

# Cross-Border Data Flow Governance Dilemma and Optimization of China-ASEAN Digital Economy Cooperation Strategy

Luyuan Xu<sup>1,2</sup>

1. Fudan University, Shanghai 200433, China.

2. Guangxi University of Finance and Economics, Nanning 530003, China.

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**Abstract:** By analyzing the themes and purposes of data governance, this paper argues that the diversity of themes and purposes of data governance has led to a dilemma in regulating data. In addition, the "digital divide" and "data hegemony" are also the main problems that China-ASEAN digital economy cooperation has to face. This topic proposes that China and ASEAN should seek a new "new" "balance" in "win-win" and "coexistence" based on the existing conceptual consensus, institutional foundation and strategic complementarity, so as to achieve a "new pattern" of "common" and "win-win".

**Keywords:** Cross-Border Data Flow; Governance Dilemma; China-ASEAN

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## Introduction

The Russian-Ukrainian conflict has accelerated the healing of U.S.-European relations, and in April, the U.S. and European countries jointly issued the "Declaration on the Future of the Internet" in an attempt to remove China, Russia and other countries from the rules of international network management. The core of the "broken circle" is the urgent need for China to strengthen cooperation with ASEAN countries, to establish more in-depth cooperation and cooperation based on the "digital silk road", and to achieve a win-win situation for cross-border information flow.

## 1. Challenges to China-ASEAN Digital Economy Cooperation

In the governance practice of transnational data flows, countries have made it their first priority that there will be no impact on national security, and if the flow of such data is potentially harmful to national security, then there is a legitimate reason for those countries to restrict such data. In a certain sense, this is a recognition of data ownership. However, its dual nature as both property and personality makes the recognition process more cumbersome, and in reality, it satisfies both governance purposes of promoting industrial development and protecting personal information. Data exchange agreements between the U.S. and Europe such as the Safe Harbor Agreement and the Privacy Shield Agreement have failed to meet the European Union's conditions for adequate safeguards, but negotiations on data management have never been abandoned due to the large number of digital transactions between the U.S. and Europe and the existence of economic win-win situations. The latest Transatlantic Data Privacy Framework (Transportation Association Framework) is essentially a concession made by the United States to meet Europe's high demand for personal information security, with the United States pledging to take new actions to ensure that monitoring of information and information is the "minimum necessary" and to establish an independent "Information Security Inspection Court" as a compensation mechanism, so that European nationals can receive compensation from this mechanism if their personal information is found to have been violated. China-ASEAN, like the U.S. and European countries, faces a "dilemma" between the development of the digital economy and the protection of personal privacy<sup>[1]</sup>.

## **2. Optimization Strategies for China-ASEAN Digital Economy Cooperation**

### **2.1 Establishing consensus**

China-ASEAN should strive to find the biggest data governance pact. First, we have reached a consensus on "ASEAN Centricity". The Association of Southeast Asian Nations (ASEAN) Charter, which came into force in 2007, highlights the core concept of ASEAN "cross-regional" cooperation. In the Joint Declaration of the ASEAN Economic Ministers' Meeting in 2008, it was also stated that countries should work to promote trade facilitation to ensure the "centrality of ASEAN". ASEAN centrality" contains at least three meanings: first, ASEAN has internal cohesion and external influence; second, it reflects the independence and autonomy, i.e., it is not subject to coercion by "extraterritorial" powers; third: ASEAN is the core of comprehensive regional issues with political security and economic cooperation as the core. This idea has been supported by several countries, such as China, the United States, Japan, India, and Australia. However, in order to ensure the U.S. strategic advantage in India, the U.S. has launched a new "Indo-Pacific Strategy" to advance the U.S.-led international order system to the Indo-Pacific region, so that the U.S.-led international order system can be more widely and permanently applied. A prerequisite for China-ASEAN data governance is the establishment of "ASEAN-centric" data governance principles among ASEAN countries to prevent excessive interference of digital hegemony in regional affairs. Since the release of the ASEAN Personal Data Protection Framework in 2016, ASEAN has conducted preliminary discussions on the governance path of cross-border data flows and regulated cross-border data flows from a holistic to holistic perspective, laying the foundation for the governance of cross-border data flows in East Asia. However, as each country is at a different stage of development, this framework is only a guiding document without any legal effect. Therefore, in order to further deepen bilateral cooperation, it is necessary to translate the guidance document, on which there is an international consensus, into regional legal provisions, and to integrate the ASEAN Framework for Personal Data Protection with the domestic laws of each member country as much as possible, which is a proven approach<sup>[2]</sup>.

