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E-COMMERCE IN ASEAN: AN EMERGING ECONOMIC SUPERPOWER AND THE CASE FOR HARMONIZING CONSUMER PROTECTION LAWS

*Juthamas Thirawat**

INTRODUCTION

It appears that the Asian century has already begun. Asia is home to around 60% of the world's population.¹ Asia has become the world's largest economy for the first time in 2020 since the nineteenth century,² and it will not stop here. Asia is expected to account for more than half of global GDP in 2024.³ Whereas the public's attention is mostly focused on China, the future of Asia is not a China-only story. More actors play a vital role in developing Asian economies. The prominent one that we cannot ignore is the Association of Southeast Asian Nations (ASEAN), consisting of ten member states: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. ASEAN combines over 660 million people,⁴ creating the world's third-largest market, surpassed only by China and India.⁵ More importantly, ASEAN is currently the world's fifth-largest economy by GDP, behind the United States (US), the European Union (EU), China, and Japan.⁶ It will soon step up to the fourth rank.⁷ As a result, ASEAN has become "the only project on this scale in the developing world."⁸

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¹ Asian population accounts for 59.76% of the world's population. See *Asia Population*, WORLDOMETERS, <https://www.worldometers.info/world-population/asia-population/> (last visited Jan. 17, 2022).

² Valentina Romei & John Reed, *The Asian Century Is Set to Begin*, FIN. TIMES (March 25, 2019), <https://www.ft.com/content/520cb6f6-2958-11e9-a5ab-ff8ef2b976c7>.

³ Oliver Tonby et al., *The Future of Asia: Asian flows and networks are defining the next phase of globalization*, MCKINSEY GLOB. INST. (Sept. 2019), <https://www.mckinsey.com/~media/mckinsey/featured%20insights/asia%20pacific/the%20future%20of%20asia%20asian%20flows%20and%20networks%20are%20defining%20the%20next%20phase%20of%20globalization/mgi-future-of-asia-flows-and-trade-discussion-paper-sep-2019.pdf>.

⁴ *Total population of the ASEAN countries from 2011 to 2021*, STATISTA, <https://www.statista.com/statistics/796222/total-population-of-the-asean-countries/> (last visited Feb. 12, 2022) [hereinafter "STATISTA, *Total population*"].

⁵ See *Countries in the World by Population* (2021), WORLDOMETERS, <https://www.worldometers.info/world-population/population-by-country/> (last visited Feb. 12, 2022); *Total Population by Country 2021*, WORLD POPULATION REVIEW, <https://worldpopulationreview.com/countries> (last visited Feb. 12, 2022); *4 ASEAN Infographics: Population, Market, Economy*, ASEAN UP (Mar. 26, 2018), <https://aseanup.com/asean-infographics-population-market-economy/>.

⁶ See *GDP Indicators 2021*, STATISTIC TIMES (Mar. 13, 2021), <https://statisticstimes.com/economy/gdp-indicators-2021.php>; Gross Domestic Product, Current Prices, IMF, <https://www.imf.org/en/Publications/WEO/weo-database/2021/April> (last visited Feb. 12, 2022); *ASEAN Integration Report 2019*, ASEAN, at xii, xiv, 6 (2019), <https://asean.org/storage/2019/11/ASEAN-integration-report-2019.pdf>.

⁷ *The Asian Century Has Arrived*, MCKINSEY & COMPANY (Nov. 15, 2019), <https://www.mckinsey.com/featured-insights/asia-pacific/the-asian-century-has-arrived>.

⁸ Peter A. Petri et al., *ASEAN Economic Community: A General Equilibrium Analysis*, 26 ASIAN ECON. J. 93, 94 (2012).

These statistics tell the same story when it comes to e-commerce. Despite many challenges, ASEAN has the world's third-highest number of internet users, outranking higher internet penetration regions.⁹ Its digital economy is expected to hit US \$300 billion by 2025 and 1 trillion gross merchandise value (GMV) by 2030.¹⁰ ASEAN has recognized the great potential and benefit of its e-commerce. The importance of e-commerce became even more critical when ASEAN decided to strengthen the cooperation of its member states to reach toward the ultimate goal of forming the highest integration as one community, "the ASEAN Community."¹¹ To achieve this goal of integration, ASEAN launched one of the three pillars that anchored the ASEAN Community—the ASEAN Economic Community (AEC)—in 2015.¹² The main objective of the AEC is to transform the Southeast Asian region into one competitive single market and production base with a free flow of goods and services, investment, skilled labor, and capital among the ten member states.¹³ As the most recent regional integration of the world, the AEC obviously draws attraction from investors globally.

However, ASEAN cannot reap the greatest benefits from its enormous e-commerce market under its new AEC integration. This is because, in effect, ASEAN still lacks a general uniform consumer protection law, not to mention a specific one for e-commerce.¹⁴ The existing legal instruments are soft laws—those with no legally binding force—that only provide inadequate consumer protection. The absence of a uniform law results in inconsistent and inefficient consumer protection laws for e-commerce of member states. This problem causes adverse effects on both consumer and business sides. For the consumer side, consumers often face risks of online fraud, resulting in non-delivery or incompliance of products because they do not have direct interaction

⁹ Typically, the number of internet users follow the number of internet penetration, but interestingly, ASEAN is the exception. See *Number of Worldwide Internet Users in 2021, by Region*, STATISTA (Sep. 29, 2021), <https://www.statista.com/statistics/249562/number-of-worldwide-internet-users-by-region/> [hereinafter "STATISTA, *Internet Users*"].

¹⁰ GOOGLE ET AL., *E-Conomy SEA 2021: Roaring 20s: The SEA Digital Decade* at 8, 83-87 (2021), https://services.google.com/fh/files/misc/e_conomy_sea_2021_report.pdf [hereinafter "GOOGLE ET AL. 2021"]; GOOGLE ET AL., *E-Conomy SEA 2020: At Full Velocity: Resilient and Racing Ahead* 92 (2020), https://storage.googleapis.com/gweb-economy-sea.appspot.com/assets/pdf/e-Conomy_SEA_2020_Report.pdf [hereinafter "GOOGLE ET AL. 2020"]; Aradhana Aravindan, *Southeast Asia's internet economy to hit \$300 billion by 2025: Report*, REUTERS, <https://www.reuters.com/article/us-southeast-asia-internet/southeast-asias-internet-economy-to-hit-300-billion-by-2025-report-idUSKBN1WI07X> (last visited Feb. 12, 2022).

¹¹ The ASEAN Community was first mentioned at the 9th ASEAN Summit in 2003 and the leaders signed the Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015 at the 12th ASEAN Summit in 2007. See *ASEAN Community*, ASEAN, <https://asean.org/storage/2012/05/7.-Fact-Sheet-on-ASEAN-Community.pdf> [hereinafter "ASEAN COMMUNITY"]; *Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015*, ASEAN (Jan. 11, 2007), <https://asean.org/cebu-declaration-on-the-acceleration-of-the-establishment-of-an-asean-community-by-2015/> [hereinafter "*Cebu Declaration*"]; Tang Siew Mun, *Is ASEAN Due for a Makeover?*, 39 CONTEMP. SOUTHEAST ASIA: J. INT'L & STRATEGIC AFFS. 239, 243 (2017).

¹² *Declaration of ASEAN Concord II (Bali Concord II)*, ASEAN (Oct. 7, 2003), <https://asean.org/speechandstatement/declaration-of-asean-concord-ii-bali-concord-ii/>.

¹³ *ASEAN Economic Community Blueprint 2015*, ASEAN at 5 (Jan. 2008), <https://www.asean.org/wp-content/uploads/images/archive/5187-10.pdf> [hereinafter "AEC BLUEPRINT 2015"].

¹⁴ Eliza Mik, *Legal and Regulatory Challenges to Facilitating e-Commerce in ASEAN*, in *ASEAN LAW IN THE NEW REGIONAL ECONOMIC ORDER: GLOBAL TRENDS AND SHIFTING PARADIGMS* 342, 358 (Pasha L. Hsieh & Bryan Mercurio eds., 2019).

with the products they purchase.¹⁵ Unlike in physical stores, all related activities happen “in the dark.”¹⁶ Buyers do not meet sellers in person. Nor can they fully access or inspect products before the conclusion of contracts. Thus, consumers in this region do not trust e-commerce— and are even reluctant to purchase products online—because they are afraid of widespread online fraud.¹⁷ Consumers are simply not confident enough to conduct domestic online,¹⁸ not to mention cross-border e-commerce. This is because if something goes wrong, it will likely be difficult for consumers to process claims that have different redress rules in other jurisdictions.¹⁹

Furthermore, cross-border transactions are more costly than domestic transactions, which creates a disincentive for businesses and consumers to form contracts abroad.²⁰ Particularly for the seller side, these additional costs come about because businesses have to research proper market intelligence and legal compliance strategies for targeted export countries.²¹ Businesses pass on these costs to consumers. The cost of researching various legislation across the different targeted markets also causes businesses to be reluctant to sell their products or, in some cases, conduct business in foreign countries.²² The disparity of laws regarding consumer protection in e-commerce thereby creates trade barriers and limits growth in cross-border trading.

A common regulatory framework in every member state would promote a more effective internal market by increasing legal certainty for both consumers and businesses, allowing them to rely on a single set of rules. Harmonizing consumer protection law in ASEAN would incentivize businesses to conduct cross-border trade that provides a greater variety of choices and prices for

¹⁵ Florian N. Egger, *Consumer Trust in E-Commerce: From Psychology to Interaction Design*, in TRUST IN ELECTRONIC COMMERCE: THE ROLE OF TRUST FROM A LEGAL, AN ORGANIZATIONAL, AND A TECHNICAL POINT OF VIEW 11, 16 (J.E.J. Prins et al. eds., 2002).

¹⁶ John Dickie, *Consumer Confidence and the EC Directive on Distance Contracts*, 21 J. CONSUMER POL’Y 217, 217-18 (1998).

¹⁷ Digital fraud caused Southeast Asia to lose US \$260 million in 2019. See ATKEARNEY, *Lifting the Barriers TO E-Commerce in ASEAN* at 11 (2015), <https://www.atkearney.co.uk/documents/10192/5540871/Lifting+the+Barriers+to+E-Commerce+in+ASEAN.pdf/d977df60-3a86-42a6-8d19-1efd92010d52>; Alexander Ayertey Odonkor, *Challenges and Prospects in Southeast Asia’s E-commerce Market*, CGTN (Sept. 24, 2020), <https://news.cgtn.com/news/2020-09-24/Challenges-and-prospects-in-Southeast-Asia-s-e-commerce-market-U2X7dP2ekM/index.html>.

¹⁸ For example, a major reason for Thai consumers for not purchasing goods or services is because they consumers are afraid businesses might deceive them (51.1%). *Thailand Internet, User Profile 2017*, ELECTRONIC TRANSACTIONS DEVELOPMENT AGENCY, 26 (2017), <https://www.etda.or.th/publishing-detail/thailand-internet-user-profile-2017.html>. Likewise, many Indonesian online consumers have also indicated that they are “afraid of fraud” in e-commerce (34%). *E-commerce in Southeast Asia: Should Merchants Offer Cash on Delivery?*, JANIO, <https://janio.asia/articles/e-commerce-in-southeast-asia-should-merchants-offer-cash-on-delivery/> (last visited Dec. 6, 2021); *Jeehun Seo, How Can Southeast Asia Galvanize E-Commerce?*, CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE (June 1, 2018), <https://www.cipe.org/blog/2018/06/01/how-can-southeast-asia-galvanize-e-commerce/>

¹⁹ Geraint Howells, *Consumer Law Enforcement and Access to Justice*, in RESEARCH HANDBOOK ON EU CONSUMER AND CONTRACT LAW 406, 407 (Christian Twigg-Flesner ed., 2016).

²⁰ Jan Smits, *Full Harmonization of Consumer Law? A Critique of the Draft Directive on Consumer Rights*, 18 EUR. REV. PRIV. L. 5, 7 (2010).

²¹ *Id.*

²² Proposal for a Consumers Right Directive, at 1-2; Ioannis Lianos et al., *The Global Governance of Online Consumer Protection and E-commerce*, WORLD ECON. F. 5 (2019), http://www3.weforum.org/docs/WEF_consumer_protection.pdf.

consumers²³ and boost consumer confidence to participate in cross-border online transactions. Then, ASEAN could expand to its full capacity and potential of e-commerce. Indeed, ASEAN has realized this importance and provided legal frameworks for its most recent economic integration, the AEC. The consumer protection scheme is on the priority list since ASEAN has recognized that consumer protection would be the critical part of developing its e-commerce to build back consumer trust and make use of the immense potential of e-commerce. Nevertheless, the AEC legal framework and ASEAN legal instruments are still inadequate.

In this Article, I assert that the current strategic measures have not yet reached the AEC's goal of a higher level of consumer protection at the regional level in order to facilitate cross-border e-commerce transactions. The insufficient regional instrument on consumer protection causes the inconsistency and inefficiency of laws in ASEAN member states, which hinder growth of e-commerce. I support this claim by examining the most recent laws regarding consumer protection in e-commerce of six member states. This is the first comparative discussion of this kind and provides the most up-to-date information on these states' consumer protection laws available. I additionally provide the first comparative study of precontractual information duties for online sellers of these six member states as one of the critical tools to protect consumers. This comparative study demonstrates how the absence of harmonizing consumer protection law in this region harms all ASEAN market players. This Article does not cover all questions about technical procedures to impose the law in ASEAN. Nor does it seek to list all rules that should be filled in the ASEAN's consumer protection law. It is, rather, a starting point for additional research in this area. It makes a case for thinking about harmonizing consumer protection law in ASEAN by showing concrete evidence of the inconsistency and inefficiency of laws that pose an obstacle to cross-border transactions in e-commerce.

This Article consists of five parts. Part I explains the history and unique character of ASEAN and introduces the AEC, the latest attempt at regional economic integration of ASEAN. It shows how ASEAN and the AEC function. Part II discusses ASEAN's e-commerce that has enormous potential to affect both players in its internal market—governments, private sectors, and consumers—and on the global scale. This part further directs attention to how ASEAN instruments and the AEC frameworks have significantly impacted e-commerce in connection with consumer protection in response to the great potential of growth and people's readiness in e-commerce.

ASEAN has not yet created a uniform and comprehensive legal instrument for consumer protection relating to precontractual information duties. Thus, Part III of this Article lays out relevant domestic laws of ASEAN member states that deal with this matter. I have selected laws, including both hard law and soft law, from six of the ten member states, namely Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam. I made this selection by considering

²³ Geraint Howells & Norbert Reich, *The Current Limits of European Harmonisation in Consumer Contract Law*, 12 ERA F. 39, 42 (2011).

three factors: (1) potential to develop e-commerce;²⁴ (2) existing e-commerce companies;²⁵ and, most importantly, (3) accessibility of resources for research.²⁶

After reviewing the member states' consumer protection laws for e-commerce in Part III, Part IV looks more deeply into one type of consumer protection law, precontractual information duties, which protects consumers engaging in e-commerce transactions. I chose this principle because it represents the fundamental right of consumers: the right to be informed, which essentially supports other consumer rights. This Article is the first to provide a comparative analysis of precontractual information duties between ASEAN member states and two nations that are considered to lead the international standard in this matter—the EU and the US. This comparative study reveals that member states' laws are still inconsistent and inefficient among member states compared to globally accepted standards, and that those inconsistencies create barriers to trade. Part V analyzes lessons learned from the selected six member states' consumer protection laws in e-commerce as well as a comparative study of precontractual information duties in these member states. The findings show that in order to have ASEAN's e-commerce flourish and provide adequate protection for consumers in the region, ASEAN needs to develop its legal framework by harmonizing consumer protection law.

I. ASEAN AND THE AEC

A. THE HISTORY OF ASEAN

ASEAN was established when its five founding members—Indonesia, Malaysia, the Philippines, Singapore, and Thailand²⁷—signed the Bangkok Declaration on August 8, 1967.²⁸ ASEAN was later joined by another five states, namely Brunei (1984), Vietnam (1995), Myanmar and Laos (1997), and Cambodia (1999).²⁹ Accordingly, ASEAN creates regional cooperation from ten member states in Southeast Asia.

²⁴ See generally Catherine Saez, *ASEAN Members Want A Regional Agreement On E-Commerce, Less Developed Members Struggle To Catch Up*, IP-WATCH (Apr. 19, 2018), <https://www.ip-watch.org/2018/04/19/asean-members-want-regional-agreement-e-commerce-less-developed-members-struggle-catch/>; Melissa Ho, *ASEAN E-commerce: Beyond the Pandemic*, HKTDC RSCH. (June 9, 2021), <https://research.hktdc.com/en/article/NzY4MzkzMzg1; Overview of e-commerce in Southeast Asia>, ASEAN UP (Feb. 14, 2018), <https://aseanup.com/overview-of-e-commerce-in-southeast-asia/>; GOOGLE ET AL. 2020, *supra* note 10, at 5.

²⁵ For example, two big online marketplaces in the ASEAN, Lazada and Shopee operate in only six countries (Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam). *About*, LAZADA, <https://www.lazada.com/en/about/> (last visited Feb. 12, 2022); *About*, SHOPEE, <https://careers.shopee.sg/about/> (last visited Feb. 12, 2022).

²⁶ Brunei, Laos, and Myanmar are left out in this Article because they do not have legislation regarding pre-contractual information duties for online contracts. Although Cambodia may have these duties in its Consumer Protection Law that was enacted in November 2019, this law is not available in English even on the website of the ASEAN Committee on Consumer Protection. See *Cambodia*, ACCP, <https://aseanconsumer.org/selectcountry=Cambodia> (last visited Feb. 12, 2022).

²⁷ *The Founding of ASEAN*, ASEAN, <https://asean.org/about-asean/the-founding-of-asean/#:~:text=The%20Association%20of%20Southeast%20Asian,%2C%20Philippines%2C%20Singapore%20and%20Thailand> (last visited Feb. 12, 2022).

²⁸ ASEAN SECRETARIAT, HANDBOOK ON SELECTED ASEAN POLITICAL DOCUMENTS at I (2013), <http://www.asean.org/uploads/archive/pdf/HBPDR.pdf>.

²⁹ *ASEAN Member States*, ASEAN, <https://asean.org/about-asean/member-states/> (last visited Feb. 12, 2022).

ASEAN has a truly heterogeneous community with different economies, cultures, political systems, and legal systems. A clear example of these differences among member states can be seen in different economies. On the one hand, Singapore, ranked 7th of 193 countries, has the world's top GDP per capita in 2021, but on the other hand, some member states in ASEAN have the lowest GDP per capita, such as Cambodia, which is ranked 153rd of 193 countries, and Myanmar, which is ranked 157th of 193 countries.³⁰ Besides these diverse economies, the legal systems also vary significantly. Some member states inherit the common law system from British colonies, such as Brunei, Malaysia, and Singapore, while others follow the civil law system, such as Thailand, Indonesia, Cambodia, Laos, and Vietnam.³¹ Owing to this combination, ASEAN represents one of the most diverse regions of the world.³² Yet, despite a great diversity, ASEAN is considered the most successful regional organization in the developing world.³³

The initial *raison d'être* of ASEAN was more political than economic. It was formed to contain and counteract the communist insurgency after the Cold War.³⁴ However, the political stability of member states was a sensitive issue that could inflame tension in the region, so the founding members deliberately hid their original political and military intent in order to dispel any suspicions that ASEAN could be a military alliance.³⁵ ASEAN, therefore, chose to highlight its focus on economic development, especially economic cooperation and announced its goal of eradicating poverty,³⁶ which would obviate the reason for people participating in communism.³⁷ For this reason, the Bangkok Declaration lists the main objectives of ASEAN as “accelerat[ing] economic growth ... through joint endeavours... [, and] ... promot[ing] active collaboration and mutual assistance on a matter of common interest in the economic ... fields.”³⁸

Turning to the core concept of cooperation in ASEAN, it is important to mention that ASEAN has a unique approach to international relations among member states called the “ASEAN

³⁰ The statistic referenced in the text is based on GDP per capita at a normal value. *List of Countries by Projected GDP Per Capita*, STAT. TIMES (Mar. 15, 2021), <https://statisticstimes.com/economy/countries-by-projected-gdp-capita.php>.

³¹ Myanmar is partly common law since it is now under socialist and military dictatorship regimes. The Philippines adopts a mixture of both systems. It mostly follows common law tradition, but civil law also retains some influence. See LUKE NOTTAGE ET AL., *ASEAN CONSUMER LAW HARMONISATION AND COOPERATION: ACHIEVEMENTS AND CHALLENGES* 20, 29-30 (2019), for in-depth information.

³² Philippe Gugler & Julien Chaisse, *The ASEAN in a New Era: Unveiling the Promises*, in *COMPETITIVENESS OF THE ASEAN COUNTRIES: CORP. AND REGUL. DRIVERS* 1, 1 (Philippe Gugler & Julien Chaisse eds., 2010).

³³ SIOW YUE CHIA & MICHAEL G. PLUMMER, *ASEAN ECONOMIC COOPERATION AND INTEGRATION: PROGRESS, CHALLENGES AND FUTURE DIRECTIONS* 1 (2015).

³⁴ STEFANO INAMA & EDMUND W. SIM, *THE FOUNDATION OF THE ASEAN ECONOMIC COMMUNITY: AN INSTITUTIONAL AND LEGAL PROFILE* 1 (2015); Naronchai Akrasanee & David Stifel, *The Political Economy of the ASEAN Free Trade Area*, in *AFTA: THE WAY AHEAD* 27, 27 (Seiji F Naya & Pearl Imada Iboshi eds., 1992); DONALD E. WEATHERBEE, *INTERNATIONAL RELATIONS IN SOUTHEAST ASIA* 3 (3d ed. 2014); Chia Siow Yue & Joseph L.H. Tan, *An Overview*, in *ASEAN & EU: FORGING NEW LINKAGES AND STRATEGIC ALLIANCES* 1, 1 (Chia Siow Yue & Joseph L.H. Tan eds., 1997); Surachai Sirikrai, *ASEAN's Three Decades of Regionalism: Success or Failure?*, 3 *THAMMASAT REV.* 4, 15 (1998).

