All currently comply with the WTO Moratorium on Customs Duties on Electronic Transmissions, in place since 1998, yet temporary in nature. In December 2019, the Moratorium was extended until the MC12,²⁴ when it will be subject to the consideration again. Some agreements signed by ASEAN members in other contexts extend the moratorium temporarily as long as the WTO does so, or permanently, regardless of what happens in the WTO.

Several Member States have stated that they do not have laws that “prohibit imposition of customs duties” on digital products and/or electronic transmissions. Some members may opt to extend VAT obligations (rather than, or in addition to, customs duties) to electronic transmissions. One significant challenge for MSMEs in ASEAN is the ability to register a company with a corporate registration number that is recognized across the region. Inconsistent or unilateral measures typically drive up the costs of compliance for smaller firms and can make it difficult or even impossible for MSMEs to compete in cross-border trade activities.

What ASEAN has done:

Other than the WTO Moratorium which relates directly to customs duties, international initiatives relate mainly to collection of VAT. In particular, the **European Court of Auditors (Agreement) E-Commerce Special Report (2019)** makes specific recommendations on regulatory frameworks for collection. In addition, the **WCO Study Report on Cross-Border E-Commerce (2017)** has identified common challenges among Customs Agencies in collecting revenue associated with low value express consignment goods. Some of the initiatives and potential solutions identified may be applicable to AMS, including variations of the EU Mini-one-stop-shop (MOSS) initiative. The **EU MOSS** initiative allows for a single registration for VAT for the supply of cross-border electronic services, such as telecommunications.

Useful international guidelines and/or standards:

²⁴ WT/L/1079

The work of relevance of customs duties on electronic transactions is largely led by the WTO (mostly **Work Programme on Electronic Commerce**, but also, in part, the **WTO Joint Statement Initiative (JSI) on E-commerce**), the **OECD** and the **UNCTAD**. The issue is likely to be discussed during the MC12 in relation to the extension of the **Moratorium of Customs Duties on Electronic Transmissions**, either temporarily (until the MC13) or indefinitely. Meanwhile, it is important to emphasize that the Moratorium only applies to customs duties and does not deprive members of the right to impose internal taxes, fees and charges on content delivered in accordance with the GATT.

The language of the RCEP maintains flexibilities, potentially allowing Members to maintain divergent policies in the area.²⁵

An increasing number of countries are also focused on tax collection for cross-border digital services. There are a range of challenges around cross-border services taxes, like Value Added Taxes (VAT), such as inconsistent **mechanisms for VAT registration**, collection and the thresholds that apply to companies liable for taxation. The increasing complexity and varying national standards have given rise to attempts at regional collaboration. Among these is the **Mini One-Stop Shop (Moss) of the EU**,²⁶ which establishes a framework for a single registration and completion of VAT returns for cross-border digital services which is recognised across the EU. This reduces complexity for traders and supports MSMEs who do not need to navigate differing regulations across the EU.

A.3 Information Sharing on Revenue Aspects of Digital Trade: Objectives & Activities

| Desired Outcome: By 2025, ASEAN Member States will explore avenues to exchange information on cross-border digital trade revenue matters. | | | |
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| To facilitate cross-border e-commerce in the region, business will seek transparency and clarity on e-commerce related issues such as customs duties and VAT. Exchanging information will support greater transparency and certainty to accelerate ASEAN as a leading digital community. | | | |
| A.3.1 All AMS to share information on cross-border digital trade revenue laws. | | | |
| Activities | Rationale | Outcomes | Target Timeline for Completion |
| 1. Annual Laws Notification Mechanism under which AMS shall share (on an annual basis) any laws on revenue aspects of cross-border digital trade | A mechanism to annually share information on increasingly complex area of laws related to digital trade revenue collection (e.g., VAT, customs duties, registration etc.) will greatly assist business planning | Submission of annual Report on laws related to digital trade taxation. Update of ASEAN Trade Repository. | Commencing 2022, with annual update |

²⁵ RCEP Article 12.11.3. Each Party may adjust its practice referred to in paragraph 1 with respect to any further outcomes in the WTO Ministerial Decisions on customs duties on electronic transmissions within the framework of the Work Programme on Electronic Commerce) and Article 12.11.4. The Parties shall review this Article in light of any further WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.

²⁶ https://ec.europa.eu/taxation_customs/business/vat/telecommunications-broadcasting-electronic-services/content/guide-vat-mini-one-stop-shop-moss_en

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| <p>To be synchronised with publication under the ASEAN Trade Repository.</p> | <p>and growth in the ASEAN region.</p> <p>The Annual Laws Notification Mechanism will help ensure transparency for ASEAN and non-ASEAN businesses in the cross-border digital trade sector. Matters could include: any regulatory regime on customs duties for digital goods/services/electronic transmissions, any regulatory regime for VAT registration and collection for cross-border digital goods/services.</p> | | |
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A.4 Cross Border Transfer of Information

Desired Outcome: By 2025, all AMS, where possible, will make progress towards unimpeded cross-border flow of data used for business purposes subject to the appropriate safeguards, including by successfully implementing the ASEAN Cross Border Data Flow Mechanism (CBDFM) comprising Model Contractual Clauses and Certification²⁷, while continuing to study and harmonise practices and interoperate with other cross border data transfer mechanisms.

The desired outcome crystallises the Agreement's commitment to recognise and facilitate the flow of information across border. Information is the "lifeblood" of the digital economy. It is especially important for companies that data be allowed to flow for business purposes and that the region carefully consider efforts to bring about improved coherence and alignment on the topic. Existing ASEAN work to create a Cross Border Data Flow Mechanism (CBDFM) can be incorporated into this Work Plan. The CBDFM might enable more efficient cross border flows of commercial data within the ASEAN, taking into consideration differences in the levels of development and the respective needs of the AMS. Regular exchanges between the AMS on relevant practices regarding data flows; references to the model contractual clauses (MCCs) and certification mechanisms which are aimed at unlocking cross-border trade opportunities and fostering the development of consumer confidence in the region; and pilot implementation projects for the MCCs and the CBDFM certification mechanism in selected AMS will help ensure consistency in business data flows in the region.

Cross Border Transfer of Information: Background

What the Agreement says:

Article 7.4

- (a) MS 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) MS 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 other legitimate public policy objectives so dictate.
- (c) Subparagraphs (a) and (b) shall not apply to financial services and financial services suppliers, as defined in the Annex on Financial Services of the GATS.

What the Mapping Study showed:

The mapping has shown that most AMS appear to have at least some laws (for instance personal data protection laws) that partially restrict the free flow of data across borders. Some AMS have not adopted instruments addressing the issue.

The restrictions have proven to be based on various criteria, including consent of the data

²⁷ In the text of the ASEAN Agreement on E-commerce, all AMS agreed to exclude financial services and financial service providers from their commitments on Cross Border Transfer of Information. They are therefore excluded from the scope of the activities proposed under this section.

subject, commercial “necessity,” nature of the data (restrictions were reported with respect to financial data, data related to the electronic signatures, health data, and certain data of relevance to corporate reporting), compatibility of privacy and/or overall data protection regime with the respective regimes of the data exporting state (assessed on the case-by-case basis or through inclusion in the list), and security concerns.

Neither reliance on cloud storage solutions nor edging technologies were duly explored. Data regulating institutions and structures were also not explored, however, several Member States have reported an obligation to obtain consent from a regulator to transfer data (or certain types thereof) abroad. In addition, several AMS resort to the centralized state-controlled access to the foreign internet networks and, by extension, data, through the use of National Internet Gateways.

It is important to note that the topic of Cross Border Flow of Information maintains an important connection with several other topics addressed in the other workstreams of this study: protection of privacy and data security (Consumer Focus Workstream) and intellectual property (notably, trade secrets) (Business Focus Workstream), as well as Location of Computing Facilities (Cross-Border Focus Workstream).

What ASEAN has done:

ASEAN already has in place multiple frameworks, master plans and initiatives that relate to cross border transfers of information. This Work Plan builds upon these efforts. The **ASEAN Digital Masterplan 2025**, which was adopted at the 1st ASEAN Digital Ministers Meeting (ADGMIN) in January 2021, aims to develop a sustainable, competitive market for the supply of digital services (outcome 4), mandating, (in 4.1) to continue to identify opportunities to harmonise digital regulation to facilitate cross-border data flows.

The **ASEAN Digital Integration Framework Action Plan 2019-2025**, in its Priority Area 2 “Protecting data while supporting digital trade and innovation,” encourages free flows of cross border data for conducting business, while respecting domestic laws and regulations. The activity is ongoing, with the interim output of “**ASEAN Cross Border Data Flow Mechanism**” still under development. (While the Model Contractual Clauses (MCC) have been adopted, the certification criteria for the AMS and their entities are still being developed). Similarly, the non-binding **ASEAN Framework on Digital Data Governance**, which was adopted at the 18th ASEAN Telecommunications and Information Ministers’ Meeting (renamed as ADGMIN) in December 2018, features a strategic priority (2) “Cross Border Data Flows, mentioning ASEAN Cross Border Data Flow Mechanism,” and emphasizes regulatory certainty, providing guidance to businesses on “who they may share data with, the types of data that may be shared, and how they may share such data.” The Framework also suggests that the different levels of maturity and local laws present in the ASEAN Member States should be considered. The Framework also suggests the development of an **ASEAN Data Classification Framework**, which was broadened to the **ASEAN Data Management Framework (DMF)** in 2021, to help companies put in place a data management structure and system in business operations. The ASEAN DMF is a guide for businesses, particularly Small and Medium-sized Enterprises, to implement a data management system. This includes guidelines for data governance structures and appropriate data protection safeguards, depending on the underlying purpose of the dataset of interest throughout its lifecycle.

The objective of elaboration of the ASEAN Cross Border Data Flow Mechanism is also set in the **Master Plan on ASEAN Connectivity 2025** (as a means of support of enhanced data

management in ASEAN Member States). This Masterplan also refers to improvement of open data use in ASEAN Member States, through establishment of the **ASEAN Open Data Network** among others.

Finally, the **ASEAN Comprehensive Recovery Framework** addresses the issues of relevance to data flows in the Broad Strategy 4: “Accelerating Inclusive Digital Transformation.” The Key Priority 4.i, “Strengthening data governance and cybersecurity,” refers to several initiatives, including enhancement of the implementation of the **ASEAN Data Management Framework** and Cross-border Data Flow Mechanism comprising **ASEAN Model Contractual Clauses and Certification** under the ASEAN Framework on Digital Data Governance, and capacity building for authorities responsible for data protection in implementing data management and cross-border data flows frameworks.

The **ASEAN Model Contractual Clauses for Cross Border Data Flows** were published in January 2021. They are voluntary tools for ASEAN businesses to utilise in their data-related business operations. MCCs are contractual terms and conditions that may be included in the binding legal agreements between businesses when transferring personal data to each other across borders. There are two modules in the MCCs to address transfers between Controller to Controller Transfers and Controller to Processor Transfers. The modules comprise core and optional clauses. They have been published in a form of a booklet, accompanied by some explanations and justifications.²⁸

A **Guideline On Accountabilities And Responsibilities Of E-Marketplace Providers** states that E-marketplace providers should require data processors, agents, contractors or other entities to whom personal data is transferred, to protect against loss, unauthorized access, use, modification, disclosure or other misuses of the data. This obligation does not specifically address the situations of cross-border data transfer.

Useful international guidelines and/or standards:

International efforts taken to regulate cross-border data flows are numerous. The selection provided below is not exhaustive, being offered in order to demonstrate the widespread trends only.

The **APEC Privacy Framework** calls for the development of cooperative arrangements and procedures (bilateral or multilateral) to facilitate cross-border cooperation in the enforcement of privacy laws, which are also relevant to cross-border data transfers. Reflected in the “**APEC Connectivity Blueprint: The 2020 Mid-Term Review**,” an Australian initiative under SMEWG on “**Harmonisation of Standards for the Movement of Data across APEC Economies**” attempts to facilitate MSME trade and participation in regional and global value chains.

According to the African Union’s **Africa E-Commerce Agenda Roadmap for Action**, Africa shall remain open to data flow by allowing regional integration of African data markets through transparent rules and exploring ways to ease business compliance in other regions. The roadmap also recommends acceleration of data legislation dialogue and implementation, including ratifying the Malabo Convention 2014 (on Cybersecurity and Personal Data Protection), and providing information and support to merchants for

²⁸ It might be argued that the clauses need additional [simplified] explanations to be useful for the wide range of stakeholders, including MSMEs.

compliance with overseas market privacy regulations.

The **East African Community Single Digital Market Report** contains the following recommendations, also (beyond privacy) covering open governmental data and cybersecurity: (1) Remove undue legal and regulatory restrictions (for example, data nationalization) on the free flow, storage, and processing of data across borders; (2) Harmonize data protection, privacy, and data exchange laws and regulations with clear guidelines for cross-border data flows, personal, and sensitive data and accounting for emerging services (cloud services, data analytics, and so on); (3) Digitize key government registries using regional standards to enable cross-border interoperability and implement a regional open data initiative using shared data standards to make regional data sets available for public and private sector data-based services and analytics; and (4) Establish a regional cybersecurity task force.

Several very notable developments in data regulation can be traced in the EU (where the data policy, including its cross-border aspects, is still being shaped). As an example, before November 2022, the European Commission expects to evaluate the two **codes of conduct on data portability in the cloud** prepared by the working group on switching cloud providers and data porting (“SWIPO”): one for “infrastructure-as-a-service” and another for “software-as-a-service.” The objective of the SWIPO Codes of Conduct is to reduce the risk of vendor lock-in by cloud service providers and allow end-users to easily switch cloud services.

While the **General Data Protection Regulation (GDPR)** already provides for the free movement of personal data within the European Union, the 2019 **Regulation on A Framework for the Free Flow of Non-Personal Data** ensures a comprehensive and coherent approach to the free movement of all data in the EU, covering, in particular: free movement of non-personal data across borders: every organisation should be able to store and process data anywhere in the EU; the availability of data for regulatory control; and full consistency and synergies with the cybersecurity package.

The **EU Long Term Action Plan for Better Implementation and Enforcement of Single Market Rules** anticipates unlocking the full potential of the notification mechanism under the ecommerce Directive. While Member States that restrict the freedom to provide cross-border information society services in a justified and proportionate manner must notify the national measures restricting that freedom to the Member State of establishment and to the Commission, this mechanism could be improved. The respective measures will be analysed as part of the preparatory work on the **Digital Services Act**.

The **Summary Report on the Open Public Consultation on the European Strategy for Data**²⁹ (an interesting example of stakeholder engagement of the rulemaking in the area of data regulation) summarizes the responses provided by 806 individual and corporate participants with respect to different aspects of data governance, that found reflection in the **European Strategy for Data**, covering, among others, data governance, standardisation, secondary use of data, data donation, data intermediaries, and questions on the (self-/co-) regulatory context of [edge and] cloud computing, particularly relevant for regulation of the data flows.

The discussions of relevance to data flows within the **WTO JSI on Electronic Commerce** demonstrate remarkable coherence with respect to the main rule (free flow of data of relevance to doing business), yet a series of disagreements remains with respect to the

²⁹ https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=68611

exceptions which might apply.

A.4 Cross-Border Transfer of Information: Objectives & Activities

A.4.1: Implement, enable, and encourage application of ASEAN’s Cross Border Data Flow Mechanisms (CBDFM)

The cross-border transfer of information has strong connections to many other elements of the Agreement, which are included in the other business and consumer workstreams for this workplan.

Desired Outcome: By 2025, all AMS, where possible, will make progress towards unimpeded cross-border flow of data used for business purposes subject to the appropriate safeguards, including by successfully implementing the ASEAN Cross Border Data Flow Mechanism (CBDFM) comprising Model Contractual Clauses and Certification³⁰, while continuing to study and harmonise practices and interoperate with other cross border data transfer mechanisms.

The desired outcome crystallises the Agreement’s commitment to recognise and facilitate the flow of information across border. Information is the “lifeblood” of the digital economy. It is especially important for companies that data be allowed to flow for business purposes and that the region carefully consider efforts to bring about improved coherence and alignment on the topic. Existing ASEAN work to create a Cross Border Data Flow Mechanism (CBDFM) can be incorporated into this Work Plan. The CBDFM might enable more efficient cross border flows of commercial data within the ASEAN, taking into consideration differences in the levels of development and the respective needs of the AMS. Regular exchanges between the AMS on relevant practices regarding data flows; references to the model contractual clauses (MCCs) and certification mechanisms which are aimed at unlocking cross-border trade opportunities and fostering the development of consumer confidence in the region; and pilot implementation projects for the MCCs and the CBDFM certification mechanism in selected AMS will help ensure consistency in business data flows in the region.

A.4.1. Encourage application of the ASEAN Cross Border Data Flow Mechanism (CBDFM).

| Activities | Rationale | Outcomes | Target Timeline for Completion |
|---|--|--|--------------------------------|
| 1. Conduct regular dialogues between AMS devoted to the cross-border transfer of data issues, including technological compatibility between adopted data transfer solutions | Regular dialogues between the AMS would help ensure alignment by sharing their experiences and good practices of implementation of the CBDFM (or other CBDF solutions), explore relevant needs and potential joint actions in this domain. The annual Data Protection and Privacy Forum could serve as a suitable venue for | The cross-border transfer of data issues are discussed during the Data Protection and Privacy Forum, which is held on an annual basis. | 2021-2025 |

³⁰ In the text of the ASEAN Agreement on E-commerce, all AMS agreed to exclude financial services and financial service providers from their commitments on Cross Border Transfer of Information. They are therefore excluded from the scope of the activities proposed under this section.

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| | such consultations. | | |
| 2. Include explicit reference to the MCC into Guidelines on accountabilities and responsibilities of e-marketplace providers | The “Guidelines on accountabilities and responsibilities of e-marketplace providers” are aimed at unlocking cross-border trade opportunities and fostering the development of consumer confidence in the region. The reference to the MCC in the Principle 1, Personal data protection, would provide additional assurance for the consumers that their data is treated appropriately in the case of its cross-border transfer within ASEAN. | The “Guidelines on accountabilities and responsibilities of e-marketplace providers” to include a reference to the MCC in the part devoted to the data transfers. | 2023 (or next revision) |
| 3. Develop a “Compendium of Use Cases” on the implementation of the CBDFM MCCs and assess its results/identify possible technical assistance/adjustment needs | <p>The initiative would help in appreciating practical use of the MCCs and identifying potential issues in practical use and offer the necessary clarifications, before expanding its use.</p> <p>Eventual technical assistance/capacity building needs related to the implementation of the MCCs could also become clearer.</p> <p>Relevant details will be discussed by the implementing body.</p> <p>Consultations with each AMS will be conducted when developing the TOR for the Compendium</p> | <p>The CBDFM MCCs pilot project is run by selected companies in 2 or more AMS.</p> <p>Develop a compendium of the clauses used by companies to assess the adoption of MCCs.</p> | 2022 |
| 4. Develop a “Compendium of Use Cases” under the CBDFM Certification Mechanism (or advanced version thereof) and assess its results + identify possible technical assistance/adjustment | The compendium on use cases on the CBDFM certification mechanisms (when developed) would help identifying potential issues in practical use of the certification mechanism and offer lessons learnt and best practices in their current use, before further implementation | The CBDFM Certification Mechanism pilot project is run in 2 or more AMS. | 2022-2024 |

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| needs | <p>Eventual technical assistance/capacity building needs related to the implementation of the Certification mechanism could also become clearer.</p> <p>Relevant details will be discussed by the implementing body.</p> <p>Consultations with each AMS will be conducted when developing the TOR for the Compendium.</p> | | |
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A.4.2: Keep the CBDFM/MCC in compliance with international and other regional requirements and best practices to ensure cross-border interoperability of data transfers beyond the ASEAN or prepare additional data transfer guidelines, if needed.

| Activities | Rationale | Outcomes | Target Timeline for Completion |
|--|--|---|---|
| <p>1. Identify key cross-border data transfer mechanisms and requirements used outside of the ASEAN, which are of the interest to the ASEAN stakeholders and conduct a GAP Study focusing on the compatibility of the CBDFM and such mechanisms/requirements. Update the results of the assessment</p> | <p>Assessment of other key cross-border data transfer mechanisms, guided by the interests of the stakeholders within the ASEAN, and in particular, the requirements such mechanisms rely on, would offer interesting insights for the eventual usefulness of the revision of the CBDFM.</p> <p>One important group of stakeholders to include are MSMEs from the region.</p> | <p>The cross-border data transfer mechanisms and requirements used outside of the ASEAN of the interest to the ASEAN stakeholders are identified.</p> <p>The “gaps” in the requirements of the CBDFM and the data transfer mechanisms / requirements used outside of the ASEAN are identified. The assessment is regularly updated.</p> | <p>2022 on (subject to regular updates)</p> |
| <p>2. [Based on the GAP study results] Prepare and introduce adjustments to the CBDFM, ensuring interoperability with the other relevant cross-cross border data transfer mechanisms used outside of the ASEAN</p> | <p>Introduction of adjustments to the CBDFM (if necessary) to ensure its cross-border interoperability</p> <p>Focus on simplifying approaches to cross-border data transfer to ensure that business information of relevance to MSMEs is facilitated</p> | <p>Adjustments to the CBDFM, ensuring interoperability with the other relevant cross-cross border data transfer mechanisms used outside of the ASEAN are introduced.</p> | <p>If necessary</p> |

