ASEAN Regulatory Pilot Space for Cross-Border Data Flows

7 November 2019

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Contents
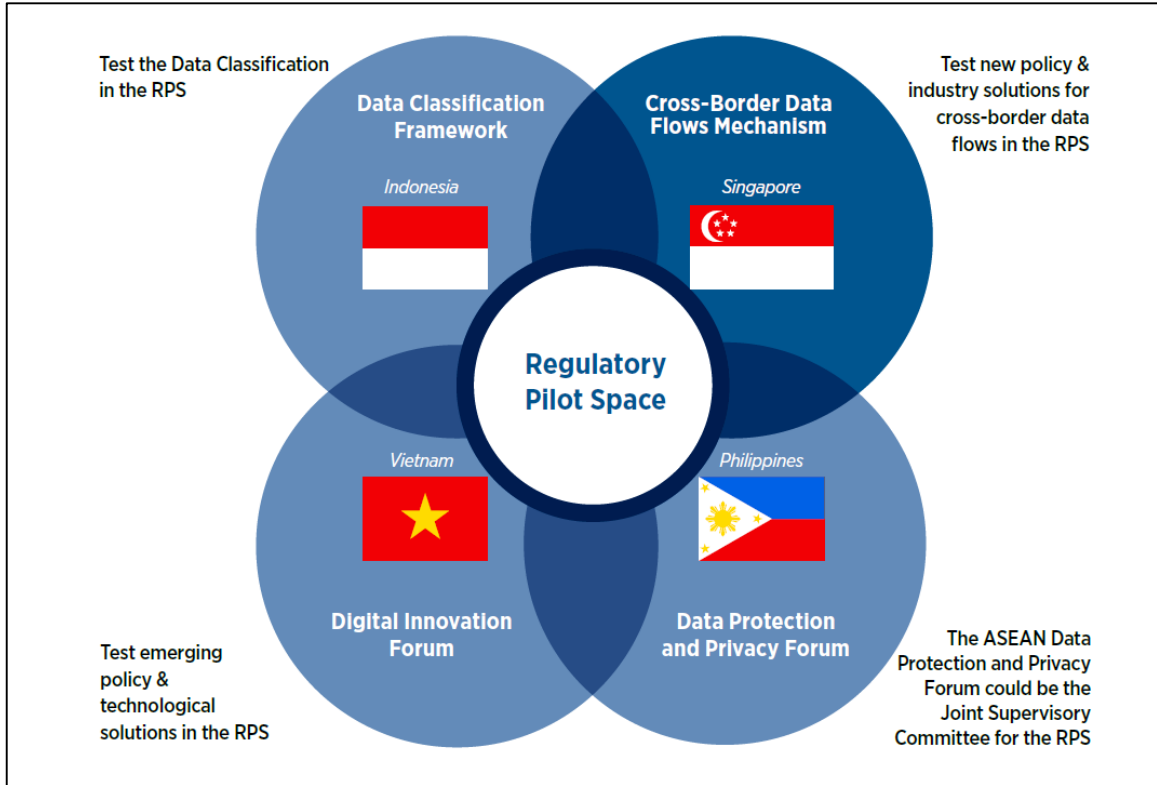
Regulatory Pilot Space for Cross Border Data Flows (RPS)

RPS Frequently Asked Questions

RPS Application Guidance

RPS White Paper

Operationalising the ASEAN Framework on Digital Data Governance: Cross Border Data Flow Regulatory Pilot Space

Test the Data Classification in the RPS

Data Classification Framework

Indonesia

Cross-Border Data Flows Mechanism

Singapore

Test new policy & industry solutions for cross-border data flows in the RPS

Regulatory Pilot Space

Vietnam

Philippines

Test emerging policy & technological solutions in the RPS

Digital Innovation Forum

Data Protection and Privacy Forum

The ASEAN Data Protection and Privacy Forum could be the Joint Supervisory Committee for the RPS

The Regulatory Pilot Space is complementary to the proposed ASEAN mechanisms for cross border data flows