³⁵ *Id.*; Rodolfo C. Severino, *Politics of Association of Southeast Asian Nations Economic Cooperation*, 6 *ASIAN ECON. POL'Y REV.* 22, 23 (2011).

³⁶ Akrasanee & Stifel, *supra* note 34 at 27; YOSHI KODAMA, *ASIA PACIFIC ECONOMIC INTEGRATION AND THE GATT-WTO REGIME* 86 (2000).

³⁷ Visoot Tuvayanond, *The Opportunities for the Future Economic Rebound in ASEAN*, 22 *UNIV. THAI CHAMBER COM. J.* 89, 91 (2002).

³⁸ ASEAN SECRETARIAT, *HANDBOOK ON SELECTED ASEAN POLITICAL DOCUMENTS*, at I (3rd ed. 2006),

Way.”³⁹ The ASEAN Way is comprised of two main principles: non-interference⁴⁰ and decision-making based on consensus and consultation.⁴¹ These two principles are key to understanding the character and function of ASEAN.

The first principle under ASEAN Way is non-interference. According to the ASEAN Charter, member states are required to respect the independence and sovereignty of each state.⁴² Thus, member states must maintain “non-interference in the internal affairs of [other states].”⁴³ The principle of non-interference comes from a deep-rooted fear of colonialism because, except for Thailand, all Southeast Asian countries were colonized.⁴⁴ With this history, even after the postcolonial period, ASEAN member states still insist on preserving this norm.⁴⁵ These member states have refused to sacrifice their sovereignty to a supranational organization, and, therefore, ASEAN cannot create a strong and binding institutional structure.⁴⁶ Without a supranational organization, ASEAN cannot impose community law, monitor the harmonization of law, or enforce compliance or dispute resolution.⁴⁷ Unlike the EU, a clear example of highly developed institutionalism that has already established supranational institutions, such as the Council, the Commission, the Court of Justice, and the Parliament, ASEAN still focuses little attention on institutional integration.⁴⁸

In contrast, ASEAN is an intergovernmental organization⁴⁹ that cannot issue any legally binding treaties⁵⁰ or legislative acts by means of regulations or directives⁵¹ like in the EU for the AEC. The enforcement of non-legally binding agreements is based on member states’ efforts at

³⁹ ASEAN Charter, Dec. 16, 2008, <https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf> (summarizing the ASEAN Way).

⁴⁰ ASEAN Charter art. 2(2)(e).

⁴¹ *Id.* art. 20.

⁴² ASEAN Charter art. 2(2)(a). *See also* Lee Leviter, Note, *The ASEAN Charter: ASEAN Failure or Member Failure?*, 43 N.Y.U. Int’l L. & Pol. 159, 161 (2010).; Susumu Yamakage, *The Construction of an East Asian Order and the Limitations of the ASEAN Model*, 12 ASIA-PAC. REV. 1, 6 (2005).

⁴³ ASEAN Charter art. 2(2)(e).

⁴⁴ Malaysia, Myanmar, and Singapore were British Colonies; Brunei was a British protectorate; Indonesia was under the Dutch; the Philippines were under Spain; Cambodia, Laos, and Vietnam were under France.

⁴⁵ LEE JONES, *ASEAN, SOVEREIGNTY AND INTERVENTION IN SOUTHEAST ASIA* 47 (2012); IMELDA DEINLA, *THE DEVELOPMENT OF THE RULE OF LAW IN ASEAN: THE STATE AND REGIONAL INTEGRATION* 5 (2017); Leviter, *supra* note 42, at 16; Yamakage, *supra* note 42, at 6.

⁴⁶ SHAUN NARINE, *EXPLAINING ASEAN: REGIONALISM IN SOUTHEAST ASIA* 33 (2002).

⁴⁷ Lay Hong Tan, *Will ASEAN Economic Integration Progress beyond a Free Trade Area*, 53 INT’L & COMP. L.Q. 935, 949 (2004).

⁴⁸ Suthiphand Chirathivat, *What Can ASEAN Learn from the Experience of European Integration? An ASEAN Perspective*, in *ASEAN & EU: FORGING NEW LINKAGES AND STRATEGIC ALLIANCES* 206, 215-18 (Chia Siow Yue & Joseph L.H. Tan eds., 1997).

⁴⁹ ASEAN Charter art. 3.

⁵⁰ DEINLA, *supra* note 45, at 4.

⁵¹ *Types of legislation*, EUROPEAN UNION, https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en (last visited Feb. 12, 2022). The regulation, such as the Council Regulation (EC) No 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, has more strict binding nature because it is directly applicable to member states, leading to full unification. In contrast, a directive, such as Consumer Rights Directive, leaves the choice of form and methods to the national authorities to implement such a directive. *See generally* Martin Gebauer & Felix Berner, *Unification and Harmonization of Laws*, in *MAX PLANCK ENCYCLOPEDIAS OF INTERNATIONAL LAW* ¶ 12 (2019).

the national stage.⁵² Policymaking can be conducted through the medium of ASEAN summits and ministerial meetings.⁵³ Even the Secretary-General of ASEAN does not have decision-making powers.⁵⁴ Instead, the Secretary-General can only “facilitate and monitor progress in the implementation of ASEAN agreements and decisions.”⁵⁵ Unlike the EU, the Secretary-General of ASEAN and the ASEAN Secretariat has no teeth. They cannot control the compliance of member states with AEC measures.⁵⁶

Despite ASEAN having no supranational organization, the emergence of globalization and fast-growing e-commerce can be a driving force to strengthen cooperation among member states. This cooperation can eventually develop into a future supranational organization because all member states can share the mutual benefits of the expanding market. Furthermore, people in the region show a genuine willingness to engage in the e-commerce market. This situation can bolster legitimate political will from the people up to the governmental leaders, which can lead to concrete steps for further economic integration.

The second principle under ASEAN Way is “decision-making based on consensus.” ASEAN emphasizes decision-making based on consultation and consensus,⁵⁷ and this norm informally regulates state behavior.⁵⁸ ASEAN has its own working approach—flexible accommodations, common decisions, collective encounters, and conflict avoidance or containment.⁵⁹ The consensus principle requires that a decision can be made only when all member states accept it.⁶⁰ This working style reflects another primary reason why ASEAN has eschewed supranationalism—it does not want any institution to deliver a decision that points out a loser or a winner. ASEAN envisions a sense of community where all member states are working together rather than forcing some member states to follow a majority decision. On this basis, a decision made by consensus has greater legitimacy than other methods, such as a majority vote,⁶¹ and it presents a unified statement, increasing the diplomatic authority of ASEAN in the international community.⁶² It encourages member states to consult, communicate, and understand the interests of their counterparts.⁶³ However, decision-making based on consensus and consultation, by nature, can lead to more confrontation and deadlock since no rigid agreement can be reached. The process

⁵² DEINLA, *supra* note 45, at 4.

⁵³ ASEAN Charter art. 7.

⁵⁴ Thomas Schmitz, *The ASEAN Economic Community and The Rule of Law* 4 (Dec. 15, 2014), http://home.lu.lv/~tschmit1/Downloads/BDHK-Workshop_15-12-2014_Schmitz.pdf.

⁵⁵ ASEAN Charter art. 11.

⁵⁶ Stefano Inama & Edmund Sim, *Prioritizing Integration Goals in the ASEAN Economic Community in a Changing World* 3 (EUR. U. INST. ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES, Working Papers RSCAS 2016/05), https://cadmus.eui.eu/bitstream/handle/1814/40145/RSCAS_2016_05.pdf?sequence=1&isAllowed=y.

⁵⁷ ASEAN Charter art. 20.

⁵⁸ Yoshinobu Yamamoto, *Regional Integration, Regional Institutions, and National Policies: A Theoretical and Empirical Examination of Regional Integration in Asia and Europe*, in REGIONAL INTEGRATION AND INSTITUTIONALIZATION COMPARING ASIA AND EUROPE 54 (G. John Ikenberry et al. eds., 2012).

⁵⁹ Surin Pitsuwan, *ASEAN's Three Decades of Regionalism: Success or Failure*, 3 THAMMASAT REV. 4, 7, 1998; DEINLA, *supra* note 45, at 8.

⁶⁰ OTTO F. VON FEIGENBLATT, THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN): CONFLICT AND DEVELOPMENT 16 (2012).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

to reach a consensus is also very time-consuming with a lengthy and high possibility of additional required negotiations,⁶⁴ making it difficult to respond to severe problems in a timely fashion.⁶⁵

Moreover, a consensus is not compatible with integration that entails complex decision-making, making it more difficult to reach decisions.⁶⁶ The consensus-making process can obstruct integration or even slow down its movement.⁶⁷ And a decision based on consensus may even fail to reflect the reality of regional politics and deflect attention away from state intervention.⁶⁸ The EU had experienced this phenomenon before and agreed in the end to adopt the principle of the qualified majority instead of consensus as to the result of the European Single Act.⁶⁹ Therefore, decision-making based on consensus might not be in the best of interests for ASEAN when it is trying to create greater economic integration for the AEC.⁷⁰

Still, decision-making based on consensus provides a substantial benefit to the foundation of the ASEAN by creating unity without leaving any member state behind, so it is worth saving. This Article recommends that ASEAN should not discard this ASEAN Way. We can fix what is wrong and strengthen the rest. As such, ASEAN should retain the decision-making process based on consensus specifically for sensitive areas, such as security and foreign policy.⁷¹ In the case of trade or economic development in e-commerce, member states should utilize a majority-vote process.⁷² In such situations, member states who are not ready to carry out a majority vote decision can choose to apply the “ASEAN minus X”⁷³ formula for more flexible participation.⁷⁴ The ASEAN minus X allows member states at different levels of development—some of which may need more time to fully implement a decision—to comply with a decision at a later stage of the process.⁷⁵ Using this concept can help member states to stay together even when they disagree on a particular action.⁷⁶ This working style that cultivates joint participation can keep member states together.

To sum up, two principles under ASEAN Way, non-interference and decision-making based on consensus, follow the unique character of ASEAN as the cooperation of a greatly diverse community. ASEAN Way has dominated working concepts, regional policies, and frameworks in ASEAN. Thus, the current ASEAN instruments come out as broad commitments in order to accommodate all member states to gradually implement them together as a whole despite their

⁶⁴ DEINLA, *supra* note 45, at 8.

⁶⁵ FEIGENBLATT, *supra* note 60, at 16.

⁶⁶ CHIRATHIVAT, *supra* note 48, at 220.

⁶⁷ *Id.*

⁶⁸ JONES, *supra* note 45, at 2.

⁶⁹ Single European Act Amending the 1957 Treaty of Rome, Feb. 17, 1986, 1987 O.J. (L 169).

⁷⁰ CHIRATHIVAT, *supra* note 48, at 220.

⁷¹ ASEAN, REPORT OF THE EMINENT PERSONS GROUP ON THE ASEAN CHARTER ¶63 (2006),

<http://www.asean.org/wp-content/uploads/images/archive/19247.pdf>.

⁷² *Id.*

⁷³ ASEAN Charter art. 21(2).

⁷⁴ Surin Pitsuwasn, *ASEAN's Three Decades of Regionalism: Success or Failure*, 3 THAMMASAT REV. 4, 7 (1998).

⁷⁵ PITSUWAN, *supra* note 59, at 7.

⁷⁶ *Id.*

disparity of social, political, and legal backgrounds. This is the main reason why ASEAN cannot impose binding laws, such as regulations or directives following the EU steps.

B. THE AEC: THE REGIONAL ECONOMIC INTEGRATION PROJECT OF ASEAN

The AEC is the regional economic integration established by ASEAN on December 31, 2015.⁷⁷ In fact, ASEAN has created several projects prior to the AEC to work on economic integration. ASEAN's first serious step took place in 1992 with the agreement in the ASEAN Free Trade Area (AFTA).⁷⁸ The AFTA was created in response to the loss of market shares from trading blocs in Europe and North America.⁷⁹ By establishing the European Common Market, also known as the European Economic Community (EEC), and the North American Free Trade Area (NAFTA), ASEAN has taken necessary responsive measures to mitigate any adverse effects from these economic blocs and sought alternative markets for its products through the AFTA.⁸⁰ Thus, the AFTA has tried to increase international competitiveness and not be left out in the world's mainstream.⁸¹ The AFTA eliminates tariff and non-tariff barriers to increase the free flow of goods in the region, which attracts substantially more trade and investment.⁸²

To be competitive in globalization, ASEAN has agreed to strengthen its ten member states toward the ultimate goal of reaching the highest degree of integration into one community as "the ASEAN Community."⁸³ The ASEAN community is often compared with the EU—the most successful regional economic integration globally. It is also important to mention that the EU has a long history with ASEAN through its colonial ties.⁸⁴ But in fact, ASEAN does not intend to pursue the ASEAN Community by following all the ways of the EU.⁸⁵ The ASEAN Community is comprised of three pillars: the AEC, the ASEAN Political-Security Community, and the ASEAN Socio-Cultural Community.⁸⁶ ASEAN first mentioned the AEC at the Bali Summit in October 2003⁸⁷ and chose to launch the AEC before the other two pillars because it considered economic integration the most important pillar and a precondition to support the accomplishment of the other two.⁸⁸ The AEC's objective is to transform Southeast Asia into a competitive single market and production base with a free flow of goods and services, investment, skilled labor, and capital

⁷⁷ ASEAN Economic Community, ASEAN, <https://asean.org/asean-economic-community/> (last visited Feb. 12, 2022).

⁷⁸ YUE & TAN, *supra* note 34, at 2; see AKRASANEE & STIFEL, *supra* note 34, at 31.

⁷⁹ Kathryn L. McCall, *What is Asia Afraid of? The Diversionary Effect of NAFTA's Rules of Origin on Trade Between the United States and Asia*, 25 CAL. W. INT'L L. J. 389, 410-413 (1995).

⁸⁰ Jaturon Thirawat, *Salient Aspects and Issues Concerning AFTA*, 7 THAMMASAT R. 2, 6 (2002).

⁸¹ *Id.* at 11.

⁸² PAUL J. DAVIDSON, ASEAN THE EVOLVING LEGAL FRAMEWORK FOR ECONOMIC COOPERATION 75 (2002).

⁸³ ASEAN Community, *supra* note 11; see *Cebu Declaration*, *supra* note 11.

⁸⁴ *An Overview*, in ASEAN & EU: FORGING NEW LINKAGES AND STRATEGIC ALLIANCE 1, 3 (Chia Siow Yue & Joseph L.H. Tan eds., 1997).

⁸⁵ Rodolfo Severino, Secretary-General of ASEAN, ASEAN: Expectations, Myths and Facts, Statement at the Writers' Workshop on Reporting Development in ASEAN, ISEAS, Singapore (June 26-27, 2012).

⁸⁶ ASEAN COMMUNITY, *supra* note 11.

⁸⁷ *Declaration of ASEAN Concord II*, *supra* note 12.

⁸⁸ INAMA & SIM, *supra* note 34, at 5 (noting that at the 12th ASEAN Summit in 2007, the leaders affirmed their commitment to establish the AEC and adopt the ASEAN Economic Blueprint in 2015); see *Cebu Declaration on the Blueprint of the ASEAN Charter*, ASEAN (Jan. 13, 2007), http://asean.org/?static_post=cebu-declaration-on-the-blueprint-of-the-asean-charter-cebu-philippines-13-january-2007.

among the ten member states.⁸⁹ The AEC represents one type of economic integration that relates to several agreements (e.g., on trade in goods, services, investment) that support ASEAN's economic integration similar to other trade agreements like the United States–Mexico–Canada Agreement (USMCA),⁹⁰ for example.

More importantly, the AEC has often invited the comparison with other successful economic integration models, particularly the EU, and its prior economic integration, the EEC. It is easy to find false parallels between EEC and AEC because of their similar names. In fact, the AEC's ultimate goal is to transform ASEAN into “a single market and production base,”⁹¹ which could be interpreted as reaching the highest level of integration as a single market in an economic and monetary union like the EU.⁹² However, the AEC does not fit with any four levels under the broad theory of economic integration: (1) free trade area (FTA); (2) custom union; (3) common market; and (4) economic and monetary union.⁹³ Nor can the AEC be compared to those integration steps in Europe.⁹⁴

In effect, ASEAN has not yet declared an explicit plan of becoming the final stage of economic integration despite the wording of its goal (a competitive single market and production base) suggesting that conclusion.⁹⁵ It will take time for the AEC to achieve the highest integration and fulfill the conditions of a single market in an economic and monetary union like the EU.⁹⁶ In order to become a single market, the AEC needs to further abolish all customs for intra-trade, eliminate more non-tariff barriers, encourage more free movement of labor, and implement systematic harmonization of law.⁹⁷

Despite any surface-level similarities between the AEC and the EEC, the AEC has its own unique way of approaching economic integration that is quite different from European models. Although the AEC has a similar name to the EEC, it has not yet reached a common market, the third stage of economic integration, like the EEC.⁹⁸ This is because the AEC has not completely liberalized trades in goods and services and the movement of capital and labor.⁹⁹ In addition, the

⁸⁹ AEC BLUEPRINT 2015, *supra* note 13, at 5.

⁹⁰ See Office of the United States Trade Representative, *United States-Mexico-Canada Agreement*, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement> (last visited Feb. 12, 2022) (noting USMA replaced NAFTA in 2020).

⁹¹ AEC BLUEPRINT 2015, *supra* note 13, at 5.

⁹² Jacques Pelkmans, *THE ASEAN ECONOMIC COMMUNITY: A CONCEPTUAL APPROACH* 20, 27 (2016).

⁹³ Janina Witkowska, *Integration Processes in the Global Economy: Current State and Prospects. The Cases of the European Union, ASEAN Economic Community, And NAFTA*, 19 *COM. ECON. RES.* 47, 49-50 (2016); see Bela Balassa, *THE THEORY OF ECONOMIC INTEGRATION* 1-17 (2011); *Economic Integration*, *ECONOMICS ONLINE*, https://www.economicsonline.co.uk/Global_economics/Economic_integration.html (last visited Feb. 12, 2022).

⁹⁴ WITKOWSKA, *supra* note 93, at 54.

⁹⁵ WITKOWSKA, *supra* note 93, at 55.

⁹⁶ In order to be considered as an economic and monetary union, such economic integration must have a well-functioning internal market, common competition, and economic policies enabling a single market, a common trade policy, and a single currency together with a common monetary policy. See SANCHITA BASU DAS, *THE ASEAN ECONOMIC COMMUNITY AND BEYOND: MYTHS AND REALITIES* 14 (2016); Witkowska, *supra* note 93 at 50; *Economic Online*, *supra* note 93; Thomas Schmitz, *The ASEAN Economic Community and The Rule of Law*, (Dec. 15, 2014), http://home.lu.lv/~tschmit1/Downloads/BDHK-Workshop_15-12-2014_Schmitz.pdf, at 2.

⁹⁷ Schmitz, *supra* note 96 at 2.

⁹⁸ *ECONOMICS ONLINE*, *supra* note 93; DAS, *supra* note 96 at 60.

⁹⁹ Witkowska, *supra* note 93 at 50.

AEC has not even integrated into a custom union, the second stage of economic integration¹⁰⁰ because it still has not created a common external custom against non-member states.¹⁰¹ The AEC's deviation from any levels of economic integration proves that the AEC does not fit in the current theory and, therefore, has its own unique level of economic integration. The AEC can be viewed as deepening the regional economic integration from the existing AFTA.¹⁰² Thus, the AEC represents an advanced step of FTA as "FTA-plus."¹⁰³ by removing tariffs for member states and committing to further facilitating the free flow of goods, services, investment, capital, and skilled labor.¹⁰⁴

Though the AEC is dissimilar to footsteps in Europe, and, in fact, does not follow the broad theory of four levels of economic integration, a study that assessed the comprehensive benefits of the AEC establishment suggests that the AEC "could produce gains similar to those resulting from the Single European Market."¹⁰⁵ For this reason, it is unsurprising that, as of 2021, this large collective market has a value of approximately over U.S. \$3 trillion.¹⁰⁶ Because of this vast market, presenting more than half a billion people, the AEC undoubtedly attracts local and foreign investment. For example, the AEC is the EU's third-largest trading partner outside Europe, only after the U.S. and China.¹⁰⁷ Also, the AEC is the U.S.' fourth-largest source for imported goods and the export market, after Canada, Mexico, and China.¹⁰⁸ As the AEC's physical market expands, so does the online market. In fact, the AEC has been under the spotlight around the world, especially from China who plays an active role in promoting digital connectivity in Southeast Asia.¹⁰⁹

II. THE POTENTIAL OF E-COMMERCE IN ASEAN UNDER THE AEC

Digitalization has reshaped traditional ways of doing business. It has created new modes of trading where people can buy or sell goods and services electronically without physical face-

¹⁰⁰ Schmitz, *supra* note 96, at 2.

¹⁰¹ Schmitz, *supra* note 96, at 2.

¹⁰² AEC BLUEPRINT 2015, *supra* note 13, at 5; Richard Pomfret, *ASEAN's New Frontiers: Integrating the Newest Members into the ASEAN Economic Community*, 8 ASIAN ECON. POL'Y REV. 25, 28 (2013).

¹⁰³ Koichi Ishikawa, *The ASEAN Economic Community and ASEAN Economic Integration*, J. CONTEMP. EAST ASIA STUD. 1, 11 (2021); PELKMANS, *supra* note 92, at 18-40; Vinod K. Aggarwal & Min Gyo Koo, *Designing Trade Institutions for Asia*, in ASIAN DESIGNS: GOVERNANCE IN THE CONTEMPORARY WORLD ORDER 35-58, 41-42 (Saadia M. Pekkanen ed., 2016).