A.4.3: Elaborate ASEAN B2G and B2B data sharing principles and guidelines.

| Activities | Rationale | Outcomes | Target Timeline for Completion |
|------------|-----------|----------|--------------------------------|
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| <p>1. Conduct a study on the rules and practices adopted in data sharing in the AMS (within ASEAN and outside of it), and problems faced and elaborate principles and/or Guidelines on B2G data sharing.</p> <p>The study should include stakeholder consultations on relevant topics</p> | <p>Privately held data has a high potential to serve the general public interest by informing decision-making, providing new scientific insights and resolving policy issues which can, for example, improve public service delivery.³¹</p> <p>Enabling B2G data sharing is, thus, beneficial for society. Nevertheless, its legal and institutional framework should be well defined, subject the necessary safeguards, to the data use ethics, incentives for the companies to share data, and supportive infrastructure solutions, among others.</p> <p>The relevant study would identify the status quo and highlight the concerns in the area, paving the way for them to be duly addressed.</p> <p>The TOR for the study, when developed, must consider the issue of which data should be targeted and achieve consensus on it.</p> <p>The activity should take place at ASEAN level only.</p> | <p>The study is completed, existent data sharing rules and practices, as well as problems, are identified.</p> <p>Guidelines are elaborated.</p> | <p>2022</p> |
| <p>2. Conduct a study on the rules and practices adopted in data sharing in the AMS (within ASEAN and outside of it), and problems faced and elaborate principles and/or Guidelines on B2B data sharing. The study should include stakeholder consultations on</p> | <p>Access to commercial data has become crucial for securing and realizing business opportunities, thus, data interdependence in the business setting is already a reality. Businesses should be reassured about the safety of the data sharing and informed about the synergies which it creates.</p> <p>The study would seek</p> | <p>The study is completed, existent data sharing rules and practices, as well as problems, are identified.</p> <p>Guidelines are elaborated.</p> | <p>2022</p> |

³¹ See: <https://digital-strategy.ec.europa.eu/en/news/experts-say-privately-held-data-available-european-union-should-be-used-better-and-more>

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| <p>relevant topics</p> | <p>quantitative and qualitative evidence, as well as identify the case studies on how the companies in the AMS share data with other businesses (voluntarily or contractually, against payments or other incentives), which technical means are used, and which results follow.</p> <p>The findings made through the study would lead to elaboration of the guidelines, reflecting on the existing and potential business models for the B2B data sharing and the relevant practices.</p> <p>The TOR for the study, when developed, must consider the issue of which data should be targeted and achieve consensus on it.</p> <p>The activity should take place at ASEAN level only.</p> | | |
| <p>3. Raise awareness of the private and public sector stakeholders about the Principles and/or Guidelines through an outreach program. Design and implement capacity building, if necessary</p> | <p>Newly elaborated guidelines would necessitate awareness-raising for their practical adoption by the businesses and the private sector, as well as the capacity building efforts.</p> | <p>Outreach campaign is developed and implemented</p> <p>Capacity building program is designed and implemented, if necessary.</p> | <p>2023-2025</p> |

A.5 Location of Computing Facilities

Desired Outcome: By 2025, AMS will deepen cooperation on Agreement commitments not to require, subject to their respective laws and regulations, location of computing facilities in their territories as a requirement for business operation³².

The desired outcome recognises the Agreement's commitments on location of computing facilities. The digital economy relies on information. ASEAN has strong incentives to limit the number of obstacles to the movement of information across the region. Data localization increases complexity and cost of doing business across borders, especially for MSMEs. Activities in this Work Plan include the development of a study of the legal frameworks and practices of the AMS devoted to data storage and processing solutions with respect to the commercial data which would shed light on the relevant realities and needs, paving the way forward. An ASEAN-wide plan for elimination or minimization of data localization requirements will ensure consistency. A mechanism on data flow restrictions/data localization requirements could enhance transparency over new laws, regulations, or rules. Finally, the elaboration of principles for the cloud and edge technologies can help ensure that these new technological solutions are duly enabled or regulated by the AMS in a coherent manner, forming a solid basis for mutual commercial data interchange.

Location of Computing Facilities: Background

What the Agreement says:

Article 7.6

- (a) Member 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 computer 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 services suppliers, as defined in the Annex on Financial Services of the GATS.

What the Mapping Study showed:

The mapping has demonstrated that most of the AMS maintain at least some data localization requirements. Some AMS have laws that do not mandate localization of commercial data on their territories.

Among the data subject to localization requirements, the following was reported: traffic

³² In the text of the ASEAN Agreement on E-commerce, all AMS agreed to exclude financial services and financial service providers from their commitments on Localisation of Computing Facilities. They are therefore excluded from the scope of the activities proposed under this section.

data related to the internet access and use; governmental data; corporate data (in particular, corporate financial records); financial data; health data; and data obtained in relation to establishment of electronic signatures.

A.5 Location of Computing Facilities: Objectives & Activities

Please note that the objectives and activities specified for this topic are strongly interlinked with those of the topic A.4, Cross-border Data Flows, shown above.

| <p>Desired Outcome: By 2025, AMS will deepen cooperation on Agreement commitments not to require, subject to their respective laws and regulations, location of computing facilities in their territories as a requirement for business operation.</p> | | | |
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| <p>The desired outcome recognises the Agreement’s commitments on location of computing facilities. The digital economy relies on information. ASEAN has strong incentives to limit the number of obstacles to the movement of information across the region. Data localization increases complexity and cost of doing business across borders, especially for MSMEs. Activities in this Work Plan include the development of a study of the legal frameworks and practices of the AMS devoted to data storage and processing solutions with respect to the commercial data which would shed light on the relevant realities and needs, paving the way forward. An ASEAN-wide plan for elimination or minimization of data localization requirements will ensure consistency. A mechanism on data flow restrictions/data localization requirements could enhance transparency over new laws, regulations, or rules. Finally, the elaboration of principles for the cloud and edge technologies can help ensure that these new technological solutions are duly enabled or regulated by the AMS in a coherent manner, forming a solid basis for mutual commercial data interchange.</p> | | | |
| <p>A.5.1 All AMS shall identify and eliminate or minimize data localization requirements, which they impose as conditions for business operation in accordance with existing international agreements.</p> | | | |
| Activities | Rationale | Outcomes | Target Timeline for Completion |
| <p>1. Study the legal frameworks and practices of the AMS with relevance to data storage and processing solutions with respect to commercial data, including data localization requirements, cloud data storage/edge technologies, and assessment of possible technical assistance (TA) needs</p> | <p>The study will help the AMS to identify and inquire their data storage and processing practices, re-assess their rationale, and, as the result, eliminate those practices that are no longer relevant, and minimize the trade restrictive or trade distorting impact of those requirements that remain. Among the criteria the study should assess includes the feasibility and costs of different data storage and processing solutions, as well as collecting feedback from existing or potential users such as MSMEs.</p> | <p>The study (or separate AMS studies/reports) completed. The recommendations of the study shall be considered for further actions with a view to bringing greater coherence of laws and regulations in ASEAN.</p> | <p>2022</p> |

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| | <p>The study should adopt technological neutrality, and consider cloud storage, edge technologies, and/or other comparable developments should be equally assessed.</p> <p>As elimination/minimization of data localization requirements might require technical assistance, the respective needs should be ascertained.</p> | | |
| <p>2. Develop an ASEAN-wide plan on the implementation of ASEAN commitments on the implementation of e-commerce agreement commitments on localisation of computing facilities, reflecting individual commitments/ technical assistance requests by AMS</p> | <p>A comprehensive ASEAN-wide plan would ensure better visibility of the situation with respect to localisation of computing facilities within the AMSs. Moreover, it might contribute to sharing experiences and exploring the synergies by different AMS in implementing their commitments.</p> <p>This only relates to commitments made in the e-commerce agreement.</p> | <p>The ASEAN-wide plan for minimization / elimination of the data localization requirements applicable to commercial data, reflecting individual commitments and technical assistance requests made by the AMS is elaborated and is being implemented.</p> | 2023 |
| <p>3. Establish a notification mechanism on data flow restrictions/data localization requirements to ASEAN and, if relevant, the AMS concerned and a public database of data flow restrictions accessible and usable by the MSMEs (this could be incorporated in the ASEAN one stop SME access portal (ASEANaccess.com)³³</p> | <p>Transparency over the commercial data flow restrictions is important for businesses, in particular, for the MSMEs, which could adjust their commercial strategies and prevent eventual losses, on the basis of this information. Enhanced transparency over the data localization requirements could also entice consultations between the AMS in the view of their elimination or minimization.</p> | <p>The mechanism is developed, as well as its procedures and obligations.</p> <p>Database of data flow restrictions is established.</p> | 2021-2025 |
| <p>4. Carry out a study on how cloud data storage and/or edge</p> | <p>Cloud data storage/edge technologies solutions knowledge is nascent, not</p> | <p>The principles are elaborated.</p> | 2022 |

³³ The ASEAN Access website aims to enable business to access information that would facilitate trade amongst ASEAN countries. The proposed database of data flow restrictions is a useful information for MSMEs that can be incorporated in the website.

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| <p>technologies are currently used in ASEAN with a view to issue a set of recommendations on their regulations³⁴</p> | <p>fully understood and potentially under regulated. An ASEAN-wide study in this area could make a timely contribution to ensuring regulatory coherence, to better enable the use of the cloud storage solutions (and the interchange) as a part of COVID recovery.</p> <p>Consensus on the scope of the study should be reached while preparing the ToR for the study.</p> | | |
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³⁴ The European Strategy for Data, which aims at creating a single market for data and put people first in developing technology, could be a useful reference for ASEAN (<https://digital-strategy.ec.europa.eu/en/library/cloud-and-edge-computing-different-way-using-it-brochure>)

5.3 Business Focus Workstream

The ASEAN E-commerce Agreement is a landmark commitment by the region to support and facilitate the flow of digital trade and digitally enabled trade across Southeast Asia in conjunction with longstanding commitments to enhancing economic integration in ASEAN. The implementation of the Agreement will not only facilitate continued cross-border trade flows, but support companies and consumers.

This Workplan divides the Agreement, as noted earlier, into three Workstreams. All three (Cross-border, Business, and Consumer) support the comprehensive implementation of the Agreement commitments made by AMS. Each Workstream element is interlinked to aspects of the implementation plan found elsewhere in the workplan. Effective alignment of objectives and activities requires careful consideration of all three Workstreams that operate in parallel.

This section examines those aspects of the Agreement which might be considered of particular interest to companies in and across ASEAN. Seven key elements are included under the Business Focus Workstream: Electronic Transactions (B.1), Electronic Authentication (B.2), Electronic Signatures (B.3), Electronic Payments (B.4), Intellectual Property (IP) Rights in an Online Setting (B.5), Technology Neutrality (B.6) and Competition (B.7). The implementation activities of each are addressed in turn.

B.1 Electronic Transactions

Desired Outcome: By 2025, ASEAN Member States should have legally binding e-transactions laws and regulations aligned with international standards and, through full implementation, recognise cross-border transactions in ASEAN that are electronic in nature to be as valid as non-electronic ones.

The desired outcome recognises the Agreement's requirement of e-transactions laws that align with international standards. As e-transactions constitute one of the most important enablers of cross-border flows of assets, goods and services, the desired outcome further highlights the important role of full implementation of e-transactions laws. Recognition of electronic transactions as being equally valid and enforceable as non-electronic ones, both in law and in practice, is pivotal in maintaining and enhancing business and trader trust and confidence in ASEAN's digital economy.

Electronic Transactions: Background

What the Agreement says:

Article 12

Each MS shall maintain, or adopt as soon as practicable, laws and regulations governing electronic transactions taking into account applicable international conventions or model laws relating to e-commerce.

What the Mapping Study showed:

The Mapping Study highlighted a relatively strong level of coverage for laws related to Electronic Transactions. There are only a few of the AMS that have had commitments categorised as partial. In some AMS there are existing laws in place, however, it is unclear whether the topic is fully addressed or if these laws have been implemented.

Given the variability in the level of implementation, the activities in the Work Plan are designed to meet the commitments in the Agreement but also go beyond the presence of laws to help strengthen AMS ability to implement laws and regulations related to electronic transactions.

What ASEAN has done:

ASEAN has made several commitments of a declaratory nature in respect of laws and regulations governing e-transactions. First, the **ASEAN Work Programme on Electronic Commerce**, under which this Agreement was developed, includes proposed initiatives such as the review of national laws and regulations covering e-transactions. Second, in the **Guideline on Accountabilities and Responsibilities of E-Marketplace Providers**, electronic contracting appears as a primary guiding principle for the development of platforms' policies by e-marketplace providers to strengthen consumer trust in e-commerce. RCEP, to which all AMS are parties, states that members shall establish or maintain a legal framework to govern e-transactions and avoid unnecessary regulatory burdens. This Work Plan will build on the above endeavours, among others, to encourage AMS to commit to actual legislative updating and, ideally, alignment in respect to the implementation of relevant e-transaction laws.

Useful international guidelines and/or standards:

International standards for e-transactions law, generally speaking, are found in two major international instruments. The **UNCITRAL Model Law on Electronic Commerce**³⁵ is the most widely enacted to text related to e-commerce and sets out the fundamental principles of non-discrimination against the use of electronic means, functional equivalence and technology neutrality. The **UN Convention on the Use of Electronic Communications in International Contracts Transactions**³⁶ updates the provisions of the former.

Given the divergence in domestic laws across AMS, including the use of various standards prescribed in these international instruments related to e-transactions, this Work Plan presents an opportunity for AMS who have yet to sign, accede or ratify the Convention to enhance their capability to do so, as a primary means to advance the alignment of e-transaction laws in ASEAN. The Work Plan also recognises that while the adoption of adequate e-transaction laws represents the minimal standard as dictated by the Agreement, implementation and enforcement capacities should also be concurrently enhanced to widen the scope of impact of the Agreement.

B.1 Electronic Transactions: Objectives & Activities

Desired Outcome: By 2025, ASEAN Member States should have legally binding e-transactions laws and regulations aligned with international standards and, through full implementation recognise cross-border transactions in ASEAN that are electronic in nature to be as valid as non-electronic ones.

The desired outcome recognises the Agreement's requirement of e-transactions laws that align with international standards. As e-transactions constitute one of the most important enablers of cross-border flows of assets, goods and services, the desired outcome further highlights the

³⁵ https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-04970_ebook.pdf

³⁶ https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-57452_ebook.pdf

important role of full implementation of e-transactions laws. Recognition of electronic transactions as being equally valid and enforceable as non-electronic ones, both in law and in practice, is pivotal in maintaining and enhancing business and trader trust and confidence in ASEAN digital economy.

B.1.1 All AMS to adopt laws and regulations governing electronic transactions, taking into account applicable international conventions or model laws relating to e-commerce.

| Activities | Rationale | Outcomes | Target Timeline for Completion |
|---|--|--|--------------------------------|
| <p>1. Laws Reporting Scheme under which AMS shall provide a national plan to align e-transactions laws and regulations with any of the prescribed UNCITRAL legislative texts</p> | <p>The Laws Reporting Scheme is a recurring or horizontal activity across the Work Plan to collect information on domestic legal and regulatory environments in the interest of transparency across AMS. The Scheme, in respect to this topic, ensures that all AMS follow at least one internationally recognised legislative text which governs e-transactions such as UNCITRAL Model Law on E-Commerce, UNCITRAL Model Law on Electronic Transferable Records or the UN Convention on Electronic Communications. This arrangement decreases the variability of e-transactions laws and regulations across AMS. Thus, businesses will face less compliance-related challenges while engaging in cross-border e-commerce.</p> <p>The national plans by AMS shall outline how (e.g legislative processes) AMS intend to align laws and regulations with its chosen internationally recognised legislative text(s). If AMS have existing e-transactions laws, the national plan shall outline how AMS may update its laws based on prospective recognised</p> | <p>Submission of national plans by AMS.</p> <p>ACCEC will develop guidelines for the notification of laws and regulations on e-commerce related laws.</p> <p>Preparation and submission of Annual Reports by AMS to ACCEC.</p> <p>Publish e-commerce related laws in the ASEAN Trade Repository.</p> | <p>2021 - 2023</p> |

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| | <p>international developments on e-transactions laws.</p> <p>The Mapping Study is the first iteration of the Laws Reporting Scheme. The Mid-term review will allow for AMS to do a stocktake and ensure that countries previously categorised as ‘partial’ and ‘no’ under the Mapping Study have appropriate laws in place.</p> <p>The ACCEC plays an integral coordinating role to enhance alignment and transparency across AMS regulatory frameworks. The ACCEC will develop guidelines for the notification of laws and regulations on e-commerce related laws. Annual Reports will also allow AMS to track and report to ACCEC progress on the domestic legislative and consultative stages towards amending their laws in alignment with either of the abovementioned international instruments.</p> | | |
| <p>2. Law Incorporation Workshops with AMS to solve common problems in adopting the UN Convention on Electronic Communications in domestic law and regulations</p> | <p>Although some AMS have modelled their e-transaction laws after instruments like the UNCITRAL Model Law on E-Commerce, UNCITRAL Model Law on Electronic Transferable Records or the UN Convention on Electronic Commerce contains the most updated model provisions governing e-transactions. In this case, aligning domestic laws with the Convention becomes a tool to harmonise e-transactions legislation on a regional level. AMS should strive to align their laws with these updated provisions.</p> | <p>Determine AMS that have already met the standard of the Agreement.</p> <p>Commencement of Workshops led by identified AMS.</p> <p>Capacity Building programme to provide technical and legal assistance in the development of laws conducted.</p> <p>Dialogue sessions to discuss and align with international practices.</p> | <p>2021 - 2023</p> |

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| | <p>The Workshops act as a capacity-building platform to (i) discuss the annual reports of AMS under the Laws Reporting Scheme; (ii) identify any challenges in adopting the UN Convention on Electronic Communications; (iii) develop solutions for those legislative challenges and (iv) tackle common issues on the implementation and enforcement of e-transactions laws.</p> <p>The Workshops can leverage the experience of AMS that have ratified the Convention to share suggested processes to aid ratification.</p> | | |
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B.1.2 Strengthen AMS ability to implement laws and regulations governing electronic transactions based on international conventions or model laws.

| Activities | Rationale | Outcomes | Target Timeline for Completion |
|---|--|--|---|
| <p>1. Capacity Building Programme for relevant AMS authorities requiring technical and legal assistance in the implementation of e-transactions laws</p> | <p>As the Mapping Study highlighted, some AMS still face implementation challenges in respect of their e-transactions laws and regulations. This Capacity Building Programme furthers the impact of enacted e-transactions legislation by ensuring such laws are implemented effectively.</p> <p>The Programme will identify resource gaps or practical limitations to the implementation of e-transaction laws, especially in CLM, and impart skills to the relevant authorities to better enforce existing laws.</p> | <p>Events which will be attended by the relevant AMS authorities overseeing the implementation of e-transactions laws.</p> | <p>2022 - 2024</p> |
| <p>2. Annual Business Survey to include questions on</p> | <p>The Survey is a recurring or horizontal activity in the Work Plan and may be</p> | <p>Annual Business Survey conducted.</p> | <p>2022 – 2025 *To be coordinated</p> |

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| <p>businesses' perceptions on whether electronic or online transactions appear to have equivalent commercial treatment to offline transactions</p> | <p>implemented by the ASEAN Business Advisory Council (ASEAN-BAC) with close coordination by the ACCEC. The Survey will identify practical gaps between common commercial or business practices and needs—especially within the MSME sector—and existing infrastructure and regulations.</p> <p>This data will highlight any common challenges faced by businesses in initiating, negotiating and concluding electronic transactions based on current legal and regulatory regimes across AMS.</p> | <p>Survey reports describing and analysing trends, if any, identified from the annual surveys.</p> <p>Socialisation of Business Survey results with competent authorities, private sector and relevant stakeholders. Could also be facilitated through ASEAN Access Portal.</p> | <p>with the ASEAN Business Advisory Council (ASEAN-BAC)</p> |
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B.2 Electronic Authentication

Desired Outcome: By 2025, ASEAN should adopt measures aligned with international norms to eliminate restrictions to the adoption of appropriate authentication technologies as well as develop a user-friendly interoperable electronic authentication approach.

