



# MONASH University

**Policymaking in the Association of Southeast Asian Nations: The  
Development of Cooperation and Regional Integration**

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## **Abstract**

This research delves into the intricacies of ASEAN's policymaking mechanisms, challenging prevailing perceptions surrounding the "ASEAN Way." By employing modern political science theories and concepts, the study provides a nuanced understanding of ASEAN's decision-making dynamics. It unveils complex patterns in policy outputs and intricately balances the interplay between member states' national interests and overarching collective goals. By comparing ASEAN's processes with those in both national and international political systems, the thesis presents a revitalized viewpoint on regional integration and cooperation, underscoring the versatility and universal applicability of political science across varied contexts.

## Declaration

This thesis is an original work of my research and contains no material which has been accepted for the award of any other degree or diploma at any university or equivalent institution and that, to the best of my knowledge and belief, this thesis contains no material previously published or written by another person, except where due reference is made in the text of the thesis.



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# 1 The real ASEAN puzzle

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## 1.1 Why ASEAN? The argument in brief

The present study aims to describe and explain the decision-making processes within the Association of Southeast Asian Nations (ASEAN), Southeast Asia's foremost regional integration initiative. While ASEAN holds significant practical importance both regionally and globally, it remains underexplored through the lens of comparative political science. Since its establishment in 1967, ASEAN has evolved into a more rules-driven entity, most notably with the ratification of the ASEAN Charter. This charter not only endowed the association with a distinct legal identity but also fortified its institutional framework to foster regional integration (Acharya 2009). Additionally, ASEAN has pioneered expansive regional initiatives, engaging external partners through platforms like the ASEAN Regional Forum, ASEAN Plus Three and Plus Six, and the East Asia Summit. These initiatives have been instrumental in ensuring regional stability and prosperity (Mahbubani and Sng 2017: 74). ASEAN's cooperative endeavours have broadened, encompassing diverse policy areas from trust-building to competition, environmental stewardship, and social policy.

The scale of ASEAN's growth is impressive. In 2018, the combined GDP of ASEAN member states (AMS) reached approximately US\$3.0 trillion, marking a fivefold increase from 1999 and over a hundredfold surge since 1967 (Natalegawa 2018: 165). Positioned as a single entity, ASEAN would rank as the world's fifth-largest economy, surpassing the United Kingdom but trailing Germany. Initiatives like the Common Effective Preferential Tariff scheme have significantly reduced tariffs, with most products from AMS now falling within the 0-5 percent range.<sup>1</sup> Furthermore, transport liberalization agreements<sup>2</sup> have streamlined cross-border trade, solidifying ASEAN's position as a global trading powerhouse. In 2019, ASEAN's merchandise trade constituted a quarter of global trade, with nearly 23 percent occurring intra-regionally.<sup>3</sup> Moreover, this regional growth has tangibly uplifted the lives of its 600 million residents. The poverty rate in Southeast Asia plummeted from 40 percent in 1990 to 15 percent in 2015 (Hun Sen 2017: 48). In essence, ASEAN's transformative impact, regardless of the benchmark, has been truly extraordinary.

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<sup>1</sup> The Agreement on the Common Effective Preferential Tariff Scheme, pivotal for the ASEAN Free Trade Area, was inked during the 4th ASEAN Summit in 1992. This foundational agreement underwent revisions in both 1995 and 2003 to adapt to the evolving needs and dynamics of the region.

<sup>2</sup> For instance, the 23rd ASEAN Transport Ministers meeting in Singapore, held in October 2017, witnessed the signing of the ASEAN Framework Agreement on the Facilitation of Cross-Border Transport of Passengers by Road Vehicles.

<sup>3</sup> Data is sourced from the "2019 ASEAN Key Figures Report" released by the ASEAN Secretariat.

To truly grasp the magnitude of ASEAN's achievements, one must delve into the intricacies of its operational mechanisms. Surprisingly, a comprehensive analysis of ASEAN's intergovernmental governance system remains absent from the literature. Like many regional entities, ASEAN's foundation rests upon treaties and agreements, binding its member states to shared objectives and cooperative duties. Yet, the diversity within its membership is unparalleled. The political spectrum of its members spans from democracies to autocracies, and economically, from capitalist to socialist systems. The disparity in development levels is stark: Singapore's GDP per capita is a staggering 49 times that of Myanmar, the least affluent ASEAN nation.<sup>4</sup> Population-wise, Indonesia, with its 270 million residents, dwarfs Brunei's modest 437 thousand. The cultural, linguistic, and religious tapestry is equally varied. Such heterogeneity is often the source of disagreements among member states, especially on normative (i.e., human rights) or regulatory matters, throughout decision-making processes. This prompts the question: How do AMS navigate such pronounced and persistent differences to foster cooperation?

Many scholars and analysts attribute ASEAN's capacity (and occasional incapacity) to harmonize such diversity to the enduring "ASEAN Way" – a *modus operandi* characterized by consensus-driven decision-making and avoidance of conflict (e.g., Haacke 1999; Acharya 2001; Narine 2004; Caballero-Anthony 2005; Kivimaki 2011; Yukawa 2018). According to this perspective, these defining traits, rooted in Southeast Asia's cooperative ethos, are pivotal to the way in which AMS operate. If consensus-seeking and conflict aversion are indeed the hallmarks of the ASEAN Way, then it is puzzling how important agreements could have been reached, overcoming inevitable differences of perspectives among member states. Furthermore, the ASEAN Way prompts inquiries into the nature and implications of these agreements: How binding and restrictive are they on member states?