¹⁰⁴ AEC BLUEPRINT 2015, *supra* note 13, at 5-16. This goal is reaffirmed in ASEAN, ASEAN ECONOMIC COMMUNITY BLUEPRINT 2025, at 3-11 (2015), https://asean.org/wp-content/uploads/2021/08/AECBP_2025r_FINAL.pdf [hereinafter "AEC BLUEPRINT 2025"].

¹⁰⁵ Peter A. Petri et al., *ASEAN Economic Community: A General Equilibrium Analysis*, 26 ASIAN ECON. J. 93-118 (2012).

¹⁰⁶ Aaron O'Neill, *Gross Domestic Product (GDP) of the ASEAN Countries from 2010 to 2020*, STATISTA (Apr. 1, 2021), <https://www.statista.com/statistics/796245/gdp-of-the-asean-countries/>; Elffie Chew, *Southeast Asia Weighs Benchmarks for \$3 Trillion Green Financing*, BLOOMBERGQUINT (Mar. 30, 2021, 7:26 PM), <https://www.bloombergquint.com/business/southeast-asia-weighs-benchmarks-for-3-trillion-green-financing>.

¹⁰⁷ *Countries and Regions: Association of South East Asian Nations (ASEAN)*, EUROPEAN COMMISSION, <https://ec.europa.eu/trade/policy/countries-and-regions/regions/asean/> (last visited Feb. 12, 2022).

¹⁰⁸ Brian Harding & Kim Mai Tran, *U.S.-Southeast Asia Trade Relations in an Age of Disruption*, CSIS BRIEF 2 (June 2019), https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/190627_HardingandTran_SoutheastAsiaTradeRelations_layout_FINAL.pdf.

¹⁰⁹ Rakhahari Chatterji, *China's Relationship with ASEAN: An Explainer*, OBSERVER RESEARCH FOUNDATION ISSUE BRIEF 7 (Apr. 2021), https://www.orfonline.org/wp-content/uploads/2021/04/ORF_IssueBrief_459_China-ASEAN.pdf.

to-face contracts. It enhances a consumer's capacity to search, compare, and choose the best and most suitable choices in terms of price, quality, quantity, or customers' reviews of products before purchasing.¹¹⁰ A non-geographical border of e-commerce¹¹¹ helps businesses connect to targeted individuals directly, promptly, and speedily, which is key to trading worldwide.¹¹² E-commerce has become the world's most rapidly growing commercial marketplace even before the COVID-19 pandemic,¹¹³ and it will continue to play a prominent role at national, regional, and international levels.¹¹⁴

A. THE READINESS OF PEOPLE IN THE REGION

The internet penetration in the Southeast Asian region (ASEAN plus Timor-Leste) has risen to 75%, but it is still less than the 90% in North America and the 87% in Europe.¹¹⁵ Nevertheless, this region has the world's third-highest number of internet users, outranking higher internet penetration regions.¹¹⁶ Four member states of ASEAN, Indonesia (ranking 4th), Philippines (ranking 12th), Vietnam (ranking 14th), and Thailand (ranking 18th), are in the top 20 of the world's internet users.¹¹⁷ More importantly, ASEAN has a distinctive culture in which 90% of the internet users access the internet predominantly via their mobile phones.¹¹⁸

In many member states, internet users spend the most time worldwide accessing the internet through mobile devices.¹¹⁹ The world's average daily time spent on mobile internet is 3.39 hours.¹²⁰ Users in the Philippines lead the world with 5.54 hours, followed closely by Thailand with 5.07 hours and Indonesia with 5.02 hours.¹²¹ Users in other countries, however, use less mobile internet on a daily basis—3.13 hours in the United States, 3.10 hours in China, or 1.37 hours in Japan.¹²² These statistics tell the same story even when comparing overall daily internet usage combining all devices.¹²³ Six out of ten ASEAN member states are active on social media

¹¹⁰ Justin Malbon, *Consumer Strategies for Avoiding Negative Online Purchasing Experiences: A Qualitative Study*, 20 COMPETITION & CONSUMER L. J. 249, 256 (2013).

¹¹¹ DANIELE AMOR, *THE E-BUSINESS (R)EVOLUTION LIVING AND WORKING IN AN INTERCONNECTED WORLD* 112 (2000).

¹¹² JANE K. WINN & BENJAMIN WRIGHT, *THE LAW OF ELECTRONIC COMMERCE* 1-3 (4th ed. 2001).

¹¹³ Isabelle Durant, *Developing Countries and Trade Negotiations on E-commerce*, UNCTAD (Feb. 19, 2021), <https://unctad.org/news/developing-countries-and-trade-negotiations-e-commerce>.

¹¹⁴ LILIAN EDWARDS & CHARLOTTE WAELDE, *LAW AND THE INTERNET: A FRAMEWORK FOR ELECTRONIC COMMERCE* 17 (2d ed. 2000).

¹¹⁵ GOOGLE ET AL. 2021, *supra* note 10, at 10; *Digital in 2020 Global Overview*, WE ARE SOCIAL & HOOTSUITE, slide no. 34, <https://wearesocial.com/digital-2020> (last visited Feb. 12, 2022).

¹¹⁶ STATISTA, *Internet Users*, *supra* note 9.

¹¹⁷ *Top 20 Countries with the Highest No. of Interest Users -2020 Q1*, INTERNET WORLD STATES (Dec. 31, 2019), <https://www.internetworldstats.com/top20.htm>.

¹¹⁸ *Econ. Sea 2019: Swipe Up and to the Right: Southeast Asia's \$100 Billion Internet Econ.*, GOOGLE ET AL 4 (2019), https://www.blog.google/documents/47/SEA_Internet_Economy_Report_2019.pdf (This report covers six countries in Southeast Asia, which are Indonesia, Malaysia, Philippines, Singapore, Thailand, and Vietnam); Mik, *supra* note 14, at 359.

¹¹⁹ *Digital in 2021 Glob. Overview Rep.*, WE ARE SOCIAL & HOOTSUITE, slide no. 35, <https://wearesocial.com/digital-2021> (last visited Feb. 12, 2022).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* at 34.

and buy more products online than the average internet user around the world.¹²⁴ This trend is likely to continue as people tend to shop online rather than in physical shops.¹²⁵

The number of ASEAN online shoppers will certainly increase in the near future due to one important factor: the age profile of the population.¹²⁶ In the ASEAN, 70% of the population is under the age of forty years old, compared to 57% in China.¹²⁷ The median age of the ASEAN population is around twenty-eight years old,¹²⁸ making ASEAN a relatively young population.¹²⁹ This younger population is a generation of digital natives and technical innovators.¹³⁰ Members of the young generation not only have a greater understanding of technological concepts through their interaction with digital technology from an early age,¹³¹ but, due to this increased interaction, they also have a greater tendency to engage in e-commerce.¹³² In fact, some statistics project that by 2025 most people in ASEAN will be fully engaged in the digital economy.¹³³ The robust use of digital technology and services in professional and personal situations will empower the majority of people in the Southeast Asian region to become digital natives and comfortable with the online world.¹³⁴ Even more significantly, this region has a strong middle class with increasing purchasing power and consumption.¹³⁵

In addition to the high volume of internet users, the increase in internet speed across the region is a dominant factor in growth of e-commerce because it was predicted that the Southeast Asian region would add nearly 4 million new users to the online world every month from 2015 to 2020.¹³⁶ The result in 2021 was on track with this prediction as the number of internet users increased in the US from 260 Million to 440 million in 2015.¹³⁷ All of these statistics support the claim that, despite many challenges, the ASEAN digital economy is expected to reach US \$300

¹²⁴ These states are Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam (alphabetical order). See *Digital in 2021 Glob. Overview Rep.*, *supra* note 119, at slides 83, 226.

¹²⁵ Rolf H. Weber, *Digital Trade and E-Commerce: Challenges and Opportunities of the Asia-Pacific Regionalism*, 10 *ASIAN J. WTO & INT'L HEALTH L & POL'Y*, 321, 322 (2015).

¹²⁶ CASSEY LEE & SANCHITA BASU DAS, *E-COMMERCE, COMPETITION AND ASEAN ECONOMIC INTEGRATION* 7, 11 (Cassey Lee & Eileen Lee ed., 2019).

¹²⁷ *E-Conomy Sea: Unlocking the \$200 Billion in Digit. Opportunity in Southeast Asia*, GOOGLE REPORT slide no.12 (2016), <https://www.slideshare.net/economySEA/economy-sea-by-google-and-temasek>.

¹²⁸ HARDING & TRAN, *supra* note 108, at 2.

¹²⁹ LEE & DAS, *supra* note 126, at 11.

¹³⁰ ATKERNEY, *THE ASEAN DIGITAL REVOLUTION* 7 (2015), <https://www.atkearney.com/documents/10192/7567195/ASEAN+Digital+Revolution.pdf/86c51659-c7fb-4bc5-b6e1-22be3d801ad2>.

¹³¹ *Id.*

¹³² LEE & DAS, *supra* note 126, at 11.

¹³³ ATKERNEY, *supra* note 130, at 20.

¹³⁴ *Id.*

¹³⁵ Weber, *supra* note 125, at 322.

¹³⁶ GOOGLE REPORT, *supra* note 127, at slide no. 12.

¹³⁷ GOOGLE ET AL. 2021, *supra* note 10, at 11; GOOGLE ET AL. 2020, *supra* note 10, at 92.

billion by 2025.¹³⁸ ASEAN has experienced a boom in technology, led by six unicorns (a company with a value of \$1 billion).¹³⁹

Unsurprisingly, with the considerable potential of economic growth in e-commerce, Chinese companies have made a play for the ASEAN e-commerce market while American companies remain on the periphery of ASEAN markets. The ASEAN e-commerce market has also incentivized investors from giant, well-known Chinese companies, such as Alibaba,¹⁴⁰ Tencent,¹⁴¹ and JD.com.¹⁴² ASEAN is a hot battleground among these competitors.¹⁴³ The fierce competition of these Chinese e-commerce companies displays in ASEAN through the top rivals for online marketplaces (Southeast Asia Amazon), which are Lazada and Shopee. These two online marketplaces cover seven markets: Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam.¹⁴⁴ Alibaba bought 51% of Lazada in 2016 and injected around \$4 billion in 2017.¹⁴⁵

¹³⁸ GOOGLE ET AL. 2021, *supra* note 10, at 8, 83-87; GOOGLE ET AL. 2020, *supra* note 10, at 94; Aradhana Aravindan, *Southeast Asia's internet economy to hit \$300 billion by 2025: Report*, REUTERS (Oct. 3, 2019, 12:07 AM), <https://www.reuters.com/article/us-southeast-asia-internet/southeast-asias-internet-economy-to-hit-300-billion-by-2025-report-idUSKBN1WI07X>

¹³⁹ See *The Full List of Unicorn Startups in Southeast Asia*, NEXT UNICORN (Mar. 30, 2021), <https://nextunicorn.ventures/the-full-list-of-unicorn-startups-in-southeast-asia/> (providing that examples of unicorns in ASEAN are: Sea, Grab, Razer, Go-Jek, Lazada, Tokopedia, Traveloka, etc.); ASIAN UP, *The 6 Tech Unicorns of Southeast Asia* (Aug. 6, 2020), <https://aseanup.com/tech-unicorns-southeast-asia/>; Akhyari Hananto, *Unicorns of Southeast Asia and Their Current Valuations* (Apr. 23, 2021, <https://seasia.co/2021/04/23/unicorns-of-southeast-asia-and-their-current-valuations-updated-april-2021>).

¹⁴⁰ See Patpicha Tanakasempipat, *Alibaba to invest \$320 Million in Thailand, as rivals boost presence*, REUTERS (Apr. 19, 2018, 6:21 AM), <https://www.reuters.com/article/us-alibaba-thailand/alibaba-to-invest-320-million-in-thailand-as-rivals-boost-presence-idUSKBN1HQ1BI> (demonstrating that Alibaba has been investing aggressively in Southeast Asia. For example, it has invested \$1.1 billion in the Indonesian marketplace, Tokopedia, in 2018 and \$320 million in Thailand in 2018).

¹⁴¹ See Elleen Yu, *China tech giants to fight for \$53B SEA e-commerce Market*, ZDNET (Nov. 30, 2018, 8:47 AM), <https://www.zdnet.com/article/china-tech-giants-to-fight-for-53b-sea-e-commerce-market/> (explaining that Tencent has invested in several companies, such as investing, \$1.2 billion in Indonesian ride-sharing application Go-Jek).

¹⁴² See Yu, *supra* note 141; see also *Alibaba and Tencent: Showdown in Southeast Asia*, THE ASEAN POST (Mar. 16, 2018), <https://theaseanpost.com/article/alibaba-and-tencent-showdown-southeast-asia> (explaining that JD.com, the ally of Tencent, launched its local store in Indonesia in 2015 and has invested in other e-commerce players, including Indonesian Traveloka and, the Thai online fashion site, Pomelo).

¹⁴³ Yu, *supra* note 141; Weizhen Tan & Akiko Fujita, *Chinese companies are set to boost Southeast Asia's e-commerce market: Credit Suisse*, CNBC (Mar. 23, 2018, 3:26 AM), <https://www.cnbc.com/2018/03/23/chinese-companies-are-set-to-boost-southeast-asias-e-commerce-market-credit-suisse.html>; eMarketer Staff, *Chinese E-commerce Firms Dominate SE Asian Market*, MONI (Oct. 2, 2017), <https://www.monigroup.com/tc/node/94>; Matteo Sutto, *The State of eCommerce in Southeast Asia 2017*, THE STARTUP (Feb. 9, 2018), <https://medium.com/swlh/the-state-of-ecommerce-in-southeast-asia-in-2017-5a779f962623>; Aron Chen, *Alibaba and Tencent Target Southeast Asia for Potential Growth*, PINGWEST (Sep. 25, 2019, 4:53 PM), <https://en.pingwest.com/a/3537>.

¹⁴⁴ Mercedes Ruehl & Henny Sender, *The battle for south-east Asia's online shoppers*, FINANCIAL TIMES (July 19, 2020), <https://www.ft.com/content/eb264616-0eb1-4dc9-bfbe-5406f349a5fb>; Luis Sanchez, *These 2 Companies Dominate E-Commerce in Southeast Asia*, THE MOTLEY FOOL (Jan. 28, 2020, 11:12AM), <https://www.fool.com/investing/2020/01/28/these-2-companies-dominate-e-commerce-in-southeast.aspx>.

¹⁴⁵ Jon Russell, *Alibaba doubles down on Lazada with fresh \$2B investment and new CEO*, TECHCRUNCH (Mar. 19, 2018, 12:44 AM), <https://techcrunch.com/2018/03/18/alibaba-doubles-down-on-lazada/>; Qian Linliang, *Belt and road on steroids: How Alibaba conquered Southeast Asia*, FINANCIAL REVIEW (Apr. 2, 2019, 11:00 PM), <https://www.afr.com/world/asia/belt-and-road-on-steroids-how-alibaba-conquered-southeast-asia-20190327-p517xs>.

Alibaba even replaced the Lazada CEO with its long-standing executive in order to monopolize the market and tie the business of Lazada into Alibaba's core e-commerce services.¹⁴⁶

Tencent has fought back to win the e-commerce market in this region by putting \$500 million in Shopee for its capital.¹⁴⁷ Shopee is owned by Sea, Ltd. which Tencent has backed since 2017.¹⁴⁸ JD.com, the strategic ally of Tencent, entered into a joint venture totaling \$500 million in 2018 with the Central Group and opened JD Central, another online marketplace in Thailand.¹⁴⁹ These events show the intense movement of Chinese companies in the ASEAN e-commerce market, whereas Amazon, representing American interests, still confines itself to Singapore.¹⁵⁰

The ASEAN e-commerce market continues to flourish under the AEC.¹⁵¹ Besides, as mentioned earlier, COVID-19 has highlighted the importance of e-commerce.¹⁵² The pandemic has caused the acceleration of digital assumption because people need to use online services to conform with social distancing policies. The statistic shows that one in every three people in ASEAN started using online services for the first time, and 90% of this population intend to continue using these services going forward.¹⁵³ They have accepted e-commerce as a new way of life.¹⁵⁴ Online shoppers in ASEAN have already reached 440 million by the end of 2021—more than the prior prediction.¹⁵⁵ These statistics reflect the strong readiness of people in ASEAN, including businesses and consumers, to participate in e-commerce, which will contribute to the inevitable exponential growth of the e-commerce market. Since people in ASEAN are ready to engage in e-commerce, the AEC can effectively implement the frameworks for economic integration and foster cooperation at the domestic level and between member states. Therefore,

¹⁴⁶ Russell, *supra* note 145.

¹⁴⁷ Yu, *supra* note 141.

¹⁴⁸ Jon Markman, *At Sea Ltd, Red Hot Meets Red Ink*, THE STREET (Dec. 15, 2020), <https://www.thestreet.com/tech/news/sealtdjdm121520>; Yoolim Lee, *World's Hottest Stock Gains Another 9% After Doubling Revenue*, BLOOMBERGQUINT (Aug. 19, 2020, 6:00 PM), <https://www.bloombergquint.com/business/tencent-backed-sea-s-sales-double-in-e-commerce-gaming-boom>

¹⁴⁹ *JD.Com Officially Launches its E-commerce Platform in Thailand*, JD.COM (Sep. 25, 2018), <https://jdcorporateblog.com/jd-com-officially-launches-its-e-commerce-platform-in-thailand/>; Aron Chen, *Alibaba and Tencent Target Southeast Asia for Potential Growth*, PINGWEST (Sep. 25, 2019, 4:53 PM), <https://en.pingwest.com/a/3537>.

¹⁵⁰ See Sheji Ho On, *10 Ecommerce Trends That Will Shape Southeast Asian Ecommerce in 2018*, ECOMMERCEIQ (Dec. 20, 2017), <https://ecommerceiq.asia/10-southeast-asia-ecommerce-trends-2018/> (providing that Amazon entered the Singaporean market and launched its Prime Now service in 2017).

¹⁵¹ *Southeast Asia E-commerce to Grow by 5.5% in 2021*, DIGFIN (Dec. 20, 2020), <https://www.digfingroup.com/ppro-2021/>; Yoolim Lee, *Southeast Asia Tech Startups Ride Out 2020, Raising \$8.2 Billion*, BLOOMBERG (Mar. 26, 2021), <https://www.bloomberg.com/news/articles/2021-03-26/southeast-asia-tech-startups-ride-out-2020-raising-8-2-billion>.

¹⁵² GOOGLE ET AL., *supra* note 10, at 8, 15-16; Research and Markets, *Southeast Asia B2C E-Commerce Market Report 2021: Market Continued Accelerating During the COVID-19 Pandemic in 2020*, GLOBAL NEWswire (Mar. 15, 2021, 5:48 AM), <https://www.globenewswire.com/news-release/2021/03/15/2192541/0/en/Southeast-Asia-B2C-E-Commerce-Market-Report-2021-Market-Continued-Accelerating-During-the-COVID-19-Pandemic-in-2020.html>; *Online Shopping Soars in Southeast Asia*, TTR WEEKLY (Mar. 18, 2021), <https://www.ttrweekly.com/site/2021/03/online-shopping-soars-in-southeast-asia/>.

¹⁵³ GOOGLE ET AL., *supra* note 10, at 10, 18.

¹⁵⁴ GOOGLE ET AL., *supra* note 10, at 26.

¹⁵⁵ *Id.* at 11; Eileen Yu, *Southeast Asian Consumers Intensify Online Habits, Spending 60% More*, ZDNET: BY THE WAY (Aug. 31, 2021), <https://www.zdnet.com/article/southeast-asian-consumers-intensify-online-habits-spending-60-more/#:~:text=Windows%2011-,Southeast%20Asian%20consumers%20intensify%20online%20habits%2C%20spending%2060%25%20more,to%20%24254%20billion%20by%202026>.

even though ASEAN cannot impose a binding top-down legal framework like the EU or like a government at a national level, people in the community are essential to drive the political will of the member states to further strengthen the economic development of the AEC. In other words, great support from people in ASEAN can ultimately create a bottom-up legal framework with which member states would willingly comply.

B. THE REGIONAL POLICY AND FRAMEWORK OF THE AEC CONCERNING E-COMMERCE

In recognition of ASEAN's great potential for e-commerce, the readiness of its people, and achieving a goal of a healthy e-commerce market, ASEAN also launched many regional policies, initiatives, and instruments to govern the e-commerce market. ASEAN is the first developing region that is working on a unified e-commerce legal framework.¹⁵⁶ The most important policy frameworks are the AEC Blueprints of 2015 and 2025.¹⁵⁷ The AEC Blueprints have served as a master plan for the AEC's implementing process and outlined timelines and goals for specific reforms.¹⁵⁸ As mentioned earlier, ASEAN has no supranational organization to impose legislation, such as rules or directives. Therefore, the AEC Blueprints are only a soft law—a nonlegally binding agreement—that asks for the cooperation of member states in implementing the AEC goals and strategic measures. The AEC Blueprints are more like an aspirational plan that lists broadly agreed commitments in order to accommodate all ASEAN member states, which have economic disparity and require gradual implementation. The AEC Blueprints, then, allow various sectoral bodies in ASEAN to further elaborate and issue more detailed and specific initiatives and work plans that support the implementation of the AEC Blueprints.¹⁵⁹

To reach the AEC's ultimate goal as a single market and production base within ASEAN, the AEC issues many comprehensive strategic plans to promote e-commerce. The AEC Blueprint 2015 and 2025 have devoted one section to e-commerce, containing commitments related to draft policies and legal infrastructure for e-commerce transactions.¹⁶⁰ The AEC Blueprint 2015, though expired in 2015, situated the policy and legal infrastructure for e-commerce with the specific goal of being "the Competitive Economic Region."¹⁶¹ It required member states to enact, amend, or update their e-commerce legislation to be consistent with regional best practices, guidelines, and standards based on common practices in order to support regional e-commerce activities.¹⁶² The priority action was the full harmonization of the legal infrastructure of e-commerce in ASEAN.¹⁶³

Although the AEC Blueprint 2015 has already expired, member states adopted the AEC Blueprint 2025 to carry out the AEC targets from 2016 to 2025.¹⁶⁴ The AEC Blueprint 2025 has continued to promote e-commerce in light of its obvious importance in the global economy.¹⁶⁵

¹⁵⁶ MIK, *supra* note 14, at 342.

