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AEC BLUEPRINT 2025 ANALYSIS

AN ANALYSIS OF THE ASEAN PRIORITIES ON EFFECTIVE, EFFICIENT, COHERENT AND RESPONSIVE REGULATIONS, AND GOOD REGULATORY PRACTICE

Foreword

The following report is part of a series which attempts to provide a detailed analysis on the ASEAN Economic Community (AEC) Blueprint 2025. Each report will cover a single element of the blueprint, providing a comprehensive look at past achievements, present problems, and the future plans of the AEC. Special attention will be placed upon the strategic measures outlined in the AEC Blueprint 2025. This report aims to provide insight into the viability surrounding regional economic integration under the AEC.

Effective, Efficient, Coherent and Responsive Regulations, and Good Regulatory Practice (GRP)

Achieving the goals of the AEC requires many supporting factors. Regulations that can highly support the economic integration process would be a very important component that is crucial in providing explicit guidance on how the integration should take place based on the agreed new blueprint. Good regulatory practice (GRP) would ensure consistent adherence to the agreed regulations to support trade, investment and other economic cooperation across the region. This initiative has been included in the AEC Blueprint 2025 because closer partnership between the public and private sectors can only be facilitated if all the relevant stakeholders are guided by effective, efficient, coherent and responsive regulations, and if they can implement GRP to ensure fairness and transparency in their activities. This report aims at analyzing how ASEAN has progressed in this area, despite not having it specifically in the previous blueprint, and at providing some useful information on ASEAN's strategy to promote quality regulations and GRP.

A. Targets under the AEC 2015 Blueprint

Effective, efficient, coherent and responsive regulations, and GRP were not included in the previous blueprint. These are new priorities that are expected to provide consistent guidance to the implementation of AEC strategic measures and improve fairness and transparency in the whole process. Successful implementation of these initiatives would encourage greater confidence within the business sector in the AEC.

B. Significant Achievements To Date

- Given that the AEC Blueprint 2015 did not specifically outline effective and efficient regulations and GRP as ASEAN priorities, there were not any measured targets to be achieved by end of 2015. However, some progress in this area has been achieved the improving standard and conformance of goods and services to further facilitate trade in the ASEAN region.

- The ASEAN Consultative Committee on Standards and Quality (ACCSQ) has been working towards harmonizing national standards with international standards and improving conformity assessment through mutual recognition arrangements to achieve a standard that can be conformed to one test and therefore can be accepted everywhere. Currently, harmonization of standards has been accomplished for 20 priority products and 81 standards for safety and electromagnetic compatibility. Priority for harmonization is given to standards used in technical regulations in member states. However, new areas are being explored and identified.

- Mutual recognition arrangement (MRA) for electrical and electronics was signed in 2002. Member states have notified their participation in the MRA through product certification. The agreement on ASEAN Harmonized Cosmetic Regulatory Scheme was in 2003. The first part of the agreement is an MRA that enables the signatories to recognize the product registration approval of any signatory based on the agreed rules and regulations. The second part of the agreement is the ASEAN Cosmetic Directive which requires cosmetic products comply with existing regulations in member states. On pharmaceuticals, the ACCSQ has developed the ASEAN Common Technical Dossiers (ACTD), a marketing authorization dossier that is common to all member states, and the ASEAN Common Technical Requirements (ATCR), which is a set of materials to guide applicants in preparing application dossiers that is consistent with requirements of the all ASEAN Drug Regulatory Authorities.

- To disseminate the latest updates and information, the ASEAN Standards and Quality Bulletin has been regularly published.

- The ACCSQ has also promoted GRP through the development of the ASEAN Good Regulatory Practice Guide, which contains details on the principles of GRP. The guide is aimed at helping member states in meeting international standards of the World Trade Organization (WTO) Technical Barriers to Trade Agreement, and their own commitment under the ASEAN Framework Agreement of the integration of priority sectors.

- ASEAN and the Organization for Economic Cooperation and Development (OECD) have established the ASEAN-OECD Good Regulatory Practices Network (GRPN) aimed at providing assistance to member states in strengthening capacity for GRP implementation through exchange of good practice and information among ASEAN and OECD member states. The GRPN was launched in March 2015 and has conducted two meetings to discuss the way forward in ASEAN's efforts in implementing the GRP. The two meetings were attended by Senior Officials from ASEAN and OECD member countries who exchanged their ideas, assessments and recommendations on implementing and improving regulatory practices.