These are the distinct puzzles this study seeks to explain, shedding light on the practical mechanisms through which ASEAN and its member states navigate their shared journey. The insights obtained hold significance beyond ASEAN, offering valuable perspectives on other regional organizations, especially in the realms of balancing unity with diversity and autonomy with interdependence. Thus, this research not only enriches our understanding of ASEAN but also offers broader insights into the dynamics of international cooperation (e.g., Keohane 1988; Moravcsik 1997; Mansfield, Milner and Rosendorff 2002).

## 1.2 Primer on ASEAN

Having established the contemporary challenges and intricacies of ASEAN's decision-making processes, it is pertinent to trace back to its origins and understand the historical context that gave rise to this unique regional entity.

ASEAN was born in 1967, when foreign ministers from its five founding members—Indonesia, Malaysia, the Philippines, Singapore, and Thailand—inked the Bangkok

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<sup>4</sup> Meanwhile, the ratio of GDP per capita, between the richest (Luxembourg) and the poorest member (Bulgaria) of the European Union, is estimated at 12:1, based on the most recent World Bank (2018) data.



Declaration. This new association succeeded the Association of Southeast Asia, which had been established in 1961 by Thailand, the Philippines, and the Federation of Malaya (now Malaysia). Initially, ASEAN functioned primarily as a forum for fostering relationships among member states, with its primary objective being the preservation of peace and stability in Southeast Asia during the intensifying Cold War era (Natalegawa 2018: 16-17).

The region's early economic landscape was dominated by agriculture. ASEAN's influence was minimal, but by the late 1960s, spearheaded by Singapore, there was a discernible pivot towards export-oriented industrialization (Chandler 1987: 447). Foreign investors were welcomed to set up manufacturing hubs, producing goods destined for Western markets. From textiles and footwear, the focus expanded to electronics, energy, semiconductors, and the wood industry. Recognizing the potential of this approach, ASEAN leaders fortified their commitments to a stable, investor-friendly environment by signing the Zone of Peace, Freedom, and Neutrality Declaration in 1971, signaling their intent to minimize external influences.

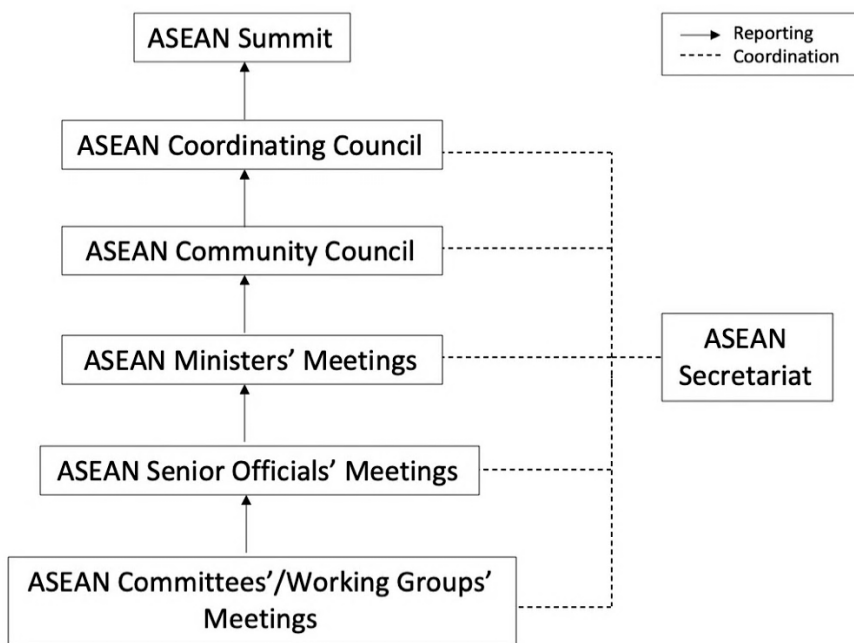
By 1976, ASEAN underwent significant transformations. Institutionally, while heads of member governments convened as needed, Economic Ministers held regular meetings to oversee the coordination and execution of ASEAN programs (ASEAN 1976). Initially supported by various Economic Committees, these were eventually consolidated into a single Senior Economic Officials body in 1992. Additionally, the establishment of a permanent Secretariat and the Treaty of Amity and Cooperation (TAC) were landmark decisions. The TAC, often associated with the "ASEAN Way," emphasized non-interference in domestic affairs and consensus-driven decision-making. Opened for accession to non-ASEAN countries from 1987, the TAC positioned ASEAN as a pivotal player in shaping regional dynamics (Yunling 2017: 235).

The post-Cold War era of the early 1990s saw ASEAN's stature rise on the global stage. Amidst the shifting security landscape, ASEAN introduced the ASEAN Regional Forum in 1994, bringing together 28 Asia-Pacific nations and the European Union (EU) to discuss political and security challenges. ASEAN's diplomatic outreach expanded with the initiation of dialogues like ASEAN Plus Three (encompassing Japan, South Korea, and China), the Asia-Europe Meeting, and the East Asia Summit in 1997. On the economic front, the signing of the Framework Agreement on Enhancing Economic Cooperation in 1992 paved the way for the ASEAN Free Trade Area. Collectively, these platforms enhanced ASEAN's collective bargaining power, arguably offering member states greater leverage than they could have achieved individually (Mabubani and Sng 2017: 74).