¹⁵⁷ AEC BLUEPRINT 2015, *supra* note 89; ASEAN BLUEPRINT 2025, *supra* note 104.

¹⁵⁸ The U.S. Commercial Service, *Understanding the ASEAN Economic Community (AEC) – Frequently Asked Questions*, https://2016.export.gov/asean/build/groups/public/@eg_asean/documents/webcontent/eg_asean_084987.pdf (last updated Aug. 2014).

¹⁵⁹ AEC BLUEPRINT 2015, *supra* note 13; ASEAN BLUEPRINT 2025, *supra* note 104.

¹⁶⁰ AEC BLUEPRINT 2015, *supra* note 13, at 23, § B.6; AEC BLUEPRINT 2025, *supra* note 104, at 24, § C.3. f.

¹⁶¹ AEC BLUEPRINT 2015, *supra* note 13, at 23, § B.6.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ AEC BLUEPRINT 2025, *supra* note 104.

¹⁶⁵ *Id.* at 24.

The AEC Blueprint 2025 recognizes that globalization makes the world interconnected through information and communications technology.¹⁶⁶ It views e-commerce as the essential factor “not only in cross-border trade but also in facilitating foreign investment through the supply of intermediary services.”¹⁶⁷ Hence, the AEC Blueprint 2025 moves e-commerce from a strategic measure under “the Competitive Economic Region” of the Blueprint 2015 to “the Enhanced Connectivity and Sectoral Cooperation.”¹⁶⁸

The change of emphasis seen in these two Blueprints related to e-commerce reflects the development of the AEC from recognizing the importance of e-commerce as one of the competitive factors to enhancing and strengthening the cooperation and connection between sectors in each state and among member states.¹⁶⁹ The AEC plans to further intensify cooperation in e-commerce among member states to facilitate cross border e-commerce transactions.¹⁷⁰ It will facilitate cooperation by setting significant strategic measures, including harmonization of consumer rights and protection laws, online dispute resolution, and electronic identification.¹⁷¹ The cooperation among member states would help build trust, gain credibility from developed countries, and increase investment in the AEC e-commerce market, which is expected to grow at least twice as fast as markets in other regions.¹⁷² Also, both Blueprints have incorporated the 2000 e-ASEAN Framework Agreement, which provides a list of activities that member states need to undertake to build e-commerce platforms in their countries and subsequently in the region, to intensify cooperation in AEC e-commerce.

Recognizing e-commerce as a vital element of the global economy, a number of initiatives and working groups were established to support the implementation of the AEC Blueprints. An important working group that addresses e-commerce issues is the ASEAN Coordinating Committee on Electronic Commerce (ACCEC), which was created in 2017 to manage ASEAN policy regarding e-commerce and digital trade.¹⁷³ The leading initiative of the ACCEC is the ASEAN Work Programme on Electronic Commerce (AWPEC) 2017-2025.¹⁷⁴ The AWPEC covers multi-sectoral bodies and initiatives in various areas of e-commerce, including “infrastructure, education and technology competency, consumer protection, modernization of the legal framework, security of electronic transactions, competition, and logistics.”¹⁷⁵

Another recent important initiative of the ACCEC is “the Guideline on Accountabilities and Responsibilities of E-marketplaces,” one of the initiatives under the AWPEC with a view

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ AEC BLUEPRINT 2015, *supra* note 13, at 23; AEC BLUEPRINT 2025, *supra* note 104, at 24.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² ASEAN UP, *supra* note 24; Sheji Ho & Felicia Moursalien, *Forget China: There's An E-Commerce Gold Rush in Southeast Asia*, TECHCRUNCH (Jun. 22, 2015), <https://techcrunch.com/2015/06/22/forget-china-theres-an-e-commerce-gold-rush-in-southeast-asia/>; Budi Yuwono, *ASEAN E-Commerce and Its Legal Infrastructure*, presented at Expert Meeting on Cyberlaws and Regulations for Enhancing E-Commerce: Including Case Studies and Lessons Learned 5 (Mar. 25-27, 2015), http://unctad.org/meetings/fr/Presentation/CII_EM5_P_B_Yuwono_en.pdf.

¹⁷³ *Overview*, ASEAN, <https://asean.org/our-communities/economic-community/asean-e-commerce/> (last visited Feb. 12, 2022) [hereinafter “ASEAN, *Overview*”].

¹⁷⁴ ASEAN, ASEAN WORK PROGRAMME ON ELECTRONIC COMMERCE, https://asean.org/wp-content/uploads/2021/09/ASEAN-Work-Programme-on-Electronic-Commerce_published.pdf (last visited Feb. 12, 2022).

¹⁷⁵ *Id.* at 4-10.

toward creating a conducive environment, especially for growing e-commerce platforms.¹⁷⁶ This Guideline encourages e-commerce platforms to incorporate guiding principles to unlock opportunities for cross-border trade and foster the development of consumer confidence in ASEAN.¹⁷⁷ Interestingly, the Guideline recommends e-marketplace providers require some material information disclosure in the preferred or local language, such as information related to products, prices, payments, the duration of contracts and delivery modes, returns and cancellation policies, and methods for placing an order.¹⁷⁸ More importantly, the Guideline recommends e-marketplace providers delist merchants if they are found to be in noncompliance with the rules.¹⁷⁹ Nevertheless, the Guideline is limited to e-marketplace providers and does not contain detailed recommendations of when this information should be disclosed or how to disclose information effectively.

One important initiative related to e-commerce is the ASEAN Agreement on Electronic Commerce 2021-2025, which was adopted in 2019 and entered into force in 2021 as the latest comprehensive agreement.¹⁸⁰ It intends to deepen cooperation among the ASEAN member States and govern several cross-sectoral bodies necessary for the development of e-commerce.¹⁸¹ The Work Plan, which supports the Agreement, launched in 2021 to provide a coherent and harmonized approach for implementing this Agreement.¹⁸² The ACCEC is responsible for coordinating with relevant ASEAN sectoral bodies to implement this Agreement in a timely manner.¹⁸³

More significantly, when closely examining the new Blueprint 2025 under the e-commerce section, the Blueprint 2025 places the harmonization of consumer rights and consumer protection on the top list among strategic measures regarding e-commerce.¹⁸⁴ This prioritization is in accordance with the direction of general consumer protection under the AEC Blueprint 2025. The Blueprint 2025 highlights the importance of building higher consumer confidence and cross-border commercial transactions.¹⁸⁵ Since e-commerce has no physical examination, concrete identity of a seller, or on-site delivery, it can substantially impact consumers. In response to this potential impact, the Blueprint has set firm goals to “establish a common ASEAN consumer protection framework through higher levels of consumer protection legislation, improve enforcement and monitoring of consumer protection legislation, and make available redress mechanisms.”¹⁸⁶

¹⁷⁶ ASEAN, THE GUIDELINE ON ACCOUNTABILITIES AND RESPONSIBILITIES OF E-MARKETPLACES (2019), <https://asean.org/asean2020/wp-content/uploads/2020/12/Guideline-on-Accountabilities-and-Responsibilities-of-E-Marketplace-Providers.pdf> [hereinafter “ASEAN, THE GUIDELINE”].

¹⁷⁷ *Id.* at 1-2. (noting that there are four main guiding principles for four areas: personal data protection, e-contracting, honest advertising, and dispute resolution.)

¹⁷⁸ *Id.* at 3 (referencing principle 2.10-11).

¹⁷⁹ *Id.* at 4 (referencing principle 2.18).

¹⁸⁰ ASEAN, *Overview*, *supra* note 173.

¹⁸¹ *Id.*

¹⁸² ASEAN, WORK PLAN ON THE IMPLEMENTATION OF ASEAN AGREEMENT ON ELECTRONIC COMMERCE (2021), <https://asean.org/book/work-plan-on-the-implementation-of-asean-agreement-on-electronic-commerce/>.

¹⁸³ *Id.*

¹⁸⁴ AEC BLUEPRINT 2025, *supra* note 10, at 24.

¹⁸⁵ *Id.* at 13.

¹⁸⁶ *Id.*

These goals under the Blueprint 2025 are also reiterated in many initiatives. One such initiative is the ASEAN Strategic Action Plan for Consumer Protection (ASAPCP) that addresses consumer policy over the next ten years (2016-2025) by modernizing relevant provisions of consumer protection legislation in member states.¹⁸⁷ Another significant initiative to support the improvement of consumer protection in member states is the 2017 ASEAN High-Level Principles on Consumer Protection (AHLP).¹⁸⁸ Interestingly, the AHLP refers to e-commerce and identifies it as an area that lacks adequate and effective consumer protection.¹⁸⁹ Hence, the AEC has a clear policy under the Blueprint 2025 of strengthening regional consumer protection in e-commerce, found explicitly in both the consumer and e-commerce sections.

Moreover, with the emphasis on consumer protection, another sectoral working group was established in 2007, named the ASEAN Committee on Consumer Protection (ACCP), to serve as the primary ASEAN sectoral committee responsible for implementing and monitoring agreements and mechanisms to foster consumer protection in the AEC.¹⁹⁰ Recently, ACCP launched the first-ever “ASEAN Regional Information Campaign on Online Shopping” in 2020 to improve consumers’ awareness of their right to seek product information and, in turn, ensure that online businesses respect consumer rights by giving accurate information.¹⁹¹ This campaign reflects ASEAN’s attempt to protect the growing number of consumers who are online shoppers, along with its focus on e-commerce growth in the region.¹⁹²

Another recent initiative in 2020 is “the ASEAN Online Business Code of Conduct,” a joint endeavor of the ACCP and the ACCEC.¹⁹³ The Code of Conduct complements the legislation of ASEAN member states.¹⁹⁴ It sets fifteen commitments for businesses operating online to build consumer confidence in e-commerce and support good business practices.¹⁹⁵ Some of the commitments impose broad pre-contractual information duties. For instance, businesses should communicate honestly and truthfully by providing complete and correct information about goods services, a clear cost of products without hidden fees, and businesses should offer options for cancellation.¹⁹⁶ These two recent initiatives, the Information Campaign and the Online Business Code of Conduct, show that the AEC is currently putting a spotlight on consumer protection in e-commerce to foster its digital economy.

In conclusion, the AEC has firmly focused on intensifying cooperation among ASEAN member states toward regional consumer protection law and policy, particularly in e-commerce.

¹⁸⁷ *ASEAN Strategic Action Plan for Consumer Protection (ASAPCP) 2025*, ASEAN, <https://aseanconsumer.org/read-publication-asean-strategic-action-plan-for-consumer-protection-asapcp-2025> (last visited Feb. 12, 2022).

¹⁸⁸ *ASEAN High-Level Principles on Consumer Protection*, ASEAN, <https://aseanconsumer.org/cterm-asean-high-level-principles-on-consumer-protection> (last visited Feb. 12, 2022).

¹⁸⁹ *Id.*

¹⁹⁰ *ASEAN Committee on Consumer Protection (ACCP)*, ASEAN, <https://aseanconsumer.org/cterm-asean-committee-on-consumer-protection-accp> (last visited Feb. 12, 2022).

¹⁹¹ ASEAN, *ASEAN Regional Information Campaign on Online Shopping*, (Mar. 16, 2020), <https://aseanconsumer.org/read-publication-asean-regional-information-campaign-on-online-shopping>.

¹⁹² *Id.*

¹⁹³ ASEAN, *ASEAN ONLINE BUSINESS CODE OF CONDUCT (2020)*, [https://aseanconsumer.org/file/post_image/2020-02-26%20ASEAN%20COC%20\(fin\).pdf](https://aseanconsumer.org/file/post_image/2020-02-26%20ASEAN%20COC%20(fin).pdf) [hereinafter “ASEAN, CODE OF CONDUCT”].

¹⁹⁴ *Id.* at 1.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 12-14 (referencing commitments number 6,7, and 9).

By obtaining that objective, the Blueprint 2025 heavily emphasizes how important it is that member states harmonize their legislation for “consumer protection.” The harmonization would serve as a stepping stone for thriving cross-border e-commerce and significantly benefits both consumers and businesses. Many initiatives and working groups of ASEAN sectoral bodies have been created to support e-commerce. Although the AEC policy encourages the development of common ASEAN legislation for greater consumer protection in e-commerce, to this point ASEAN’s comprehensive and harmonized consumer protection law is missing. A lack of harmonized consumer protection law results in inconsistent and inefficient consumer protection laws among member states. This legal diversity adversely affects consumers, businesses, and governments. The following parts will support this claim.

III. CONSUMER PROTECTION IN THE CONTEXT OF E-COMMERCE OF THE SELECTED SIX MEMBER STATES

At present, ASEAN only has an overly broad framework regarding harmonizing and strengthening consumer protection in e-commerce under the AEC Blueprint and its following initiatives. Although unified or harmonized e-commerce law and consumer protection law are not yet in place under the AEC framework, all member states are aware of the importance of e-commerce. They recognize the immense potential of the AEC e-commerce market and have already enacted e-commerce law.

In brief, all ASEAN member states have already enacted domestic laws concerning e-commerce transactions with influence from the United Nations Commission on International Trade Law (UNCITRAL) instruments.¹⁹⁷ Most domestic laws of member states, such as the Philippines and Indonesia, are based on the 1996 UNCITRAL Model Law on Electronic Commerce.¹⁹⁸ Some states promulgated e-commerce transaction laws based on the 2005 United Nations Convention on the Use of Electronic Communications in International Contracts (Electronic Communications Convention), the updated and complemented version of the Model Law, such as Singapore (fully adopted), Malaysia (partially adopted), Thailand (partially adopted), and Vietnam (mostly adopted).¹⁹⁹

Nevertheless, ASEAN member states’ electronic transaction laws do not all contain specific provisions on consumer protection because the main principles of both UNCITRAL instruments are technological neutrality and functional equivalence.²⁰⁰ These two principles establish rules that provide equal treatment to traditional paper based and electronic means and

¹⁹⁷ U.N. Conf. on Trade and Development, Review of E-commerce Legislation Harmonization in the Association of Southeast Asian Nations, UNCTAD/DTL/STICT/2013/1, at 8 (2003); MIK, *supra* note 14 at 347 [hereinafter UNCTAD].

¹⁹⁸ MIK, *supra* note 14 at 347-48.

¹⁹⁹ *Id.* at 48; UNCTAD, *supra* note 197 at 30, 38, 44; *ICT Ministry Amending Act*, THE NATION THAILAND, <https://www.nationthailand.com/edandtech/30181289> (last visited Feb. 12, 2022).

²⁰⁰ U.N. Comm’n on Int’l Trade Law, *Model Law on Electronic Commerce (1996) with additional article 5 bis as adopted in 1998*, https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce (last visited Feb. 12, 2022); U.N. Comm’n on Int’l Trade Law, *United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005)*, https://uncitral.un.org/en/texts/ecommerce/conventions/electronic_communications (last visited Feb. 12, 2022).

affirm the formation and validity of contracts concluded electronically.²⁰¹ With no consumer protection provision in e-commerce transaction law, general consumer protection laws in member states have had to widen their scope of application that generally apply to traditional offline transactions to regulate online transactions. More significantly, most states have decided to promulgate sui generis laws in the form of an act, regulation, decree, or administrative order to specifically cover consumer protection for e-commerce transactions, separated from their main e-commerce transaction or consumer protection laws.

To date, scholars have focused on either e-commerce law or consumer protection law.²⁰² Yet these two areas are closely connected in this digital era and becoming more and more so. Instead of studying them independently of each other, this Article fills this gap and takes an integrative approach by discussing consumer protection in the context of e-commerce. It is the first to collect the most updated data of consumer protection in relation to e-commerce transactions up to six ASEAN member states based on the potential to develop e-commerce, the current existing e-commerce companies, and accessibility of resources to research. This part comprises member states' main laws and a brief background of several entities that regulate consumer protection, including state agencies (either a separate organization or ministry), leading authorities, organizations, and associations serving as non-governmental organizations (NGOs). The information about the competent authorities and NGOs in each state help clarify the source of legislation and focal points of consumer protection for each state because these authorities generally propose, monitor, or enforce laws and educate consumers. The selected six member states are arranged alphabetically as follows.

A. INDONESIA

The Indonesian population comprises approximately a third of all people in ASEAN.²⁰³ In terms of e-commerce, Indonesia is thought to account for 52% of the e-commerce market in this region.²⁰⁴ Indonesia has the second most unicorns in ASEAN, such as Go-Jek, Traveloka, Tokopedia, Bukalapak, and only Singapore outranks Indonesia.²⁰⁵ The law that regulates all internet-related activities in Indonesia is the 2008 Law on Information and Electronic Transactions,²⁰⁶ which was partly amended in 2016.²⁰⁷ The Law provides general provisions for

²⁰¹ . U.N. Comm'n on Int'l Trade Law, *Model Law on Electronic Commerce (1996) with additional article 5 bis as adopted in 1998*, https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce (last visited Feb. 12, 2022); U.N. Comm'n on Int'l Trade Law, *United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005)*, , https://uncitral.un.org/en/texts/ecommerce/conventions/electronic_communications (last visited Feb. 12, 2022).

²⁰² UNCTAD, *supra* note 197; ASEAN, HANDBOOK ON ASEAN CONSUMER PROTECTION LAWS AND REGULATIONS (2d ed. 2021). <https://aseanconsumer.org/file/ASEAN%20Handbook/2nd%20Edition%20of%20The%20ASEAN%20Consumer%20Protection%20Handbook%20-%202013Sep21.pdf> [hereinafter ASEAN, HANDBOOK]; Mik, *supra* note 14 at 358.

²⁰³ STATISTA, *Total population*, *supra* note 4.

²⁰⁴ Siwage Dharma Negara et al., *E-Commerce Development in Indonesia: Challenges and Prospects*, in E-COMMERCE, COMPETITION AND ASEAN ECONOMIC INTEGRATION 119, 119 (Cassey Lee & Eileen Lee eds., 2019).

²⁰⁵ NEXT UNICORN, *supra* note 139; Hananto, *supra* note 139.

²⁰⁶ Information and Electronic Transactions, 2008 (Law No. 11) (Indon.); UNCTAD, *supra* note 197 at 25.

²⁰⁷ Amendment to Law No. 11 of 2008, 2016 (Law No. 19)) (Indon.) (for details of the amendment, please see Kristo Molina, *Indonesian Electronic Information and Transactions Law Amended* (Dec. 15, 2016), <https://www.whitecase.com/publications/alert/indonesian-electronic-information-and-transactions-law-amended>).

all internet-based transactions and specific provisions on privacy, cybercrime, and content issues.²⁰⁸

Since the Law on Information and Electronic Transactions does not include a consumer protection provision, Indonesia's 1999 Law on Consumer Protection²⁰⁹ subsequently governs consumer protection in electronic transactions as long as the provisions of law permit.²¹⁰ Among other consumer rights,²¹¹ several sections in the Law on Consumer Protection relate to the right to information for consumers, such that they should be able to obtain accurate and clear information provided electronically about contract requirements, manufacturers, and product details of goods and services.²¹²

Additionally, Indonesia issued "the Government Regulation No. 80 of 2019 on Trading through Electronic System (GR 80)"²¹³ with the intention to improve the governance of Indonesian e-commerce.²¹⁴ GR 80 requires businesses to comply with a specific setup when they engage in e-commerce activities, such as licensing, disclosing correct, clear, and honest information about goods or services, and ensuring tax compliance.²¹⁵ It covers all players (i.e., merchants, e-commerce providers, and intermediary service providers) that offer their goods or services within an e-commerce trading system in the Indonesian territory.²¹⁶ More importantly, GR 80 emphasizes that those e-commerce businesses must comply with consumer protection and rights as stated in the Law on Consumer Protection, along with specific protection frameworks provided in GR 80 regarding personal data protection, consumer complaint services, and dispute resolutions.²¹⁷

²⁰⁸ Siwage Dharma Negara et al., *supra* note 204 at 139; UNCTAD, *supra* note 197 at 25.

²⁰⁹ Consumer Protection, 1999 (Law No. 8) (Indon.). (effective Apr., 20, 2000.)

²¹⁰ UNCTAD, *supra* note 197 at 25. (The official Elucidation on Law on Consumers Protection specifies that the Law applies to electronic and cross-border transactions.)

²¹¹ For example, right to safety, right to choose, right to be heard, right to presentation, right to education, right to redress. *See* detailed information in Consumer Protection, 1999 (Law No. 8) (Indon.), art. 4.

²¹² *Id.*; UNCTAD, *supra* note 197 at 25.

²¹³ Government Regulation No. 80 of 2019 on Trading through Electronic System (Indon.) [hereinafter GR 80]. (To further implement certain provisions of the GR 80, the Indonesian Minister of Trade (MOT) subsequently issued Regulation No. 50 of 2020 regarding Provisions on Business Licensing, Advertising, Guidance and Supervision of Businesses Trading Trade through Electronic Systems.) *See also* Akset, *A New Regulatory Framework for Indonesia's E-Commerce Sector: Licensing Requirement and Threshold of Foreign E-commerce Business* (June 29, 2020), <https://aksetlaw.com/news-event/newsflash/a-new-regulatory-framework-for-indonesias-e-commerce-sector-licensing-requirement-and-threshold-of-foreign-e-commerce-business/>; SSEK, *Indonesia Introduces New Requirements for E-Commerce Companies* (June 19, 2020), <https://www.ssek.com/blog/indonesia-introduces-new-requirements-for-e-commerce-companies>.