- Several country experiences in regulatory reform can be described as follows[1]:

Country	Development
Philippines	• Critical regulatory reforms were undertaken under a reform-minded government (Corazon Aquino, Fidel Ramos) and a regime of democratic governance where consultation and dialogue are important processes used to generate stakeholder support. • Regulatory reform was easier through executive fiat rather than legislation. Certain regulatory reforms on various sectors (water, telecommunications, banking, sugar, and coconut oil) were successfully undertaken by the government, but not without strong opposition from vested interests. Energy reform under the Electric Power Industry Reform Act was more difficult to implement. • Despite the regulatory reforms, regulatory quality was poor due to weak institutional capacity for regulation and the absence of a more deliberative process of review, consultation, publication, and approval of proposed regulatory changes (new regulation or changes in existing regulation). • Regulatory reform efforts happen at two levels: the national and local government levels. Local governments exhibited varying success in reforming local policies and ordinances.

[1] The information is supplied by a joint paper by ERIA, Malaysia Productivity Corporation (MPC), and New Zealand Institute for Economic Research (NZIER), available at *http://www.eria.org/RPR-FY2015-04.pdf*

Country	Development
Thailand	• In the 1990s, efforts to reduce the bureaucratic red tape were initiated to address the problems of complicated administrative process that had begun in the 1930s. The government first conducted the regulatory impact assessment (RIA) in 1988 to further reduce submissions of regulations that could contribute to greater red tape, therefore improving the administrative efficiency. • Also in the 1990s, the regulatory management system (RMS) was initiated when participation by the private sector in public service investment was allowed to reduce bureaucracy and to encourage more efficient operations. Some political resistance took place in the beginning but on the positive side, this signifies greater people's involvement in the reform process. • The 1997 crisis marked the beginning of privatisation of state utility enterprises as requested by the IMF. But further privatisation did not continue as the government felt it could worsen the crisis. The RIA led to some reform of the regulations to further strengthen the economy, with a new checklist to be complied with when proposing new regulations for the Cabinet's consideration. • A new directive on the economy was driven by the 2007 Constitution to promote free and fair economic system through market forces and thus ensuring fair competition and consumer protection. The directive was also aimed at preventing monopoly through regulation that private investment in public utilities should not exceed 49 percent. Further promotion of ease of doing business was carried out by addressing the problem of Thai legislation that was largely based on closed government control system, which is not in line with the current global trade liberalisation. This was done through (i) enactment of the Licensing Facilitation Act (2015) for ease of doing business and enhancement of transparency, (ii) enactment of Royal Decree on Revision of Law (2015), and (3) law on RIA by adopting scientific process to achieve sustainable development and improve the lives of people.
Vietnam	• A number of laws and regulations on economic and business practices had been introduced since 1986 to promote reform of the economic system. The government officially recognised the need to simplify administrative procedures in 1994. In 1996, the National Assembly issued the first Law of Legal Normative Documents, which specifies which authorities could promulgate different types of laws, ordinances, decisions and circulars and sets out procedures for public consultation. The second Law of Legal Normative Documents issued later governed the process of drafting regulations through requirement on public consultation and RIA. • When preparing to join the WTO, Viet Nam made efforts to align its domestic laws with international norms and practices. Various legal documents on business practices were issued and amended to encourage fair competition for enterprises.