In 2007, ASEAN underwent a transformative shift towards becoming a more rules-based entity with the adoption of the ASEAN Charter. This treaty not only defined the organization's objectives but also endowed it with a distinct legal identity under international law, significantly enhancing the governance and execution of ASEAN's decisions. The subsequent unveiling of the ASEAN Economic Community (AEC) blueprint for 2008-2015 showcased a detailed roadmap with implementation targets and timelines, while allowing flexibility to cater to the diverse interests of member states (ASEAN Secretariat 2015b). The AEC is a cornerstone of the tri-pillar ASEAN Community vision articulated in the Bali

Concord II of 2003. This vision was further realized in 2015 with the formal inauguration of the ASEAN Community, structured around three core pillars: political-security (APSC), economic (AEC), and socio-cultural (ASCC). The subsequent blueprints for 2016-2025, building on the successes of their predecessors, aimed to foster enhanced connectivity and deeper sectoral integration among member states. While the implementation of the 2025 blueprints is divided into two phases, each phase undergoes a thorough review every five years (ASEAN Secretariat 2015a).

**Figure 1.1.** ASEAN governing structure



Note: The diagram depicts the main institutional hierarchy of ASEAN post-Charter, as summarized by the author.

Organizational restructuring also ensued. Figure 1.1 showcases the primary institutions central to ASEAN's post-2007 Charter decision-making process and their hierarchical relationships. The ASEAN Summit, a biannual gathering of the heads of member governments, emerged as the organization's top policy-making body.<sup>5</sup> All intergovernmental agreements necessitate the Summit's endorsement. The ASEAN Coordinating Council (ACC), composed of the Foreign Ministers from member countries, serves as a vital link between the Summit and other ASEAN entities, including the Secretariat. Its responsibilities encompass preparing the Summit's agenda, overseeing the implementation of ASEAN agreements and decisions, and subsequently updating the Summit on progress.<sup>6</sup> Additionally, the ACC reviews the annual report from the Secretary-General on ASEAN's activities and the Secretariat's operations, with the authority to approve or terminate Deputy Secretaries-General. Given its expansive role, the

<sup>5</sup> Art. 7.2a, The ASEAN Charter.

<sup>6</sup> Art. 8.2, The ASEAN Charter.

ACC is arguably second in influence only to the ASEAN Summit. In practice, the ACC handles decision-making for less contentious matters, as long as there is consensus, and the issues are not elevated to the Summit level.

Beneath the ACC lie the three Community Councils and their associated Sectoral Ministerial bodies, each tasked with coordinating the implementation and oversight of their respective domains. These Community Councils align with the three foundational pillars of the ASEAN Community vision: APSC, AEC, and ASCC. While each member government designates its national representative for these Community Councils,<sup>7</sup> it is generally expected that a consistent Ministry from each member state will take on this role to ensure continuity. For instance, an interview with a current official from Vietnam's Ministry of Industry and Trade confirmed that the APSC and AEC Councils are typically represented by the Foreign and Economic Ministers, respectively.<sup>8</sup> Supporting these Councils and Sectoral Ministerial bodies are their respective Senior Officials bodies and specialized committees/groups, each originating from the individual national governments. These auxiliary bodies are pivotal in the negotiation and formulation of future ASEAN agreements and decisions, handling technical and straightforward matters and maintaining open communication with their higher-ups.

The ASEAN Secretariat, headed by the Secretary-General, serves primarily as the central administrative body for ASEAN. Established in 1976, its role has remained largely consistent even as ASEAN's scope has broadened to encompass a diverse array of issues. The Secretariat's primary responsibilities include facilitating and monitoring the implementation of ASEAN agreements and decisions, and presenting reports on ASEAN activities to the Summit.<sup>9</sup> Additionally, the Secretary-General and the Secretariat attend meetings of the Summit, the ACC, Sectoral Ministerial bodies, and other ASEAN gatherings. In essence, aside from their monitoring function—which will be discussed in **Chapter 5**—the Secretary-General and the Secretariat function akin to an organizational "secretary," meticulously documenting all ASEAN proceedings. In external relations, however, the Secretary-General assumes a more ambassadorial role, articulating ASEAN's collective stance to external parties.

Structurally, the Secretariat has grown over the years. Four Deputy Secretaries-General now assist the Secretary-General, overseeing three divisions and four departments. These departments further branch out into two or three directorates, encompassing 46 divisions staffed by numerous representatives from national governments. Despite this expansion, many experts still regard the ASEAN Secretariat as under-resourced (Mahbubani and Sng 2017: 226-30; Natalegawa 2018: 57).

This intricate structure and expansive reach of ASEAN's institutional framework, as detailed above, underscore the organization's commitment to fostering regional cooperation and integration. Though it might appear less formalized than the EU's structure, ASEAN distinctly carves its presence among global regional organizations. Yet, the vastness of its operations introduces unique challenges. The annual tally of ASEAN meetings has reportedly

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<sup>7</sup> Art. 9.3, the ASEAN Charter.