²¹⁴ Baker McKenzie, *Indonesia Now Has Specific E-commerce Regulation* (Dec. 18, 2019), <https://www.bakermckenzie.com/en/insight/publications/2019/12/indonesia-specific-e-commerce-regulation>; Akset, *Indonesian Government introduces a More Developed E-Commerce Regulation* (Dec. 12, 2019), <https://aksetlaw.com/news-event/newsflash/indonesian-government-introduces-a-more-developed-e-commerce-regulation/>; Ayman Falak Medina, *Indonesia's Law on E-Commerce: Clear Guidelines and Compliance by November 2021*, ASEAN BRIEFING, (Jan. 3, 2020), <https://www.aseanbriefing.com/news/indonesias-law-on-e-commerce-clear-guidelines-and-compliance-by-november-2021/>.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ ASEAN Briefing, *supra* note 214.

The Directorate of Consumer Empowerment (under Ministry of Trade of Indonesia's Directorate General of Consumer Protection and Trade Compliance) is the Indonesian national consumer protection agency, which the Law on Consumer Protection established.²¹⁸ The Directorate of Consumer Empowerment is tasked with making policies, enforcing laws, receiving consumer complaints, educating consumers, and raising awareness.²¹⁹ Indonesia has diverse NGOs for consumer protection, e.g., the Indonesia Consumer Association, the Institute For Consumer Development and Protection, and the Yogyakarta Consumer Institute.²²⁰ They all have a general role of cooperating with government agencies on consumer protection, promoting consumer protection, providing counsel to consumers, and receiving and settling consumer complaints.²²¹

B. MALAYSIA

Malaysians are active internet users, which has resulted in the rapid growth of the country's e-commerce.²²² The primary law governing e-commerce and online businesses is the 2006 Electronic Commerce Act, which pertains to the legal recognition and validity of electronic contracts and signatures.²²³ The Electronic Commerce Act, however, does not contain any consumer protection provisions.²²⁴

Regarding consumer protection, the 1999 Consumer Protection Act is the main law that protects Malaysian consumers against unfair practices and enforces minimum product standards.²²⁵ The Consumer Protection Act was amended in 2007 to extend its scope to cover e-commerce transactions.²²⁶ The 2012 Consumer Protection (Electronic Trade Transactions) Regulations were enacted to further strengthen consumer protection in e-commerce.²²⁷ The 2012 regulations directly apply to online business traders and online marketplace operators by imposing certain obligations on them such as disclosing required information on websites or online marketplaces, providing appropriate means to rectify errors, and maintaining records.²²⁸ The 2012

²¹⁸ DIRECTORATE GENERAL OF CONSUMER PROTECTION AND TRADE COMPLIANCE, MINISTRY OF TRADE, <https://www.kemendag.go.id/id> (last visited Feb. 12, 2022).

²¹⁹ ASEAN, HANDBOOK, *supra* note 202, at 40.

²²⁰ *Id.* at 41.

²²¹ *Id.*

²²² INT'L TRADE ADMIN., *eCommerce* (Aug. 19, 2020), <https://www.trade.gov/country-commercial-guides/malaysia-ecommerce>.

²²³ Electronic Commerce Act, 2006 (Malay.).

²²⁴ Naemah Amin & Roshazlizawati Mohd Nor, *Online shopping in Malaysia: Legal Protection for E-consumers*, 5 EUR. J. BUS. & MGMT 79, 81 (2013).

²²⁵ Consumer Protection Law, 1999 (Malay.); UNCTAD, *supra* note 197 at 30; Tham Siew Yean, *Development of E-commerce in Malaysia*, in E-COMMERCE, COMPETITION AND ASEAN ECONOMIC INTEGRATION 169, 178 (Cassey Lee & Eileen Lee eds., 2019).

²²⁶ *Id.*; Amin & Nor, *supra* note 224 at 81; Sheela Jayabalan, *E-Commerce and Consumer Protection: The Importance of Legislative Measures*, 16 JURNAL UNDANG-UNDANG DAN MASYARAKAT 93, 97 (2012).

²²⁷ Consumer Protection (Electronic Trade Transactions) Regulations, 2012 (Malay.) [hereinafter Regulation].

²²⁸ UNCTAD, *supra* note 197 at 30; Amin & Nor, *supra* note 224 at 85; Yean, *supra* note 225, at 179.

regulations aim to increase consumers' confidence in online shopping and trading which encourages the development and growth of e-commerce in Malaysia.²²⁹

The Ministry of Domestic Trade and Consumer Affairs (MDTCA) is the primary government agency responsible for policy-making and enforcing consumer protection law in Malaysia.²³⁰ Also, MDTCA is in charge of receiving consumer complaints and acts as a secretariat to the National Consumer Advisory Council (NCAC) to advise the Minister of Domestic Trade and Consumer Affairs about relevant consumer issues and the implementation of the Consumer Protection Act.²³¹ Furthermore, in Malaysia, the most notable and influential NGO in the sphere of consumer protection is the Federation of Malaysian Consumers Associations (FOMCA).²³² FOMCA coordinates the activities of 13 other non-governmental consumer protection associations in Malaysia.²³³ FOMCA also provides dispute settlements services (mediation and arbitration), educational services (training and awareness-raising), advice, and advocacy to consumers.²³⁴

C. THE PHILIPPINES

The Philippines has a large growing number of internet users, especially via mobile phone, but its e-commerce is still at a nascent stage.²³⁵ The Philippines enacted the Electronic Transaction Act in 2000 to assure the validity and legal effect of electronic documents or messages and to end discrimination between different types of technology.²³⁶ The Philippines does not have a separate consumer protection law for e-commerce. Technically, the 2000 Electronic Commerce Act does not provide additional or tailored consumer protections for e-commerce.²³⁷ The act merely refers to consumer protection law and reaffirms that the application of consumer protection law shall be extended to electronic transactions.²³⁸

The Philippines's main consumer protection law is the 1992 Consumer Act to protect the interests of consumers, promote their general welfare, and establish standards of conduct for businesses and industries.²³⁹ Furthermore, for better compliance of activities in e-commerce relating to consumer protection, three departments (the Department of Trade and Industry, the Department of Health, and the Department of Agriculture) issued the Joint Department Administrative Order regarding rules and regulations for consumer protection in a transaction

²²⁹ UNCTAD, *supra* note 197 at 30; *New Rules for Safer Elec. Transactions*, MALAYSIAN BAR (Apr. 8, 2013, 12:00 AM), <https://www.malaysianbar.org.my/article/news/legal-and-general-news/members-opinions/new-rules-for-safer-electronic-transactions>.

²³⁰ ASEAN, HANDBOOK, *supra* note 202, at 48.

²³¹ *Id.*

²³² THE FED'N OF MALAY. CONSUMERS ASS'NS, <http://www.fomca.org.my/v1/> (last visited Feb. 12, 2022).

²³³ ASEAN, HANDBOOK, *supra* note 202, at 48; NOTTAGE ET AL., *supra* note 31, at 255.

²³⁴ *Id.*

²³⁵ Shanti Aubren T. Prado & Meg L. Regañon, *Competition and E-commerce in the Phil.*, in E-COMMERCE, COMPETITION AND ASEAN ECON. INTEGRATION 232, 232 (Cassey Lee & Eileen Lee eds., 2019).

²³⁶ Republic Act No. 8792 of June 14, 2000, An Act Providing for The Recognition and Use of Elec. Com. and Non-Com. Transactions, Penalties for Unlawful Use Thereof, And Other Purposes (Phil.).

²³⁷ UNCTAD, *supra* note 197, at 35.

²³⁸ *Id.*

²³⁹ Republic Act No. 7394 of April 13, 1992, The Consumer Act of the Phil., art. 2. (Phil.).

made through electronic means in 2008.²⁴⁰ This administrative order aims to protect consumers doing online transactions particularly when purchasing goods and services.²⁴¹ It provides several consumer protection provisions, such as information requirements for online disclosures.²⁴² The Department of Trade and Industry²⁴³ plays a central role in implementing and enforcing the 1992 Consumer Act.²⁴⁴ It also pushed for a new law regulating Filipino online platforms in 2020 and a proposed bill.²⁴⁵ The department is well-known in the regional arena and promotes consumer education.²⁴⁶

The Philippines has a different structure for its consumer protection agency than other ASEAN state members; it is in the form of a council consisting of representatives from governmental and non-governmental agencies.²⁴⁷ The 1992 Consumer Act established the National Consumer Affairs Council (NCAC) to manage, make effective, and coordinate consumer programs and policies of relevant government agencies (e.g., Department of Trade and Industry, Department of Health, Department of Agriculture, Department of Education), private organizations, and business/industry sectors.²⁴⁸ Besides the NCAC, the Philippines has a number of consumer organizations in which the Department of Trade and Industry is in the process of revisiting its guidelines for consumer movement in the country.²⁴⁹

D. SINGAPORE

Singapore has the highest GDP in the ASEAN,²⁵⁰ and its people have become more sophisticated and receptive towards e-commerce as online shoppers.²⁵¹ Without doubt, Singapore is home to the most unicorns in ASEAN, i.e., Sea, Grab, Razer, Lazada, Trax, Bigo Live, and PatSnap.²⁵² The principal law governing e-commerce in Singapore is the Electronic Transaction

²⁴⁰ Joint Dep't Admin. Order No. 1, Rules and Reguls. for Consumer Prot. in a Transaction Covered by the Consumer Act of the Philippines (R.A. 7394) through elec. means under the E-Commerce Act (R.A. 8792) [hereinafter "Joint Order"]; DEP'T OF TRADE & INDUS. PHIL. 1-23 (2008), <https://www.wipo.int/edocs/lexdocs/laws/en/ph/ph157en.pdf>.

²⁴¹ UNCTAD, *supra* note 197, at 35.

²⁴² Joint Order, sec. 5.

²⁴³ REPUB. OF THE PHIL., DEP'T OF TRADE AND INDUS., <https://www.dti.gov.ph/> (last visited Feb. 12, 2022)

²⁴⁴ ASEAN, HANDBOOK, *supra* note 202, at 55.

²⁴⁵ An Act Prot. Consumers and Merch. engaged in Internet Transactions, Creating for this Purpose the E-commerce Bureau and Appropriating Funds Therefor, S.B. No. 1591 of June 9, 2020 (Phil.).

²⁴⁶ ASEAN, HANDBOOK, *supra* note 202, at 55; *Bureau of Trade Regul. and Consumer Prot. – Dep't of Trade and Indus.*, CONSUMERS INT'L, <https://www.consumersinternational.org/members/members/the-department-of-trade-and-industry-dti/> (last visited Feb. 12, 2022).

²⁴⁷ ASEAN, HANDBOOK, *supra* note 202, at 54.

²⁴⁸ *Id.*

²⁴⁹ *Id.* at 55. The examples of the Phils.' consumer orgs. include the Consumer Union of the Phil., the Coal. for Consumer Prot. and Welfare. Inc., the Nationwide Ass'n of Consumers, Inc., and Laban Consumer, Inc. For more details please see the previous version of ASEAN, HANDBOOK (2018), [https://aseanconsumer.org/file/post_image/Handbook%20on%20ASEAN%20Consumer%20Protection%20Laws%20and%20Regulations%20\(1\)-ilovepdf-compressed.pdf](https://aseanconsumer.org/file/post_image/Handbook%20on%20ASEAN%20Consumer%20Protection%20Laws%20and%20Regulations%20(1)-ilovepdf-compressed.pdf), at 45.

²⁵⁰ STATISTIC TIMES, *supra* note 30.

²⁵¹ Kala Anandarajah et al., *E-Commerce in Singapore: Current States, Policies and Regulations*, in E-COMMERCE, COMPETITION AND ASEAN ECON. INTEGRATION 193, 217 (Cassey Lee & Eileen Lee eds., 2019).

²⁵² Hananto, *supra* note 139.

Act.²⁵³ Singapore amended the Electronic Transaction Act in 2010 in order to align with the Electronic Communications Convention, which it signed and ratified as the first ASEAN member state.²⁵⁴ The Electronic Transaction Act covers the legal recognition and legal effect of electronic information and electronic contracts²⁵⁵ without incorporating provisions on consumer protection in e-commerce.²⁵⁶ Thus, Singapore does not have separate legislation to regulate issues concerning consumer protection that the online environment raises.²⁵⁷

Nevertheless, Singapore still has the Consumer Protection (Fair Trading) Act (CPFTA) that generally applies to all kinds of transactions, including electronic transactions.²⁵⁸ CPFTA was first enacted in 2003 and has gone through amendments on several occasions until the latest one in 2016.²⁵⁹ CPFTA's main objectives are to protect consumers against unfair practices and to give consumers additional rights relating to the conformity of goods in sales contracts.²⁶⁰ For instance, Lemon Law²⁶¹ protects consumers in Singapore against defective products exhibited within six months with effective forms of redress, i.e., repair, replace, reduce the price, or provide a refund from sellers.²⁶² In addition, Enterprise Singapore and the Singapore Standards Council launched the first national standard for all stages of e-commerce transactions (pre-purchase, purchase, and post-purchase) in 2020 called Technical Reference 76 (TR 76).²⁶³ Though TR 76 is basically a guideline that is not legally binding, it offers a checklist for online businesses to develop their e-commerce processes and policies and to ensure that they provide comprehensive information available to consumers so that they can make more informed purchases.²⁶⁴

The Ministry of Trade and Industry is in charge of policy matters of the CPFTA, whereas the Competition and Consumer Commission of Singapore (CCSC) is the administering agency for the CPFTA with the authority to investigate businesses and their practices, ensure their compliance, and enforce the law against unlawful business.²⁶⁵ The key NGO in Singapore is the Consumers Association of Singapore (CASE).²⁶⁶ Although CASE is in the form of an NGO, in

²⁵³ The Electronic Transactions Act of 1st July 2010 (Sing).

²⁵⁴ UNCTAD, *supra* note 197, at 38.

²⁵⁵ Anandarajah et al., *supra* note 251, at 207-08.

²⁵⁶ UNCTAD, *supra* note 197, at 38.

²⁵⁷ *Id.*

²⁵⁸ The Consumer Protection (Fair Trading) Act (2004) (Sing.); UNCTAD, *supra* note 197, at 38; Anandarajah et al., *supra* note 251, at 211.

²⁵⁹ ASEAN, HANDBOOK, *supra* note 202, at 56

²⁶⁰ *Id.*

²⁶¹ Lemon Law was inserted in the amendment of CPFTA in 2012.

²⁶² For more information, please see, Ministry of Trade and Industry, Singapore, *General Advisory on Amendments to the Consumer Protection (Fair Trading) Act and Hire Purchase Act (Lemon Law)*, <https://www.mti.gov.sg/en/Legislation/Legislation/General-Advisory-on-Amendments-to-the-Consumer-Protection-Fair-Trading-Act-and-Hire-Purchase-Act> (last visited Feb. 12, 2022).

²⁶³ Technical Reference 76 (2020) (Sing.) [hereinafter "TR 76"].

²⁶⁴ Ayman Falak Medina, *Singapore Introduces New Guidelines for E-commerce Transactions* (June 16, 2020), <https://www.aseanbriefing.com/news/singapore-introduces-new-guidelines-e-commerce-transactions/>; Elleen Yu, *Singapore Releases Guidelines Covering all Stages of E-commerce Transactions*, ZDNET (June 12, 2020, 08.06 AM), <https://www.zdnet.com/article/singapore-releases-guidelines-covering-all-stages-of-e-commerce-transactions/>.

²⁶⁵ ASEAN, HANDBOOK, *supra* note 202, at 59; NOTTAGE ET AL., *supra* note 31, at 251.

²⁶⁶ CONSUMERS ASS'N SINGAPORE, <https://www.case.org.sg/> (last visited Feb. 12, 2022).

practice it has a very close relationship with the government, which is useful in law reform and enforcing newly enacted legislation.²⁶⁷ Also, it has a strong proactive role in educating both consumers and traders about their rights and responsibilities.²⁶⁸ CASE provides advice, assistance, and mediation services to consumers, so CASE is the first stop out-of-court that consumers can reach out to when disputes arise.²⁶⁹ In effect, CASE has a vital role in Singaporean consumer protection because the governmental approach is predominantly based on consumer empowerment for greater consumer responsibility and pro-activity.²⁷⁰ The Singaporean government encourages consumers to seek civil remedies against unlawful business without relying on or waiting for the government to take action.²⁷¹

E. THAILAND

E-commerce in Thailand has progressively grown, especially B2C e-commerce, which generates the highest value in ASEAN; therefore, the Thai government has actively promoted the country's digital economy in response to this considerable potential for its e-commerce.²⁷² The main Thai law regulating e-commerce is the Electronic Transactions Act B.E. 2544, which was first enacted in 2001.²⁷³ The Electronic Transactions Act has gone through three additional rounds of amendments, mostly to be in line with UNCITRAL instruments, i.e. both Model Laws on Electronic Commerce and Electronic Signatures and the Electronic Communications Convention, and the latest amendment was in 2019.²⁷⁴ The Electronic Transaction Act focuses mainly on providing equal legal validity, formalities, and evidentiary status between paper-based or electronic transactions.²⁷⁵ Moreover, a new draft of the Royal Decree on Regulating the Digital Platforms Services has recently been proposed for enactment under the Electronic Transactions Act in 2021.²⁷⁶ The draft Decree aims to regulate and control most digital platforms in Thailand, including some provisions geared towards consumer protection.²⁷⁷

²⁶⁷ NOTTAGE ET AL., *supra* note 31, at 25.

²⁶⁸ *Id.* at 251.

²⁶⁹ ASEAN, HANDBOOK, *supra* note 202, at 59.

²⁷⁰ Singapore Parliamentary Debates, Official Report, vol. 76, (Nov. 10, 2003), https://sprs.parl.gov.sg/search/topic?reportid=025_20031110_S0004_T0002.

²⁷¹ *Id.*

²⁷² ELECTRONIC TRANSACTIONS DEV. AGENCY (PUBLIC ORGANIZATION), MINISTRY DIGITAL ECON. AND SOCIETY, VALUE E-COMMERCE SURVEY IN THAILAND 2019, 10, 16, 20 (2020), https://www.eta.or.th/th/Useful-Resource/publications/Value-of-e-Commerce-Survey-in-Thailand-2019_EN.aspx.

²⁷³ The Electronic Transactions Act B.E. 2544, (2001) (Thai.).

²⁷⁴ The Electronic Transactions Act (No. 1) B.E. 2544, (2001) and the Electronic Transactions Act (No. 2) B.E. 2551, (2008) are based on UNCITRAL Model Laws on Electronic Commerce and Electronic Signatures. The Electronic Transactions Act (No. 3) B.E. 2562, (2019) is based on Electronic Communications Convention to which Thailand is considering becoming a party. The Electronic Transactions Act (No. 4) B.E. 2562, (2019) covers legal issues related to identity management and trust services.

²⁷⁵ UNCTAD, *supra* note 197, at 41.

²⁷⁶ A draft of Royal Decree on Regulating the Digital Platforms Services B.E. ... (Thai.), <https://www.eta.or.th/getattachment/7f142a03-3ca1-4a35-aa62-3889fbae51e2/Digital-Service-Platform-Decree-for-Hearing.aspx>.

²⁷⁷ *Id.* at sec. 16; Nont Horayangura, *The Electronic Transactions Development Agency ("ETDA") of Thailand is proposing a new draft Royal Decree on Regulating the Digital Platforms*, BAKER MCKENZIE (July 20, 2021),

Since the Electronic Transaction Act does not contain any consumer protection provisions, consumers engaging in e-commerce will fall under the scope of the Consumer Protection Act B.E. 2522 (1979),²⁷⁸ a principal law for consumer protection in Thailand.²⁷⁹ The Consumer Protection Act has been revised several times, most recently in 2019, to provide comprehensive protection for Thai consumers.²⁸⁰ The Consumer Protection Act provides fundamental rights, such as the right to be informed, the right to expect safety in the use of goods and services, or the right to receive a fair contract.²⁸¹

Apart from the Consumer Protection Act, more provisions related to consumer protection in e-commerce can be found in two other relevant laws. The first law is the Direct Sales and Direct Marketing Act B.E. 2545 (2002) (DSDM),²⁸² most recently amended in 2017, which has been applied to certain small and medium-sized enterprises (SMEs) that conduct electronic transactions under the scope of this Act.²⁸³ The DSDM provides consumers the right to terminate a contract for sale of products within a cooling-off period of seven days from the date consumers receive products²⁸⁴ and to receive a full refund within fifteen days of businesses receiving a notice from consumers.²⁸⁵

The second law is the Notification No. 70 of 2020, issued by Ministry of Commerce's Central Committee on Prices of Goods and Services,²⁸⁶ which requires all online businesses to display prices and descriptions of goods and services.²⁸⁷ The Notification was created to address an issue in which many online businesses, particularly those selling products and services on social

<https://viewpoints.bakermckenzie.com/post/102h3d1/the-electronic-transactions-development-agency-etda-of-thailand-is-proposing>.

²⁷⁸ The Consumer Protection Act B.E. 2522, (1979) (Thai.) [hereinafter "CPA"]. Thailand is the first ASEAN member state that have the consumer protection law. See NOTTAGE ET AL., *supra* note 31, at 31.

²⁷⁹ Orabhund Panuspatthna, *The Laws and Policies of Thailand in Supporting Electronic Commerce*, 16 THAI. L.J. 1, 2 (2013); Aunya Singsangob, *Thailand's Consumer Protection in Electronic Commerce: Laws and Regulations*, 13 INT'L J. COMPUTER, INTERNET & MGMT. 19.1, 19.5 (2005).

²⁸⁰ CPA (No. 4) B.E. 2562, (2019) (Thai).

²⁸¹ CPA, sec. 4, (1979) (as amended in 2019) (Thai.).

²⁸² The Direct Sales and Direct Marketing Act B.E. 2545, (2002) (Thai.) [hereinafter "DSDM"].