Country	Development
Malaysia	• Since privatisation was initiated in Malaysia, new institutions and mechanisms were established to regulate entities that had been privatised. Prior to the national competition policy and law, regulations in each economic sector were in place to promote fair competition. After the financial crisis in the late 1990s, regulatory reform became more difficult due to industry consolidation and re-nationalisation. • The Sixth Malaysia Plan (2006-2010) signified the (i) adoption of new administrative procedures on privatisation, (ii) streamlining of implementation procedures through centralised planning and decentralised implementation, with standardised terms and conditions for privatisation. The Seventh Malaysia Plan accelerated the privatisation programme through improved legal and regulatory framework, and strengthened government support, to accelerate economic growth and lower the government's financial burden. • The Ninth Malaysia Plan was aimed at bringing down further the cost of doing business by simplifying rules and regulations, and expediting the issuance of permits and approvals for trade and investment. In addition, it also promoted greater transparency and more stringent penalties for any wrongdoings. • Prior to implementation of good regulatory practice (GRP), the existing regulations were not properly evaluated in terms of their quality and transparency. The National Parliament would approve the laws and the government would issue regulations to implement the laws, but no government institution existed to conduct the RIA.
Singapore	• The responsibility for issuing sectoral regulations has been shifted from government ministries to committees or commissions that are established to represent important stakeholders and obtain their feedbacks on the existing regulations. The Cut Red Tape Campaign (2000) was aimed to encourage a more efficient public service. • The Rules Review Panel (RRP) was established to ensure that all rules enforced by government agencies would be reviewed every 3 to 5 years by looking at the backgrounds and rationales behind them, to promote more responsive regulatory system to better support fair business practices. The Smart Regulation Committee (SRC) superseded the RRP in 2005 with an additional task of changing the role of the public service from being a regulator to more of a facilitator, and developing a more business-friendly regulatory system. This is done through more intensive consultation with the relevant stakeholders, resulting in more effective regulations.

- These updates describes the efforts undertaken by member states in improving their regulatory practices. The World Bank[2] has come up with indicators to measure how introduction, implementation and evaluation of regulations have embraced the principles of transparency, public participation and government accountability. In the study, 13 questions are asked to the relevant stakeholders to get their views and opinions on whether or not the government have conducted the proper procedures on introducing, implementing or enforcing, and evaluating the effectiveness of regulations. Those 13 questions represent the stakeholders' perception in terms of transparency of rulemaking, public consultation of rulemaking, impact assessment of the rules, opportunities to challenge regulations, and convenience in accessing laws and regulations.

- The outcomes of the study on ASEAN member states are summarized in the two tables below. The first table contains the list of questions, and the second explains the stakeholders' responses.

[2] Taken from rulemaking.worldbank.org

Number	Questions	Categories
1	Have there been any recent reforms that have had an impact on the rulemaking process in your jurisdiction – including notification, publication of proposed regulations, consultation or public comment mechanisms, and/or regulatory impact assessment practices?	Transparency of rulemaking
2	Do ministries or regulatory agencies in your jurisdiction develop forward regulatory plans – that is, a public list of anticipated regulatory changes or proposals intended to be adopted/implemented in your jurisdiction within a specified time frame?	
3	Does the government publish regular reports on regulatory reforms?	
4	Is there a practice of "pre-consultation" with the public? (Pre-consultation includes an invitation by the regulator to interested stakeholders to engage in the "early thinking" on how to address an identified problem, before the preparation of a draft regulation.)	
5	Do ministries or regulatory agencies in your jurisdiction publish the text or summary of proposed (not yet adopted) regulations before their enactment?	
6	Do ministries or regulatory agencies in your jurisdiction solicit comments on proposed (not yet adopted) regulations from the general public?	Public consultation in rulemaking
7	Do ministries or regulatory agencies in your jurisdiction report on the results of the consultation on proposed regulations?	
8	Do ministries or regulatory agencies in your jurisdiction conduct an impact assessment of proposed (not yet adopted) regulations?	Impact assessment
9	Do ministries or regulatory agencies in your jurisdiction conduct an impact assessment of proposed (not yet adopted) regulations?	Challenging regulations
10	Is there any existing requirement that regulations be periodically reviewed to see whether they are still needed or should be revised?	
11	Are the laws that are currently in effect available in a single place?	Accessing laws and regulations
12	Are the regulations that are currently in effect codified and available in a single place?	
13	Are these websites or registries updated regularly?	

Questions Number													Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	
Brunei													
X	X	X	X	X	X	X	X	X	NA	/	/	/	• Reforms are usually disseminated through mass media. • Laws may enter into force before publication at the government gazette.
Cambodia													
X	/	X	/	/	/	X	X	X	NA	X	X	X	• Access to text of proposed regulations depends on sensitivity of the cases. • Consultations by ministries are done on case by case basis, from a few months to a year.
Indonesia													
X	/	/	/	/	/	X	/	/	NA	/	/	/	• Any anticipated reforms are available on the website of the Ministry of Law and Human Rights. • Any comments from the public on proposed regulations are submitted to the House of Representatives (parliament).
Lao PDR													
X	X	X	X	/	/	X	/	X	X	/	/	/	• Text of proposed regulations are available on the government website and the public is given 60 days to provide comments. • Regulations on governing institutions are exempt from public consultations.
Malaysia													
X	/	/	/	/	/	/	/	/	/	/	X	/	• Reforms on regulations are available on government website and the pre-consultation process is done online. • Impact assessment is done on regulations that may have significant impacts on business and require mandatory compliance.