<sup>8</sup> Interview conducted on June 20, 2020.

<sup>9</sup> Art. 11.2, the ASEAN Charter.

surged to over 1,000 in recent years (Stubbs 2019: 938). In every one of these meetings, across all levels, ten primary actors each represent a unique interest. This vast assembly operates in a dynamic environment that produces hundreds of decisions annually. Moreover, the consensus-driven nature of ASEAN mandates that nearly every decision aligns with the interests of all ten member states. Such a structure, combined with the inherent diversity of its member states, underscores the potential for interest conflicts, as vividly illustrated by the debates surrounding ASEAN's approach to human rights.

For instance, during the drafting process of the ASEAN Charter, which aimed to provide a practical framework for governing the organization, member states grappled with the contentious issue of whether to establish a regional human rights body. This process was divided into two phases. The first phase, spanning from January to December 2006, saw recommendations made by the Eminent Persons Group (EPG), primarily consisting of ASEAN statesmen. The subsequent phase, from January to November 2007, was overseen by the High-Level Task Force (HLTF), a group of representatives from member governments. Their task was to negotiate the provisions of the Charter based on the EPG report and the guidance of ASEAN leaders. Notably, the proposal for an ASEAN human rights body failed to achieve consensus among EPG members. As a result, rather than embedding it as a specific recommendation in the draft articles of Part III, they relegated the issue to a mere suggestion in Part II of their report.<sup>10</sup>

Nevertheless, upon the recommendation of the Foreign Ministers, the issue of the human rights body was presented to the HLTF members for discussion. However, during their eighth meeting on 26 July 2007, the discussions reached an impasse. Indonesia and Thailand ardently supported the establishment of an ASEAN human rights Commission, influenced by the presence of well-established National Human Rights Commissions within their own countries, similar to Malaysia and the Philippines. Conversely, the HLTF representatives from Cambodia, Lao PDR, Myanmar, and Vietnam (collectively referred to as CLMV) – where human rights discussions were often deemed sensitive – opposed the idea. Meanwhile, Brunei, Malaysia, the Philippines, and Singapore adopted a neutral stance. In a bid to break the deadlock, the Philippines proposed that ASEAN could establish such a Commission, allowing member states to join when they felt prepared. However, this proposal too was rebuffed by the CLMV countries. With no consensus in sight, the matter was escalated to the ASEAN Foreign Ministers, the pre-Charter apex decision-making body. They swiftly resolved the issue, decreeing the formation of an ASEAN human rights body with a consultative role, thereby maintaining the status quo in the CLMV states.

This resolution exemplifies a "conditional compromise."<sup>11</sup> By allowing the creation of a human rights body in alignment with the positions of certain member states, while simultaneously constraining its powers to ensure the human rights status quo in the CLMV

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<sup>10</sup> For a detailed examination of the EPG report, refer to ASEAN (2006). For a deeper understanding of the creation of the ASEAN Charter, see Koh, Manalo, and Woon (2009) as well as Woon (2015).

<sup>11</sup> This term is used provisionally for the context of this discussion. It only is a preliminary descriptor and may not be the final or formal name of the mechanism as explored in Chapter 4.

members remained intact, the decision-making process was expedited. This mechanism will be delved into in **Chapter 4**. A thorough exploration of such mechanisms is essential to understand how ASEAN navigates the challenges posed by the diverse viewpoints of its member states. Regrettably, such in-depth analyses are sparse in the current ASEAN literature.

### **1.3 Existing research on the development of ASEAN**

This section summarizes the literature on ASEAN that has helped shape the purpose of the present study. While these studies have greatly enriched our understanding of ASEAN's evolution and distinct character for the past 50 years, they have largely refrained from analysing the organization's operations through the lens of comparative politics. Instead, there is a pronounced emphasis on the distinctiveness of ASEAN, particularly the "ASEAN Way." While acknowledging the "ASEAN Way" as a distinct institutional form is essential, solely attributing institutional design choices to ASEAN's uniqueness offers a superficial and potentially misleading understanding of the decision-making processes within the organization.

To begin with, ASEAN's visibility in academic circles surged in the 1990s, particularly following its role, in collaboration with the international community, in addressing the Cambodian conflict, one of the most intense regional disputes during the Cold War. This joint effort spurred scholars to employ international relations theories to delve into ASEAN's roles, responsibilities, influence, and areas for enhancement. Such explorations have become foundational to the sustained academic discourse on ASEAN (Ravenhill 2009; Stubbs 2019).

While various theoretical lenses provide diverse interpretations, there is a scholarly consensus that the "ASEAN Way" is central to understanding the organization. Much of the current literature on ASEAN revolves around these norms. The ASEAN Way, rooted in Southeast Asian cultural characteristics, encompasses principles like non-interference in domestic politics, consensus-based decision-making, voluntary enforcement of regional decisions, and peaceful dispute resolution. Some scholars view these norms as protective shields for member autonomy (e.g., Leifer 1999; Simon 2008), while others believe they have been institutionalized, influencing the regional framework (e.g., Natalegawa 2011; Stubbs 2015).