About the ASEAN Regulatory Pilot Space

A regulatory pilot space is a 'safe space' in which businesses can test innovative products, services, business models and delivery mechanisms without fear of harming consumers or facing regulatory sanctions

Key Elements

Complementary to other ASEAN CBDF mechanisms

ASEAN host countries are those countries that already have privacy laws and can enforce the law

RPS does not require added extra layers of regulation

An MoU between host and participating MS is not a prerequisite

Eligibility Criteria

Criteria for entry: Businesses engaged in ICT and in other non-regulated sectors

RPS participants need to provide qualitative/quantitative evidence that they meet the eligibility criteria, e.g. Tangible Benefits; Data Innovation; Ready to Test, Accountability mechanisms

Key Benefits

Reduce time to market for innovative tech ideas

Better outcomes for consumers

Allows policymakers to test policy ideas BEFORE tabling new laws

Enabling ASEAN MS and private sector to improve digital competiveness

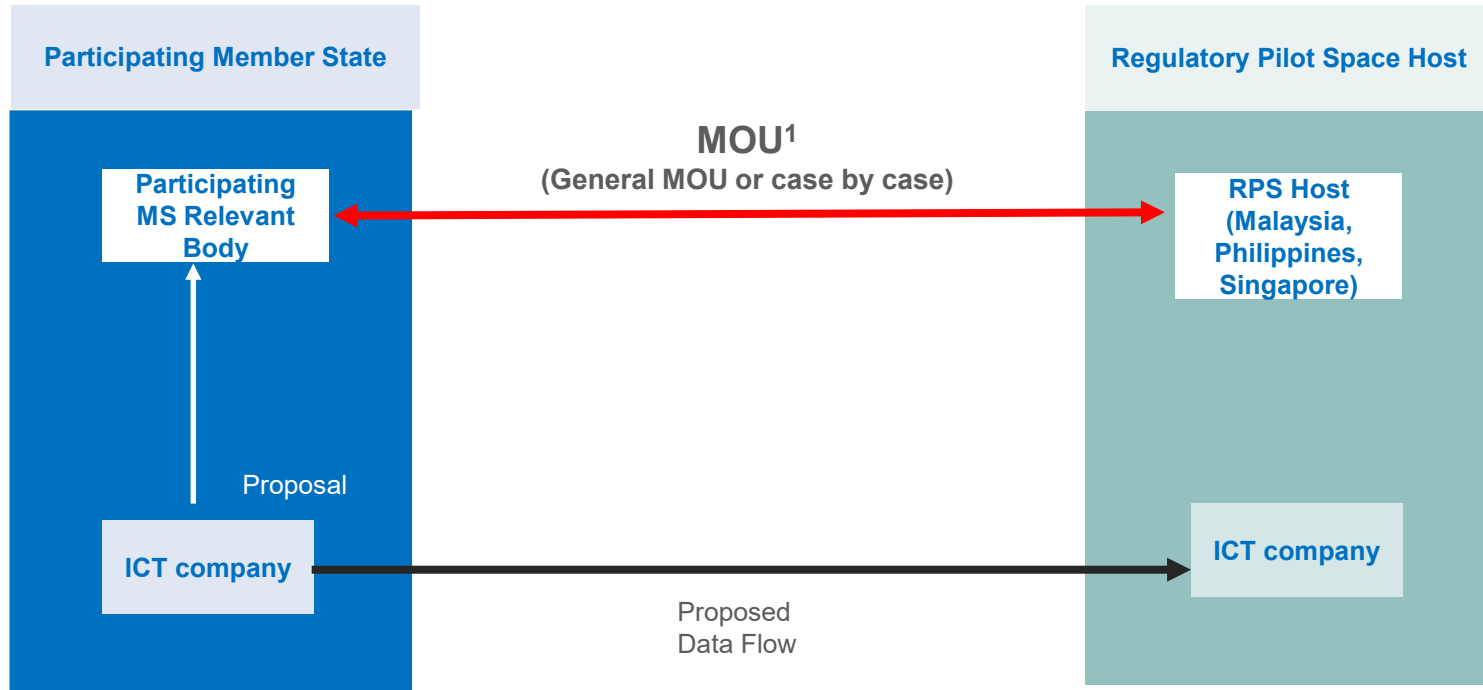Signalling to the rest of the World ASEAN is open to innovation