Questions Number													Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	
Myanmar													
X	X	/	/	/	/	/	X	/	X	/	X	/	• Draft text of proposed regulations are available on newspapers and government websites for 3-6 months. • If a regulation has significant impacts on a certain stakeholder group, they may appeal through the parliamentary committee.
Philippines													
X	X	/	/	/	/	X	X	/	X	/	/	/	• Public consultation meetings are held for the public to voice their opinions on a regulatory reform. • A regulatory impact assessment system is being developed by the National Economic Development Authority.
Singapore													
X	/	/	/	/	/	/	/	/	X	/	/	/	• Any anticipated reforms are available on the website of the Ministry of Law and Human Rights. • Any comments from the public on proposed regulations are submitted to the House of Representatives (parliament).
Thailand													
X	X	X	X	/	/	/	X	/	NA	/	/	/	• Each ministry or regulator has its own authority on publishing a proposed law before its enactment. • Any affected parties can appeal or challenge an adopted law to the Administrative Court.
Vietnam													
/	/	X	/	/	/	/	/	X	X	/	/	X	• Pre-consultations on any proposed law are decided by the drafting committee and relevant regulatory agency. • Impact assessment is done on regulations that end up being very costly in its enforcement process, or having many negative impacts on certain groups.

- To different degrees, ASEAN member states have made significant efforts in the five categories of regulatory governance. Indonesia, Malaysia and Singapore seem to be leading in ensuring that the general public is consulted before a certain regulation is enacted and in assessing the impacts, if need be. Most countries have done well in terms of providing access to the laws and regulations through their adopted means of codifying and disseminating them to the public. Stakeholders in Brunei Darussalam seem to be expecting greater transparency and involvement in the initial process of proposing or amending a regulation.

C. Current Issues and Challenges

- There are still huge gaps across the ASEAN region in terms of regulations, not only across different member states but across economic sectors. The challenge is to converge the different regulatory systems and improve their effectiveness and coherence to promote easiness of doing business in ASEAN.

- The second challenge has to do with the mechanism of implementing and revising the existing laws and regulations. An example is the implementation of the Blue Card Scheme under Protocol 5 of the ASEAN Scheme of Compulsory Motor Vehicle Third-Party Liability Insurance. The protocol has been signed by the ASEAN Finance Ministers in 2001 and ratified by all member states. However, the implementor of the protocol is the ASEAN Council of Bureaux, which consists of National Bureaus from all member states. These national bureaus are the operators of motor and road accident insurance providers, who come from the general insurance industry. The implementation of the protocol has been hindered by the absence of the regulators in the meetings and negotiations, and therefore the much needed changes in insurance and other related regulations have not been addressed.

D. Plans under the AEC 2025 Blueprint

- The AEC Blueprint 2025 outlines ASEAN's priorities on positive impacts that effective and efficient regulatory environment and GRP can have on the economy, particularly the market and market players. The challenge is to ensure that the regulator reform address the existing problems faced by businesses in the region. One important point made in the blueprint is the need to develop responsive ASEAN through improved governance, greater transparency in the public sector, and more intensive engagement with the private sector.

- Strategic measures to promote better regulations and regulatory practice in ASEAN include:
    1. Ensuring that regulations support competition and non-discrimination;
    2. Undertaking programmes to review the implementation of existing regulations, and current process of streamlining and revising those regulations;
    3. Formalizing GRP consultations and dialogues with the relevant stakeholders to identify and solve the current problems through appropriate reform of the regulations;
    4. Outlining the targets and milestones to facilitate regular assessment of the regulatory landscape, and regular review of the progress and impacts;
    5. Implementing targeted capacity building programmes with international partners such as the OECD in the implementation of regulatory reform and good regulatory practice.