Opinions on ASEAN's efficacy span a spectrum, from viewing it as a mere talking shop to a potent force for regional integration. Nesadurai (2017) and Stubbs (2019) provide comprehensive overviews of these divergent views. Constructivists posit that ASEAN, through its adherence to the ASEAN Way, has carved a distinct identity in Southeast Asia, fostering regional peace and deterring conflicts (e.g., Acharya 2001; Caballero-Anthony 2005; Kivimaki 2011). Acharya (2001: 57) even suggested that the non-interference principle could have anchored ASEAN as a regional security community in the 1990s. Conversely, realists perceive ASEAN as a flexible regional entity, prioritizing individual member interests over collective objectives (e.g., Narine 2008; Khoo 2015). They credit regional peace to the balance of military and economic prowess among major external powers in Southeast Asia (Leifer 1999; Emmers 2003). Notably, ASEAN's commitment to non-interference and consensus has faced criticism

for its perceived inability to tackle regional challenges, such as the Asian financial crisis, environmental issues, and territorial disputes (Beeson and Watson 2019).

From a liberal standpoint, some researchers assert that member states' actions are largely influenced by their dominant national interests and strategies (e.g., Solingen 2008; Jones 2010; 2012), focusing on the evolving application of the ASEAN Way. Sociologically, some argue that ASEAN's institutional design mirrors the EU to some extent (Jetschke and Murray 2012: 181), suggesting that ASEAN's adoption of liberal norms, like human rights, is a strategic move to gain both Western and internal approval. This is evidenced by the ASEAN Way's sovereignty-focused norms found in many official documents, such as the terms of reference for the ASEAN Intergovernmental Commission on Human Rights (Katsumata 2009; Davies 2013). From a broad historical approach, some posit that ASEAN's legitimacy stems from its unwavering commitment to the ASEAN Way, adapting to contemporary challenges (e.g., Stubbs 2015; Yukawa 2018). By championing a refined approach to non-interference and state sovereignty, some even argue that ASEAN's contributions to regional stability and prosperity make it deserving of accolades like the Nobel Peace Prize (Mahbubani and Sng 2017: Chapter 6; Natalegawa 2018: 178).

This existing body of research has undeniably deepened our understanding of ASEAN. Yet, there is a conspicuous gap in the literature regarding the evolution of ASEAN's decision-making processes and the intricacies of reaching specific agreements. Stubbs (2020: 605) observes that the evaluation of ASEAN often hinges on specific moments, with researchers either lauding or critiquing its actions. This inconsistency arises from the absence of a unified analytical framework to gauge the success of regional organizations. Consequently, assessments of ASEAN's effectiveness, legitimacy, and efficiency vary based on whether researchers approach the subject from realist, liberal, or constructivist perspectives. Moreover, these analyses often do not delve into the *systematic mechanisms* behind ASEAN agreements. Instead, they predominantly revolve around the organization's distinctive characteristics, primarily encapsulated in the term "ASEAN Way."

Furthermore, a significant portion of the literature critiquing the inefficiency of ASEAN's consensus decision-making tends to overlook empirical evidence from other regional contexts. Research on the EU system, for instance, reveals a strong preference for consensus-based decision-making. Schneider, Steunenberg and Widgren (2006: 304) highlight the emphasis lawmakers place on the consensus rule. This inclination towards consensus is further evident in the EU's decision-making processes, which often involve informal negotiations aimed at achieving unanimous agreement (Thomson 2011: 279-80). Even in situations where formal procedures permit majority rule, the European Council tends to prioritize consensus, resulting in actual votes becoming an exception rather than the norm (Hayes-Renshaw, Van Aken, and Wallace 2006; Novak 2013; Novak, Rozenberg, and Bendjaballah 2021).

In the midst of varied perspectives on ASEAN within both scholarly and policy circles, and given the notable lack of solid evidence to support these views, this study seeks to thoroughly examine ASEAN agreement and the factors that shape them. Instead of merely viewing ASEAN as a unique embodiment of non-intervention and consensus-seeking, this research endeavors to assess the broader practice of consensus-based decision-making

observed across different global contexts. Although the consensus rule is commonly adopted across many systems and regions, ASEAN distinguishes itself through specific mechanisms and informal rules that guide its application. This investigation aims to dissect and theorize these distinct aspects, offering deeper insights into why states may opt for informal institutions to preserve sovereignty while promoting consensus-driven decision-making.

In doing so, the present study makes a number of contributions. To begin with, the research presented in this study takes a first step towards uncovering the mechanisms and dynamics that underlie ASEAN's decision-making processes. Indeed, Ba (2019: 2) highlights a critical gap in ASEAN scholarship, pointing out its failure to adequately explore how diverse interests converge to produce specific outcomes within the organization. This research seeks to address this gap and marks a significant theoretical contribution by employing a deliberate methodological shift away from traditional ASEAN studies. It meticulously applies and refines established conceptual frameworks from the policymaking process, such as punctuated equilibrium (Chapter 2) and discretionary powers (Chapter 4), to analyze ASEAN's decision-making. This new approach questions the conventional wisdom that the "ASEAN Way" being the sole driver of ASEAN's decision-making dynamics. The results of the analyses suggest that while ASEAN shares some decision-making similarities with other regional organizations, there are nuanced differences that distinctly shape its path. This sets the stage for deeper future studies on the ways in which ASEAN works together to make decisions.