²⁸³ According to the DSDM (No. 3) B.E. 2560 (2017), not all businesses who sell goods and services in e-commerce will fall under the scope of this Act. Section 3 of this Act refers to Ministerial Regulation B.E. 2561, (2018), excluding certain businesses from this Act. For example, an *individual person* who is not registered as a direct marketing business with annual income less than 1.8 million Thai baht from selling goods and services in e-commerce is not under the scope of the Act.

²⁸⁴ DSDM, sec. 33, (2002) (as amended in 2017) (Thai.).

²⁸⁵ *Id.* at sec. 36.

²⁸⁶ The Price of Products and Services Act B.E. 2542, (1999) (Thai.). Minister of Commerce is a chairperson and Permanent Secretary of the Ministry of Commerce is a vice chairperson of the Central Committee on Prices of Goods and Services.

²⁸⁷ The Notification of the Central Committee on Price of Goods and Services (No.70) B.E. 2563, (2020) (Thai.) (regarding the Display of Price and Description about the Sale of Goods and Service via E-commerce or Online) [hereinafter "Notification"].

media platforms (e.g. Facebook and Instagram), intentionally choose not to display the prices of their products but rather invite customers to inquire about the information through private chats.²⁸⁸

The primary government agency responsible for protecting consumers in Thailand is the Office of the Consumer Protection Board (OCPB).²⁸⁹ The OCPB was established by the Consumer Protection Act and has been attached to the office of the Prime Minister.²⁹⁰ With the special feature of being the only executive body in Thailand, the OCPB can receive complaints, mediate disputes, and bring cases to court on behalf of consumers.²⁹¹ Also, the OCPB can coordinate with Thai police forces to advise whether certain conduct constitutes a prosecutable offense.²⁹² The work of the OCPB under a government mandate strengthens Thai consumer protection because it leads to better enforcement by assisting in prosecuting businesses and more streamlined information processing.²⁹³ This unique function of the OCPB is different from other ASEAN member states.²⁹⁴

Moreover, Thailand's current 2017 Constitution affirms consumer rights by allowing the establishment of an organization to represent consumers and protect their rights.²⁹⁵ As such, the Thailand Consumers Council (consisting of 152 consumer organizations) was formed in 2020 to focus on consumer engagement and education.²⁹⁶ Although the Thailand Consumers Council is an independent consumer body, it is also entitled to seek redress for consumers in the courts on behalf of consumers in addition to the OCPB.²⁹⁷ In fact, Thailand stands out as having several of the strongest consumer NGOs in the ASEAN dating back to the 1970s,²⁹⁸ the prominent one being the Foundation for Consumers (FFC), established in 1994.²⁹⁹ FFC actively works with consumers to formulate policy and provide advocacy.³⁰⁰

²⁸⁸ Phusadee Arunmas, *Disclose Prices or Face Fines, Warns DIT*, BANGKOK POST (July 17, 2019, 5:30 PM), <https://www.bangkokpost.com/business/1714080/disclose-prices-or-face-fines-warns-dit>; John Mendiola, *Online Sellers in Thailand Who Fail to Display Prices & Product Details Face Hefty Fines* (Oct. 7, 2020), <https://silklegal.com/online-sellers-in-thailand-who-fail-to-display-prices-product-details-face-hefty-fines/>.

²⁸⁹ OFF. OF THE CONSUMER PROT. BD., <https://www.ocpb.go.th/index.php?filename=index> (last visited Feb. 12, 2022).

²⁹⁰ *Id.*

²⁹¹ The Consumer Protection Act B.E. 2522, sec. 10, (1979) (as amended in 2019) (Thai.).

²⁹² *Id.*; NOTTAGE ET AL., *supra* note 31, at 257.

²⁹³ NOTTAGE ET AL., *supra* note 31, at 257-58.

²⁹⁴ *Id.* at 259.

²⁹⁵ CONSTITUTION OF THE KINGDOM OF THAILAND B.E. 2560 Apr. 6, 2017, sec. 46.

²⁹⁶ Thailand Consumer Council was formed on October 8, 2020 under the Establishment of Consumers Council Act B.E. 2562 (2019). See THAILAND CONSUMERS COUNCIL, <https://tcc.or.th/> (last visited Feb. 12, 2022).

²⁹⁷ The Establishment of Consumers Council Act B.E. 2562 (2019) (Thai.), sec. 14.

²⁹⁸ NOTTAGE ET AL., *supra* note 31, at 24; Frank Munger, *Revolution Imagined: Cause Advocacy Consumer Rights and the Evolving Role of NGOs in Thailand*, 9 ASIAN J. COMPAR. L. 29, 29-64 (2014).

²⁹⁹ FOUND. FOR CONSUMERS, <https://www.consumerthai.org/> (last visited Feb. 12, 2022).

³⁰⁰ ASEAN, HANDBOOK, *supra* note 202, at 62.

F. VIETNAM

As e-commerce has grown in Vietnam, businesses have become increasingly competitive in the Vietnamese market and have, as a result, attracted domestic and foreign investment.³⁰¹ Vietnam enacted the 2005 Law on E-Transactions,³⁰² providing broad provisions on e-commerce and e-signatures.³⁰³ After that, the government issued several decrees regulating e-commerce, including Decree No. 52/2013 on E-commerce (Decree 52) in 2013 to control e-commerce activities.³⁰⁴ Special emphasis should be given to Decree No. 52 because, in addition to controlling e-commerce, it also provides some consumer protection provisions, for instance, information requirements for e-commerce websites before the conclusion of contracts.³⁰⁵ Nevertheless, after Decree 52 was enacted, several underlying issues surfaced; therefore, the Ministry of Industry and Trade recently released a draft decree (Draft Decree) on January 4, 2021, to amend and supplement certain articles of Decree 52, especially regulating e-commerce platforms and activities.³⁰⁶ One unique feature of Decree 52 is that the scope of this Decree also covers social networking websites as e-commerce platforms if they meet the necessary conditions; this law is unlike the laws of any other states.³⁰⁷

In addition, Vietnam's National Assembly passed the Law on Protection of Consumers' Rights in 2010 (Consumer Protection Law).³⁰⁸ The Law broadens the legal framework to protect consumers, including those who engage in electronic transactions.³⁰⁹ To guide the implementation of a number of articles of the Consumer Protection Law, the government issued Decree No. 99/2011 (Decree 99).³¹⁰ Decree 99 incorporates a specific provision for a distance contract, a contract concluded between consumers and traders via electronic means or telephone.³¹¹ Decree No. 99 requires specific information to be included in such a contract and provides a cooling-off period for consumers.³¹² To sum up, unlike other selected member states, Vietnam has Decree 99

³⁰¹ Nguyen Van Thuan & Nguyen Thi Hong Van, *Vietnam E-commerce Market Overview and Trends*, in E-COMMERCE, COMPETITION AND ASEAN ECONOMIC INTEGRATION 271, 271 (Cassey Lee & Eileen Lee eds., 2019); Linh Bui et al., *Vietnam: Stricter E-commerce Regulations to Be Issued* (Nov. 19, 2020), <https://www.allens.com.au/insights-news/insights/2020/11/vietnam-stricter-e-commerce-regulations-to-be-issued/>.

³⁰² Law no. 51/2005/QH11 of November 29, 2005 on E-transactions (Viet.).

³⁰³ UNCTAD, *supra* note 197, at 44.

³⁰⁴ Decree No. 52/2013/ND-CP dated May 16, 2013 of the Government on E-commerce (Viet.) [hereinafter "Decree 52"].

³⁰⁵ *Id.* arts. 15, 16, and 18.

³⁰⁶ Yee Chung Seck & Manh Hung Tran, *Vietnam: Updated draft regulations that affect e-commerce platforms* (Feb. 16, 2021), <https://www.globalcompliancencnews.com/2021/02/16/vietnam-draft-regulations-affecting-e-commerce-platforms280121/>; Vietnam Briefing, *Vietnam's Draft Decree on E-commerce: Impact on Foreign Investors* (June 9, 2021), <https://www.vietnam-briefing.com/news/vietnams-draft-decree-e-commerce-impact-on-foreign-investors.html/>.

³⁰⁷ *Id.*

³⁰⁸ Law No.59/2010/QH12 of November 17, 2010 on Protection of Consumers' Rights (Viet.).

³⁰⁹ UNCTAD, *supra* note 197, at 44.

³¹⁰ Decree No. 99/2011/ND-CP of October 27, 2011, Detailing and Guiding a Number of Articles of the Law on Protection of Consumer Rights (Viet.) [hereinafter "Decree 99"].

³¹¹ Mayer Brown, *Consumer Rights Protection Law in Vietnam* (March 30, 2012), https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2012/03/consumer-rights-protection-law-in-vietnam/files/consumer-rights-protection-law-in-vietnam/fileattachment/consumer_rights_protection_law_vietnam.pdf.

³¹² *Id.*

that provides consumer protection for e-commerce with a supplement of more detailed e-commerce rules under Decree 52.

The Vietnam Competition and Consumer Authority (VCCA) under the Ministry of Industry and Trade is the state agency responsible for implementing the Consumer Protection Law.³¹³ It is also in charge of making policy, governing standard contracts and general trading conditions, receiving and mediating consumer complaints, undertaking consumer education, and raising awareness among consumers.³¹⁴ Vietnam's most notable NGO for consumers is Vietnam Consumer Protection Association (VICOPRO).³¹⁵ It is a central association established in 2018 after the restructure of the former Vietnam Standards and Consumers Association (VINASTAS).³¹⁶ VICOPRO has closely cooperated with VCCA to implement the 2010 Consumer Protection Law and relevant legislation.³¹⁷

In summary, without a uniform consumer protection law in ASEAN, member states have different types and substances of domestic laws following their traditional legal structures. Apart from Singapore, which issues a non-legally binding guideline, the other five states enact laws that specifically govern consumer protection in the e-commerce context. They have *sui generis* laws in various types, i.e., an act, a decree, a regulation, a joint department administrative order, a notification, separately from their main consumer protection and e-commerce laws.

IV. PRE-CONTRACTUAL INFORMATION DUTIES: AN EXAMPLE OF THE INCONSISTENCY AND INEFFICIENCY OF LAWS IN ASEAN

After observing laws (both soft law and hard law) of the selected six member states, we have seen that all states have at least one law regulating consumer protection for e-commerce despite different styles and types of laws. This part goes into a deep dive on the substance of one selected principle to protect consumers in order to examine the consistency and adequacy of member states' laws.

Governments worldwide use many legal principles as a market intervention to protect consumers, such as governing unfair contract terms, providing the right of withdrawal, or regulating digital products. Nevertheless, I choose the principle of "pre-contractual information duties" to demonstrate the problem arising out of no uniform consumer protection law in ASEAN. These duties are based on the fundamental right of consumers: "the right to be informed," which is deep-rooted in the realm of consumer protection law. Pre-contractual information duties are very impactful because they give consumers protection even before the conclusion of contracts. Also, it provides clear evidence of the reason why ASEAN should start to think about a concrete plan for harmonizing consumer protection laws of its member states.

³¹³ VIET. COMPETITION & CONSUMER AUTHORITY, <http://en.vcca.gov.vn/> (last visited Feb. 12, 2022).

³¹⁴ ASEAN, HANDBOOK, *supra* note 202, at 66.

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.*

Pre-contractual information duties are simply explained as duties imposed on a business to disclose certain material information to a consumer before the conclusion of a contract.³¹⁸ Pre-contractual information duties have been used to rectify asymmetries,³¹⁹ promote transparency, support informed consent in contract making decisions,³²⁰ and enhance competition and innovation.³²¹ Recently, the consumer protection law paradigm has shifted from post-redress to pre-protection to avoid international consumer litigation, which is time-consuming, costly, and ineffective.³²² In this light, pre-contractual information duties are a crucial dimension of any e-commerce activity. It has been a center of interest from scholars all over the world in multiple fields.

Many international organizations issued soft laws—non-legally binding instruments—yet influential regarding pre-contractual information duties. One of them is the United Nations (UN), which set a milestone for developing consumer protection law in the United Nations Guidelines for Consumer Protection (UNGCP).³²³ The UNGCP suggests that the UN member states continuously develop transparent and effective consumer policies to enhance consumer confidence³²⁴ and ensure that businesses and consumers know about their rights and obligations in e-commerce.³²⁵ More importantly, the 2015 UNGCP, the most recent one, refers to another significant international guideline and standard, the Guidelines for Consumer Protection in the Context of Electronic Commerce of the Organization for Economic Cooperation and Development (OECD).³²⁶ The OECD guidelines ensure, like the UNGCP, that online consumers benefit from the same protection as those buying from physical stores.³²⁷ Online disclosure is one of eight general principles suggested in the OECD guidelines.³²⁸ The guidelines recommend businesses provide “clear and easily accessible information”³²⁹ about businesses themselves,³³⁰ goods and

³¹⁸ David Kästle-Lamparter, *Pre-Contractual Information Duties*, in COMMENTARIES ON EUROPEAN CONTRACT LAWS 383, 384-85 (Nils Jansen & Reinhard Zimmermann eds., 2018).

³¹⁹ Alan Schwartz & Louis L. Wilde, *Intervening in Markets on the Basis of Imperfect Information: A Legal and Economic Analysis*, 127 U. PA. L. REV. 630, 635 (1979); Howard Beales et al., *The Efficient Regulation of Consumer Information*, 24 J.L. & ECON. 491, 492 (1981).

³²⁰ OECD, CONSUMER POL’Y TOOLKIT 78, 82 (2010), <https://read.oecd.org/10.1787/9789264079663-en?format=pdf>.

³²¹ Christoph Busch, *The Future of Pre-contractual Information Duties: from Behavioural Insights to Big Data*, RESEARCH HANDBOOK ON EU CONSUMER & CONTRACT L. 221, 223 (Christian Twigg-Flesner ed., 2016).

³²² *Id.* at 19.

³²³ GA. RESOL. 39/248 (1985). The first one was launched in 1985. The UN revised the UNGCP in 1999 and then in 2015. *See* ECON. & SOCIAL COUNCIL RES. E/1999/INF/2/Add.2 (July 26, 1999); GA. RESOL. 70/186 (2015).

³²⁴ *Id.* sec I, No. 63.

³²⁵ *Id.* sec I, No. 64.

³²⁶ OECD, GUIDELINES FOR CONSUMER PROTECTION CONTEXT ELECTRONIC COM. (2016), <https://www.oecd.org/sti/consumer/ECommerce-Recommendation-2016.pdf> [hereinafter “OECD, THE GUIDELINES”] The OECD Guidelines were first adopted in 1999 and updated in 2016.

³²⁷ I. Benöhr, *The United Nations Guidelines for Consumer Protection: Legal Implications and New Frontiers*, 43 J. CONSUMER POL’Y 105, 106-7, 111 (2020).

³²⁸ OECD, THE GUIDELINES, *supra* note 327, at principle III.

³²⁹ *Id.* at 15.

³³⁰ *Id.* The information includes, for example, identifications (legal name of the business and name under which it trades), appropriate and effective resolution of any disputes that may arise, principal geographic address, including an e-mail address, a telephone number or other electronic means of contact, any relevant government registration or license information.

services,³³¹ and transactions.³³² The UN and the OECD guidelines confirm that consumer protection has gradually transformed from being constrained on a national topic to becoming a core supranational law subject.³³³

At the regional level, the EU launched the two most recent directives specifically on consumer protection that impose significant pre-contractual information duties applied to online contracts. They are the 2011 Consumer Right Directive³³⁴ and its amendment provisions under the 2019 Directive on Better Enforcement and Modernization of EU Consumer Protection, in short, the Omnibus Directive.³³⁵ At the national level it is impossible not to mention the US, the world's most influential e-commerce country which is home to many influential online marketplaces and online stores. The Federal Trade Commission (FTC), the US government agency for consumer protection, has promulgated and created many FTC rules, guidance documents, and advice to properly accommodate online activities. For example, 2000's Electronic Commerce: Selling Internationally, A Guide for Businesses³³⁶ and 2013's Dot Com Disclosures: How to Make Effective Disclosures in Digital Advertising (hereinafter Dot Com Disclosures Guidance)³³⁷ both have some similar provisions under the same concept with EU directives. In fact, the FTC Dot Com Disclosures Guidance has even more complex principles regarding efficient methods for disclosing information than the EU directives.

The EU and the US have different approaches towards pre-contractual information duties in consumer contracts. The EU represents the legislature's *ex-ante* law model through directives that explicitly provide pre-contractual information duties at the outset for protecting consumers. In contrast, the US has the judiciary's *ex-post* law model. The courts specify that an omission of material information is deceptive and list pieces of information that satisfy the materiality list of

³³¹ *Id.* at 16. The information should describe goods or services offered that is sufficient to enable consumers to make informed decisions regarding transactions.

³³² *Id.* The information includes for example, initial price; terms, conditions, and methods of payment, including contract duration; terms of delivery or performance; details of and conditions related to withdrawal, termination or cancellation, after-sales service, return, exchange, refunds, warranties and guarantees; information on available dispute resolution and redress options.

³³³ Geraint Howells et al., *Consumer Law in its International Dimension*, HANDBOOK RES. ON INT'L CONSUMER L. 1, 1-15 (2d ed. 2018).

³³⁴ Directive 2011/83 of the European Parliament and of the Council of 25 October 2011 on Consumer Rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, 2011 O.J. (L 304) [hereinafter "the Consumer Rights Directive"].

³³⁵ Directive 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the Better Enforcement and Modernization of Union Consumer Protection Rules, 2019 O.J. (L 328) [hereinafter "the Omnibus Directive"].

³³⁶ FED. TRADE COMM'N, ELECTRONIC COMMERCE: SELLING INTERNATIONALLY, A GUIDE FOR BUSINESSES (2000), <https://www.ftc.gov/system/files/documents/plain-language/alt067-electronic-commerce-selling-internationally-guide-businesses.pdf>.

³³⁷ FED. TRADE COMM'N, DOT COM DISCLOSURES: HOW TO MAKE EFFECTIVE DISCLOSURES IN DIGITAL ADVERTISING (2013), <https://www.ftc.gov/tips-advice/business-center/guidance/com-disclosures-how-make-effective-disclosures-digital> [hereinafter "FTC, DOT COM DISCLOSURES GUIDANCE"].

these duties.³³⁸ Despite the apparent differences in these models, the substance of EU and US laws has converged such that they actually regulate and require disclosure of similar material information. The convergence of laws in protecting consumers of e-commerce is probably because of the cross-border nature of e-commerce that connects the world and creates a singular market. This is the reason why governments around the world impose the same types of laws to protect consumers. As such, pre-contractual information duties for businesses to disclose material information to consumers have long been recognized at the national, regional, and international levels as the best tool to protect consumers from information asymmetry which is the root cause of fraud in e-commerce.

Despite the absence of regional legislation, there is a movement to create pre-contractual information duties for e-commerce at the national level showing a trend for legal development in this region. Most member states have general consumer protection laws that provide consumers with the right to information.³³⁹ However, because of the nature of e-commerce wherein consumers rely largely on the information given online, all six states have issued separate laws in addition to their general consumer protection laws about pre-contractual information duties in e-commerce³⁴⁰ (although Thailand has a few provisions³⁴¹ and Singapore has a non-binding guideline). It is useful to analyze the terms that the selected six member states use to refer to the principle of mandatory information disclosure when concluding a contract. Singapore and Vietnam (and the EU Directives) use the exact wording, *pre-contractual information duties*.³⁴² The laws of the remaining four states—Indonesia, Malaysia, the Philippines, and Thailand—do not use this precise wording for these duties.³⁴³ Regardless of the word choice referring to this principle, the legal implication and effect are the same. These states all come to the same conclusion that pre-contractual information duties require information disclosure before the conclusion of a contract,

³³⁸ A consumer protection term that refers to “a failure to disclose” under US contract law. See also NAT’L CONSUMER L. CTR., *Unfair and Deceptive Acts and Practices* [hereinafter “UDAP”] § 4.2.15 (10th ed. 2021), updated at www.nclc.org/library.

³³⁹ For example, Law No. 8 of 1999’s on Consumer Protection, art. 4 “The rights of the consumers are: (c.) to obtain correct, clear and honest information on the condition and warranty of the goods and/or services...”; R.A. 7394 (Indon.), The Consumer Act of the Philippines, art. 2 “...the State shall implement measures to achieve the following objectives: (c.) provision of information and education to facilitate sound choice and the proper exercise of rights by the consumer ...”; CPA, sec. 4 “A consumer has the rights to be afforded the following protection: (1) the right to information including correct and adequate description of quality as to the goods or services (Thai); Law No.59/2010 on Protection of Consumers’ Rights, art. 8 “Consumer Rights (2.) Being provided accurate and complete information about organizations or individuals trading goods or services; contents of transaction of goods and/or services; the source and origin of goods; being provided with invoices and vouchers and documents relating to the transactions and other necessary information about goods and/or services that consumers purchase and/or use.” (Viet.).

³⁴⁰ GR 80 (Indon.); Regulations (Malay.); Joint Order (Phil.); TR 76 (Sing.); Decree 99 and 52 (Viet.).

³⁴¹ Thailand does not enact comprehensive law with several provisions applied for consumer protection in e-commerce like other states. Instead, Thailand has pre-contractual duties to disclose information only about price and description of goods and services in its Notification. Broad protection still resides in the CPA and the DSDM, which applies to e-commerce businesses (except for some kinds of individuals or businesses under the SMEs regime).

³⁴² TR 76, rule no. 3 “Pre-purchase activities” (Sing.); Decree 52, art. 28(2)(d) “Such information must satisfy the following requirements: Being displayed clearly to customers before the time they send a proposal for conclusion of contract.” (Viet.).