Regulatory Pilot Space is not to be used to circumvent regulation
A pilot approach is a stepping stone for all AMS to implement the ASEAN CBDF Mechanism [1]

[1] The ASEAN CBDF mechanism proposes the development of two data transfer tools – (a) Third Party Certification and (b) Contractual Clauses.
The RPS adds value by complementing the ASEAN CBDF mechanism.

How the Regulatory Pilot Space Works

Participating Member State

Regulatory Pilot Space Host

MOU[1]
(General MOU or case by case)

Participating MS Relevant Body

RPS Host (Malaysia, Philippines, Singapore)

Proposal

ICT company

ICT company

Proposed Data Flow

[1] **Provided that there is regulatory certainty for companies, then a joint letter from the authorities may suffice**

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RPS: Frequently Asked Questions

The document "Operationalising the ASEAN Framework on Digital Data Governance: A Regulatory Pilot Space for Cross Border Data Flows" was issued in July 2019. This document contains the answers to the FAQ below and is available on gsma.com. However, there have been some clarifications to the RPS since then, so please see the following "Additional Q&A" slide and "RPS White Paper" slide)

Why is a mechanism for regulatory experimentation needed?

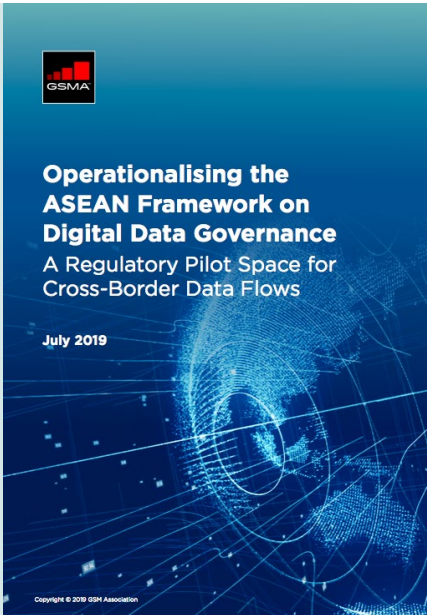What is the Regulatory Pilot Space?

Who would participate?

What are the key benefits?

Why does industry need a Regulatory Pilot Space?

What is needed to ensure a company does not misuse the RPS to circumvent regulation?

What are the operational details?

Does the RPS require added extra layers of regulation in the form of the Joint Supervisory Committee?

Operationalising the ASEAN Framework on Digital Data Governance

A Regulatory Pilot Space for Cross-Border Data Flows

July 2019

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What businesses will be able to propose projects?

What are the eligibility criteria for companies to participate in the RPS?

Why should ASEAN Member States participate?

How will countries with no enforcement authority participate effectively in the RPS?

How will the RPS operate in countries with sector- specific data protection laws?

How about categorising RPS participants according to types of data?

Who will be party to the MOUs?

Is this a permanent solution?

Additional Q&A

Is an MoU necessary?

AMS can change the process in the way that they think best. In our proposal we were considering a general mechanism for companies to apply to a Joint Supervisory committee under the terms of a general MoU. In our discussion within the AMS it has become clear that a project-by-project approach will be preferable. Also, that a MoU is not necessarily the best way to achieve the regulatory certainty that companies need.

Provided that there is regulatory certainty for the companies, then a joint letter from the authorities may suffice.

Will host country authorities will have to enforce their rules in foreign countries, thereby encroaching on other countries' sovereignty?

Not at all. The host countries are the countries that receive the data, where the data flows. Once the data is in the host country, the authorities can enforce the law in their jurisdiction, in accordance with their national law. The countries of origin need to agree that the data can flow to a host country.