Empirically, this study introduces a novel dataset of ASEAN's policy outputs. This dataset encompasses intricate details of all internal ASEAN agreements adopted between its inception in 1967 and 2020. To the best of our knowledge, this represents the first dataset of its kind in the literature. Previous efforts such as those by Cockerham (2010) and Cremona et al. (2015) have either focused on principal agreements up to 2007 or on agreements between ASEAN and external entities, respectively. This study advances the field by compiling comprehensive original data on ASEAN's policy agenda development, delegation, and ratification and compliance patterns. Moreover, it does so by employing established coding frameworks such as the Comparative Agendas Project (Baumgartner, Breunig, and Grossman 2019). As a result, this dataset not only provides a solid empirical foundation to test a range of theories from comparative public policy on ASEAN but also positions ASEAN within the broader discourse of comparative regionalism. It facilitates more efficient comparisons, bringing ASEAN studies in line with contemporary disciplinary research and enabling analyses that were previously unattainable.

Finally, this study contributes to a nascent body of literature that seeks to move "beyond the ASEAN Way" in studying ASEAN both within its unique context as well as in relation to other political systems and broader phenomena (e.g., Jetschke and Theiner 2020; Suzuki 2021; Vabulas and Snidal 2021; Lim and Kim 2023; Lundgren et al. 2023). This emerging discourse challenges the long-held view of ASEAN's distinctiveness, suggesting that the norms and mechanisms often attributed to the ASEAN Way might indeed find parallels in the broader landscape of regional cooperation. For example, Jetschke and Theiner's (2020) analysis across multiple regional organizations shows that ASEAN's consensus-based decision-making and informality are also present in organizations like the African Union, Shanghai Cooperation

Organization, and MERCOSUR.<sup>12</sup> Likewise, Vabulas and Snidal (2021; 2023) highlight a global trend toward preferring informal institutions across continents, illustrating that the move towards less formalized cooperation mechanisms — aimed at preserving state sovereignty — is not unique to ASEAN. They also reveal ASEAN's (unexpected) trend towards greater formalization, contradicting the conventional view of its "formal informality" (cf. Acharya and Johnston 2007).

Furthermore, Suzuki (2021) investigates the ASEAN chairship's key role in uniting member states' interests under consensus decision-making, aligning with research on the chair's agenda-setting power in the EU (Thomson 2008) and worldwide (Tallberg 2010). The present study significantly advances the discussion by providing generalizable evidence through multivariate analyses, filling a critical gap in the literature with quantitative rigor. By doing so, it contributes to our scholarly understanding of ASEAN's governance beyond the simplistic confines of the ASEAN Way, and provides a blueprint for future research, emphasizing the role of empirical analysis in exploring regional governance complexities.

#### **1.4 Research questions**

To gain a comprehensive understanding of decision-making within ASEAN, this study embarks on a systematic analysis of all ASEAN outputs. Outputs, in this context, refer to authoritative decisions crafted by the system's decision-makers. Oftentimes, these outputs are publicized as laws or agreements, as evidenced in ASEAN's operations. Notably, only ASEAN's policy outputs are readily accessible, while much of its decision-making process remains shrouded in secrecy. Negotiations typically occur behind closed doors, and there is a lack of available information on the proposals of ASEAN agreements. This very characteristic underscores the importance of studying outputs. The framework of analysing political systems in terms of inputs, processes, and outputs was introduced by David Easton (1953; 1957). These conceptual tools are invaluable, guiding researchers in pinpointing essential research questions.

When examining outputs, key questions revolve around the scope and thematic focus of ASEAN agreements. Understanding the reasons behind the variations in these agreements often requires a deeper look into the system's inputs and processes. For instance, why do AMS prioritize agreements in certain policy areas over others? The response to such a query might hinge on how ASEAN policymakers distribute their attention across a variety of issues. Research on agenda-setting in both national (e.g., John et al. 2013; Dowding and Martin 2017; Sebok and Boda 2021) and international contexts (Lundgren, Squatrito, and Tallberg 2018) suggests that shifts in policymakers' attention can lead to corresponding changes in the content of the agenda. Consequently, examining ASEAN's performance, particularly in terms of policy production over time and across various issues, becomes imperative. Insights into this question could be gleaned from key ASEAN announcements or speeches, following clues from studies that demonstrate a link between government announcements (e.g., Kennedy, Alcantara, and

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<sup>12</sup> In the Shanghai Cooperation Organization, a concept similar to the "ASEAN Way" is termed the "Shanghai Spirit," as detailed in Tsygankov (2018: Chapter 26).



Armstrong 2021) or electoral pledges (e.g., Thomson et al. 2019) and actual policy outcomes. Such an analysis is vital for assessing ASEAN's ability in adapting to regional demands and priorities.

Another intriguing facet of outputs is the quality of their content. What drives the specificity in some ASEAN agreements while others remain intentionally ambiguous? The degree of precision in these agreements might be influenced by the differences in policy preferences among AMS. For insight, one can look to the EU, where the procedural rules — whether unanimity or qualified majority voting — influence the flexibility of EU laws. Studies have shown that EU legislation tends to include more (Thomson, Torenvlied, and Arregui 2007; Thomson 2011) or less (Franchino 2007; Migliorati 2021) leeway when there is significant conflict or disagreement among member states, who are both the decision-makers and implementers of those laws. Furthermore, the ratification trajectory of an agreement within each member's governmental framework can offer insights into their dedication to regional collaboration. Previous research on the adoption of MERCOSUR policies indicates that when institutional designs allow member governments to avoid repercussions for non-compliance, "empty promises" become an inevitable consequence (Arnold 2017).