³⁴³ The Consumer Rights Directive, arts. 6.

for example, in an electronic offer (Indonesia),³⁴⁴ on a website (Malaysia),³⁴⁵ on businesses' e-commerce or online systems (Thailand),³⁴⁶ or to enable consumers to make an informed decision (the Philippines).³⁴⁷

The legal measure from the selected six ASEAN member states offers clear evidence of how pre-contractual information duties have developed in order to protect consumers in e-commerce. An analysis of these existing pre-contractual information duties supports the claims that a uniform law with comprehensive rules is feasible and that cooperation among member states is essential. This is because without a unified or harmonized consumer protection law in the region, each ASEAN member state, no doubt, ends up with different substance for its legal measures. This substantive difference extends to a member states' policy, source of laws, and application of consumers' right to information.

To highlight the differences and similarities between legislation in ASEAN member states, I use provisions of the 2011 Consumer Right Directive (hereinafter "the CRD") with its amendment from the 2019 Omnibus Directive (hereinafter "the OD") as a base for a comparative study. This is because the CRD provides the most comprehensive rules on pre-contractual information duties. Even the US leading online marketplaces, such as Amazon and eBay, also follow the strictest rules of the CRD to sell their products worldwide, including in Europe. Therefore, most pre-contractual information duties under the CRD can be considered an international standard that other countries should follow. Additionally, I will bring US' FTC Dot Com Disclosures Guidance into the conversation when it relates to efficient methods for disclosure since it is the most detailed rule at present.

For a clear setting, I grouped and divided the pre-contractual information duties of the CRD into three main topics: information to be disclosed, methods for disclosing information, and enforcement and sanctions. The analysis of these topics contains not only an explanation of the legal provisions of these selected six states but also a comparative analysis of these laws and the international standard.

A. INFORMATION TO BE DISCLOSED

Pieces of information that are required to be pre-contractually disclosed in this section are based on 21 pieces of information under the EU directives.³⁴⁸ They are grouped into five categories, which are information about products,³⁴⁹ businesses,³⁵⁰ contracts,³⁵¹ the right of withdrawal,³⁵² and code of conducts and ADR.³⁵³ In brief, all selected six states have at least two

³⁴⁴ GR 80, art. 39. (Indon.).

³⁴⁵ Regulation, sec. 3(1) (Malay.).

³⁴⁶ Notification, clause 4 (Thai.).

³⁴⁷ Join Order, sec. 5(3) (Phil.).

³⁴⁸ The Consumer Rights Directive, art. 6(1).

³⁴⁹ *Id.* at arts. 6(1)(a),(e),(ea),(f),(r), and (s).

³⁵⁰ *Id.* at arts. 6(1)(b),(c), and (d).

³⁵¹ *Id.* at arts. 6(1)(g),(l),(m),(q),(o), and (p).

³⁵² *Id.* at arts. 6(1)(h),(k),(i), and (j).

³⁵³ *Id.* at arts. 6(1)(n), and (t).

kinds of basic information requirements for online contracts, i.e., information about products and businesses. Interestingly, all the states (except Thailand, which has a broad provision concerning the right to information) prioritize information about traders before other kinds of information, unlike the EU's CRD. The reason behind this prioritization is that ASEAN is facing widespread online fraud in the region.³⁵⁴ Online fraud cases occur because consumers lack information and awareness about the identity of online businesses—the counterparty to a contract. Consequently, these governments use the mandated disclosure to locate the responsible party online in a dispute and fight against online fraud.

Regarding the information about products, all six states basically require disclosure of the main characteristics of goods and services so consumers can specify correct goods or services.³⁵⁵ Only Singapore's TR 76 Guidelines for e-commerce transactions, the latest to come out among the other states in 2020, has a provision in accordance with the latest rule of the EU in 2019, the OD,³⁵⁶ concerning the disclosure of functionality and interoperability of digital products.³⁵⁷ Another important piece of information about products is about its price.³⁵⁸ All selected six member states share a focus on the price of a product.³⁵⁹ Thailand, to provide an example, issued a separate law requiring online businesses to display prices and descriptions of goods and services to prevent online businesses, especially those selling products via social media, from inviting customers to inquire about information through private channels; a practice that allows online businesses to intentionally hide the price.³⁶⁰ Additionally, only Vietnam has a similar provision as the EU's CRD concerning disclosure of the costs for the use of communication, i.e., internet, to conclude distance contracts, including online contracts.³⁶¹ Regarding the information about traders, all states require the disclosure of this kind of information.³⁶² Interestingly, all of them even order the disclosure of identities of businesses first before other kinds of information, which is different than the CRD.³⁶³ The Philippines' law has the most detailed requirements for identities and contact details of online businesses, followed by Vietnam, Singapore, and Malaysia. The required information of these four states, such as registration number or representative agent, even goes beyond the requirement in the CRD.³⁶⁴ In terms of traders' contact details, the Philippines, Vietnam, and Singapore require geographical address, email, and telephone number,³⁶⁵ whereas

³⁵⁴ Odonkor, *supra* note 17.

³⁵⁵ The Consumer Rights Directive, art. 6(1)(a); GR 80, art. 39(1)(a) (Indon.); Regulation, sec. 3(1) sched. 4 (Malay.); Joint Order, sec. 5(2) (Phil.); TR 76, no. 3.2.3 (Sing.); Notification, clause. 4 (Thai); Decree 99, art 17(1)(b) and Decree 52, art. 30 (Viet.).

³⁵⁶ The Consumer Rights Directive, arts. 6(1)(r) and (s) amended by the Omnibus Directive, art. 4(4)(a)(iv).

³⁵⁷ TR 76, no. 3.2.3 (Sing.).

³⁵⁸ The Consumer Rights Directive, arts. 6(1)(e),(ea), and (f).

³⁵⁹ GR 80, art. 39(1)(b) (Indon.); Regulation, sec. 3(1) sched. 5 (Malay.); Joint Order, sec. 5(3.4) (Phil.); TR 76, no. 3.2.3 (Sing.); Decree 52, art. 31 (Viet.).

³⁶⁰ Notification, clause 4 (Thai.).

³⁶¹ Decree 99, art 17(1)(f) (Viet.); The Consumer Rights Directive, arts. 6(1)(f).

³⁶² GR 80, art. 39(1)(a) (Indon.); Regulation, sec. 3(1) sched. 1, 2 (Malay.); Joint Order, sec. 5(1) (Phil.); TR 76, no. 3.2.2 (Sing.); CPA, sec. 4 (Thai.); Decree 99, art 17(1)(a) (Viet.); Decree 52, arts. 29 (1)(2) (Viet.).

³⁶³ The Consumer Rights Directive, arts. 6(1)(b), (c), and (d).

³⁶⁴ Joint Order, sec. 5(1) (Phil.); Decree 99, art 17(1)(a) (Viet.); Decree 52, arts. 29 (1)(2) (Viet.); TR 76, no. 3.2.2 (Sing.); Regulation, sec. 3 sched. 1, 2 (Malay.).

³⁶⁵ Joint Order, secs. 5(1.3) and (1.4) (Phil.); Decree 99, art 17(1)(a) (Viet.); Decree 52, arts. 29 (Viet.); TR 76, no. 3.2.2 (Sing.).

Malaysia requires only the latter two.³⁶⁶ Indonesia and Thailand require only the identities of online businesses.³⁶⁷

Regarding the information about contracts, all five states except Thailand provide rules demanding disclosure of information about payment and delivery, which are very substantial for a sales contract.³⁶⁸ Thailand does not have a single provision related to the arrangement of payment and delivery. Singapore is the only state that requires online businesses to display information about their complaint handling policy.³⁶⁹ Another important piece of information for a sales contract is a legal guarantee of the conformity of products.³⁷⁰ Most states, i.e., Indonesia, the Philippines, Singapore, and Vietnam, explicitly require this pre-contractual disclosure about the conformity of products.³⁷¹ In fact, the Philippines, Singapore, and Vietnam even include disclosure of any available warranties, which is beyond the EU's CRD.³⁷² Additionally, only the Philippines and Singapore require pre-contractual disclosure about after-sale services.³⁷³ Moreover, regarding the disclosure of the duration of a contract,³⁷⁴ although the Philippines does not have a direct provision about it, the Philippines is the only state that requires e-commerce sellers to disclose any conditions relating to contract renewal or extension.³⁷⁵ It should be noted that no state mentions the disclosure of commercial or financial guarantees.³⁷⁶

Regarding the information about the right of withdrawal, Vietnam has the most comprehensive and similar rule to the CRD,³⁷⁷ followed by Singapore and the Philippines. Vietnamese law imposes a duty for online sellers who own e-commerce websites to disclose information concerning return or exchange policies; terms, methods, and cost of this return; and methods for obtaining refunds on their websites.³⁷⁸ Vietnam even has a provision regarding liability to pay in service contracts provided to consumers before they exercise the right of withdrawal, similar to the CRD rule.³⁷⁹ Singapore also has a clear provision requiring e-retailers and e-marketplaces to provide information about return, refund, and exchange policies available to customers before any online transactions take place.³⁸⁰ The Philippines simply states that sellers

³⁶⁶ Regulation, sec. 3 sched. 3 (Malay.).

³⁶⁷ GR 80, art. 13(1)(a) (Indon.); CPA, sec. 4 (Thai.).

³⁶⁸ The Consumer Rights Directive, art. 6(1)(g); GR 80, arts. 39(1)(d),(e) (Indon.); Regulation, sec. 3(1) sched. 6, 8 (Malay.); Joint Order, secs. 5(3.5.2), (3.5.3) (Phil.); TR 76, no. 3.2.4 (Sing.); Decree 99, art 17(1)(b), (c) (Viet.); Decree 52, arts. 33, 34 (Viet.).

³⁶⁹ TR 76, no. 6.1 (Sing.).

³⁷⁰ The Consumer Rights Directive, arts. 6(1)(l).

³⁷¹ GR 80, art. 13(1)(b) (Indon.); Joint Order, secs. 5(3.5.8) (Phil.); TR 76, no. 3.2.3 (Sing.); Decree 53, art 32(1)(c) (Viet.).

³⁷² The Consumer Rights Directive, art. 6(1)(l); Joint Order, secs. 5(3.5.8) ("any available warranties and guarantees") (Phil.); TR 76, no. 3.2.3 ("guarantees and warranties available for the product") (Sing.); Decree 53, art 32(1)(c) ("Product warranty policy") (Viet.).

³⁷³ The Consumer Rights Directive, art. 6(1)(m); Joint Order, secs. 5(3.5.8) (Phil.); TR 76, no. 3.2.3 (Sing.).

³⁷⁴ The Consumer Rights Directive, arts. 6(1)(o) and (p).

³⁷⁵ Joint Order, secs. 5(3.5.7) (Phil.).

³⁷⁶ The Consumer Rights Directive, art. 6(1)(q).

³⁷⁷ *Id.* at arts. 6(1)(h), (k), (i), and (j).

³⁷⁸ Decree 52, art. 32(1)(b) (Viet.).

³⁷⁹ *Id.* at art. 32(1)(d) (Viet.).

³⁸⁰ TR 76, no. 5.5 (Sing.).

in e-commerce must disclose details about returns, refunds, cooling-off periods, and the right of withdrawal in order to allow consumers to make informed decisions.³⁸¹ Indonesia does not specifically mention disclosure of a cooling-off period or the withdrawal right before the conclusion of a contract. It only requires that the information about returning mismatched goods or services must be in electronic contracts and in accordance with the given offers.³⁸² Both Malaysia and Thailand do have legal provisions regarding the right of withdrawal and cooling off period (ten days for Malaysia and seven days for Thailand), not in a pre-contractual stage, but rather after the conclusion of a contract.³⁸³

Regarding the information about a code of conduct and ADR,³⁸⁴ no state has a provision about a code of conduct, but two states have rules regarding the ADR, the out-of-court redress mechanism. The first state is the Philippines, whose law requires online sellers to clearly and conspicuously specify the information about the applicable law and forum to govern any contractual disputes at the earliest possible stages of interaction with consumers.³⁸⁵ The second state is Vietnam, whose requirement covers not all online businesses but only e-commerce trading floors (online marketplaces) to display information about a mechanism to settle complaints and disputes between contracting parties.³⁸⁶

At present, most states (except the Philippines and Thailand)³⁸⁷ not only explicitly impose pre-contractual information disclosure on online sellers but also online marketplaces.³⁸⁸ The governments of the Philippines and Thailand are currently working on enacting new laws that mainly regulate e-commerce platforms, including online marketplaces.³⁸⁹ During this period, Vietnam also released a draft law in 2020 to amend its current law, Decree 52, that added more stringent rules for activities of e-commerce platforms and foreign investment in addition to its existing rules for e-commerce trading floors (online marketplaces).³⁹⁰

³⁸¹ Joint Order, secs. 5(3.5.5) and (3.5.6) (Phil.).

³⁸² GR 80, art. 53(1)(g) (Indon.).

³⁸³ Direct Sales and Anti-Pyramid Scheme Act 1993, arts 25-27 (Malay.); *see also* Amin & Mohd Nor, *supra* note 224, at 85; DSDM, art. 33 (Thai.). Again, for Thailand, all e-commerce sellers must comply with the right of withdrawal and cooling off period except individuals or SMEs businesses with certain conditions, which are outside the scope of the law.

³⁸⁴ The Consumer Rights Directive, arts. 6(1)(n) and (t).

³⁸⁵ Joint Order, secs. 5(3.5.11) (Phil.).

³⁸⁶ Decree 52, arts. 38(2)(h) (Viet.).

³⁸⁷ Joint Order sec. 1 states that “this order shall apply to all retailers, sellers, distributors, suppliers or manufacturers engaged in electronic commerce with consumers.” (Phil.); CPA, sec. 4(1) provides only broad provision applying to both offline and online transactions that consumers have “the right to information including correct and adequate description of quality as to the goods or services,” and the law does not mention about the online marketplace.

³⁸⁸ GR 80, art. 5 (Indon.), Regulation, sec. 3(1) (Malay.), TR 76, no. 3.2.2 (Sing.), Decree 52, arts 3(8)(9) (Viet.).

³⁸⁹ An Act Protecting Consumers and Merchants Engaged in Internet Transactions, Creating for this Purpose the E-commerce Bureau and Appropriating Funds, S.B. No. 1591 of June 9, 2020 (Phil.); A draft of Royal Decree on Regulating the Digital Platforms Services B.E. ... (Thai.).

³⁹⁰ Vietnam Briefing, *supra* note 306; Linh Bui et al., *supra* note 301; Linh Bui, *Stringent E-commerce Rules for Vietnam Coming Up Ahead*, VIR (May 8, 2021, 09.00 AM), <https://vir.com.vn/stringent-e-commerce-rules-for-vietnam-coming-up-ahead-84030.html>.

In addition, of the three rules under the EU's CRD that are specifically applied to online marketplaces,³⁹¹ most states have one out of three similar rules to the CRD. The Philippines, Vietnam, Singapore, and Malaysia (these states are placed in order of more to less detailed rules) have their laws or a legal instrument that require a business to incorporate its identification in terms of registration number, head office, or representative agent, for the purpose to help consumers determine whether the person with whom they are concluding a contract is a business or not.³⁹² Nevertheless, no state has added a further rule for online marketplaces to explicitly disclose the person responsible for obligations related to the contract, either for online sellers or a marketplace.³⁹³ Hence, consumers need to check the details of sellers, particularly their identification, on their own. For the last rule in the CRD regarding the disclosure of a method for ranking offers (e.g., by price, consumer ratings) on online marketplaces, among the selected six states, this rule can only be found in the new draft law of Thailand.³⁹⁴

B. METHODS FOR DISCLOSING INFORMATION

None of the states have a comprehensive rule providing several methods for disclosing information that is similar to the EU's CRD³⁹⁵ or a detailed rule concerning how to effectively disclose required information in a clear and comprehensible manner as provided in the US' FTC Dot Com Disclosures Guidance.³⁹⁶

With the exception of Malaysia, the other states have general and broad provisions for disclosing information. In essence, despite the different wordings of the laws in the five states, online businesses must disclose pre-contractual information in a clear and comprehensible manner.³⁹⁷ Singapore and Vietnam have more detailed rules that are closer to the US' FTC Dot Com Disclosures Guidance. Singapore stands out from other states because it offers some detailed rules in addition to the CRD and has the closest rules to the FTC Dot Com Disclosures Guidance. Singapore is the only state that highlights the importance of pre-contractual information disclosure, and many rules in this regard can be found in several places throughout its TR 76.³⁹⁸ Not only does Singapore's TR 76 provide the kinds of pre-contractual information that must be disclosed in general, but another provision also specifies thirteen pieces of information that online businesses must clearly provide when customers place products in a shopping cart or at any point before customers make payment.³⁹⁹ This rule is more comprehensive than those found in either the EU

³⁹¹ The Consumer Rights Directive, art. 6a.

³⁹² Compare to the Consumer Rights Directive, art. 6a(1)(b).

³⁹³ *Id.* at art. 6a(1)(d).

³⁹⁴ A draft of Royal Decree on Regulating the Digital Platforms Services B.E. ... (Thai.), sec. 16(1)(2).

³⁹⁵ The Consumer Rights Directive, arts. 6(1) and 8.

³⁹⁶ FED. TRADE COMM'N, DOT COM DISCLOSURES: HOW TO MAKE EFFECTIVE DISCLOSURES IN DIGITAL ADVERTISING (2013), <https://www.ftc.gov/tips-advice/business-center/guidance/com-disclosures-how-make-effective-disclosures-digital>.

³⁹⁷ GR 80, art. 13(2) (Indon.) "valid, clear and truthful"; Joint Order, secs. 5 "accurate, clear and easily accessible" (Phil.); TR 76, no. 3.3.1 "accurate, unambiguous, precise, easy to understand (Sing.); Notification, clause 4 "clear, complete, accessible, easy to read" (only for information about products and prices) (Thai.), Decree 52, art. 28(2)(a) "obvious, accurate, searchable and understandable" (Viet.).

³⁹⁸ TR 76, no. 4.2 (Sing.).

³⁹⁹ *Id.*

or the U.S.⁴⁰⁰ Moreover, Singapore's TR 76 is similar to the FTC Dot Com Disclosures Guidance in that its TR 76 suggests the method for disclosure should relate to (1) the proximity and placement of information and (2) the consistency and uniformity of structure and layout to avoid confusion and misrepresentation.⁴⁰¹ Nevertheless, it should be noted that while TR 76 specifically governs pre-contractual information disclosure with the same scope of the EU directives, it is different from the FTC Dot Com Disclosures Guidance that applies only to online advertisement.⁴⁰²

Another member state that should be pointed out is Vietnam because it also has similar rules to the FTC Dot Com Disclosures Guidance, despite these rules not always containing as many details as in Singapore's TR 76. Vietnam's Decree 52 requires the placement of required information to be accessible online and arranged in corresponding sections on relevant websites. Moreover, all required information must be clearly displayed to customers before a contract is concluded.⁴⁰³

With regard to the requirement about which language is used to provide information, although the working language of ASEAN is English,⁴⁰⁴ some states still maintain their national language requirement. For instance, Thailand clearly specifies that information concerning price must always be in Thai (but allow additional languages as per the preference of businesses).⁴⁰⁵ Vietnam explicitly states that languages expressing general trading conditions must always include Vietnamese.⁴⁰⁶ In contrast, Indonesia does not impose a language requirement in the pre-contractual process. Instead, it requires that e-contracts with "consumers in Indonesia must use the Indonesian language."⁴⁰⁷ Singapore does not have a language requirement, but its guideline suggests that e-businesses determine which languages are likely to provide consumers the best opportunities, and, if they offer language options, these options should be clear and easily accessible for customers to switch to their preferred languages.⁴⁰⁸ Rules of these states are similar to the CRD, which also allows member states to maintain or introduce rules in their national language.⁴⁰⁹

Concerning delivery and payment restrictions, only the Philippines, Singapore, and Vietnam demand pre-contractual disclosure of delivery restrictions before the conclusion of a

⁴⁰⁰ Compare TR 76 with Consumer Rights Directive, art. 8(2) and the FTC Dot Com Disclosures Guidance

⁴⁰¹ See *id.* at no. 3.3.1 "prominently disclosed with ease of navigation with the website or mobile platform, consistent and uniform in terms of structure and layout to avoid confusion and misrepresentation as much as possible" (Sing.).

⁴⁰² FTC, DOT COM DISCLOSURES GUIDANCE, *supra* note 338, at 8-21 (The Guidance provides six considerations for helping evaluate whether a disclosure is clear and conspicuous or not) "1) proximity and placement; 2) prominence; 3) distracting factors in the advertisement; 4) repetition; 5) multimedia messages and campaigns; 6) understandable language".

⁴⁰³ Decree 52, arts. 28(2)(b), (d) (Viet.).

⁴⁰⁴ ASEAN Charter, art. 34.

⁴⁰⁵ Notification no. 70, clause 4 para. 2 (Thai.).

⁴⁰⁶ Decree 52, art. 32(2) (Viet.).

⁴⁰⁷ GR 80, art. 55 (Indon.).

⁴⁰⁸ TR 76, no. 3.3.4 (Sing.).