Having in place appropriate electronic authentication approaches is important in meeting the Agreement's objective in creating an environment of trust and confidence in the use of e-commerce in the ASEAN region as it helps users establish a level of confidence in the reliability of electronic transactions. The desired outcome recognises the Agreement's chief focus on permitting participants to choose their own authentication technologies from a repository of recognised technologies and implementation models. Activities focusing on knowledge management and stakeholder outreach and collaboration further this goal. The desired outcome further recognises AMS' variation in approaches to authentication as highlighted by the Mapping Study and advances the aim of interoperability of electronic authentication approaches across AMS.

Electronic Authentication: Background

What the Agreement says:

Article 1 (c) Electric Authentication means the process of testing an electronic statement or claim in order to establish a level of confidence in the reliability of that statement or claim.

Article 7.2 (b) Each MS shall maintain or adopt as soon as practicable, measures based on international norms for electronic authentication that:

- (i) permit participants in electronic transactions to determine the appropriate authentication technologies and implementation models for their electronic transactions;
- (ii) do not limit the recognition of authentication technologies and implementation models; and
- (iii) permit participants in electronic transactions to have the opportunity to prove that their electronic transactions comply with that MS's laws and regulation with respect to authentication

Article 7.2 (c) Notwithstanding subparagraph (b) each MS may require that, for a particular category of electronic transactions, the method of authentication meet certain performance standards or to be certified by an authority accredited in accordance with the laws and regulations of that MS.

Article 7.2. (d) Each MS shall encourage the use of interoperable electronic authentication.

What the Mapping Study showed:

The Mapping Study highlighted a relatively weak level of coverage for laws related to Electronic Authentication. With half of the AMS categorised as partial, there is room for improvement in addressing legal implementation status and specific reference to electronic authentication in existing legislation.

Given the variability in legal frameworks, this Work Plan presents an opportunity for all AMS to increase adoption of electronic authentication measures in accordance with international norms and guidelines. In light of the heavily technical aspects of the topic, the Work Plan also recognises the importance in knowledge sharing between electronic authentication authorities, businesses, and consumers to increase trust and awareness on the topic.

What ASEAN has done:

ASEAN's chief programme on e-authentication is the **Intra-ASEAN Secure Transactions Framework**, which was part of the **ASEAN ICT Masterplan** concluded in 2015. The Framework emphasised the need for ASEAN to adopt a risk-based approach to define the level of assurance required for each authentication technologies, with reference to **ISO29115:2013**,³⁷ an International Standards Organisation document providing a framework for managing entity authentication assurance in a given context.

This Work Plan continues where the (now-concluded) Framework left off and encourages multifaceted and multi-stakeholder cooperation with a targeted view to improve business and consumer trust in the e-commerce sector. Indeed, in line with the proposed call to action in the **ASEAN Work Programme on Electronic Commerce** to study appropriate e-authentication mechanisms, this Work Plan encourages AMS cooperation on several fronts, including, but not limited to, knowledge-sharing, guided standardisation, technology neutrality, and consumer outreach and trust-building. As an example of a concrete step taken by ASEAN to further explore the application of electronic authentication and relevant uses cases under the **ASEAN Digital Integration Framework Action Plan (DIFAP)**, a workshop on the exchange of information, best practices on standards and compatibility of digital IDs (Digital Identity Dialogue) was included as an activity in DIFAP.

On the front of interoperable business registration, which aids interoperable authentication in cross-border settings, the ASEAN Work Programme on Starting a Business under the purview of the **ASEAN Coordinating Committee on Micro, Small and Medium Enterprises (ACCMSME)** has proposed a feasibility study of common business registration processes, forms and single company numbering system for ASEAN (Initiative 13.1). The findings of the study shall inform the possible feasibility of interoperable corporate ID as well in enabling cross-border business procedures.

Some AMS at the domestic level are currently engaging in different initiatives in electronic authentication. For example Indonesia is developing further studies to test the use of digital identity so it can be used in various electronic transactions. Singapore with its SingPass has implemented this technology.

This Work Plan recognises that the socialisation of ASEAN's work on e-authentication is necessary to secure the trust of users of these technologies and activate the e-commerce market.

Useful international guidelines and/or standards:

While there are countless international initiatives on e-authentication and technologies related thereto, the **EU Regulation on e-identification and trust services for e-transactions**³⁸ (eIDAS Regulation) is the most progressive in respect of interoperability. Among other

³⁷ <https://www.iso.org/obp/ui/#iso:std:iso-iec:29115:ed-1:v1:en>

³⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0910&from=EN>

provisions, the eIDAS Regulation ensures that businesses and consumers can use their own national electronic identification schemes to access public services available online in other EU countries, alongside prescribed classifications of levels of assurance. This Work Plan acknowledges elements of eIDAS, such as the classification of e-authentication schemes, which lend themselves well to the ASEAN context for potential development and implementation.

Other instructive guidelines which would be suitable for consideration by AMS throughout the implementation of the Work Plan include those published by the Organisation for Economic Cooperation and Development (OECD), in particular, the **Recommendation on Electronic Authentication**³⁹ and the attendant **Guidance on Electronic Authentication**. Both documents encourage effective domestic and cross-border e-authentication of persons and entities and provide foundational and operational principles for cross-jurisdictional interoperability.

Another report by OECD titled “**Digital Identity Management of Natural Persons: Enabling Innovation and Trust in the Internet Economy**”⁴⁰ focuses particularly on digital identification (ID), one of the methods of e-authentication. The findings of this Report, which frames digital ID management from a public policy perspective and recommends national strategies for the same, may be the policy launchpad for ASEAN to explore further technological cooperative efforts beyond the Work Plan.

B.2 Electronic Authentication: Objectives & Activities

| <p>Desired Outcome: By 2025, ASEAN should adopt measures aligned with international norms to eliminate restrictions to the adoption of appropriate authentication technologies as well as develop a user-friendly interoperable electronic authentication approach.</p> | | | |
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| <p>Having in place appropriate electronic authentication approaches is important in meeting the Agreement’s objective in creating an environment of trust and confidence in the use of e-commerce in the ASEAN region as it helps users establish a level of confidence in the reliability of electronic transactions. The desired outcome recognises the Agreement’s chief focus on permitting participants to choose their own authentication technologies from a repository of recognised technologies and implementation models. Activities focusing on knowledge management and stakeholder outreach and collaboration further this goal. The desired outcome further recognises AMS’ variation in approaches to authentication as highlighted by the Mapping Study and advances the aim of interoperability of electronic authentication approaches across AMS.</p> | | | |
| <p>B.2.1 All AMS maintain, or adopt as soon as practicable, measures based on international norms for the use of interoperable electronic authentication technologies.</p> | | | |
| Activities | Rationale | Outcomes | Target Timeline for Completion |
| 1. Publication of a Collaborative Repository List of | A descriptive Collaborative Repository List will contain information submitted by | Submission of list of approved and/or other commonly utilised e- | 2022 - 2025 |

³⁹ <https://www.oecd.org/sti/ieconomy/38921342.pdf>

⁴⁰ <https://www.oecd-ilibrary.org/docserver/5kg1zqsm3pns-en.pdf?expires=1623293392&id=id&acname=guest&checksum=156A8CF886D6DD03E721BC465462ACE6>

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| <p>approved and/or other commonly utilised entity authentication technologies</p> | <p>each AMS on their own approved and/or other commonly utilised e-authentication technologies aligning with the standards certified by respective domestic accredited authorities.</p> <p>The Repository List thus provides AMS with a centralised resource on e-authentication technologies and provides a platform for AMS to transparently share knowledge of what types of technologies, recent or otherwise, have been approved and adopted. This list promotes transparency while preserving AMS' autonomy to embed specific technologies into its domestic e-authentication framework.</p> | <p>authentication technologies by each AMS, subject to AMS' laws on technology neutrality affecting disclosure.</p> <p>Publication of the Collaborative Repository List.</p> <p>Periodic updates accounting for innovations in authentication technologies.</p> | |
| <p>2. Publication and adoption of the ASEAN Guidance on Authentication LOA (Levels of Assurance) of electronic authentication methods and technologies</p> | <p>The Guidance will be a document containing mutually-agreed levels of assurance based on extant adopted technologies across AMS (as compiled in the Repository List). The level of assurance of a particular technology depends on the strength of the proofing process, types of credentials and authentication mechanisms.</p> <p>The Guidance and the various levels of assurance will be presented with a view to ensure transparency and interoperability of authentication technologies across AMS.</p> <p>The production of the Guidance, in particular in assessing the strength of the methods of authentication, shall be aided by references to relevant international</p> | <p>Study of international assurance frameworks (such as ISO29115:2013 or NISTSP80053).</p> <p>Production of the Guidance.</p> <p>Periodic reviews of the Guidance.</p> | <p>2023</p> |

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| | <p>standards for assurance frameworks as determined by AMS (e.g. ISO/IEC 29115:2013 or NIST-SP80053).</p> <p>The agreed levels of assurance contained therein may also inform the e-authentication criterion of the ASEAN Trustmark Scheme (noted elsewhere in this Work Plan).</p> | | |
| <p>3. ASEAN Framework for Interoperability of Electronic Authentication Technologies</p> | <p>The two prior knowledge management activities (Repository List and Guidance) lay the groundwork for developing an ASEAN-wide Framework which focuses on the practical goal of interoperability. The Framework shall also entail an action plan to operationalise the stages of attaining interoperability between AMS.</p> <p>The Intra-ASEAN Secure Transactions Framework, completed under the ASEAN ICT Masterplan 2015, can be used as a foundation for the discussion on an interoperable authentication framework among AMS. Similarly, in recognition of the relationship between corporate registration, identity and authentication, the findings of the feasibility study on common business registration processes, forms and single company numbering system for ASEAN by the ASEAN Coordinating Committee on Micro, Small and Medium Enterprises (ACCMSME) can be taken into consideration in formulating the broader e-authentication framework.</p> | <p>Consultation with stakeholders.</p> <p>Completion of the feasibility study on common business registration by ACCMSME.</p> <p>Framework developed.</p> | <p>2023 – 2024</p> |

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| | The Framework will provide AMS with a common understanding of authentication technologies and policy guidance on how to strengthen interoperability across AMS. | | |
| 4. Interoperability Pilot Project to create mutual recognition between two or more AMS of chosen authentication approaches | <p>Based on the action plan of the ASEAN Framework for Interoperability of Authentication Technologies, a pilot study can be implemented for one of the activities (e.g. pilot test of interoperable digital IDs between two AMS). The use of the pilot project for the interoperability framework allows AMS requiring time to draft and implement the necessary domestic e-authentication to do so before participating in the pilot study.</p> <p>Results of the pilot study conducted with a select few AMS can inform the feasibility of ASEAN-wide interoperable e-authentication mechanism. AMS can work to solve operational challenges identified through the pilot study. Findings can also be used to revise the ASEAN Framework.</p> | <p>Number of participants across AMS determined.</p> <p>Scope, duration and extent of pilot project determined.</p> <p>Pilot project completed.</p> <p>Pilot report produced.</p> | 2025 |
| 5. Capacity Building Workshops to address knowledge and expertise gaps on e-authentication in alignment with the Agreement | <p>To maximise the utility of the Collaborative Repository List and the Guidance on Authentication LOA, capacity building workshops will aim to address any AMS authorities' knowledge and expertise gaps on e-authentication technologies. Relevant stakeholders include regulators, authentication service providers and other international bodies.</p> <p>Capacity building activities may take guidance from the planned Digital Identity</p> | <p>Relevant stakeholders identified, workshop guidelines formulated and workshops organised.</p> <p>Digital Identity Dialogue completed.</p> <p>AMS agencies to attend the workshops.</p> | 2021 - 2025 |

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| | <p>Dialogue, a capacity building event on digital IDs to be conducted by Singapore in 2022 under the ASEAN Digital Integration Framework Action Plan (DIFAP) (Outcome 18).</p> <p>These activities will build on the domestic capacities of agencies to adopt secure authentication methods. Agencies will keep abreast of developments in new authentication technologies and address emerging cyber threats related to authentication.</p> | | |
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B.2.2 AMS to ensure stakeholder socialisation and compliance with electronic authentication approaches.

| Activities | Rationale | Outcomes | Target Timeline for Completion |
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| <p>1. Annual Business Survey to include questions on businesses’ understanding and perceptions of e-authentication technologies and implementation models</p> | <p>The Survey is a recurring activity in some topics in the Work Plan and should be implemented by the ASEAN Business Advisory Council (ASEAN-BAC) with close coordination by the ACCEC. The Survey will identify practical gaps between common commercial or business practices and needs—especially within the MSME sector— and existing infrastructure and regulations.</p> <p>This data will highlight possible pain points in common across ASEAN, including identity proofing, electronic authentication and interoperable authentication infrastructure as they apply to cross-border business transactions. The data will also provide a grounded understanding of commercial and technological innovations</p> | <p>Annual Business Survey conducted.</p> <p>Survey reports describing and analysing trends, if any, identified from the annual surveys.</p> <p>Socialisation of Business Survey results with competent authorities, private sector and relevant stakeholders. Could also be facilitated through ASEAN Access Portal.</p> | <p>2022 – 2025 *To be coordinated with the ASEAN Business Advisory Council (ASEAN-BAC)</p> |

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| | <p>for authentication e-transactions.</p> | | |
| <p>2. Business Tool-Kit for using electronic authentication technologies and implementing authentication measures which do not hinder electronic commerce</p> | <p>While other activities concerning e-authentication relate to the legislative and enforcement roles of AMS authorities, the Tool-Kit targets businesses to encourage adoption of e-authentication technologies and compliance with regulations. The Tool-Kit shall present e-authentication information in a business-friendly way and be substantively consistent with the ASEAN Framework for Interoperability of Electronic Authentication Technologies. The ASEAN Coordinating Committee on Micro, Small and Medium Enterprises (ACCMSME) may assist in socialisation of the tool-kit, with possible publication on the ASEAN Access Portal.</p> <p>For instance, the Tool-Kit should provide technical guidance for businesses to upgrade their authentication methods and fend off security threats. Contents therein will also account for businesses' (particularly</p> | <p>Business Tool-Kit produced.</p> <p>Socialisation of Tool-Kit.</p> | <p>2023 *To be coordinated with the ASEAN Coordinating Committee on Micro, Small and Medium Enterprises (ACCMSME)</p> |

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| | <p>MSMEs) commercial concerns and operational realities.</p> | | |
| <p>3. E-Authentication Consumer Outreach Activities, such as marketing and outreach to share case studies through public events, forums and online videos or reference materials showing why e-authentication matters to consumers</p> | <p>This activity targets ASEAN consumers of e-commerce. Consumers might not understand the role and importance of e-authentication and enforceable laws on the same in relation to secure online transactions.</p> <p>These activities shed light on how such technologies contribute to a secure e-commerce environment to enhance consumer trust.</p> <p>For instance, consumers shall be informed through a public-private partnership marketing campaign (e.g. with an e-commerce platform) on the benefits of token-based authentication (case study) while engaging in digital trade across AMS. Language used in these activities will be geared towards the layperson’s understanding.</p> <p>Consumer engagement and trust in the e-commerce sector will also improve the ASEAN Consumer Empowerment Index (ACEI).</p> | <p>Scope, frequency and partners of activities determined.</p> <p>Outreach activities carried out.</p> | <p>2021 - 2025 *To be coordinated with the ASEAN Committee on Consumer Protection (ACCP)</p> |

B.3 Electronic Signatures

Desired Outcome: By 2025, ASEAN should have in place laws and regulations governing electronic signatures aligned with international standards and, through proper implementation and enforcement, recognise the legal validity of electronic signatures.

The desired outcome elevates AMS' underlying commitment in the Agreement to not deny the legal validity of e-signatures. While the Mapping Study revealed that most AMS' laws recognising e-signatures loosely refer to any of the UNCITRAL legislative texts, harmonisation based on the most updated provisions in the UN Convention on Electronic Communications is ideal. The desired outcome also highlights the need for proper implementation and enforcement of laws and regulations to ensure that the legal validity e-signatures is practically and commercially upheld.

Electronic Signatures: Background

What the Agreement says:

Article 7.2 (a) Except in circumstances otherwise provided under its law and regulations, a MS shall not deny the legal validity of a signature solely on the basis that the signature is in the electric form.

Note: Cambodia, Lao PDR and Myanmar shall not be obliged to implement subparagraph (a) for a period of five years after the date of entry into force of this Agreement.

What the Mapping Study showed:

The Mapping Study highlighted a relatively strong level of coverage for laws related to electronic signatures. A few AMS were categorised as partial, due to room for improvement in addressing legal implementation status.

Acknowledging that the topic has been addressed in most AMS to some extent, the Work Plan focuses on the modernising of existing measures to ensure alignment with the latest international instruments.

What ASEAN has done:

Other than the **ASEAN Work Programme on Electronic Commerce** which suggests the review of national laws and regulations covering e-signatures, the other relevant ASEAN initiative is the **Economic Blueprint 2025**. The Blueprint puts forward, among other suggested strategic measures, the development of an interoperable, mutually recognised, secure, reliable and user-friendly e-signature scheme. This Work Plan runs in tandem with these initiatives to uphold functional equivalence of written and electronic signatures for e-commerce transactions as the Agreement dictates and, ideally, enhance interoperable e-signature mechanisms in the e-commerce sector across all AMS. RCEP has similar requirements.

Useful international guidelines and/or standards:

As discussed in the topic of e-transactions, the **UNCITRAL Model Law on E-Commerce**⁴¹ is the most widely enacted text related to e-commerce which provides, among other rules,

⁴¹ https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-04970_ebook.pdf

provisions related to electronic signatures. However, the 1996 instrument was followed by the adoption of the **UNCITRAL Model Law on Electronic Signatures**⁴² in 2001 which updates provisions in the former. The **UN Convention on Electronic Communications**,⁴³ the latest relevant international instrument to be adopted, updates the provisions of both earlier Model Laws. In the light of the above, this Work Plan acknowledges the utility of AMS' collective ratification of the Convention to adopt similarly modernised domestic laws and regulations on e-signatures.

The **eIDAS Regulation's**⁴⁴ treatment of e-signatures in the EU has the potential to chart ASEAN's future track on interoperable and secure e-signatures beyond the activities proposed in this Work Plan. For instance, one of the preconditions of AMS' progress on an interoperable e-signatures scheme is definitional consistency, which in turn could draw on the EU's three levels of signature: 'simple' electronic signature, advanced electronic signature (digital signature) and qualified electronic signature. The eIDAS clarifies that the requirements of each level build on the requirements of the level below it.