This study marks a strategic shift from the qualitative approaches traditionally used in ASEAN research by adopting a quantitative method that leverages established conceptual frameworks from the policymaking process. While this quantitative approach sets the study apart, it builds on the rich insights from historical and qualitative analyses of ASEAN's evolution, integrating them to paint a fuller picture of ASEAN policymaking. This blend of quantitative methods, which are relatively new to ASEAN research though well-established in disciplinary studies, with the foundational understanding derived from prior research represents a significant advancement in the study of ASEAN, offering a new perspective on its governance and policy-making processes. The specific descriptive and explanatory research questions that this study seeks to address are as follows:

#### *Main research question*

- How does ASEAN's system of intergovernmental governance work in practice?

#### *Subsidiary research questions*

##### 1. The development of ASEAN's policy agenda.

- How does the policy agenda develop over time?
- To what extent are their critical turning points or "punctuated equilibria," in the development of ASEAN's agenda?

##### 2. The quantity and quality of ASEAN's outputs.

- What explains variations in the productivity of ASEAN over time and across policy areas?
- What explains variations in the depth of harmonization across ASEAN's policy outputs?

### 3. Compliance with ASEAN agreements.

- What explains differences in the timeliness of national ratification of ASEAN agreements?

## 1.5 Focus of the thesis

### *Policy agenda in ASEAN*

The first part of this study offers a comprehensive overview of the ASEAN policy agenda. By methodically assessing the emphasis each policy domain garners over specific periods, gauged by the volume of outputs, this study addresses pivotal questions about ASEAN and comparative politics. What are the primary concerns of ASEAN policymakers, and how do they evolve? How is the ASEAN policy agenda formulated? Are changes incremental, or do they represent significant departures from established norms? How does ASEAN's policymaking process compare to other political systems? Answering these questions is vital as they shed light on how AMS prioritize issues over time. For instance, a heightened focus on a particular issue area indicates its significance to policymakers. This study also delves into specific issue areas to understand the trajectory of policy changes. By charting these shifts, we can better understand ASEAN's policymaking dynamics and compare them to other systems.

Accordingly, **Chapter 2** draws inspiration from the attention-driven decision-making model (Jones and Baumgartner 2005a; True, Jones, and Baumgartner 2019). This model posits that the distribution of attention across different issues is crucial, showcasing how a political system responds to its changing surroundings. In an ideal scenario, a system that perfectly adapts to global changes would maintain a steady focus distribution over time. However, many governmental agendas display a "punctuated equilibrium" trend, characterized by long periods of stability disrupted by sudden, major shifts in focus (Jones and Baumgartner 2005b: 337; 2012). Each decision made can have ripple effects, either shifting attention away from some areas or prompting changes in related policy sectors. Fundamental areas like defence, economics, governance, and international relations often dominate the agenda (Cohen 1997; Kingdon 1995). As a result, policy outputs mainly centre on these areas. Research comparing the executive agendas of various Western democracies suggests that secondary issues only rise in importance when primary concerns are less urgent (e.g., Baumgartner et al. 2009b; Jennings et al. 2011; Greene 2016).

For the study in **Chapter 2**, a dataset encompassing all pertinent details of ASEAN's policy outputs since 1967 is essential. To identify the issues ASEAN addresses, each legal instrument is categorized by a policy topic code.<sup>13</sup> The study employs the Comparative Agendas Project (CAP) master codebook, which lists 21 major policy topics and numerous subtopics. CAP represents a significant global effort to code and monitor governmental outputs

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<sup>13</sup> Legal instruments, often referred to interchangeably as "agreements" or "laws" within this thesis, constitute the primary policy outputs of the organization. For an in-depth understanding and explanatory notes on these instruments, consult ASEAN's official documentation at: <http://agreement.asean.org/explanatory/show.html>.

in response to their operational environment (Baumgartner, Breunig, and Grossman 2019). Initially stemming from the US Policy Agendas Project by Baumgartner and Jones (1993), CAP now includes over 20 projects worldwide, spanning countries like Brazil, China, Russia, the EU, and Turkey. While CAP primarily focuses on national projects, its coding system can be applied to any policy agenda, whether subnational, supranational, or international. Given this study's interest in cross-system comparability, leveraging CAP's established topic list and data proves advantageous.

### *The quantity of ASEAN's policy outputs*

The second part of this study (Chapters 3 & 4) delves into the specifics of ASEAN's outputs, following the general overview provided in **Chapter 2**. This section focuses on the quantity and quality of legal instruments produced by the association, key indicators of an international organization's productivity.

Understanding the breadth and evolution of policy outputs is crucial to the ongoing discussions about ASEAN's performance. Questions arise: Does ASEAN's output volume fluctuate significantly over time? Has its productivity increased or decreased? What factors, such as institutional reforms, expansion, diverse preferences, among others, account for these variations in productivity? A thorough analysis should also shed light on trends in the number of outputs throughout the organization's history. Are there specific areas where ASEAN is more active in policymaking? If so, why?