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Regulatory Pilot Space Application Guidance

#	Data required	Example
1	Name/address of company proposing (the 'Applicant')	Company name
2	A single point of contact in respect of the proposal	Individual name, job title, email and mobile
3	Name of service	Working title or project if a name is not finalised
4	Aim of service	Objective to be achieved by the service
5	Sending country ('Participating Member State')	Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam
6	Recipient country ('RPS Host')	Malaysia, Philippines, Singapore
7	Recipient company (where the data will be processed)	Are they receiving it as processor (i.e. to perform some processing activity on behalf of the Proposer) or as a controller to process the data for new purposes that it determines
8	Type of data to be processed	Detailed description of the data
9	Type of data subject (i.e. the person that the data relates to)	Employee, customer, patient, convict, child, pupil etc
10	The purpose for which the data will be processed	Examples in RPS white paper, Annex 1
11	Expected stakeholder benefits of the service	To consumers, society, government and industry See RPS white paper, sections 5, 6.1 & 7
12	Potential risks that could be posed	See RPS white paper, sections 5 & 6.3
13	Safeguards proposed to mitigate the identified risks	Evidence of a binding commitment that they will allow court claims to be brought in the exporting country even if the infringement took place abroad inside the RPS. It will need to include prompts for all the safeguards, including: • transparency, • confirmation that they have a policy covering privacy and a person appointed who is dedicated to privacy, • processes for making complaints See RPS white paper, 6.4 Accountability mechanism

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RPS White Paper

The White Paper was presented to ASEAN in April 2019 and, since this is a fast moving subject area, has evolved following input from ASEAN Member States. The main changes include the following:

1. Name change: Renamed from Sandbox to Regulatory Pilot Space

2. Scope clarification: Digital economy, excluding regulated industries

3. Memorandum of Understanding: An MoU is not the only solution, approval can also be on a case by case basis

The original White Paper is available on gsma.com but must be read with the above changes in mind

Annex A – ASEAN & GSMA Policy Dialogue

How ASEAN can Protect Data and Drive Innovation

AIM 2020 Initiative 1.1: Accelerate the development and growth of ASEAN's ICT industry and services

GSMA White Paper
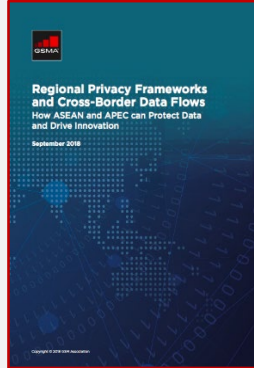*Moving Towards a Digitally-Enabled ASEAN Community*
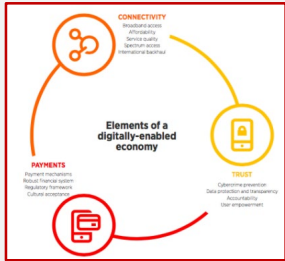
GSMA Data Privacy Survey
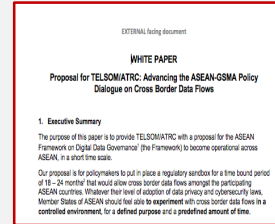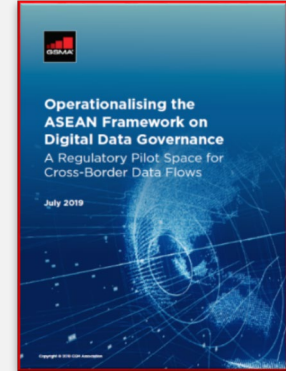*ASEAN Member States and GSMA members*

GSMA Report
Regional Privacy Frameworks and Cross-Border Data Flows

GSMA White Paper
Proposal to TELSOM/ATRC for a Regulatory Sandbox

GSMA Report
Operationalising the ASEAN Framework on Digital Data Governance

ASEAN PDP Framework 2016

ASEAN Framework DDG 2018

Adopted 2019, Implementation 2020