B.3 Electronic Signatures: Objectives & Activities

| <p>Desired Outcome: By 2025, ASEAN should have in place laws and regulations governing electronic signatures aligned with international standards and, through proper implementation and enforcement, recognise the legal validity of electronic signatures.</p> | | | |
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| <p>The desired outcome elevates AMS' underlying commitment in the Agreement to not deny the legal validity of e-signatures. While the Mapping Study revealed that most AMS' laws recognising e-signatures loosely refer to any of the UNCITRAL legislative texts, harmonisation based on the most updated provisions in the UN Convention on Electronic Communications is ideal. The desired outcome also highlights the need for proper implementation and enforcement of laws and regulations to ensure that the legal validity e-signatures is practically and commercially upheld.</p> | | | |
| <p>B.3.1 All AMS have laws that accept the legal validity of a signature even when the signature is in electronic form.</p> | | | |
| Activities | Rationale | Outcomes | Target Timeline for Completion |
| <p>1. Laws Reporting Scheme under which AMS shall provide a national plan to align its e-signatures laws and regulations with any of the prescribed UNCITRAL legislative texts</p> | <p>The Scheme is a recurring or horizontal activity across the Work Plan to collect information on domestic legal and regulatory environments in the interest of transparency across AMS. The Scheme, in respect of this topic, ensures that AMS follow at least one internationally recognised legislative text (UNCITRAL</p> | <p>Submission of national plans by AMS.</p> <p>ACCEC will develop guidelines for the notification of laws and regulations on e-commerce related laws.</p> | <p>2021 – 2023</p> |

⁴² <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/ml-elecsig-e.pdf>

⁴³ https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-57452_ebook.pdf

⁴⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0910&from=EN>

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| | <p>Model Law on E-Commerce, UNCITRAL, Model Law on E-Signatures or the UN Convention on Electronic Communications).</p> <p>This arrangement decreases the variability of e-signature laws and regulations across AMS. Thus, businesses will face less compliance-related challenges while engaging in cross-border e-commerce.</p> <p>The national plans by AMS shall outline how (e.g legislative processes) AMS should align its laws and regulations with its chosen internationally recognised legislative text(s). If AMS have existing e-signatures laws, the national plan shall outline how AMS will update its laws based on prospective recognised international developments on e-signatures laws.</p> <p>The implementation of this activity should consider exceptions within the Agreement that give Cambodia, Lao PDR and Myanmar no obligation to implement Article 7.2 (a) on Electronic Signatures for a period of five years after the date of entry into force of the agreement.</p> <p>The Mapping Study is the first iteration of the Laws Reporting Scheme. The Mid-term review will allow for AMS to do a stocktake and ensure that countries previously categorised as ‘partial’ and ‘no’ under the Mapping Study have appropriate laws in place.</p> <p>The ACCEC plays an integral coordinating role to enhance alignment and transparency across AMS regulatory</p> | <p>Preparation and submission of Annual Reports by AMS to ACCEC.</p> <p>Publish e-commerce related laws in the ASEAN Trade Repository.</p> | |
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| | <p>frameworks. The ACCEC will develop guidelines for the notification of laws and regulations on e-commerce related laws. Annual Reports will also allow AMS to report to ACCEC on the status of their national plans to align their e-signature laws. Common obstacles highlighted from the report will form the basis of the Law Incorporation Workshops.</p> | | |
| <p>2. Law Incorporation Workshops with AMS to solve common problems in adopting UNCITRAL Model Law and possibly other international conventions like the UN Convention on Electronic Communications in domestic law and regulations</p> | <p>Although some AMS may model their e-transaction laws after instruments like the Model Law on E-Commerce or E-Signatures, the UN Convention on Electronic Communications contains the most updated model provisions governing e-signatures. AMS should strive to align their laws with these updated provisions. Revision of AMS' domestic e-signatures laws in alignment with current widely accepted standards in the Convention adds flexibility to carry out business via electronic means and simplifies the process of harmonising commercial practices regionally.</p> <p>The Workshops act as a platform to (i) discuss the annual reports of AMS under the Laws Reporting Scheme; (ii) identify any challenges in adopting the UN Convention on Electronic Communications; (iii) develop solutions for those legislative challenges and (iv) tackle common issues on the implementation and enforcement of e-signature laws.</p> <p>The Workshops can leverage the experience of AMS that</p> | <p>Determine AMS which have ratified the UNCITRAL Model Law and the UN Convention on Electronic Communications.</p> <p>Commencement of Workshops and led by the identified AMS.</p> <p>Capacity Building programme to provide technical and legal assistance in the development of laws conducted.</p> <p>Dialogue sessions to discuss and align with international practices.</p> | <p>2021 – 2023</p> |

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| | <p>have ratified the Convention to share suggested processes to aid ratification.</p> | | |
| <p>3. Annual Business Survey to include questions on businesses' perceptions on whether e-signatures have equivalent legal treatment as offline ones</p> | <p>The Survey is a recurring or horizontal activity in some topics in the Work Plan and should be implemented by the ASEAN Business Advisory Council (ASEAN-BAC) with close coordination by the ACCEC. The Survey will identify practical gaps between common commercial or business practices and needs—especially within the MSME sector— and existing infrastructure and regulations.</p> <p>This data will highlight any common pain points in how businesses experience the functional equivalence of electronic and traditional signatures in instances like admissibility in court or contract formation. For instance, private sector understanding of the difference between electronic and digital signatures can be discerned, and appropriately addressed in an addendum to future survey cycles. The data will also provide a grounded understanding of commercial and technological innovations relevant to e-signatures.</p> | <p>Annual Business Survey conducted.</p> <p>Survey reports describing and analysing trends, if any, identified from the annual surveys.</p> <p>Socialisation of Business Survey results with competent authorities, private sector and relevant stakeholders. Could also be facilitated through ASEAN Access Portal.</p> | <p>2022 – 2025 *To be coordinated with the ASEAN Business Advisory Council (ASEAN-BAC)</p> |

B.4 Electronic Payments

Desired Outcome: By 2025, ASEAN Member States shall encourage progress on the development of safe and secure, efficient and interoperable e-payment systems that facilitate e-commerce.

The desired outcome operationalises the Agreement's commitment for AMS to recognise the importance and encourage the use of safe and secure, efficient and interoperable e-payments system. Cross-border electronic payments are a crucial enabling component to drive growth in the ASEAN's digital economy. This can be supported by developing AMS' respective domestic payment systems as a necessary step in facilitating interlinkage of cross-border payment systems in the ASEAN region. The implementation of safe and secure, efficient and interoperable e-payment systems will contribute to creating an environment of trust and confidence in the use of e-commerce in the ASEAN region. The adoption of electronic payments reduces transaction cost and time for businesses, especially micro, small and medium sized enterprises (MSMEs), and also increases the convenience for consumers to make seamless online purchases through e-commerce. Aligned with the commitments under the Agreement, an objective under this topic seeks to establish a baseline through assessing the readiness of each AMS, in terms of capacity, infrastructure and regulation, to develop an interoperable ASEAN e-payments system. Further, by building on existing and exploring new ASEAN initiatives, AMS can accelerate progress on developing an e-payments system that is safe and secure, efficient and interoperable for both business-to-consumer (B2C) and business-to-business (B2B) transactions by 2025.

Electronic Payments: Background

What the Agreement says:

Article 9

1. MS recognise the importance of safe and secure, efficient and interoperable e-payments systems while taking into account the readiness of each MS in terms of capacity, infrastructure, and regulation of e-payment systems.
2. Each MS shall encourage the use of safe and secure, efficient and interoperable e-payment systems to facilitate e-commerce in accordance with its laws and regulations.

What the Mapping Study showed:

The Mapping Study highlighted a relatively strong level of coverage for laws related to Electronic Payments. A few of the AMS were categorised as partial, due to room for improvement in addressing legal implementation status.

Recognising the importance of the topic to driving growth in the digital economy, the Work Plan highlights the crucial role of cooperation among AMS to identify infrastructure limitations and other payment obstacles to implement an ASEAN interoperable electronic payment system.

What ASEAN has done:

In recent years, ASEAN has made considerable progress in expanding its repository of

initiatives and activities to improve financial inclusion and encourage the adoption of interoperable digital payment services, in line with one of the broader strategic goals of the **ASEAN Economic Blueprint**. However, what remains unclear is the implementation status of these initiatives and the level of alignment with the Agreement. This Work Plan harmonises these various initiatives under the banner of e-commerce and seeks to harness regional momentum in respect of this issue.

ASEAN's recently completed initiative is the **ASEAN Payments Policy Framework for Cross-Border Real-Time Retail Payments**, endorsed by AFMGM. The Working Committee on Payment and Settlement Systems (WC-PSS) has developed the Implementing Policy Guidelines (IPG) of the Framework, which includes an integral annex showing use cases of enabling technologies, clearing and settlement arrangements, etc. This Policy Framework has also been referenced in other ASEAN initiatives; the ASEAN Comprehensive Recovery Framework Implementation Plan proposes an implementation timeline of bilateral linkages for the Policy Framework under Initiative 4.d(1) (i.e., at least 2 AMS by 2021; at least 3 AMS by 2022; at least 4 AMS by 2023; and at least 5 AMS by 2024). Given the substantial work already undertaken by ASEAN to conceive and advance these initiatives, this Work Plan seeks to accelerate ASEAN-wide implementation of the Policy Framework to actualise cross-border real-time e-payments for the e-commerce sector across most AMS. Momentum in this area is not insignificant; Singapore and Thailand have fully implemented bilateral e-payment linkages and implementation is ongoing between Thailand and Lao PDR as well as between Thailand and Cambodia.⁴⁵

Another ASEAN initiative which this Work Plan has adopted for targeted development is the **Interoperable QR Code Framework** (Initiative 4.d(2) under the ASEAN Comprehensive Recovery Framework Implementation. Meanwhile, the **Policy Note on Digital Financial Literacy** would be instructive at a general level to improve financial literacy and inclusion in ASEAN and complement concurrent work.

In order to assess the readiness of each AMS in terms of capacity and infrastructure of e-payment systems as stated in the Agreement, the **ASEAN E-Payments Readiness Index**, proposed under Initiative 4.d(4) the **ASEAN Comprehensive Recovery Framework Implementation Plan**, provides this Work Plan with a suitable mechanism. Its counterpart, the **APEC E-Payments Readiness Index**,⁴⁶ is helpful in providing potential indicators for an ASEAN approach, given that the former included different business, technology, financial access and payments-specific variables which rest on four pillars of regulation and policy, infrastructure, demand and innovative products and services. AMS should decide what its own Index ought to measure and the ways in which measurement will take place.

Useful international guidelines and/or standards:

In the international fora, the World Economic Forum (WEF) has in recent years published several reports which can serve as a point of reference for AMS policymakers as they implement this Work Plan. As a conversation-starter, the White Paper entitled "**Addressing E-Payment Challenges in Global E-Commerce**"⁴⁷ details the opportunities the global e-commerce sector presents for small businesses and payment-related hurdles faced by

⁴⁵ <https://www.bot.or.th/English/PressandSpeeches/Press/2020/Pages/n0963.aspx>

⁴⁶ <https://www.apec.org/au/apec-fintech-e-payment>

⁴⁷ http://www.weforum.org/docs/WEF_Addressing_E-Payment_Challenges_in_Global_E-Commerce_clean.pdf

cross-border players dealing digitally. This White Paper was published as part of the wider public-private dialogue initiative entitled **“Enabling E-commerce.”**⁴⁸ The dialogue initiative involves the WTO, the WEF and the Electronic World Trade Platform (eWTP) and allows stakeholders to better understand how to enable MSME e-commerce around the globe while serving as a bridge between global e-commerce practice and policy.

Complementary research efforts focusing on the region include Hinrich Foundation’s report titled **“Increasing access and interoperability of cross-border e-payments in Asia”**⁴⁹ (focusing on MSMEs in its analysis of the growth of the cross-border retail payments market) and International Trade Centre’s guide entitled **“Electronic Payments: Guide of Legal, Regulatory Reforms and Best Practices for Developing Countries”**⁵⁰ (addressing regulatory principles, risk of legal uncertainty and e-payments services under international law). The extensive corpus of research on digital payments is a suitable international backdrop against which ASEAN may contextualise its own regional effort to implement the Work Plan.

Separately, WEF’s Insight Report entitled **“Connecting Digital Economies: Policy Recommendations for Cross-Border Payments”**⁵¹ provides a helpful examination of issues such as diverging standards, market barriers, security threats and lack of coordination on cross-border oversight to provide AMS officials with policymaking insight to remove any remaining obstacles they may overcome throughout the implementation of the Work Plan.

In respect of ASEAN’s long-term ambition to streamline cross-border payments and promote digital trade, certain international innovations such as the **Digital Economy Partnership Agreement (DEPA)**⁵² are especially helpful. DEPA establishes, among other things, new approaches and collaborations in digital trade issues, promotes interoperability between regimes and addresses new issues brought about by digitalisation. More interestingly, DEPA’s innovative modular design, with segmented modules covering discrete components within a broader issue area, could serve as a model for ASEAN to enhance the ways in which it cooperates beyond the Work Plan.

B.4 Electronic Payments: Objectives & Activities

As electronic payments is one of the priority areas and pillars identified under the **ASEAN Digital Integration Index (ADII)**, the recommended focus areas, based on the results of the Index, have been taken into consideration in developing the following objectives and activities.

Desired Outcome: By 2025, ASEAN Member States will have accelerated progress on the development of safe and secure, efficient and interoperable e-payment systems that facilitate e-commerce.

⁴⁸ <https://devsol.etradeforall.org/development-solution/world-economic-forum-digital-trade-project/>

⁴⁹ <https://www.hinrichfoundation.com/research/wp/digital/cross-payments-in-asia-deborah-elms/>

⁵⁰ https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=3796&context=scholarly_works

⁵¹ http://www3.weforum.org/docs/WEF_Connecting_Digital_Economies_2020.pdf

⁵² <https://www.mti.gov.sg/-/media/MTI/Microsites/DEAs/Digital-Economy-Partnership-Agreement/Text-of-the-DEPA.pdf>

The desired outcome operationalises the Agreement’s commitment for AMS to recognise the importance and encourage the use of safe and secure, efficient and interoperable e-payments system. Cross-border electronic payments are a crucial enabling component to drive growth in the ASEAN digital economy. The implementation of safe and secure, efficient and interoperable e-payment systems will contribute to creating an environment of trust and confidence in the use of e-commerce in the ASEAN region. The adoption of electronic payments reduces transaction cost and time for businesses, especially micro, small and medium sized enterprises (MSMEs), and also increases the convenience for consumers to make seamless online purchases through e-commerce. Aligned with the commitments under the Agreement, an objective under this topic seeks to establish a baseline through assessing the readiness of each AMS, in terms of capacity, infrastructure and regulation, to develop an interoperable ASEAN e-payments system. Further, by building on existing ASEAN initiatives, AMS can accelerate progress on developing an e-payments system that is safe and secure, efficient and interoperable for both business-to-consumer (B2C) and business-to-business (B2B) transactions by 2025.

B.4.1 AMS to cooperate in considering each AMS readiness for the implementation of safe and secure, efficient and interoperable e-payment systems.

| Activities | Rationale | Outcomes | Target Timeline for Completion |
|---|---|---|---|
| <p>1. Coordination with other sectoral bodies to ensure that discussion on the ASEAN E-Payments Readiness Index.</p> | <p>The Index— already included for delivery in the ASEAN Comprehensive Recovery Framework Implementation Plan (Initiative 4.d(4)) —will assess the readiness of each AMS in terms of capacity, infrastructure, and regulation of e-payment systems based on several pillars (regulatory and policy, infrastructure, demand and products and services). ACCEC should work closely with the Working Committee on Payment and Settlement Systems (WC-PSS) and the Working Committee on Financial Inclusion (WC-FINC) – as identified in the ACRF Implementation Plan – to consider the feasibility of the Index and subject matter areas to be measured as part of the Index.</p> <p>An aligned Index will actively contribute to AMS</p> | <p>Development and annual updates to the ASEAN E-Payments Readiness Index.</p> <p>Timeline and methodology for data-gathering determined.</p> <p>Annual updates to the Readiness Index.</p> | <p>2022-2025</p> <p>*To be coordinated with the Working Committee on Payment and Settlement Systems (WC-PSS) and the Working Committee on Financial Inclusion (WC-FINC)</p> |

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| | ability to identify obstacles and progress towards to the implementation of safe and secure, efficient and interoperable e-payment systems. | | |
| 2. Annual Business Survey to include questions on the safety, security, efficiency and interoperability of cross-border e-payment systems | <p>The Survey is a recurring or horizontal activity across the Work Plan and should be implemented by the ASEAN Business Advisory Council (ASEAN-BAC) with close coordination by the ACCEC. The Survey will identify practical gaps between common commercial or business practices and needs— especially within the MSME sector— existing infrastructure and regulations.</p> <p>This data will highlight any common pain points in electronic payment transactions and provide a grounded understanding of new commercial and technological innovations.</p> | <p>Annual Business Survey conducted.</p> <p>Survey reports describing and analysing trends, if any, identified from the annual surveys.</p> <p>Socialisation of Business Survey results with competent authorities, private sector and relevant stakeholders. Could also be facilitated through ASEAN Access Portal.</p> | <p>2022 - 2025</p> <p>*To be coordinated with the ASEAN Business Advisory Council (ASEAN-BAC)</p> |

B.4.2 Accelerate Progress On E-Payments Solutions by Building on Existing ASEAN Initiatives on E-Payments.

| Activities | Rationale | Outcomes | Target Timeline for Completion |
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| 1. Coordination with other sectoral bodies to ensure that the planned Implementation of the ASEAN Payments Policy Framework for Cross-Border Real Time Retail Payments between at least five AMS. | <p>The implementation of the Framework — already included under the ASEAN Comprehensive Recovery Framework Implementation Plan (Initiative 4.d(1)) — will promote financial inclusion through the implementation of an interoperable cross-border real-time retail payments system.</p> <p>ACCEC will therefore coordinate closely with Working Committee on Payment and Settlement Systems (WC-PSS) – as</p> | Encourage implementation of bilateral and/or multilateral linkages | <p>2022 – 2025</p> <p>*To be coordinated with the Working Committee on Payment and Settlement Systems (WC-PSS)</p> |

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| | identified in the ACRF Implementation Plan – to ensure that the outcomes of the Framework’s implementation accounts for the evolving challenges specifically associated with e-commerce and remains broadly aligned with the goals of the E-Commerce Agreement. | | |
| 2. Coordination with other sectoral bodies to ensure that the planned development and implementation of the ASEAN Interoperable QR Code Framework | <p>The interoperable framework – already included in the ASEAN Comprehensive Recovery Framework Implementation Plan (Initiative 4.d(2)) – will promote regional payment connectivity. The development of the framework and its accompanying implementation guideline will establish a harmonised approach to an interoperable e-payment system across ASEAN. Development of the framework should include input from the private sector (e.g. payment intermediaries, banks).</p> <p>ACCEC will ensure that implementation of the Framework by the Working Committee on Payment and Settlement Systems (WC-PSS) and the ASEAN Bankers Association – as identified in the ACRF Implementation Plan – aligns with the goals of the E-Commerce Agreement.</p> | <p>ASEAN Interoperable QR Code Framework developed.</p> <p>Guidelines on the implementation of the QR Code Framework developed.</p> <p>Full implementation of bilateral and/or multilateral linkages between at least four AMS.</p> | <p>2022 – 2025</p> <p>*To be coordinated with the Working Committee on Payment and Settlement Systems (WC-PSS) in collaboration with ASEAN Bankers Association</p> |

B.4.3 Development of solutions to remove emerging digital payment obstacles.

| Activities | Rationale | Outcomes | Target Timeline for Completion |
|---|--|--------------------------|--|
| 1. Ongoing monitoring of other e-payment obstacles otherwise unaddressed by | To avoid a narrow approach to e-payments, annual reports/workshops on the results of the | Annual reports conducted | 2023 - 2025 *To be coordinated with the |

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| <p>existing ASEAN frameworks and initiatives</p> | <p>Annual Business Survey and studies of emerging financial technology trends should be reviewed by the ACCEC, the Working Committee on Payment and Settlement Systems (WC-PSS) and the Working Committee on Financial Inclusion (WC-FINC).</p> <p>Based on the obstacles identified, ACCEC to coordinate with WC-PSS and WC-FINC to consider the need for further dialogue sessions to be held for AMS and relevant stakeholders, including private sector participation, to determine appropriate solutions to address cross border e-payment obstacles.</p> | <p>Workshops on issues concerning multiple sectoral bodies conducted.</p> <p>Dialogue sessions with relevant stakeholders including private sector participation conducted.</p> | <p>Working Committee on Payment and Settlement Systems (WC-PSS)</p> |
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B.5 Intellectual Property Rights in an Online Setting

Desired Outcome: By 2025, ASEAN should review existing intellectual property (IP) rights commitments with the view of ensuring that they apply in a digital setting to provide effective IP rights protection and enforcement.

Intellectual Property Rights in the Online Setting are instrumental to fostering innovations and future proofing ASEAN's digital economy. The desired outcome frames the Agreement's sole requirement for cooperation by AMS on IP rights as cooperation to review and enhance existing IP rights-related initiatives in ASEAN to better account for the digital world. The desired outcome leverages ASEAN's existing fora and resources on the matter of IP rights towards a necessary review of existing IP rights-related commitments. This ensures that concerns in the digital setting or the cross-border e-commerce context are continually addressed, and that AMS' authorities can more effectively protect and enforce IP rights of users of cross-border e-commerce.

Intellectual Property Rights in an Online Setting: Background

What the Agreement says:

The AMS commitment under the Agreement relating to intellectual property rights in an online setting is cooperative in nature. Article 6.1(h) provides that each MS "shall cooperate in areas including intellectual property (IP) rights."

What the Mapping Study showed:

The Mapping Study highlighted a relatively weak level of coverage for laws related to Intellectual Property Rights in an Online Setting. All AMS were classified to have 'partial' legislative coverage, as there was no specific reference to the protection of rights in an e-commerce or digital context. The complexity of the topic calls for the need for continued discussions and dialogue to identify and review the ongoing IP issues unique to the digital world.

What ASEAN has done:

Generally, ASEAN has had a productive history of cooperation on the matter of intellectual property rights. The primary ASEAN-wide framework on IP is the **ASEAN Intellectual Property Rights Action Plan (AIPRAP) 2016-2025** which proposed 19 initiatives under its four strategic goals. The Action Plan was created on the basis of ASEAN's long-standing commitment to promote cooperation on IP, captured in the **1995 Framework Agreement on IP Cooperation**. After the Mid-Term Review of the AIPRAP in 2020, the **ASEAN Working Group on IP Cooperation (AWGIPC)** agreed to add two new deliverables on online IP rights enforcement to tackle the emerging trends of online infringement. The revised version of the AIPRAP was presented to the Senior Economic Officials Meeting (SEOM) and endorsed in January 2021.