E. AEC 2025 Blueprint Analysis

Strategic Measure	Current Status and Development
1 Pro-competitive and non-discriminatory regulations	
• Ensure that regulations are pro-competitive, commensurate with objectives, and non-discriminatory	• The closest development may be the progress on competition policy and law (CPL) in ASEAN. Currently not all member states have implemented their CPL, and some countries are still ratifying their CPL legislations for implementation. • The ASEAN Experts Group on Competition (AEGC) was established as a forum to discuss best practices and policy guidelines.
2 Concerted programmes to review existing regulations	
• Undertake regular concerted regional programmes of review of existing regulatory implementation processes and procedures for further streamlining and, where necessary, recommendations for amendments and other appropriate measures, which may include termination	• Individually, each member state has conducted their regulatory impact assessment or analysis (RIA), as proposed by the OECD. RIA aims at systematically appraising potential impacts of a new regulation to assess whether it is likely to achieve the desired objectives.
3 Institutionalization of GRP consultations with stakeholders	
• Institutionalize GRP consultations and informed regulatory conversations with various stakeholders in order to identify problems, come up with technical solutions, and help build consensus for reform. Enhancing engagement with the private sector as well as other stakeholders contributes to regulatory coherence, increased transparency and greater synergies of government policies and business actions across industries and sectors in the ASEAN region.	• Malaysia and Singapore are at the forefront in conducting consultations with the relevant stakeholders before the governments issue a new regulation. Viet Nam and Thailand have also made similar efforts, although the Thai Parliament's involvement in the approval process can oftentimes result in delays of the issuance and implementation.
4 Targets and milestones of assessment of the regulatory landscape	
• The regulatory agenda may include the setting of both targets and milestones in order to facilitate a regular assessment of the regulatory landscape, and periodic review of progress and impacts in the region.	• The individual RIA process in each member state has to different extent outlines the targets and milestones of their regulatory reforms.

E. AEC 2025 Blueprint Analysis

Strategic Measure	Current Status and Development
5 Capacity building programmes to support implementation of reform	
• Undertake targeted capacity building programmes with knowledge partners such the Organisation for Economic Cooperation and Development (OECD) and Economic Research Institute for ASEAN and East Asia (ERIA) to assist ASEAN Member States in the regulatory reform initiatives, which takes into account the different development levels, development needs and regulatory policy space of each ASEAN Member State	• Member states have cooperated mainly with the OECD in the design of their regulatory reforms, particularly in the management system (RMS) and impact assessment (RIA). ERIA has conducted joint study with the Malaysian Productivity Corporation (MPC) and the New Zealand Institute of Economic Research (NZIER) in analyzing the progress of regulatory reforms and good practice.

F. Conclusion: Moving Forward with the AEC 2025 Plans

- While individually each ASEAN member state has done their reforms and impact achievement for more efficient, effective and coherent regulations and for better regulatory practice (with assistance from international partners, most notably the OECD), closer cooperation among member states would be very useful to make concerted efforts to further reform their regulations in the direction of convergence of the different regulatory landscapes that would significantly raise ASEAN's global competitiveness and support the ASEAN single market and production base mechanism. This should also include development of common regional targets and milestones that are agreed upon by all member states to guide them in the implementation process later on.

- The model proposed by the NZIER for high-performing regulatory system, which can be a generic approach for ASEAN's reform process, consists of the following components:
    1. Policy cycle for developing regulations, which covers policy development in different levels, change implementation, administration and enforcement, and monitoring and review;
    2. Supporting practices, which can be in the forms of consultation, communication and engagement, learning, and accountability;
    3. Key institutions to coordinate and develop the regulatory system and report on its progress;
    4. Regulatory strategy which could be in the form of government's endorsement of good practice regulatory principles.

- This generic model could be adopted by ASEAN in the cooperation to ensure that the process involves all relevant stakeholders to achieve the desired outcomes.

- Since the AEC Blueprint 2025 clearly mentions the need for regular consultations with the private sector and other relevant stakeholders to achieve the end result that is beneficial for everyone. The challenge now for ASEAN is how to develop and institutionalize a mechanism for closer consultation and cooperation between the regulators and stakeholders. Singapore has proven that more intensive consultations result in higher quality of regulations being issued. There is then an urgent need to develop greater trust among the relevant parties to achieve the desired objectives.

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