⁴⁰⁹ The Consumer Rights Directive, art. 6(7) (EU).

contract.⁴¹⁰ However, unlike the CRD, these states do not fix the exact time at the beginning.⁴¹¹ Additionally, unlike the provisions in the CRD, no state mentions information about an obligation to pay before placing an order, or provides legible words on an activating button that indicates the consumers are placing an order with an obligation to pay.⁴¹² Likewise, no state mentions a provision requiring disclosure of selected information in the case of limited space or time to display information.⁴¹³

For the last formal requirement, almost all states (except Malaysia and the Philippines) have provisions concerning confirmation of concluded contracts. Among the four states, Singapore has more requirements than other states and even the CRD.⁴¹⁴ Singapore's TR 76 suggests both confirmations of payment and an order.⁴¹⁵ In any event, the order confirmation should contain certain information, such as an order date and number, the quantity of products, an estimated time of delivery, and methods of contacting online businesses (customer support).⁴¹⁶ Indonesia's GR 80 requires e-confirmation sent to consumers within a certain timeframe, and such e-confirmation must contain the same information as provided in an e-offer.⁴¹⁷ Accordingly, e-confirmation should include minimum information about the specifications of products and their prices, the payment and delivery mechanism and system, as the payment deadline, and any limitation on liability in the event of the occurrence of unexpected risks, for example.⁴¹⁸ Similarly, Vietnam's Decree 52 requires businesses to provide a confirmation of orders that contains the list of information, such as a list of products consumers have ordered, the quantity and price of each product, the total value of the contract, the time of delivery, and contact information for further inquiries to consumers.⁴¹⁹

In Thailand, although DSDM does not contain any pre-contractual information duties, it has a provision that specifically requires that the order confirmation be sent to consumers after the conclusion of a contract.⁴²⁰ The details of information include: names of buyers and sellers; dates of purchase and delivery of products; due dates; places and methods of payments and deliveries of products; procedures regarding contract termination; warranties; the right of withdrawal and cooling-off periods; return methods; and exchange policies in case of damage or defect.⁴²¹ Looking at the list above, it is important to note that a Thai confirmation of an order contains information that is required by other states and the CRD in the pre-contractual stage. This shows that Thailand also has the same concern that certain information should be disclosed to consumers. However,

⁴¹⁰ Joint Order, sec. 5 (3.5.1) "any restrictions, limitations or conditions of purchase, such as geographic limitations..." (Phil.); TR 76, no. 3.2.3 "shipping restrictions" (Sing.); Decree 52, art. 32(c) "geographical limits of the delivery of goods or provision of services, if any" (Viet.).

⁴¹¹ The Consumer Rights Directive, art. 8(3) (EU).

⁴¹² *Id.* at art. 8(2).

⁴¹³ *Id.* at art. 8(4).

⁴¹⁴ *Id.* at art. 8(7).

⁴¹⁵ TR 76, nos. 4.3.3 and 4.3.5 (Sing.).

⁴¹⁶ *Id.* at no. 4.3.5 (Sing.).

⁴¹⁷ GR 80, art. 46 (Indon.).

⁴¹⁸ *Id.* at art. 39 (Indon.).

⁴¹⁹ Decree 52, art. 19 (Viet.).

⁴²⁰ DSDM, art. 30-31. (Thai.).

⁴²¹ *Id.*

Thailand considers the process of disclosure suits in the post-contractual rather than pre-contractual stages.

C. LEGAL EFFECTS AND SANCTIONS

The selected six states are silent on the issue of the legal effects of pre-contractual information duties. They do not have a specific provision allowing information in disclosure to be incorporated in a concluded contract.⁴²² One reason this specific provision is absent is that, if such information has already been included in an offer, it would automatically become a part of a contract by virtue of the general principle of contract law. Then, this legal matter would fall under the scope of contract law in each state. From observing another enforcement rule regarding the burden of proof,⁴²³ consumer protection laws of the selected six member states provide different rules for who bears the burden of proof in consumer contracts, especially circumstances that shift the burden of proof to businesses.⁴²⁴

Concerning sanctions, that this section explores all the five states except for Singapore because Singapore's TR 76 guideline is not legally binding. For the rest of the five states, some states have provisions related to sanctions for violating pre-contractual information duties within their specific laws concerning consumer protection in e-commerce, whereas other states refer to their main laws. Indonesia and Vietnam are in the former group, while Malaysia, the Philippines, and Thailand are in the latter group. Each of these five states have sanctions in the form of a fine, which is consistent with the EU approach.⁴²⁵ Nevertheless, Vietnam is distinct from the other states because its sanction gives consumers the unilateral right to terminate contracts for noncompliance with pre-contractual information duties.

For the first group of states having sanctions within their specific laws, Indonesia's GR 80 indicates that the non-disclosure of information about identities of businesses, characteristics, conditions, and guarantees of goods and services will be subject to administrative sanctions.⁴²⁶ The administrative sanctions can take the form of a written reprimand, putting businesses who fail to disclose information on a priority list of oversight, a black list, or a temporary blockade, or could lead to a revocation of business licenses.⁴²⁷

⁴²² The Consumer Rights Directive, art. 6(5).

⁴²³ *Id.* at art. 6(9).

⁴²⁴ For examples, businesses shall have burden of proof for faults in the compensation claims. Law No. 8 of 1999 on Consumer Protection, art. 28 (Indon.); Suppliers shall have burden of proof that a contract or a term of the exclusion of rights, duties, and liabilities or restriction of liability made by businesses is not without adequate justification. Consumer Protection Act, art. 24E (Malay.); The burden of proof shall be on the supplier that the supplier has complied with any specified requirement of this Act or the regulations made thereunder. CPFTA, art. 18 (Sing.); Businesses shall have burden of proof for facts regarding manufacturing, assembling, design, or ingredients of products or services, or operations, where the court considers those facts are known to businesses. Consumer Case Procedures Act, B.E. 2551 (2008), art. 29 (Thai.); Burden of proof about the fault of the organization or individuals trading of goods and/or services shall be on such organization or individuals. Consumer Protection Law, art. 42 (Viet.).

⁴²⁵ The Consumer Rights Directive, art. 24, *supra* note 422.

⁴²⁶ GR 80, art. 80(1) (Indon.).

⁴²⁷ *Id.*

Vietnam's Decree 99 provides many detailed rules about the sanction imposed for noncompliance with pre-contractual information duties. It gives a consumer the right to terminate a contract unilaterally if a trader fails to properly or fully provide the required information in distance contracts, including online contracts, under this law.⁴²⁸ A consumer can unilaterally exercise the right to terminate a contract within ten days after the conclusion of a contract by notifying a business without paying any costs related to that termination unless such a cost is for using goods or services.⁴²⁹ Once a consumer unilaterally terminates a contract, a trader must refund the consumer's paid money within thirty days after being notified of the termination.⁴³⁰ Also, a trader is subject to pay interest on delayed payment beyond the timeframe.⁴³¹ The refund must be made by the same payment used by a consumer unless a consumer agrees otherwise.⁴³² In addition, if the termination of a contract causes damage to a consumer, the law requires that a trader pays damages under the Vietnamese civil law.⁴³³

For the second group of states referring sanctions to their main laws, Malaysia and the Philippines refer to the sanction provisions in their main consumer protection laws. According to the Malaysian Consumer Protection Act, online businesses or marketplaces that fail to comply with pre-contractual information duties are subject to a fine or imprisonment, or both with different amounts and time depending on whether a person or a company commits the offense.⁴³⁴ Moreover, any person or company will be imposed an additional fine of up to 1,000 Malaysian Ringgit for each day during the time that the offense continues after conviction.⁴³⁵ Apart from the above criminal penalties, a consumer may bring a claim to the Tribunal for Consumer Complaints for civil remedies against such a business.⁴³⁶

The Philippines's Joint Order clearly states that any violation under this Joint Order will fall under the scope of the Consumer Protection Act related to administrative penalties.⁴³⁷ These administrative penalties vary in many forms; for example, the issuance of a cease and desist order, the acceptance of a voluntary assurance of compliance, restitution or rescission of the contract without damages, or the imposition of administrative fines (between 500-300,000 Philippines pesos but no more than 1,000 Philippines pesos for each day of continuing violation).⁴³⁸

⁴²⁸ Decree 99, art. 17(3) (Viet.).

⁴²⁹ *Id.*

⁴³⁰ *Id.* at art. 17(4).

⁴³¹ *Id.*

⁴³² *Id.*

⁴³³ *Id.*

⁴³⁴ Consumer Protection Law, art. 145 (Malay.). A person is subject to a fine of up to 50,000 Malaysian Ringgit or imprisonment up to three years or both, and for a second or subsequent offense, a fine of up to 100,000 Malaysian Ringgit or imprisonment up to five years or both. A company is subject to a fine of up to 100,000 Malaysian Ringgit, and for a second or subsequent offense, a fine of up to 200,000 Malaysian Ringgit or imprisonment up to five years or both.

⁴³⁵ *Id.* at art. 145(3).

⁴³⁶ Jane Tan Chiu Yen, *New Rules for Safer Electronic Transactions*, MALAYSIAN BAR (Apr. 8, 2013, 12:00 AM), <https://www.malaysianbar.org.my/article/news/legal-and-general-news/members-opinions/new-rules-for-safer-electronic-transactions>.

⁴³⁷ Joint Order, *supra* 240, at sec. 12.

⁴³⁸ Consumer Protection Act, *supra* 239, art. 164.

Thailand neither has a provision of sanctions for noncompliance with pre-contractual information duties in a specific law, nor does it refer back to the main consumer protection law like the other two aforementioned states. Nevertheless, the specific law as secondary law that imposes pre-contractual disclosure duties about prices and descriptions of products refers back to its primary law, the Price of Products and Services Act B.E. 2542 (1999), for the sanction. The Price of Products and Services Act penalizes a business that does not disclose information about the price and description of products with a fine not exceeding 10,000 Thai baht.⁴³⁹ More significantly, to incentivize the Thai community to help with this enforcement, if a business is penalized with such a fine, a person who helps the government (Department of Internal Trade) by pointing out the non-disclosure of products' prices and descriptions of businesses will be awarded 25% of that fine.⁴⁴⁰ In sum, each member state has different rules and approaches that it sees appropriate in response to noncompliance with pre-contractual information duties.

V. LESSONS LEARNED FROM THE ANALYSIS OF E-COMMERCE IN ASEAN

ASEAN's most recent economic integration as the AEC has immense potential since its e-commerce market combines over half a billion people who are prospective internet users and online shoppers. People's readiness in this region to engage in online transactions is obviously an important driving force to develop the e-commerce market. With this great potential for growth in the e-commerce realm and ASEAN consumers' ever-increasing online habits, the AEC aims to build consumer confidence in online transactions and support good business practices. The AEC envisions its ultimate goal of cross-border e-commerce transactions in the region as expanding its full capacity that in turn makes the AEC a more competitive economic region.

However, ASEAN has attracted criticism for reluctantly cooperating with the economic integration without securing the actual compliance of its member states.⁴⁴¹ One main factor that impedes this integration is that ASEAN lacks the genuine political will to intensify its cooperation. This is because sometimes member states are in direct competition with each other. Several complications have occurred, including member states having conflicting interpretations and avoiding regional compliance.⁴⁴² As of 2021, ASEAN has progressively implemented 54.1% of

⁴³⁹ Price of Goods and Services Act, B.E. 2542 (1999), art. 40 (Thai).

⁴⁴⁰ *Id.* at art. 32.

⁴⁴¹ Tan Hsien-Li, *New Approaches to Achieving ASEAN Regionalism*, 9 EAST ASIA F. Q. 10, 10 (2017).

⁴⁴² One example is the agreement from the past economic integration—AFTA—where ASEAN member states had to reduce the AFTA tariff rates from 0%-5%. However, many member states had conflicts which delayed their ability to reduce tariffs on certain goods, such as Malaysia for automobiles, Indonesia and Philippines for rice and sugar, and Thailand for palm oil. Please see Singapore Declaration Of 1992, ASEAN, (Jan. 28, 1992), http://asean.org/?static_post=singapore-declaration-of-1992-singapore-28-january-1992; US-ASEAN, *Common Effective Preferential Tariff (CEPT)*, <https://www.usasean.org/regions/asean/afta/common-effective-preferential-tariff> (last visited Feb. 12, 2022); Petchanet Pratuangkrai, *Regional Trade Pressure on Malaysia*, PRESSREADER (Aug. 15, 2009), <https://www.pressreader.com/thailand/the-nation/20090815/282359740727453>; International Center for Trade and Sustainable Development, *News from the Regions: ASEAN Free Trade Area Faces Delay* (Apr. 2, 2000), <https://www.ictsd.org/bridges-news/bridges/news/news-from-the-regions-asean-free-trade-area-faces-delay>.

sectoral work plans in an effort to meet the goals under the AEC Blueprint 2025.⁴⁴³ Still, many scholars are skeptical about the success of the AEC, the most recent regional integration.⁴⁴⁴

Despite criticism and skepticism, I take the optimistic view that the development of AEC e-commerce, with a high potential for growth and support from the ASEAN people, would ultimately strengthen the political will of ASEAN member states and create stronger and better cooperation. Unlike other regional integration such as the E.U., ASEAN would have a bottom-up structure that such will would originate in the private sector, starting with consumers and businesses and advancing to governments. Then, this political will would concretize the AEC instead of a supranational organization making a top-down policy.

Over fifty years of establishing ASEAN, member states have maintained their positions for refusing a supranational organization and strictly followed ASEAN Way to dominate working style, policies, and frameworks. This firm position tells us that the focus of developing laws should be shifted away from creating a supranational institution to enact a community law to promoting the cooperation of member states through its legal instruments. Unlike other economic integrations, ASEAN can have an ASEAN style of issuing legal instruments soft law yet influential for member states to gradually implement them into their domestic laws without a supranational organization. Since ASEAN has recognized that achieving greater development of AEC e-commerce depends on the ongoing cooperation of member states to modernize their legal infrastructures, especially consumer protection, ASEAN should emphasize this point. ASEAN should continue facilitating AEC e-commerce by harmonizing consumer protection and consumer rights.⁴⁴⁵

Indeed, the AEC Blueprints set out only broad concepts and strategic measures for the AEC integration process. Nevertheless, we have seen the upcoming trend that ASEAN sectoral bodies have issued more detailed and specific initiatives and working plans to support the AEC Blueprints; for example, the Guideline on Accountabilities and Responsibilities of E-marketplaces⁴⁴⁶ and the Online Business Code of Conduct.⁴⁴⁷ They are a good starting point for the acceptance of ASEAN to harmonize consumer protection laws in e-commerce among member states. However, these legal instruments rely heavily on businesses to behave without concrete rules for member states to implement them in their domestic law, so they have a long way from uniform and comprehensive rules of consumer protection. Clear evidence is that they do not even provide efficient rules for pre-contractual information duties for online sellers, which are well developed in other parts of the world as mentioned earlier.

⁴⁴³ ASEAN, THE MID-TERM REVIEW REPORT OF THE ASEAN ECONOMIC COMMUNITY BLUEPRINT 2025 (Apr. 28, 2021), <https://asean.org/asean2020/launched-asean-mid-term-review-of-the-aec-blueprint-2025/>.

⁴⁴⁴ Lee Jones, *Explaining the Failure of the ASEAN Economic Community: the Primacy of Domestic Political Economy*, 29 PACIFIC REVIEW 647, 647–70 (2016); Sanchita Basu Das, *Mind the Gap: Explaining Implementation Shortfalls in the ASEAN Economic Community* 1, 1-31 (ISEAS Econ., Working Paper No. 2017-7); Joshua Kurlantzick, *The Failures of the ASEAN Economic Community*, COUNCIL ON FOREIGN RELATIONS (Sept. 12, 2014, 3:43 PM), <https://www.cfr.org/blog/failures-asean-economic-community>.

⁴⁴⁵ ASEAN, ASEAN ECONOMIC COMMUNITY BLUEPRINT 2025, at 24, https://asean.org/wp-content/uploads/2021/08/AECBP_2025r_FINAL.pdf.

⁴⁴⁶ ASEAN, THE GUIDELINE, *supra* note 176.

⁴⁴⁷ ASEAN, CODE OF CONDUCT, *supra* note 193.

In detail, the Guideline on Accountabilities and Responsibilities of E-marketplaces governs the conduct of online marketplaces and allows these big companies operating online marketplaces to control individual sellers on their platforms.⁴⁴⁸ However, businesses are designed to make profits, so giving them control of other businesses for the purpose of protecting consumers may not be appropriate and practical. They could easily take advantage of consumers. Besides, businesses cannot completely control sellers acting in bad faith because they do not have the power to enforce compliance. Thus, ASEAN cannot and should not rely mainly on online marketplaces to protect consumers. More importantly, a significant number of online sellers are doing business on their own without using online marketplaces. Even though ASEAN has already issued the Online Business Code of Conduct, which provides a limited number of pre-contractual information duties for online sellers, the outlined duties are broad, inadequate, and incomprehensible.⁴⁴⁹

It is obvious that member states are willing to implement the AEC frameworks and policies of e-commerce because they all want to enjoy the full benefit from it. All member states have developed national laws to protect consumers and foster their digital economies. The selected six states are the leading players in ASEAN and can present a feasible direction for the laws in this region. With the example of pre-contractual information duties, these six states have already promulgated laws regulating online businesses by requiring them to disclose material information, many of which are similar to those in the E.U. and the U.S. This finding brings about the concrete conclusion that because of the nature of cross-border transactions in e-commerce, people are connected worldwide and thus experience the same problems which competent authorities try to solve.

Nevertheless, two serious problems can be identified because of the absence of a harmonized law across the region. First, the nonexistence of a common legal framework causes discrepancies and inconsistencies between the laws of member states with practical consequences. Every state has its own consumer protection law, a mandatory law that governs B2C contracts following the state's policies, cultures, and preferences. The lack of harmony of laws in member states poses a serious problem for the AEC since it is supposed to have a single law that applies in a single market. At present, the selected six member states only have three pieces of information in common: the characteristics of products, prices, and identities of businesses. Consumers have already intuitively been hesitant to conduct cross-border transactions because they are governed by legal systems outside their home country that has different and unfamiliar rules. Consumers are typically concerned about the protection they will receive for any disputes arising out of transactions in foreign countries.⁴⁵⁰

More importantly, let us imagine a business that wants to sell products online in member states with, for example, different lists of information requirements as appear in the previous part. This means such a business has to set up different webpages to legally sell in each state. It is an obvious nightmare for any business to enter the ASEAN e-commerce market. To address further, researching information about various laws in different legal systems creates an additional cost for

⁴⁴⁸ ASEAN, THE GUIDELINE, *supra* note 176.

⁴⁴⁹ ASEAN, CODE OF CONDUCT, *supra* note 193.

⁴⁵⁰ Gerhard Wagner, *The Economics of Harmonization: the Case of Contract Law*, 39 COMMON MKT. L. REV. 995, 1016-17 (2002).

businesses.⁴⁵¹ This additional cost reduces opportunities for SMEs to be competitive in the market because of such a financial burden.⁴⁵² Consumers also suffer from this additional cost because in practice, businesses raise the prices of products to cover the additional expense. Consequently, the different laws among member states often pose obstacles to cross-border e-commerce,⁴⁵³ which are impractical and challenging for both consumers and businesses engaging in online transactions and they ultimately create disincentives for investment.

Second, although most ASEAN member states have provisions regarding pre-contractual information duties, these provisions are still incomplete and often inadequate when compared to other parts of the world. ASEAN does not have a common minimum requirement to govern general online sellers. The analysis of the selected six member states showed that each member state lacks some rules regarding pre-contractual information duties compared to other countries such as the E.U. and the U.S. For example, Thailand does not have any legislation to directly govern consumer protection in e-commerce, resulting in inadequate rules to protect consumers. Indonesia, Malaysia, the Philippines, and Vietnam have already enacted specific legislation to cover this area; but, as we have seen in the previous section, some important rules are still missing in each state. Singapore's TR 76 is a guideline, which is merely a soft law that is not legally binding, so it cannot impose a concrete legal consequence of noncompliance like the hard laws of other states.

It is true that harmonizing diverse laws has never been ASEAN's strong suit. Yet, the AEC frameworks and policies and the current laws of ASEAN member states all support the central claim of this Article—that the ASEAN needs to harmonize consumer protection laws in online transactions of member states in accordance with the worldwide standard so that all parts of ASEAN, i.e., consumers, businesses, and states, can gain the greatest benefits of its e-commerce under the huge project of economic integration as the AEC. ASEAN must have a uniform consumer protection law with many features, including pre-contractual information duties, to promote growth of e-commerce in the region.

CONCLUSION

This Article has highlighted ASEAN, a prominent player in the Asian market. Under ASEAN's most recent economic integration, the AEC, it has combined ten Southeast Asian countries' markets. ASEAN's enormous collective market has considerable potential for e-commerce, which is significantly enhanced by the readiness of people in the region—who are willing to engage in e-commerce—and the support from AEC frameworks and policies at the regional level. In recognition of this potential, ASEAN has set a goal to boost AEC e-commerce to reach its full capacity and thus become a competitive economic region.

The historical background and the great diversity of ASEAN member states make it challenging for the establishment of a supranational organization to impose hard laws. In spite of these challenges, ASEAN has issued many regional frameworks as soft laws—non-legally binding

⁴⁵¹ *Id.* at 1013-15.

⁴⁵² *Id.*

⁴⁵³ *Communication from the Commission to the Council and the European Parliament on European Contract Law*, Sept. 13, 2001, 2001 O.J. (C 255/1) 5 ¶10; Christian Twigg-Flesner, *Comment: the Future of EU Consumer Law – The End of Harmonization?*, in *EUROPEAN CONSUMER PROTECTION: THEORY AND PRACTICE* 6–20 (James Devenney & Mel B. Kenny eds., 2012).

agreements that ask for the cooperation of member states—to create fruitful and good governance of the e-commerce ecosystem. Nevertheless, one salient feature to facilitate e-commerce is missing. ASEAN still lacks a comprehensive legal instrument to govern consumer protection, despite its ability to facilitate e-commerce and promote the digital economy. For this reason, all ASEAN member states have developed their own national legislation in the area of consumer protection for e-commerce based on their preferences, as shown in the most current data of the selected six ASEAN member states in this Article.

I chose pre-contractual information duties, one of the most vital tools to protect consumers in online transactions, as a concrete example to show that the legal provisions of member states are inconsistent and inefficient due to the absence of a uniform ASEAN law. These problems profoundly impact ASEAN because they can harm consumers, businesses, member states, and even ASEAN's own economic development related to e-commerce. Therefore, this Article urges ASEAN to harmonize consumer protection law if it wants to reap the benefits of e-commerce to the fullest extent. This Article aims to be a starting point for larger questions. For example, how should harmonization of consumer protection laws in ASEAN be pursued? What legal principles should be contained in such harmonizing law? These questions are waiting for future research and studies to provide the appropriate answers.