Indeed, other ASEAN initiatives, such as the **Economic Blueprint, Comprehensive Recovery Framework** and **Strategic Action Plan for SME Development**, recommend, among other things, the development of coordination mechanisms for IP enforcement in the digital environment and capacity-building programs on IP rights awareness. This Work Plan reiterates ASEAN's recognition of the importance of online or digital elements of IP rights protection and enforcement and ensures ongoing activities clearly incorporate those elements through multi-stakeholder engagement and continued review.

Useful international guidelines and/or standards:

There are several international benchmarks which may guide the implementation of the Work Plan to ensure its relevance to broader developments and innovations. The World Intellectual Property Organisation (WIPO) is the leading international forum for IP services, policy and cooperation. The Advisory Committee on Enforcement of WIPO, as one potentially relevant example, published a **Study on Approaches to Online Trademark Infringements**⁵³ which reviewed the problem of online counterfeits and synthesises common international approaches that have emerged to provide uniform guidance by listing joined-up principles uniformly observed in transnational approaches to voluntary anti-counterfeit measures.

Other useful regional benchmarks at the EU level include the **study on voluntary collaboration practices (VCPs) in addressing online infringements of trade mark rights, design rights, copyright and rights related to copyright**⁵⁴ authored by the EU IP Office. Another EU initiative, the **Southeast Asia IP SME Helpdesk**,⁵⁵ provides IP advice to European SMEs in Southeast Asia. The Helpdesk produced several how-to guides to, among other things, assist EU firms based in Southeast Asia secure effective evidence of IP infringement as well as remove counterfeit goods from e-commerce sites. The Helpdesk also runs an IP Enquiry Service for individual SMEs and intermediaries to submit IP enquiries to receive free and confidential first-line advice from a panel of experts. These resources may assist ASEAN in exploring ways to expand its IP cooperation efforts on the digital front beyond those found in existing ASEAN frameworks and this Work Plan.

In the private sector, companies have spearheaded collaborative efforts, such as the **Alibaba Group's Rights Holders Collaboration Summit**⁵⁶ in 2016 which gathered international brands, trade associations and the IP enforcement community in a forum. This Work Plan recognises efforts by private sector entities and attempts to replicate similar levels of engagement through multi-stakeholder discussion sessions embedded in existing ASEAN mechanisms, such as the meetings of the ASEAN Working Group on Intellectual Property Cooperation (AWGIPC) with invitations sent out to bodies like the ASEAN IP Association.

B.5 Intellectual Property Rights in an Online Setting: Objectives & Activities

Desired Outcome: By 2025, ASEAN should review existing intellectual property (IP) rights commitments with the view of ensuring that they apply in a digital setting to provide effective IP rights protection and enforcement.

Intellectual Property Rights in the Online Setting are instrumental to fostering innovations and future proofing ASEAN digital economy. The desired outcome frames the Agreement's sole requirement for cooperation by AMS on IP rights as cooperation to review and enhance existing IP rights-related initiatives in ASEAN to better account for the digital world. The desired outcome leverages ASEAN's existing fora and resources on the matter of IP rights towards a necessary review of existing IP rights-related commitments. This ensures that concerns in the digital setting

⁵³ https://www.wipo.int/edocs/mdocs/enforcement/en/wipo_ace_12/wipo_ace_12_9_rev_2.pdf

⁵⁴ https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/Research%20and%20udies/study_voluntary_collaboration_practices_en.pdf

⁵⁵ <https://www.southeastasia-iprhelpdesk.eu/>

⁵⁶ <https://www.alibabagroup.com/en/news/article?news=p160701>

or the cross-border e-commerce context are continually addressed, and that AMS' authorities can more effectively protect and enforce IP rights of users of cross-border e-commerce.

B.5.1 Ensure IP protection in the digital setting through review of ongoing activities and capacity building development.

| Activities | Rationale | Outcomes | Target Timeline for Completion |
|---|---|--|---|
| <p>1. Publication of an ASEAN Handbook on IP Rights in the Digital World</p> | <p>The Mapping Study revealed that IP rights protection and enforcement does not explicitly address concerns specific to digital trade. The Handbook will present to AMS' authorities and businesses a set of principles, best practices and redress mechanisms to provide guidance on the applicability of IP rights and enforcement in the context of cross-border e-commerce. This Handbook may be published on the ASEAN Access Platform.</p> <p>The ASEAN Working Group on IP Cooperation (AWGIPC) published an ASEAN IPR Enforcement Handbook as part of the ASEAN IPR Action Plan (AIPRAP) 2016-2025. While the published Handbook includes, among other things, domestic online enforcement mechanism for each AMS, the proposed Handbook in this activity may update or build on this previously published Handbook to develop, in greater detail, IPR regional enforcement in the context of cross-border e-commerce. Through further discussion and collaboration between ACCEC and AWGIPC, the proposed Handbook may complement the newly-added initiative 12.8 of the revised AIPRA which calls for the development of ASEAN</p> | <p>Handbook published.</p> <p>Socialisation of Handbook with private sector, especially MSMEs.</p> | <p>2022 *To be coordinated with the ASEAN Working Group on IP Cooperation (AWGIPC)</p> |

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| | <p>guidelines on IPR enforcement against online infringement.</p> <p>Targeted socialisation of the Handbook involving the private sector, with possible assistance from the ASEAN Coordinating Committee on Micro, Small and Medium Enterprises (ACCMSME), will promote greater business confidence in cross-border e-commerce, particularly where IP rights are concerned.</p> | | |
| <p>2. Annual Business Survey to include questions on the perceived adequacy and effectiveness of existing IP rights protection and enforcement in an online or digital setting</p> | <p>The Survey is a recurring or horizontal activity across the Work Plan, implemented by the ASEAN Business Advisory Council (ASEAN-BAC) with close coordination by the ACCEC. The Survey will identify practical gaps between common commercial or business practices and needs—especially within the MSME sector— and existing infrastructure and regulations.</p> <p>This data will highlight any common challenges faced by businesses and e-commerce platforms in protecting and enforcing their IP rights when engaging in cross-border digital trade.</p> | <p>Annual Business Survey conducted.</p> <p>Survey reports describing and analysing trends, if any, identified from the annual surveys.</p> <p>Socialisation of Business Survey results with competent authorities, private sector and relevant stakeholders. Could also be facilitated through ASEAN Access Portal.</p> | <p>2022 – 2025</p> <p>*To be coordinated with the ASEAN Business Advisory Council (ASEAN-BAC)</p> |
| <p>3. Explore the inclusion of multi-stakeholder discussion sessions on IP rights in a digital setting</p> | <p>This activity addresses the need for a dedicated forum for discussion of IP rights in a digital setting. With reference to private sector roundtables such as Alibaba’s Right Holders Collaboration Forum, there could be dedicated roundtables organised with relevant cross-industry private and public sector stakeholders. ACCEC is encouraged to coordinate closely with the ASEAN Working Group on Intellectual Property Cooperation (AWGIPC) for the</p> | <p>Proposed expansion of AWGIPC meetings’ agenda.</p> <p>Summaries of roundtable discussions published.</p> <p>Submission of the Annual Reports.</p> | <p>2022 – 2025</p> <p>*To be coordinated with the ASEAN Working Group on IP Cooperation (AWGIPC) and the ASEAN IP Association (AIPA)</p> |

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| | <p>latter to consider the proposed activity and determine which existing fora and/or task forces would be suited to coordinate the proposed roundtables. Additionally, ACCEC should also coordinate with AWGIPC to consider increasing existing engagement with the ASEAN IP Association (AIPA) to promote public-private partnership.</p> <p>The roundtables shall aim to address and solve common IP rights protection and enforcement problems as highlighted by businesses and e-commerce platforms. Concurrently, the roundtables shall enhance the capacity of AMS' IPR protection and enforcement in a digital setting.</p> <p>Based off the findings of the roundtables, Annual Reports allow AMS to track and report to ACCEC on any ongoing domestic legislative and consultative processes related to amending laws, regulations and redress mechanisms to provide IP rights protection and enforcement in a digital setting.</p> | | |
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B.6 Technology Neutrality

Desired Outcome: By 2025, ASEAN should agree to adopt the principle of technology neutrality for e-commerce.

The Agreement mandates AMS to recognise the importance of technology neutrality. To increase clarity on what the principle of technology neutrality means or how it applies to legal or regulatory regimes governing e-commerce, the desired outcome simply highlights the need for dialogue and alignment in this respect, which also responds to the generally weak level of coverage of laws related to technology neutrality across AMS.

Technology Neutrality: Background

What the Agreement says:

Article 5.4

MS shall endeavour to recognise the importance of the principle of technology neutrality and recognise the need for alignment in policy and regulatory approaches among MS to facilitate cross border e-commerce.

What the Mapping Study showed:

The Mapping Study highlighted a relatively weak level of coverage for laws related to technology neutrality. For most AMS that were classified to have ‘partial’ legislative coverage, there was no specific legislation recognising the principle, but existing legislations do not seem to specify a preference for specific technology either. However, most AMS also referenced their domestic laws based on the UNCITRAL Model, which includes provision on technology neutrality.

Useful international guidelines and/or standards:

Although the Agreement states that AMS should recognise the importance of the principle of technology neutrality, it remains unclear if ASEAN has previously deliberated on its approach to technology neutrality in any related fora and if so, whether a collective approach was recorded or subsequently adopted. As it stands, the **UN Convention on Electronic Communications**,⁵⁷ being the latest international instrument related to e-commerce laws, embodies the principle of technological neutrality. By virtue of the activities suggested in the earlier topics of this workstream, the desired outcome of collective adoption of the Convention by all AMS would include similar adoption of technology neutrality by each AMS in domestic laws.

Nonetheless, this Work Plan recognises a spectrum of approaches as regards technology neutrality (i.e. ‘minimalist’, ‘prescribed’ or ‘two-tier’) as reflected in other international or regional initiatives. In the light of that, this Work Plan encourages ASEAN to engage in a series of discussions to discuss how its identified priorities and goals relate to the application of technology neutrality to e-commerce.

B.6 Technology Neutrality: Objectives & Activities

Desired Outcome: By 2025, ASEAN should agree to adopt the principle of technology neutrality for e-commerce.

The Agreement mandates AMS to recognise the importance of technology neutrality. To increase clarity on what the principle of technology neutrality means or how it applies to legal or regulatory regimes governing e-commerce, the desired outcome simply highlights the need for dialogue and alignment in this respect, which also responds to the generally weak level of coverage of laws related to technology neutrality across AMS.

B.6.1 AMS to collaboratively adjust the scope of work on technology neutrality beyond 2025.

⁵⁷ https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-57452_ebook.pdf

| Activities | Rationale | Outcomes | Target Timeline for Completion |
|--|--|--|--------------------------------|
| <p>1. Laws Reporting Scheme under which AMS shall provide information on national plans to adopt the principle of technology neutrality</p> | <p>The Scheme is a recurring or horizontal activity across the Work Plan to collect information on domestic legal and regulatory environments in the interest of transparency across AMS. Based on the findings of the Mapping Study, some AMS have confirmed reference to international model laws or instruments that reflect the principle of technology neutrality.</p> <p>The collection of national plans by AMS will help ensure that all AMS have taken steps to adopt the principle of technology neutrality; this could be through referencing least one internationally recognised UNCITRAL legislative texts (UNCITRAL Model Law on E-Commerce or the UN Convention on Electronic Communications). Domestic adoption of the principle of technology neutrality is crucial before regional alignment based on a possible collective approach can be achieved.</p> <p>The Mapping Study is the first iteration of the Laws Reporting Scheme. The Mid-term review will allow for AMS to do a stocktake and ensure that countries previously categorised as ‘partial’ and ‘no’ under the Mapping Study have appropriate laws in place.</p> <p>The ACCEC plays an integral coordinating role to enhance alignment and transparency across AMS regulatory</p> | <p>Submission of national plans by AMS.</p> <p>ACCEC will develop guidelines for the notification of laws and regulations on e-commerce related laws.</p> <p>Preparation and submission of Annual Reports by AMS to ACCEC.</p> <p>Publish e-commerce related laws in the ASEAN Trade Repository.</p> | <p>2021 - 2023</p> |

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| | <p>frameworks. The ACCEC will develop guidelines for the notification of laws and regulations on e-commerce related laws. Annual Reports will allow AMS to track and report to ACCEC on any domestic legislative and consultative processes towards amending their laws and regulations to ensure that the principle of technology neutrality is adopted.</p> | | |
| <p>2. Annual Business Survey, which shall include questions inquiring whether businesses perceive technology neutrality to be upheld in commercial practice, other than circumstances related to government procurement</p> | <p>The Survey is another recurring or horizontal activity across this Work Plan, to be implemented by the ASEAN Business Advisory Council (ASEAN-BAC) with close coordination by the ACCEC. The Survey will identify practical gaps between common commercial or business practices and needs—especially within the MSME sector— and existing infrastructure and regulations.</p> <p>This data will highlight recurring viewpoints espoused by businesses on AMS’ technology neutrality models and implementation of the same in cross-border e-commerce.</p> | <p>Annual Business Survey conducted.</p> <p>Survey reports describing and analysing trends, if any, identified from the annual surveys.</p> <p>Socialisation of Business Survey results with competent authorities, private sector and relevant stakeholders. Could also be facilitated through ASEAN Access Portal.</p> | <p>2022 – 2025</p> <p>*To be coordinated with the ASEAN Business Advisory Council (ASEAN-BAC)</p> |
| <p>3. Technology Neutrality Roundtables to discuss the feasibility of different technology neutrality models and international best practices with a view to develop a commitment-based AMS approach</p> | <p>As the Mapping Study revealed, most AMS’ laws have limited reference to technology neutrality. The Roundtable shall be a platform for AMS to consider models of technology neutrality between AMS and outside of ASEAN. AMS’ own priorities and goals on technology neutrality will also be canvassed.</p> <p>With the input of private sector representatives, AMS shall agree on its collective</p> | <p>Agenda of roundtables determined, and roundtables conducted.</p> | <p>2023 - 2025</p> |

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| | <p>approach to reflecting the principle of technology neutrality in its laws, regulations and policy-making strategies. AMS may consider developing recommendations or guidelines on a collective approach to technology neutrality based on the discussions at the roundtables. Where possible, knowledge and expertise gaps relating to technology neutrality within each MS may also be addressed through capacity building sessions built into the agenda of the roundtables.</p> <p>The Roundtable shall also be a platform for AMS to review its commitment to technology neutrality with reference to developments in international guidelines and best practices.</p> | | |
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B.7 Competition

Desired Outcome: By 2025, ASEAN will ensure that competition policies clearly address digital cross-border activities and have continued application in a digital setting.

It is important for ASEAN to have competitive markets that allow consumers to get the best possible price and widest quality of goods and services. The desired outcome furthers the Agreement's goal to enable an effective legal and regulatory environment in furtherance of public interest and a competitive business environment. Cooperative review efforts by AMS on the extensive list of existing ASEAN initiatives on competition law and policy ensure that digital cross-border concerns are addressed while preventing duplication of work. The desired outcome also reflects the need for continued application of initiatives in the digital setting through multi-stakeholder dialogues to solve emerging regulatory challenges and account for new innovations.

Competition: Background

What the Agreement says:

Article 5.1 In the development and promotion of e-commerce, the role of each MS shall be geared towards providing and enabling legal and regulatory environment, providing a conducive and competitive business environment, and protecting the public interest.

Article 6.1 Each MS shall cooperate in areas including (i) competition.

What the Mapping Study showed:

The Mapping Study highlighted a relatively weak level of coverage for laws related to competition in a digital setting. All AMS were classified to have 'partial' legislative coverage as it was unclear if there was consideration of competition issues unique to the e-commerce or digital trade context embedded in domestic level competition laws and policies.

To ensure a competitive e-commerce environment, the Work Plan aims to improve domestic competition laws and policies to address anti-competitive behaviours in a digital setting through identification of common challenges and new innovations around the topic.

What ASEAN has done:

ASEAN has developed several initiatives to ensure the establishment of effective competition regimes in all AMS. The definitive ongoing initiative for competition law and policy is the **ASEAN Competition Action Plan 2025** which contains five strategic goals: (1) establishing effective competition regimes in all AMS; (2) strengthening the capacities of competition agencies; (3) putting in place regional cooperation arrangements; (4) fostering awareness on the field of competition; and (5) moving towards harmonization of competition policies and laws. The Action Plan, which builds off the wider strategic measures to establish effective competition policy in the **ASEAN Economic Blueprint 2025**, is overseen by the **ASEAN Experts Group on Competition (AEGC)**. The **ASEAN Regional Capacity Building Roadmap for Competition 2017-2020**, which concluded in 2020 and the **ASEAN Regional Building Roadmap for Competition 2021-2025**, to be completed in 2021 have also established gaps in capacity existing across AMS with recommendations for capacity building in individual AMS.

Other ASEAN instruments which reference the need for strengthened competition regimes include the **ASEAN Digital Masterplan 2025** which suggests several initiatives to deepen collaboration between ICT and competition regulatory authorities and improve competitiveness in the digital economy. The **ASEAN Capacity Building Roadmap for Consumer Protection**, which recognises the need to make consumer and competition law work together, identifies several initiatives to that end. Although ASEAN has on its plate a promising repository of initiatives to enhance competition law and policy, it is unclear if the initiatives account for the unique needs of the digital economy or account for key competition challenges in the e-commerce sector.

Similarly, while ASEAN has produced a remarkable list of resources on competition law and policy, it is unclear if such resources were prepared to adequately cover present and prospective challenges in regulating e-commerce and the digital economy. Such resources include the **ASEAN Regional Guidelines on Competition Policy** (a reference guide containing different policy and institutional options that include international best practices), the **ASEAN Self-Assessment Toolkit on Competition Enforcement and Advocacy**, **Handbook on Competition & E-Commerce in ASEAN** and **Handbook on Competition Policy and Law in ASEAN for Business**.

Given ASEAN's encouraging array of past and present initiatives to advance effective competition law and policy, this Work Plan focuses on reviewing the adequacy of these initiatives in incorporating digital elements, and where possible, accelerate their implementation. Recognising the fast-paced nature of the e-commerce sector where technological changes can present new challenges for enforcement, the Work Plan also provides for continued identification of such challenges with a view to incorporate solutions to those challenges in ongoing initiatives and resources.

Useful international guidelines and/or standards:

To aid this future-proofing process, there are several helpful international guidelines. The OECD Competition Committee produced an **Executive Summary of the Roundtable on Implications of E-Commerce for Competition Policy** in 2018.⁵⁸ The Roundtable sought to examine the potential antitrust challenges posed by the continuing growth of online retail channels. Recommendations found in studies from the UK's Digital Competition Expert Panel⁵⁹ and the French Competition Authority,⁶⁰ such as the creation of a specific digital economy unit in the competition agency,⁶¹ may also be instructive for possible changes at the domestic level. Similarly, reports from the different **Working Groups of the International Competition Network** may assist ASEAN in cooperative efforts beyond the Work Plan.

B.7 Competition: Objectives & Activities

58

[https://one.oecd.org/document/DAF/COMP/M\(2018\)1/ANN3/FINAL/en/pdf?_ga=2.257636616.267712228.1621490303-1868827019.1621490302](https://one.oecd.org/document/DAF/COMP/M(2018)1/ANN3/FINAL/en/pdf?_ga=2.257636616.267712228.1621490303-1868827019.1621490302)

59

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785547/unlocking_digital_competition_furman_review_web.pdf

⁶⁰ <https://www.autoritedelaconurrence.fr/sites/default/files/concurrence-commerce-en-ligne-en.pdf>

⁶¹ <https://www.autoritedelaconurrence.fr/en/press-release/autorite-creates-digital-economy-unit>

Desired Outcome: By 2025, ASEAN will ensure that competition policies clearly address digital cross-border activities and have continued application in the digital setting.

It is important for ASEAN to have competitive markets that allow consumers to get the best possible price and widest quality of goods and services. The desired outcome furthers the Agreement’s goal to enable an effective legal and regulatory environment in furtherance of public interest and a competitive business environment. Cooperative review efforts by AMS on the extensive list of existing ASEAN initiatives on competition law and policy ensure that digital cross-border concerns are addressed while preventing duplication of work. The desired outcome also reflects the need for continued application of initiatives in the digital setting through multi-stakeholder dialogues to solve emerging regulatory challenges and account for new innovations.