### **2.2 Win-win cooperation**

China advocates strengthening the collaboration of data governance among countries and maintaining the orderly opening of the data market to achieve the goal of "mutual benefit and win-win", the key and difficulty lies in how to coordinate the interests and distribution of benefits among countries. In other words, under the framework of cooperation, each mechanism should be both pragmatic and flexible, and should have incentive compatibility. On the one hand, the gradual participation of countries in the implementation of the system should be promoted; on the other hand: there is also a need to establish relevant constraint mechanisms to avoid the unfair distribution of benefits caused by the abuse of the system. To this end, we should promote the strategic docking between China and the United States in a pragmatic manner for different countries, and find the focus and entry points for strategic cooperation between China and the United States. Currently, the controversy over cross-border data flow is mainly focused on the taxation of tariffs. Currently, the main purpose of national tax systems is to prevent double taxation and prevent corporate tax evasion. However, because the digital economy is less dependent on the physical presence of companies, and the users in the source countries and the data generated play a large role in the creation of the profits of multinational companies, international tax rules cannot effectively tax digital economy activities where they occur, and if an excessive digital tax is imposed, it will increase the burden of the country's operations at home and abroad. In order to achieve a win-win situation in this issue, China-ASEAN should, firstly, deeply understand that the introduction and reform of "digital tax" is a general trend; secondly, under the multilateral framework of "ASEAN+X", we should actively promote digital tax consultation, coordinate the contradictions between digital taxes, and combine the OECD's 2015 "Inclusive Framework on Base Erosion and Benefit Transfer" and 2019 "Two Pillars Plan" to coordinate digital taxes. The digital taxation should be harmonized. Third, some scalable leeway should be allowed according to the differences in the level of development of ASEAN countries. For example, when cooperating with Singapore and Malaysia, two countries with more developed digital economies, a hierarchical approach can be adopted, focusing on cooperation with digital technology, smart cities and artificial intelligence; countries like Thailand, the Philippines, and Cambodia can cooperate in various areas such as digital infrastructure development, cross-border e-commerce, and digital transformation. For the governance of cross-border data flows, a flexible approach of "principles + exceptions" can be adopted, which should be based on the principles but also focus on setting exceptions<sup>[3]</sup>.

## 2.3 Cooperative coexistence

In the management of cross-border data flows, many issues involve sensitive national nerves, so the negotiation and signing of any agreement will be a long and drawn-out "battle". China has always advocated and advocated to promote negotiation by seeking common ground while reserving differences, and to allow issues that have been initially agreed upon to be negotiated and signed first in order to enhance confidence and mutual trust, and then slowly resolve controversial issues. For example, the "Privacy Exception" clause in GATS will restrict cross-border trade in services on the basis of privacy protection and extend it to digital trade, requiring governments to distinguish between concepts such as "national security" and "personal privacy" to facilitate compliance checks by multinational enterprises. Currently, there is no international harmonization on dispute resolution for cross-border data flows, but there are many useful attempts at regional level. The data governance collaboration between China and ASEAN also needs to properly deal with data conflicts, strengthen political mutual trust between the two sides, enhance digital security collaboration, and set up special data protection agencies or arbitration bodies (e.g., e-court) with reference to the WTO dispute resolution mechanism and GATS, so as to form a predictable and operable "conflict buffer zone" for some areas with minor disputes.

## 3. Conclusion

In recent years, in the context of "reverse globalization", the competition among major powers has shifted from traditional trade to the digital economy, and many countries or regions such as the United States and Europe have begun to show signs of a "third path" and have begun to seek a "third path" to defend national security and data sovereignty. As a great power, China should promote the unity of Asian countries to resist risks and promote development together.

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