B.7.1 Establish an ASEAN-wide approach to addressing competition issues in e-commerce and the digital environment.

| Activities | Rationale | Outcomes | Target Timeline for Completion |
|---|---|--|---|
| <p>1. Develop ASEAN Investigation Manual on Competition Policy and Law (CPL) for the Digital Economy</p> | <p>The Manual is to be delivered by the ASEAN Experts Group on Competition (AEGC) in 2022 to detail enforcement strategies and tools for AMS. A review is in order in 2025 to ensure that its contents continue to account for unique online aspects of competition. The manual could be updated if new developments arising from the digital economy renders the manual obsolete.</p> <p>ACCEC shall work with the AEGC to ensure that the review of the Manual aligns with the evolving regulatory needs of the e-commerce sector.</p> | <p>Development of the manual</p> | <p>2022</p> <p>*To be coordinated with the ASEAN Experts Group on Competition (AEGC)</p> |
| <p>2. Conduct Annual Business Survey to measure the perceived adequacy of existing competition laws and policies in the e-commerce sector, with particular attention to the views of MSMEs</p> | <p>The Survey is a recurring or horizontal activity across the Work Plan, conducted and implemented by the ASEAN Business Advisory Council (ASEAN-BAC) with close coordination by the ACCEC. The Survey, in conjunction with the ASEAN Competition Business Perception Index held every five years by the</p> | <p>Conduct annual survey report to be published on ASEAN Access Portal</p> <p>Proportion of MSME correspondents in the total number of survey recipients in the annual business survey</p> | <p>2022 – 2025</p> <p>*To be coordinated with the ASEAN Business Advisory Council (ASEAN-BAC) and the ASEAN Experts</p> |

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| | <p>ASEAN Experts Group on Competition (AEGC), will periodically identify practical gaps between common commercial or business practices as well as existing laws.</p> <p>This data will highlight recurring viewpoints espoused by businesses on the regulatory landscape and the effectiveness of the competition regimes that apply to digital trade and e-commerce across AMS.</p> | | <p>Group on Competition (AEGC)</p> |
| <p>3. Adding explicitly digital economy elements into the technical assistance activities under the ASEAN Experts Group on Competition (AEGC)</p> | <p>This activity expands the scope of technical assistance activities conducted by the AEGC by including explicit digital economy elements to the agenda and or content of their activities.</p> <p>The technical assistance activities may consist of: (i) workshops, (ii) training courses, (iii) conferences and seminars, including the ASEAN Competition Conference (ACC), (iv) e-learning materials.</p> | <p>Scope of technical assistance activities expanded</p> <p>Activities held</p> | <p>2022 – 2025 *To be coordinated with the ASEAN Experts Group on Competition (AEGC)</p> |

5.4 Consumer Focus Workstream

Strengthening consumer confidence and participation is necessary to achieve the goal of a leading digital economy. The role consumers play is essential not only in ensuring competitive markets for businesses but also allowing the entire digital economy to thrive. The Agreement contains a variety of commitments and cooperation pledges that are relevant for consumers. As noted above, topics currently gathered under this workstream may also be relevant for businesses, involve cross-border coordination, and likely include enablers like capacity building and stakeholder engagement. Four particular aspects of the Agreement are considered here as a part of the Workstream on Consumer Focus: Consumer Protection (C.1), Alternative Dispute Resolution for E-Commerce (C.2), Personal Data Protection and Privacy (C.3) and Cybersecurity (C.4). The implementation activities for each are addressed in turn.

C.1 Consumer Protection

Desired Outcome: By 2025, ASEAN will endeavour to enhance consumer protection in the online and digital environment

In order to increase growth in AS digital economy, it is integral to facilitate greater consumer trust in the region. The desired outcome recognises the effects of the Agreement which puts forth that AMS should have enabling legal and regulatory frameworks that are transparent, consistent, and effective in providing e-commerce users a high level of protection. The objectives of the Agreement on creating an environment of trust and confidence in the use of e-commerce in the ASEAN region are also echoed in the desired outcome. Due to the cross-border nature of e-commerce and digital trade, a harmonised approach to standards through the establishment of the ASEAN Trust Mark Scheme, alongside other socialisation activities, will also provide consumers with the security and confidence to engage on e-commerce platforms.

Consumer Protection: Background

What the Agreement says:

Article 6.1 Each MS shall cooperate in areas including:

c) online consumer protection

Article 7.3 Online Consumer Protection

(a) MS recognise the importance of adopting and maintaining transparent and effective consumer protection measures for e-commerce as well as other measures conducive to the development of consumer confidence.

(b) Each MS shall provide protection for consumers using e-commerce that affords a similar level of protection to that provided for consumers of other forms of commerce under its relevant laws, regulations and policies.

Note: Cambodia, Lao PDR and Myanmar shall not be obliged to implement subparagraph (b) for a period of five years after the date of entry into force of this agreement.

- (c) MS recognise the importance of cooperation between their respective competent authorities in charge of consumer protection on activities related to e-commerce in order to enhance consumer protection.

What the Mapping Study showed:

The Mapping Study highlighted a relatively strong level of coverage for laws related to Consumer Protection. For most of the AMS categorised as ‘partial,’ a general omnibus legislation on consumer protection exists, but many do not contain explicit reference to online transactions.

There is a wide variability in the level of implementation of the laws and explicit references to consumers using e-commerce. Therefore, the objectives and activities in the Work Plan will go beyond legal frameworks and seek to facilitate greater consumer trust and confidence on activities related to e-commerce. The activities proposed are intended to increase socialisation and engagement with consumers in the design of consumer protection measures in the region.

What ASEAN has done:

ASEAN has already in place multiple political commitments and initiatives on the topic of consumer protection under its various master plans and frameworks. **The ASEAN Economic Blueprint 2025** put forward strategic measures that specify intensifying the implementation of consumer protection mechanisms. These are further detailed under the **ASEAN Strategic Plan for Consumer Protection 2016-2025**. A broad range of initiatives are suggested which range from *modernizing legislation* to *enhancing consumer knowledge through the development of handbooks* to *developing an ASEAN Consumer Empowerment Index*. This is complemented by the **ASEAN Capacity Building Roadmap for Consumer Protection 2020-2025** which identifies needs from the **ASEAN Strategic Action Plan for Consumer Protection 2016-2025** and the **ASEAN High Level Principles on Consumer Protection**. The roadmap identifies 10 key capacity needs and recommends activities to meet those needs. This includes Policy and Legislative Development; E-Commerce; Effective Consumer Law Enforcement; The Development and Engagement of Non-Government Consumer Organisation; and Educating, Empowering and Informing Consumer. However, despite the expansive list of consumer protection-related initiatives, it remains unclear the extent to which these collectively capture the unique challenges of consumer protection in the digital setting or the e-commerce or digital services sectors.

This Work Plan represents an opportunity to extend the scope of existing ASEAN Initiatives and activities related to Consumer Protection to clearly address online elements and ensure commitments on the same are executed by the relevant implementing bodies. This Work Plan complements existing ASEAN and national activities to address specific e-commerce needs. Moreover, given the importance of consumer trust in the digital economy, the Work Plan will have to go beyond existing ASEAN initiatives and activities related Consumer Protection and establish ASEAN-wide mechanisms that increase consumer confidence. Because this is evolving rapidly ASEAN may wish to consider future capacity building activities on consumer law and e-Commerce, looking into online scams, and online consumer law investigation training.

The **ASEAN Work Programme on Electronic Commerce 2017-2025**, the **ASEAN Digital Masterplan 2025** and the **ASEAN Comprehensive Recovery Framework** all put forward

strengthening consumer protection as a key priority. In addition, the **ASEAN Online Business Code of Conduct**, **Handbook on ASEAN Consumer Protection Laws and Regulation** have been developed and the **ASEAN Guidelines on Accountabilities and Responsibilities of E-Marketplace Providers** includes consumer protection as one of the principles that e-marketplace providers are encouraged to consider. The ASEAN Comprehensive Recovery Framework includes developing an **ASEAN-wide recognised Trust Mark** to be given to businesses who commit to the ASEAN Online Business Code of Conduct.

The **ASEAN Consumer Association Network (ACAN)** was also established to allow domestic AMS consumer associations to share knowledge and exchange best practices on how to address and managing consumer protection challenges in the region.

Given the extensive efforts already ongoing by other ASEAN sectoral bodies, the activities proposed under this topic are to be viewed in a **collaborative nature**, to **complement existing initiatives of the ASEAN Committee on Consumer Protection (ACCP)**. The ACCP has begun work for the development of ASEAN Guidelines on Consumer Protection in E-commerce. Furthermore, the ACCP is in the process of developing ASEAN Guidelines on Online Dispute Resolution (“ODR”). The first draft of the ASEAN Guidelines on ODR, which was circulated to AMSs on 28 July 2021, covers a wide scope of areas, including legal and procedural issues relating to ODR). The overlap in scope suggests the importance of sustained communication and alignment of goals between ACCEC and ACCP.

Acknowledging the cross-border nature of e-commerce, this Work Plan also recognises that it is important that online consumer protection approaches take into account developments related to ASEAN’s online dispute resolution (ODR) mechanism to ensure that an effective and efficient mechanism is in place that meets the needs of consumers using e-commerce.

Useful international guidelines and/or standards:

There are several international guidelines on Consumer Protection. The **UN Guidelines for Consumer Protection (UNGCP)**,⁶² which was most recently revised in 2015, details principles which enable effective consumer protection legislation and regulations, enforcement institutions and redress systems. A chapter (I) on e-commerce was added as part of the revised Guidelines. The **Intergovernmental Group of Experts on Consumer Law Protection and Policy** is the institutional mechanism for monitoring compliance with the Guidelines. To support the implementation of the UNGCP, the **UNCTAD Manual on Consumer Protection**⁶³ was published in 2017 as the first comprehensive international reference in the field of consumer protection. The Manual assists developing countries in modernising their choice of policy and adopting practical tools to promote consumer protection and welfare. The **OECD Recommendation on Consumer Protection in Electronic Commerce**,⁶⁴ revised in 2016, included emerging trends and challenges faced by consumers. Recommendations apply to B2C e-commerce and promote stakeholder engagement to implement the principles found in the Recommendations. The **International Consumer Protection and Enforcement Network (ICPEN)** is an organisation composed of consumer protection law enforcement authorities. The Network encourages cooperation between agencies to increase the impact of consumer

⁶² https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf

⁶³ https://unctad.org/system/files/official-document/ditccplp2017d1_en.pdf

⁶⁴ <https://www.oecd.org/sti/consumer/ECommerce-Recommendation-2016.pdf>

laws and regulations by providing a forum for regular contact regarding consumer protection concerns between agencies.

C.1 Consumer Protection: Objectives & Activities

| <p>Desired Outcome: By 2025, ASEAN will endeavour to enhance consumer protection in the online and digital environment</p> | | | |
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| <p>In order to increase growth in ASEAN's digital economy, it is integral to facilitate greater consumer trust in the region. The desired outcome recognises the effects of the Agreement which puts forth that AMS should have enabling legal and regulatory frameworks that are transparent, consistent, and effective in providing e-commerce users a high level of protection. The objectives of the Agreement on creating an environment of trust and confidence in the use of e-commerce in the ASEAN region are also echoed in the desired outcome. Due to the cross-border nature of e-commerce and digital trade, a harmonised approach to standards through the establishment of the ASEAN Trust Mark Scheme, alongside other socialisation activities, will also provide consumers with the security and confidence to engage on e-commerce platforms.</p> | | | |
| <p>C.1.1 All AMS shall enhance consumer protection in e-commerce</p> | | | |
| Activities | Rationale | Outcomes | Target Timeline for Completion |
| <p>1. Laws Reporting Scheme under which AMS shall determine a plan of action to ensure that existing consumer protection laws and regulations contain clear references to e-commerce</p> | <p>The Laws Reporting Scheme is a recurring or horizontal activity across the Work Plan to collect information on domestic legal and regulatory environments in the interest of transparency across AMS.</p> <p>Based on the findings of the Mapping Study and to meet the obligations set out in the Agreement, all AMS should determine a plan of action to amend laws and regulations to clearly reference e-commerce to help ensure similar levels of protection between consumers using e-commerce and other forms of commerce.</p> <p>This activity complements Initiative 1.3.1 under the ASEAN Strategic Plan for Consumer Protection (ASAPCP) 2016-2025 which outcome aims for AMS's</p> | <p>Approach to amending laws and regulation to contain clear reference to e-commerce determined.</p> <p>Submission of national plans by AMS.</p> <p>ACCEC will develop guidelines for the notification of laws and regulations on e-commerce related laws.</p> <p>Preparation and submission of Annual Reports by AMS to ACCEC.</p> <p>Publish e-commerce related laws in the ASEAN Trade Repository.</p> | <p>2021-2023</p> |

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| | <p>consumer protection legislation to be modernised and contain provisions on areas <i>including e-commerce</i>.</p> <p>The implementation of this activity should consider exceptions within the Agreement that give Cambodia, Lao PDR and Myanmar no obligation to implement Article 7.3 (b) on Online Consumer Protection for a period of five years after the date of entry into force of the agreement.</p> <p>The Mapping Study is the first iteration of the Laws Reporting Scheme. The Mid-term review will allow for AMS to do a stocktake and ensure that countries previously categorised as ‘partial’ and ‘no’ under the Mapping Study have consumer protection laws in place that provide clear references to e-commerce.</p> <p>The ACCEC plays an integral coordinating role to enhance alignment and transparency across AMS regulatory frameworks to ensure existing consumer protection legislations and policies clearly apply to the digital economy. The ACCEC will develop guidelines for the notification of laws and regulations on e-commerce related laws. Annual Reports will allow AMS to track and report to ACCEC on any domestic legislative and consultative processes towards amending their laws and regulations to ensure that consumers using e-commerce are provided a similar</p> | | |
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| | protection as consumers using other forms of commerce. | | |
| 2. Integrating e-commerce considerations in the Handbook on ASEAN Consumer Protection Laws and Regulations | <p>The Handbook on ASEAN Consumer Protection Laws and Regulations is initiative 2.2.1 under the ASAPCP 2025.</p> <p>This activity will ensure e-commerce considerations are incorporated into that Handbook.</p> | <p>Integrate a section on consumer protection in the digital economy into the Handbook.</p> <p>Upload the Handbook on the ASEAN Access Portal</p> | <p>2021</p> <p>*To be led by ACCP</p> |
| 3. Conduct capacity building activities on consumer law and e-Commerce, looking into online scams, and online consumer law investigation training | <p>The Capacity building activities are initiative 2.1.1 under the ASAPCP 2025.</p> <p>The capacity building activities will include both a regional ASEAN component and national building block activities.</p> <p>The activities are key to strengthening AMS ability to promote consumer welfare in a manner relevant to their domestic needs and build up effective and efficient consumer protection regimes.</p> | Conduct capacity building activities | <p>2021-2025</p> <p>*To be led by ACCP</p> |

C.1.2 Ensure effective socialisation and engagement of consumer confidence-focused activities.

| Activities | Rationale | Outcomes | Target Timeline for Completion |
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| 1. Review questionnaire for ASEAN Consumer Empowerment Index to include questions on consumer confidence, protection, and trust in e-commerce settings | <p>The ASEAN Consumer Empowerment Index is an initiative (4.2) under the ASEAN Strategic Action Plan for Consumer Protection (ASAPCP) 2016-2025.</p> <p>The questionnaire will periodically capture ASEAN consumers' perceived confidence on protection provided in e-commerce settings. Data collected will provide a grounded view of</p> | <p>Review of questionnaire every 3 years</p> <p>Conduct the questionnaire every 3 years</p> <p>Update the questionnaire every 3 years.</p> <p>Socialisation of ASEAN Consumer Empowerment Index in alignment with</p> | <p>2022 - 2025</p> <p>*To be coordinated by ACCP</p> |

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| | <p>evolving consumer protection challenges and inform the development of e-commerce focused activities that enhance consumer protection.</p> <p>The activity under this work plan builds on existing efforts on the index. Based on the results of the Index, stakeholder engagement activities should be organised to include the ASEAN Consumer Associations Network, competent authorities, private sector and additional stakeholders in the development of effective consumer protection laws that address consumers' and businesses' concerns.</p> <p>The results of the Index will also advance existing consumer education activities to address the gaps identified.</p> | <p>activities under the ADGSOM track,</p> | |
| <p>2. Expand the scope of ASEAN Consumer Association Network to strengthen consumer advocacy for e-commerce users</p> | <p>Established in 2018, the ASEAN Consumer Association Network (ACAN) allows domestic AMS consumer associations to share knowledge and exchange best practices on how to address and managing consumer protection challenges in the region.</p> <p>This activity proposes an expansion of the scope of the ACAN to strengthen ASEAN e-commerce consumer advocacy related activities. ACAN should review ASEAN's ongoing efforts to promote online consumer protection and identify priority areas to facilitate and promote</p> | <p>Scope of ASEAN Consumer Association Network (ACAN) expanded.</p> | <p>2022 *To be coordinated by ACCP</p> |

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| | <p>consumer confidence based on the needs of e-commerce users.</p> <p>The new scope of ACAN will increase the socialization and engagement of ASEAN e-commerce consumer confidence-focused activities. The ACAN can also provide practical inputs to ongoing activities that will help build consumer trust and confidence in ASEAN's digital economy.</p> | | |
| <p>3. Guidelines for the Implementation of the ASEAN Trust Mark Scheme</p> | <p>The ASEAN Trustmark Scheme is an initiative under the ASEAN Comprehensive Recovery Framework which aims to promote the application and adherence of the ASEAN Online Business Code of Conduct. The ACCEC should closely coordinate with the ACCP to ensure the implementation of this activity.</p> <p>The Guidelines will: (i) outline the scope, content, enforcement, monitoring and business requirements for the implementation of the Trust Mark scheme and (ii) identify regulatory and capacity gaps using the Mapping Study as a baseline.</p> <p>The guidelines may draw inspiration from ongoing domestic Trust Mark schemes in AMS.</p> | <p>Develop guidelines for the Implementation of ASEAN Trust Mark Scheme.</p> <p>Socialization of Trust Mark Scheme with MSMEs and consumers.</p> | <p>2022</p> |
| <p>4. Develop the ASEAN Guidelines on Consumer Protection in E-Commerce</p> | <p>The Guidelines on Consumer Protection in E-Commerce are deliverable 1.3.1 under the ASAPCP 2025.</p> | <p>Publish guidelines</p> | <p>2022 *To be led by ACCP</p> |

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| | <p>This activity will support outcome 1.3 under the ASAPCP to ensure AMS consumer protection legislation are modernized and contain provisions on unfair contract terms; e-commerce; product liability/safety and consumer data privacy.</p> | | |
| <p>5. Integrate e-Commerce Considerations into the ASEAN Guidelines on Unfair Contract Terms and the ASEAN Guidelines on Product Safety and Regulations</p> | <p>The integration of e-Commerce elements into the ASEAN Guidelines on Unfair Contract Terms and the ASEAN Guidelines on Product Safety and Regulations supports deliverable 1.3.1 under the ASAPCP.</p> <p>The activity will allow AMS to modernize consumer protection legislation (taking into account the high-level principles and peer reviews) of relevant provisions of national consumer protection legislation in the areas of unfair contract terms and product liability/safety.</p> | <p>Publish the Guidelines</p> | <p>2023 – 2024 *To be led by ACCP</p> |
| <p>6. Developing interactive and distance-learning e-learning modules for consumers</p> | <p>The development of interactive and distance-learning e-learning modules for consumers is deliverable 2.2.3 of the ASAPCP.</p> <p>As part of the activity AMS will adapt of ASEAN training materials as on-line education tools that can be used by consumer associations for training of trainers</p> | <p>Develop four online modules</p> | <p>2021 *To be led by ACCP</p> |
| <p>7. Promoting Regional Information Campaign (RIC) on Online</p> | <p>The promotion of a Regional Information Campaign (RIC) on Online</p> | <p>Promote the RICs</p> | <p>2021-2023 *To be led by ACCP</p> |

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| <p>Shopping, Deceptive Advertisement and Redress Scheme</p> | <p>Shopping, Deceptive Advertisement and Redress Scheme supports outcome 2.2.5 of the ASAPCP.</p> <p>The activity will support the development of national and regional awareness campaigns that enhance consumer knowledge and advocacy in the online space.</p> | | |
| <p>8. Integrating e-Commerce considerations into the development of the ODR Guidelines</p> | <p>The integration of e-Commerce considerations into the development of the Online Dispute Resolution (ODR) guidelines supports initiative 3.2.2 under the ASAPCP.</p> <p>The establishment of an ASEAN ODR system will be supported by the development of criteria and guidelines for ODR operationalization.</p> | <p>Develop the ODR guidelines</p> | <p>2021 *To be led by ACCP</p> |
| <p>9. Integrating e-Commerce Consideration into the Report on the needs and gaps on the access to dispute resolution and redress systems in ASEAN</p> | <p>The Report on the needs and gaps on the access to dispute resolution and redress systems in ASEAN is part of initiative 3.2.2 under the ASAPCP.</p> <p>By integrating e-Commerce considerations into the report this activity will strengthen the ability of AMS to develop concrete mechanisms for implementation of consumer protection and consumer redress.</p> | <p>Develop the Report on the needs and gaps</p> | <p>2023 *To be led by ACCP</p> |
| <p>10. Integrating e-Commerce Consideration into the voluntary peer reviews of consumer protection laws in selected AMS</p> | <p>Voluntary peer reviews of consumer protection laws in all AMS is initiative 1.2.1 under the ASAPCP.</p> <p>The voluntary peer review aims to enhance effectiveness of the work of</p> | <p>Integrate e-commerce considerations in the peer review reports</p> | <p>2025 *To be led by ACCP</p> |

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| | <p>the ACCP and promote ASEAN cooperation on consumer policy issues.</p> <p>The process will consist of the needs, capacity and performance of volunteering countries. The process is to be organized under the ACCP to promote exchange of experiences, knowledge and best practices.</p> | | |
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C.2 Alternative Dispute Resolution for E-Commerce

Desired outcome: By 2025, ASEAN will endeavour to facilitate the use of harmonized alternative dispute resolution mechanisms to resolve claims in the digital space.

To increase trust in ASEAN's leading digital community, e-commerce consumers need a mechanism to address digital and e-commerce disputes, particularly for cross-border complaints. The recent rise of digital technologies has also led to the increase of alternative and online dispute resolution mechanisms, however, given the novelty of the technologies and mechanisms available, little is known about the effectiveness of existing mechanisms in resolving claims unique to e-commerce. To strengthen AMS' ability to facilitate the use of alternative dispute resolution mechanisms (ADR), the Work Plan's desired outcome and proposed objective aims to build on the cooperative efforts and strengthen knowledge sharing among AMS to increase the facilitation of resolution of e-commerce claims.

Alternative Dispute Resolution for E-Commerce: Background

What the Agreement says:

Article 5.3 Each MS shall encourage the use of alternative dispute resolution to facilitate the resolution of claims over e-commerce transactions.

What the Mapping Study showed:

The Mapping Study has highlighted a relatively weak level of coverage for laws related to ADR for e-commerce claims. Most of the members have been categorised as 'partial' for this topic. This is due to the fact that some might not have appropriate ADR mechanisms in place, for some it seems unclear if the existing ADR mechanism addresses all e-commerce related topics, and for some AMS, the legislation is still in draft form.

Therefore, the objectives and activities in this Work Plan seeks to address some of the gaps identified in the Mapping Study. Given the evolving developments in this space, the activities proposed are intended to stimulate discussions to reach a consensus about the potential of establishing an ASEAN-wide ADR mechanism that applies to the digital world.

What ASEAN has done:

ASEAN has already in place multiple political commitments and initiatives on the topic of ADR under its various master plans and frameworks including at the domestic level. The **ASEAN Economic Blueprint 2025** and **ASEAN Work Programme on Electronic Commerce 2017-2025** put forward high level objectives that include making available domestic ADR mechanisms and harmonised legal frameworks for online dispute resolution (ODR), taking into account international standards. The **ASEAN Strategic Consumer Protection 2016-2025** provides more detailed and ambitious activities that include establishing an ASEAN Regional ODR Network and an ASEAN mechanism for cross border complaints and investigation. ASEAN commissioned a project in 2020 for the development of **ASEAN Alternative Dispute Resolution Guidelines**, the expected outputs also include a policy paper for alternative dispute resolution for consumer protection. In addition, the **ASEAN Guidelines on Cross-Border B2C Dispute Resolution** have been developed and the **ASEAN Guidelines on Accountabilities and Responsibilities of E-Marketplace Providers** includes dispute resolution as one of the principles that e-marketplace providers are encouraged to consider.

This Work Plan presents an opportunity for all domestic and ASEAN ADR activities to be modernised to take into account consumer issues faced in an e-commerce context. Leveraging the existing ASEAN Guidelines on Cross-Border B2C Dispute Resolution, which acknowledges the unique challenges in e-commerce, existing ADR and ODR initiatives could be assessed against appropriateness for e-commerce issue coverage.

Useful international guidelines and/or standards:

There are many international instruments for the various alternative dispute resolution methods. In considering arbitration as an alternative dispute resolution method, the **UNCITRAL Model Law on Commercial Arbitration**⁶⁵ and the **Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)**⁶⁶ are the international instruments that are generally referenced. The Model Law aims to assist states in modernising their laws on arbitral procedures while the New York Convention ensures the worldwide enforcement of foreign arbitration awards and upholds the validity of arbitration agreements. As for mediation, generally used as an alternative dispute resolution method, the **United Nations Convention on International Settlement Agreements Resulting from Mediation** also known as the “**Singapore Convention on Mediation**”⁶⁷ serves as a uniform framework for the enforcement and invocation of international settlement Agreements resulting from mediation. As for online dispute resolution (ODR), the **UNCITRAL Technical Notes on Online Dispute Resolution**⁶⁸ was adopted in 2017 to assist states in developing and using ODR systems. Technical Notes are non-binding and intended for use in disputes arising from both B2B and B2C cross-border low-value sales or service contracts concluded using electronic communications.

The EU’s legislative package on ADR includes the **EU Directive on Consumer ADR**⁶⁹ and the **EU Regulation on Online Dispute Resolution**.⁷⁰ The ADR Directive encourages the use of approved ADR entities in the EU consumer sphere while the ODR Regulation facilitates the creation of a free website through which parties can initiate ADR in relation to disputes concerning online transactions. The U.S. has proposed the **Draft Model Rules for Electronic Arbitration of Small Cross-Border Consumer Claims**. These Model Rules could serve as the basis of implementation of commonly agreed reciprocal procedures for online dispute resolution and the provision of information to consumers on resolution of cross-border e-commerce disputes.

The **APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business to Business Disputes**⁷¹ assists global businesses to resolve B2B cross-border disputes focused on low value disputes by providing inexpensive, technology-assisted dispute resolution across borders, languages and jurisdictions through partnering ODR providers. As part of the Framework, participating ODR providers agree to use the **APEC Model Procedural**

⁶⁵ https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-54671_ebook.pdf

⁶⁶ <https://www.newyorkconvention.org/english>

⁶⁷ <https://www.singaporeconvention.org/convention/the-convention-text/>

⁶⁸ https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf

⁶⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0011>

⁷⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0524>

⁷¹ http://mddb.apec.org/Documents/2019/SOM/CSOM/19_csom_012anxb.pdf

Rules. The Rules do not cover consumer transactions and are not intended to interfere with the operation by participating countries of their own ADR systems.

C.2 Alternative Dispute Resolution for E-Commerce: Objectives & Activities

| <p>Desired Outcome: By 2025, ASEAN will endeavour to facilitate the use of harmonized alternative dispute resolution mechanisms to resolve claims in the digital space.</p> | | | |
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| <p>To increase trust in ASEAN’s leading digital community, e-commerce consumers need a mechanism to address digital and e-commerce disputes, particularly for cross-border complaints. The recent rise of digital technologies has also led to the increase of alternative and online dispute resolution mechanisms, however, given the novelty of the technologies and mechanisms available, little is known about the effectiveness of existing mechanisms in resolving claims unique to e-commerce. To strengthen AMS’ ability to facilitate the use of alternative dispute resolution mechanisms (ADR), the Work Plan’s desired outcome and proposed objective aims to build on the cooperative efforts and strengthen knowledge sharing among AMS to increase the facilitation of resolution of e-commerce claims.</p> | | | |
| <p>C.2.1 Strengthen knowledge and facilitate discussions on Alternative Dispute Resolution mechanisms to address E-commerce issues.</p> | | | |
| Activities | Rationale | Outcomes | Target Timeline for Completion |
| <p>1. Laws Reporting Scheme under which AMS shall provide a national plan of action to ratify/adopt international ADR-related legislative texts.</p> | <p>The Laws Reporting Scheme is a recurring or horizontal activity across the Work Plan to collect information on domestic legal and regulatory environments in the interest of transparency across AMS.</p> <p>The Mapping Study is the first iteration of the Laws Reporting Scheme. The Mapping Study has highlighted gaps in regulatory coverage for ADR. ADR for e-commerce transactions is an area that is likely to undergo significant changes as the digital economy develops. In order for ASEAN to achieve its goal of establishing a leading digital economy, it is important for AMS to report on their legislation to improve transparency and clarity on regulatory frameworks.</p> | <p>Submission of national plans on adjustments by AMS.</p> <p>ACCEC will develop guidelines for the notification of laws and regulations on e-commerce related laws.</p> <p>Preparation and submission of Annual Reports by AMS to ACCEC.</p> <p>Publish e-commerce related laws in the ASEAN Trade Repository.</p> | <p>2021 - 2023</p> <p>*To be coordinated by ACCEC</p> |

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| | <p>The Scheme ensures that AMS follow at least one internationally recognised legislative text (e.g. UNCITRAL Model Law on Commercial Arbitration, New York Convention, Singapore Convention on Mediation). This arrangement decreases the variability of ADR legislative frameworks across AMS. Thus, consumers will face fewer challenges while seeking for claims over their e-commerce transactions.</p> <p>The Mid-term review will allow for AMS to do a stocktake and ensure that countries previously categorised as ‘partial’ and ‘no’ under the Mapping Study have been categorised correctly based on the laws they have in place that govern alternative dispute resolution for e-commerce claims.</p> <p>The ACCEC plays an integral coordinating role to enhance alignment and transparency across AMS regulatory frameworks to ensure existing ADR legislations and policies clearly apply to the digital economy. The ACCEC will develop guidelines for the notification of laws and regulations on e-commerce related laws. Annual Reports will also allow AMS to report to ACCEC on the status of their national plans to align their ADR frameworks. Common obstacles highlighted from the report will form the basis of the Law Incorporation Workshops.</p> | | |
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| <p>2. Law Incorporation Workshops with AMS to solve common problems in adopting international ADR-related legislative text.</p> | <p>Based on the findings of the Mapping Study and the Laws Reporting Scheme, capacity building activities should be conducted to address common challenges to the development of legal frameworks for ADR to address e-commerce claims that reference international frameworks.</p> <p>The Workshops act as a platform to (i) discuss the annual reports of AMS under the Laws Reporting Scheme, including the assessment methodology for the categorisation of AMS; (ii) identify any challenges in adopting the international legislative text; (iii) develop solutions for those legislative challenges and (iv) provide capacity building for the development of legislative frameworks where necessary. The workshop should also promote dialogues and alignment with international practices to enable better interoperability between AMS.</p> <p>The Workshop should also leverage the Country Assessment and Best Practice report as a guide and reference for AMS in developing appropriate ADR mechanisms</p> <p>The Workshop can also support the operationalisation of the published guidelines under Initiative 1.5.1 under the ASEAN Strategic Plan for Consumer Protection (ASAPCP) 2016-2025. The</p> | <p>Commencement of Workshops, led by the identified AMS.</p> <p>Capacity Building programme to provide relevant authorities with relevant skills and knowledge to develop appropriate legal frameworks.</p> | <p>2021 – 2023 *ACCEC to coordinate with ACCP</p> |
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| | <p>guidelines provide an array of common approaches to ADRs including the consideration of a mechanism for resolving consumer complaints through consumer groups</p> | | |
| <p>3. Review the questionnaire for ASEAN Consumer Empowerment Index to include questions covering consumer confidence on the availability and effectiveness of existing alternative dispute resolution in address e-commerce claims</p> | <p>The ASEAN Consumer Empowerment Index is an initiative (4.2) under the ASEAN Strategic plan for Consumer Protection (ASAPCP) 2016-2025.</p> <p>The questionnaire will periodically capture ASEAN consumers' perceived confidence on the availability and effectiveness of existing ADR mechanisms in addressing e-commerce claims.</p> <p>Data collected will provide a grounded view of evolving ADR mechanisms for e-commerce claims and inform the development of e-commerce focused activities that can enhance consumer protection and trust in the digital economy in ASEAN.</p> <p>The activity under this work plan builds on existing efforts on the Index. Based on the results of the Index, stakeholder engagement activities should be organised to include dispute resolution providers, ASEAN Consumer Associations Network, competent authorities, private sector and additional stakeholders in the development of effective ADR/ODR mechanisms that address consumers' concerns.</p> | <p>Review of questionnaire every 3 years.</p> <p>Conduct the questionnaire every 3 years.</p> <p>Update the questionnaire every 3 years.</p> <p>Socialisation of ASEAN Consumer Empowerment Index results with dispute resolution providers, ASEAN Consumer Association, competent authorities, private sector and additional stakeholders.</p> | <p>2022 – 2025</p> <p>*The ACCP to coordinate with ACCEC</p> |

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| | <p>The results of the Index will also advance existing consumer education activities to address the gaps identified.</p> | | |
| <p>4. Close coordination to ensure the establishment of ASEAN ODR Guidelines and ASEAN Mechanism for Cross Border Complaints and Investigation</p> | <p>The establishment of ASEAN ODR Guidelines and an ASEAN Mechanism for Cross Border Complaints and Investigation are both initiatives under the ASEAN Strategic plan for Consumer Protection (ASAPCP) 2016-2025.</p> <p>Given the overlapping scope, ACCEC should closely coordinate with ACCP to provide support and ensure the completion of these initiatives.</p> | <p>ASEAN Regional ODR Guidelines are established under the ASAPCP.</p> <p>ASEAN Mechanism for Cross Border Complaints and Investigation to be implemented under the ASAPCP.</p> | <p>2021 – 2025</p> <p>*ACCP to coordinate with ACCEC</p> |

C.3 Data Protection/Privacy

Desired outcome: By 2025, ASEAN should facilitate e-commerce and the digital economy by adopting or maintaining an appropriate legal framework and measures that provide for the protection of the personal information and privacy in conformity with ASEAN Framework on Personal Data Protection and other international best practices.

Data plays an integral role in achieving digital growth in ASEAN. Personal data has to be secure, protected and prevented from misuse in order to gain trust and confidence from consumers. But restrictions on the movement of personal data, particularly if not carefully considered, may strongly impact cross-border flows of data which can be important for businesses to operate and expand across the region. Based on the results of the Mapping Study, it would be beneficial for activities under this topic to focus on addressing some of the common regulatory gaps and challenges. The agreement and desired outcomes for the topic recognises this and includes that all AMS should adopt measures to protect personal data that are aligned with the ASEAN framework on Personal Data Protection and other international principles, guidelines and criteria. Moreover, given the critical role businesses play in facilitating e-commerce and digital trade, it is crucial to engage business to ensure that implemented measures are appropriate and effective.

Data Protection/Privacy: Background

What the Agreement says

Article 7.5 Online Personal Information Protection

- (a) Each MS shall adopt or maintain measures to protect the personal information of the users of e-commerce.
- (b) A MS shall not be obliged to implement subparagraph (a) before the date on which that MS enacts laws or regulations to protect the personal information of e-commerce users.
- (c) In the development of personal information protection measures, each MS shall take into account international principles, guidelines and criteria of relevant international bodies

What the mapping study showed

The mapping study highlighted a relatively weak level of coverage for laws related to Data Protection and Privacy. There is a wide variability in the level of implementation of the laws. For AMS classified as 'partial', a draft law is under review. For most of the AMS classified as 'no', there is no specific legislation addressing personal data protection.

The Work Plan therefore presents an opportunity for AMS to cooperate, build alignment, identify constraints, and formulate solutions for the adoption of measures to protect personal information of the users of e-commerce that are aligned with international standards. The Work Plan also recognises the importance of strengthening AMS' ability to implement laws and regulations for this purpose and the role of educating stakeholders around new and potentially evolving standards. Note that personal data protection and privacy rules need to be aligned with elements of the Workstream on Cross-Border Focus,

especially including commitments, objectives and activities related to cross-border information flows.

What ASEAN has done

ASEAN has already in place multiple political commitments and initiatives on the topic of Data Protection and Privacy under its various master plans and frameworks. The **ASEAN Economic Blueprint 2025** and **ASEAN Work Programme on Electronic Commerce 2017-2025** both put forward objectives to build on the **ASEAN Framework on Personal Data Protection** to strengthen the digital ecosystem.

The **ASEAN Digital Integration Framework Action Plan 2019-2025** and the **ASEAN Digital Master Plan 2025** include initiatives on the legal and regulatory measures for the protection of data. Under the latter, recommendations have been made for AMS to build on the existing ASEAN Framework on Personal Data Protection and **ASEAN Framework on Digital Data Governance** to develop regulations and frameworks that include data management and cross-border data flows. It is also recommended that ASEAN should refine the Implementation Guidelines for the **Cross Border Data Flow Mechanism** to ensure interoperability with other international standards.

The **ASEAN Framework on Digital Data Governance** establishes the ASEAN Data Classification framework (now renamed as the **ASEAN Data Management Framework**), the **ASEAN Cross Border Data Mechanism**, the **ASEAN Data Protection and Privacy Forum** and the **ASEAN Data Innovation Forum**. The **ASEAN Comprehensive Recovery Framework** put forward initiatives and programmes that includes the development of the ASEAN Data Management Framework, enhancing implementation and capacity building initiatives for authorities responsible for implementing data management and cross-border flow frameworks.

Therefore, the objectives and activities in the Work Plan will leverage and complement existing ASEAN Frameworks, Initiatives and Activities related to Data Protection and Privacy. Given the fast-moving pace of the topic, the Work Plan also recognises the importance of periodic assessments and dialogue sessions using the existing ASEAN Data Protection and Privacy forum to assess the appropriateness and relevance of existing measures.

Subject to close coordination with the relevant ASEAN sectoral body, this Work Plan proposes a suggested approach for the **ASEAN Data Protection and Privacy Forum**. The forum will focus on a range of different topics every year and will showcase themed case study presentations, workshops and stakeholder dialogues to drive innovation and solutions on related topics. The Forum will also recognise the importance of strong private sector engagement to ensure continued relevance of mechanisms and frameworks. Furthermore, it will also provide an opportunity to review the links with objectives and activities proposed in this Work Plan under topic A.4 (Cross Border Transfer of Information) and A.5 (Data Centre Localisation) to ensure coherence among data related topics in the Work Plan.

Useful international guidelines and/or standards

There are several prominent international guidelines and standards on the topic of data protection and privacy. The Asia-Pacific Economic Cooperation (APEC) **Cross Border Privacy**

Rules (CBPR) System⁷² implements the 2015 **APEC Privacy Framework**.⁷³ This is further complemented by the **APEC Cross-Border E-Commerce Facilitation Framework**. The 2018 European Union (EU) **General Data Protection Regulation (GDPR)**,⁷⁴ designed to promote harmonisation of data protection laws across the European Economic Area (EEA), is a more detailed regulation which prescribes standards on collection, processing and transfer of personal data. Both the CBPR system and the GDPR are governance frameworks which are largely consistent with the **OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data**⁷⁵ established in 1980. The OECD Guidelines was revised again in 2013 to focus on a privacy protection approach grounded in risk management and the need for improved interoperability.

Another innovation of the EU is the **Binding Corporate Rules (BCR)**⁷⁶ which are personal data protection policies enabling the cross-border transfers of personal information between multinational corporations, international organisations, and groups of companies. The Rules have to be approved by the country's data protection authority. Authorisation of the BCR exists alongside the certification of the CBPR System and thus presents businesses the option of mutual recognition. As a result, a **Referential for Requirements for BCR and CBPR**⁷⁷ was drafted to serve as an informal pragmatic checklist for organisations.

C.3 Data Protection/Privacy: Objectives & Activities

Note that this Work Plan recognises the links between objectives and activities suggested under C.3 on Data Protection and Privacy and A.4. Cross Border Transfer of Information and A.5 Data Centre Localisation. Activities suggested here, in C.3, lay out the foundation necessary for activities proposed under the other two sections and should be read in conjunction with one another.

In addition, the topic is one of the priority areas and pillars identified under the **ASEAN Digital Integration Index**. As such, the recommended focus areas, based on the results of the Index, have been taken into consideration in developing the following objectives and activities.

Desired Outcome: By 2025, ASEAN should facilitate e-commerce and the digital economy by adopting or maintaining an appropriate legal framework and measures that provide for the protection of the personal information and privacy in conformity with ASEAN Framework on Personal Data Protection and other international best practices.

⁷² <https://www.apec.org/groups/committee-on-trade-and-investment/~media/files/groups/ecsg/cbpr/cbpr-policiesrulesguidelines.ashx>

⁷³ https://www.apec.org/~media/APEC/Publications/2005/12/APEC-Privacy-Framework/05_ecsg_privacyframewk.pdf

⁷⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679>

⁷⁵ <https://www.oecd.org/digital/ieconomy/oecdguidelinesonthe protectionofprivacyandtransborderflowsofpersonaldata.htm>

⁷⁶ [https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/binding-corporate-rules-bcr_en#:~:text=Binding%20corporate%20rules%20\(BCR\)%20are,group%20of%20undertakings%20or%20enterprises.](https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/binding-corporate-rules-bcr_en#:~:text=Binding%20corporate%20rules%20(BCR)%20are,group%20of%20undertakings%20or%20enterprises.)

⁷⁷ https://www.apec.org/~media/files/groups/ecsg/20140307_referential-bcr-cbpr-reqs.pdf

Data plays an integral role in achieving digital growth in ASEAN. Personal data has to be secure, protected and prevented from misuse in order to gain trust and confidence from consumers. But restrictions on the movement of personal data, particularly if not carefully considered, may strongly impact cross-border flows of data which can be important for businesses to operate and expand across the region. Based on the results of the Mapping Study, it would be beneficial for activities under this topic to focus on addressing some of the common regulatory gaps and challenges. The agreement and desired outcomes for the topic recognises this and includes that all AMS should adopt measures to protect personal data that are aligned with the ASEAN framework on Personal Data Protection and other international principles, guidelines and criteria. Moreover, given the critical role businesses play in facilitating e-commerce and digital trade, it is crucial to engage business to ensure that implemented measures are appropriate and effective.

C.3.1 All AMS to adopt measures that protect the personal information of e-commerce users that are aligned with the ASEAN Personal Data Protection Framework and consider international principles, guidelines and criteria.

| Activities | Rationale | Outcomes | Target Timeline for Completion |
|--|---|---|--------------------------------|
| <p>1. Laws Reporting Scheme under which AMS shall determine a plan of action to implement measures related to the ASEAN Data Protection Framework which includes comprehensive domestic personal data protection and privacy laws</p> | <p>The Laws Reporting Scheme is a recurring or horizontal activity across the Work Plan to collect information on domestic legal and regulatory environments in the interest of transparency across AMS.</p> <p>To meet the obligations set out in the Agreement, all AMS should determine a plan of action to have domestic data protection laws that protect the personal information of the users of e-commerce and consider international principles, guidelines and criteria.</p> <p>The Mapping Study is the first iteration of the Laws Reporting Scheme. The Mid-term review will allow for AMS to do a stocktake and ensure that countries previously categorised as ‘partial’ and ‘no’ under the Mapping Study have laws in place that govern personal data protection.</p> | <p>Submission of national plans by AMS.</p> <p>ACCEC will develop guidelines for the notification of laws and regulations on e-commerce related laws.</p> <p>Preparation and submission of Annual Reports by AMS to ACCEC.</p> <p>Publish e-commerce related laws in the ASEAN Trade Repository</p> | <p>2021 -2023</p> |

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| | <p>The ACCEC plays an integral coordinating role to enhance alignment and transparency across AMS regulatory frameworks to ensure existing data protection legislations and policies clearly apply to the digital economy. The ACCEC will develop guidelines for the notification of laws and regulations on e-commerce related laws. Annual Reports will also allow AMS to report to ACCEC on the status of their national plans to align their data protection frameworks. Common obstacles highlighted from the report will form the basis of the Law Incorporation Workshops.</p> | | |
| <p>2. Law Incorporation Workshops with AMS to solve common problems in adopting data protection laws that protect the personal information of the users of e-commerce and consider international principles, guidelines and criteria.</p> | <p>Based on the findings of the mapping study and the Laws Reporting scheme, capacity building activities should be conducted to address common challenges to the development of legal frameworks for data protection and privacy laws that protect the personal information of the users of e-commerce and consider international principles, guidelines and criteria.</p> <p>In implementing the respective AMS' plan of action, it is important to include capacity building activities that identify resource gaps or practical limitations to the implementation of data protection laws, especially in CLM, and impart skills to the relevant authorities.</p> <p>The Workshops act as a</p> | <p>Commencement of Workshops and led by the identified AMS.</p> <p>Capacity Building programme to provide technical and legal assistance in the development of data protection laws conducted.</p> | <p>2021 - 2023</p> |

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| | <p>platform to (i) discuss the annual reports of AMS under the Laws Reporting Scheme; (ii) identify challenges in adopting the international legislative text; (iii) develop solutions for those legislative challenges and (iv) provide capacity building for the development of legislative frameworks where necessary.</p> | | |
| <p>3. Ongoing Monitoring of emerging issues related to Data Protection and Privacy</p> | <p>To ensure measures adopted remain relevant and are aligned with international principles and guidelines. AMS should periodically assess developments in international guidelines on personal data protection to provide guidance and source of reference when updating domestic laws and regulation.</p> <p>The determination of AMS to revise the laws and regulations will be subject to each AMS' decision in accordance and taking into consideration their respective needs and interests.</p> <p>Dialogue Sessions on Data Protection Privacy at the 2024 ASEAN Data Protection and Privacy Forum should also be conducted to assess whether existing policies, laws, procedures and practices are fit for purpose.</p> <p>Final Review: to develop a consensus among AMS on whether existing laws regulations and practices need to be adjusted to reflect best practices at the</p> | <p>Periodic assessment of international principles and guidelines reviewed.</p> <p>Dialogue sessions conducted.</p> <p>Need for revision of existing laws to be determined.</p> <p>Review of ASEAN Framework on Personal Data Protection.</p> | <p>2024-2025</p> |

| | time of the review. This also provides an opportunity to review the ASEAN Framework on Personal Data Protection. | | |
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| C.3.2 Strengthen AMS ability to actively engage relevant stakeholders to ensure implemented laws and regulations effectively protect the personal information of e-commerce users. | | | |
| Activities | Rationale | Outcomes | Target Timeline for Completion |
| <p>1. Review questionnaire for ASEAN Consumer Empowerment Index to include consumer's confidence on personal data protection in e-commerce settings.</p> | <p>The ASEAN Consumer Empowerment Index is an initiative (Initiative 4.2) under the ASEAN Strategic plan for Consumer Protection (ASAPCP) 2016-2025.</p> <p>The questionnaire will periodically capture ASEAN consumers' perceived confidence on personal data protection provided in e-commerce settings. Data collected will provide a grounded view of evolving data protection challenges and inform the development of e-commerce focused activities that enhance consumer protection.</p> <p>The activity under this work plan builds on existing efforts on the index. Based on the results of the Index, stakeholder engagement activities should be organised to include relevant data authorities, ASEAN Consumer Association, competent authorities, private sector and additional stakeholders in the development of effective data protection laws that address consumers' and businesses' concerns.</p> <p>The results of the index will also advance existing</p> | <p>Review of questionnaire every 3 years.</p> <p>Conduct questionnaire every 3 years.</p> <p>Update questionnaire every 3 years.</p> <p>Socialisation of ASEAN Consumer Empowerment Index results with relevant data authorities, ASEAN Consumer Association, competent authorities, private sector and additional stakeholders.</p> | <p>2022-2025</p> <p>*ACCP to coordinate with ACCEC</p> |

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| | consumer education activities to address the gaps identified. | | |
| 2. ASEAN Business Self-Assessment Toolkit on Personal Data Protection and Data Security Standards for Businesses | <p>The toolkit will provide businesses with consistent and transparent standards. Using the toolkit, businesses will be able to verify if they are in compliance with ASEAN personal data protection and data security standards.</p> <p>The toolkit will also include capacity building strategies, and instructional materials.</p> | <p>ASEAN Business Self-Assessment Toolkit developed.</p> <p>Socialisation of Self-Assessment toolkit with private sector.</p> | 2024 |

C.4 Cybersecurity

Desired outcome: By 2025, ASEAN will have outlined a collaborative approach to addressing cybersecurity in the region to tackle digital trade challenges.

The Agreement and desired outcome recognises the integral role for cooperative initiative to build the capacities of competent authorities to tackle digital challenges. On the ever-evolving threat of cybersecurity, although prevention is key, it is also necessary to ensure authorities are prepared to address cybersecurity challenges as and when they occur. In cooperating and building capacities of relevant authorities, international standards and frameworks should also be taken into consideration to ensure that the adopted approaches remain relevant. Moreover, given the nature of e-commerce being cross border, it is vital that efforts on cybersecurity are not just contained domestically but also allow for cross border cooperation in order to ensure a unified and integrated approach to combating these issues and effectively addressing consumer and business concerns about participating in the digital economy and e-commerce. The trade and economic consequences of approaches to managing cybersecurity should also be considered, as these topics are not just of relevance to security and law enforcement.

Cybersecurity: Background

What the Agreement says

Article 6.2 Each MS shall undertake the following cooperation initiatives, as appropriate:

- c) establishing cooperation mechanisms among competent authorities to facilitate prompt investigation and resolution of fraudulent incidents related to e-commerce transactions and other matters agreed to by MS.

Article 8.1 MS recognise:

- (a) Building the capacities of their national entities responsible for cybersecurity including through the exchange of best practices; and
- (b) Using existing collaboration mechanisms to cooperate on matters related to cybersecurity

What the mapping study showed

The Mapping Study has highlighted a relatively average level of coverage for laws related to Cybersecurity. Most of the countries that have been categorised as ‘partial’ for this topic have draft legislations under discussion or have supplementary mechanisms but no dedicated legislation for the topic.

What ASEAN has done

ASEAN has already in place multiple political commitments and initiatives on the topic of Cybersecurity under its various master plans and frameworks. Cybersecurity should not be viewed solely as security issues but also ensure that relevant trade and commerce implications be considered. In addition, the topic of Cybersecurity encompasses cybercrime. The activities under this topic will therefore require close collaboration with law enforcement authorities to facilitate prompt investigation and resolution of fraudulent incidents related

to e-commerce transaction. The **ASEAN Cybersecurity Coordinating Committee (ASEAN Cyber-CC)** is responsible for working with other relevant sectoral bodies to coordinate cross-sectoral issues pertaining to cybersecurity.

The **ASEAN Economic Blueprint 2025** puts forward strategic measures that include raising awareness on cybercrime issues. Furthermore, the **ASEAN Plan of Action in Combating in Transnational Crime (2016-2025)** provides ASEAN's key commitments to combating cybercrime. The plan of action puts forward several priority areas that aim to strengthen regional cooperation and capacity of domestic competent authorities to combat transnational crimes.

The objectives and activities in the Work Plan seek to guide AMS in meeting the provisions of the Agreement. To foster a culture of trust and increase consumer confidence, the Work Plan recognises and highlights the importance of building the capacities of national law enforcement authorities and developing a cross border cybercrime detection mechanism that takes into account international standards

The **ASEAN Economic Blueprint 2025** and the following frameworks have also put forward cooperative initiatives to strengthen coordination on cybersecurity issues. In addition, an **international coordination mechanism** amongst cybersecurity agencies has also been institutionalised under the **ASEAN Work Programme on Electronic Commerce 2017-2025**. The upcoming **ASEAN Cybersecurity Cooperation Strategy 2021-2025** is also being developed as part of the **ASEAN Comprehensive Recovery Framework**. The **ASEAN Digital Integration Index**, which is currently being developed, also provides recommendations for ASEAN and AMS to strengthen integrated regional cybersecurity efforts.

The Work Plan presents the opportunity to build on the work of the upcoming ASEAN Cybersecurity Cooperation Strategy 2021-2025 and recognises the need to strengthen guidance towards implementation in order to improve coordination and address gaps on the topic of cybersecurity in the region.

Useful international guidelines and/or standards

There are a wide variety of international instruments in place on the topic of cybercrime. The **Budapest Convention on Cybercrime**⁷⁸ was the first international treaty to focus explicitly on cybercrime. The Convention aims to harmonise national cybercrime legislation, support the investigation of cybercrimes and promote international cooperation against cybercrime. It also prescribes rules and mechanisms which facilitate effective cross-border investigation of cybercrime. The World Bank and the United Nations have co-published a Toolkit, "**Combating Cybercrime: Tools and Capacity Building for Emerging Economies**"⁷⁹ to build the capacity of policymakers, law enforcement agencies and the public at large to combat cybercrime. INTERPOL's efforts on cybercrime and cybersecurity in ASEAN are spearheaded by the **INTERPOL ASEAN Cybercrime Operations Desk** as well as the complementary INTERPOL initiatives such as the **ASEAN Cyber Capacity Development Project**. A **National Cybercrime Strategy Guidebook** was also developed as part of the project. The ASEAN Cybercrime Operations Desk has also recently published the **ASEAN Cyberthreat Assessment 2021** which identifies and analyses key cyberthreat trends in the ASEAN region. The UNODC

⁷⁸ <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680081561>

⁷⁹ <https://openknowledge.worldbank.org/bitstream/handle/10986/30306/129637-WP-PUBLIC-worldbank-combating-cybercrime-toolkit.pdf?sequence=1&isAllowed=y>

Global Programme on Cybercrime includes a regional ASEAN programme to assist states to combat cybercrime more effectively through ASEAN-based mechanisms and forums.

On the topic of cybersecurity, the International Chamber of Commerce (ICC) has developed the **ICC Cybersecurity Guide for Business**.⁸⁰ The guide allows business owners of small and large organisations to identify their cybersecurity risks and effectively manage threats to their information systems. The guide provides a framework for companies to consider the question of online security, shows ways to apply cybersecurity principles into policies, and helps companies rise to the challenge of information security in a changing environment. The **APEC Framework for Securing the Digital Economy** includes non-binding principles and implementation strategies for governments to consider in developing domestic frameworks to maintain cybersecurity while taking into account opportunities arising from e-commerce and digital trade.

C.4 Cybersecurity: Objectives & Activities

Cybersecurity is one of the priority areas and pillars identified under the **ASEAN Digital Integration Index**. The recommended focus areas, based on the results of the Index, have been taken into consideration in developing the following objectives and activities.

| <p>Desired Outcome: By 2025 ASEAN will have outlined a collaborative approach to addressing cybersecurity and cybercrime in the region to tackle digital trade challenges.</p> | | | |
|--|--|---|--|
| <p>The Agreement and desired outcome recognises the integral role for cooperative initiative to build the capacities of competent authorities to tackle digital challenges. On the ever-evolving threat of cybersecurity, although prevention is key, it is also necessary to ensure authorities are prepared to address cybersecurity challenges as and when they occur. In cooperating and building capacities of relevant authorities, international standards and frameworks should also be taken into consideration to ensure that the adopted approaches remain relevant. Moreover, given the nature of e-commerce being cross border, it is vital that efforts on cybersecurity are not just contained domestically but also allow for cross border cooperation in order to ensure a unified and integrated approach to combating these issues and effectively addressing consumer and business concerns about participating in the digital economy and e-commerce. The trade and economic consequences of approaches to managing cybersecurity should also be considered, as these topics are not just of relevance to security and law enforcement.</p> | | | |
| <p>C.4.1 Establishing a cooperation mechanism among competent authorities to facilitate prompt investigation and resolution of fraudulent incidents related to e-commerce transactions.</p> | | | |
| Activities | Rationale | Outcomes | Target Timeline for Completion |
| 1. Progress Reporting Scheme under which AMS shall report progress and compliance with the Plan of Action in | AMS have included in the ASEAN Plan of Action in Combating in Transnational Crime several actions and priority areas that ensures AMS continue to cooperate | Progress made to implement plan of action determined. Actions requiring additional technical and | 2022 - 2025 *ASEAN Cybersecurity Coordinating Committee (ASEAN-CC) to |

⁸⁰ <https://iccwbo.org/content/uploads/sites/3/2015/08/ICC-Cyber-Security-Guide-for-Business.pdf>

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| <p>Combating in Transnational Crime</p> | <p>closely in efforts to prevent and combat transnational crimes (including cybercrime).</p> <p>Assessing current AMS compliance and progress with the action plan will allow for a baseline to be established on progress made in regard to the topic and ensure that the proposed activities complement and accelerate, rather than duplicate, efforts.</p> | <p>capacity assistance identified.</p> <p>Dialogue sessions to strengthen communication and cooperation to address obstacles for implementation conducted.</p> | <p>coordinate with the Senior Official Meeting on Transnational Crime (SOMTC) and Working Group on Cybercrime (WG on CC)</p> |
| <p>2. Establish ASEAN Cybersecurity Forum</p> | <p>A cybersecurity forum will provide a platform for AMS to share ongoing information and best practices related to cybersecurity issues in the region. This includes the ongoing examining of the scope of fraudulent activities related to e-commerce transactions.</p> <p>Recognising the importance of cybersecurity across different sectors, AMS should be encouraged to include representatives from trade and commerce ministries to participate in the forum. This will also allow for the exchange of best practices to ensure that responsible entities can effectively address emerging digital challenges related to cybersecurity.</p> | <p>ASEAN Cybersecurity Forum established.</p> <p>Report based on discussions at the forum to be published.</p> <p>Conduct Capacity Building Activities for competent authorities that leverages the identified best practices.</p> | <p>2022 - 2025</p> <p>*ASEAN Cybersecurity Coordinating Committee (ASEAN-CC) to coordinate with and ASEAN Network Security Action Council (ANSAC) and ACCEC</p> |
| <p>3. ASEAN Cross Border Fraudulent Incident Detection Mechanism</p> | <p>To meet the commitments set out in the agreement, ACCEC should closely coordinate with the ASEAN Cybersecurity Coordinating Committee (ASEAN Cyber-CC) to ensure the development of a cooperative mechanism to facilitate prompt investigation and resolution</p> | <p>Develop a common mechanism for ASEAN cross-border fraudulent incidents based on discussions in ongoing ASEAN Cybersecurity Forum.</p> | <p>2024 - 2025</p> <p>*To be coordinated with the ASEAN Cybersecurity Coordinating Committee (ASEAN-CC)</p> |

| | of fraudulent incidents related to e-commerce transactions shall be established. (e.g., Cyber threat detection, Incident Reporting Framework, ASEAN CERT, etc.). | | |
|---|---|---|--|
| C.4.2 Build the capacities of national entities responsible for cybersecurity. | | | |
| Activities | Rationale | Outcomes | Target Timeline for Completion |
| 1. Action Plan for the implementation of the ASEAN Cybersecurity Cooperation Strategy 2021-2025 | Recognising existing ASEAN efforts on cybersecurity, ACCEC should closely coordinate to ensure that AMS build on the upcoming ASEAN Cybersecurity Cooperation Strategy 2021-2025 (Initiative 2) under Key priority 4j of the ASEAN Comprehensive Recovery Framework and engage national entities responsible for cybersecurity to develop a plan of action. | Development of Action Plan for the implementation of the ASEAN Cybersecurity Cooperation Strategy 2021-2025. Socialisation of Action Plan for the implementation of the ASEAN Cybersecurity Cooperation Strategy 2021-2025 with relevant stakeholders including national cybersecurity entities and other relevant ministry representatives. | 2021 *ASEAN Cybersecurity Coordinating Committee (ASEAN-CC) to coordinate with and ASEAN Network Security Action Council (ANSAC), Network Security Action Council (ANSAC) and ACCEC |
| 2. Development of guidelines for the implementation of the ASEAN Cybersecurity Coordinating Committee (ASEAN Cyber-CC) | Recognising existing ASEAN efforts on cybersecurity, AMS established the ASEAN Cyber-CC, included in the ASEAN Work Programme on Electronic Commerce 2017-2025 . The development of implementation guidelines will harmonise implementation approaches to the mechanism across all AMS. | Guidelines for Implementation of the ASEAN Cyber-CC developed. Capacity Building Programme for national entities, including trade and economic officials, responsible for cybersecurity to adopt the coordination mechanism to ensure effective cooperation on matters related to cybersecurity. | 2022 – 2023 * ACCEC to coordinate with the ASEAN Cybersecurity Coordinating Committee (ASEAN-CC) and ASEAN Network Security Action |
| 3. ASEAN Self-Assessment Toolkit on Cybersecurity Capacity | Based on the key cyberthreat trends identified in the ASEAN Cyberthreat Assessment 2021 , a cybersecurity capacity assessment tool will allow national entities responsible | ASEAN Self-Assessment Toolkit on Cybersecurity Capacity developed. Capacity Building activities developed to | 2023 – 2024 *ASEAN Cybersecurity Coordinating Committee (ASEAN-CC) |

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| | for cybersecurity to identify areas to strengthen capacity, and ensure existing approaches are aligned with internationally recognised risk metrics. | address gaps identified in self-assessment toolkit. | and ASEAN Network Security Action Council (ANSAC) |
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6. Work Plan Overview

This Chapter provides an overview table of the different objectives, recommended activities, and target timelines. *(The preliminary suggested KPIs and Lead Implementing Body can be found in Annex A, attached separately.)*

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