Historically, the metric of policy outputs has been a staple in studies assessing the legislative performance of various national political systems (e.g., Damgaard and Jensen 2006). In comparative environmental politics, this metric is sometimes termed as “density” (e.g., Knill, Debus, and Heichel 2010). At the international level, research has explored output volume in various contexts. For example, Pollack and Hafner-Burton (2010) studied the EU's approach to gender equality by examining related work programs of the European Commission. Similarly, Allen and Yuen (2014) analysed the dynamics between the Security Council and the management variations in UN peacekeeping operations. When evaluating international judicial institutions, the frequency of orders issued over time often serves as a measure of their effectiveness (Alter 2014).

Typically, output volume is quantified by tallying the number of policy acts within specific time frames. The data for this analysis is sourced from the comprehensive inventory of all ASEAN's legal instruments, as detailed in the first part of this study. Additionally, the analysis introduces a dataset on Chairman's Statements, a significant *political output* of the organization. By measuring ASEAN's outputs chronologically and by issue areas, we can identify periods of inactivity and discern shifts in ASEAN's productivity across policy sectors.

**Chapter 3** formulates, and tests hypotheses based on theoretical explanations rooted in both national policy processes and international cooperation. These include concepts like the “program to policy linkage,” neofunctionalism (NF), and theories associated with the formation of preferential trade agreements (PTAs). Each perspective provides a unique lens

into the driving forces behind cooperation. The “program to policy” concept emphasizes the alignment between electoral promises, government announcements, and actual policy outcomes (e.g., Thomson et al. 2017; Breunig, Grossman and Schnatterer 2019). NF, introduced by Haas (1958) and later refined by Lindberg (1963) and Schmitter (1969), is anchored in the “spill-over” process, suggesting that cooperation in one domain can catalyze collaboration in related areas. Theories surrounding PTAs, on the other hand, focus on the causal relationship between existing trade patterns and the emergence of PTAs (e.g., Lawrence 1996; Antras and Staiger 2012). Here, the argument is that existing forms of substantive cooperation, like trade or cross-border flows of workers and tourists, generate demands for international agreements in these sectors.

### *The quality of ASEAN’s policy outputs*

Beyond sheer quantity, the quality of ASEAN's outputs exhibits significant variation. Some instruments are detailed and prescriptive, offering little room for member states to interpret provisions. In contrast, others are intentionally vague, allowing member states more flexibility in implementation. For instance, Article 5 of the ASEAN Charter mandates member states to enact appropriate domestic legislation to effectively implement the Charter's provisions. This suggests a delegation of discretionary power from decision-makers to implementers, a common feature in many political systems (e.g., Hawkins et al. 2006). This study aims to address two primary questions: (1) How often do policymakers delegate discretionary power to AMS? and (2) Under what conditions are they inclined to do so?

Opinions on delegation are varied. Some view it as a means to balance unity with diversity and policy coordination with flexibility. Especially in complex policy areas where policymakers might lack expertise, delegation allows implementers to leverage their technical knowledge. Moreover, it equips implementers to address unforeseen challenges within the policy framework. However, there's an inherent risk: implementers might enact policies misaligned with policymakers' intentions. Given the information advantage implementers often hold, policymakers might struggle to detect and correct any policy deviations. In the ASEAN context, where policymakers also represent member states, states might favour delegation to their national administrations to maintain existing policies rather than to leverage policy expertise.

**Chapter 4** explores and tests hypotheses from two primary perspectives on delegation: the transaction-costs perspective and the consensus-building perspective, both of which have been extensively applied in political systems like the US Congress and the EU (e.g., Epstein and O’Halloran 1999; Franchino 2007).

The transaction-cost perspective focuses on the costs policymakers incur when trying to bridge the information gap between themselves and implementers (McCubbins, Noll, and Weingast 1989; Huber and Shipan 2002). Given that implementers often have better information, it might be beneficial for policymakers to delegate when their preferences align. However, when preferences diverge, the risk of deviation increases. Detailed policy drafting

and monitoring can also be costly (Bendor, Glazer, and Hammond 2001). This suggests that instruments requiring higher expertise might see more delegation, while those with higher deviation risks might see less.

Commitment problems also arise within the transaction-cost perspective (Kydland and Prescott 1977; Gilardi 2002). Policymakers might find themselves bound to policies misaligned with their preferences, either due to concessions on other issues or being outvoted. In such cases, policymakers, who are also implementers, might be inclined to favour their preferences during national implementation (Thomson, Torenvlied, and Arregui 2007).

The consensus-building perspective posits that delegation is influenced by the need to resolve disagreements among member states (Dimitrova and Steunenberg 2000). Disagreements often stem from differing national laws and regulations. Strict decision rules, like consensus decision-making, can exacerbate disagreements since a single veto can halt instrument adoption. This suggests that instruments with divergent member state preferences might grant more discretion.

To validate these hypotheses, **Chapter 4** employs a unique dataset encompassing over 8,500 major provisions from 235 legal instruments adopted by ASEAN since 1967. Each provision is coded based on whether it delegates discretionary power to AMS. The chapter also introduces a refined measure of policy complexity in ASEAN agreements, building on recent research on delegation in other contexts.

### *Compliance with ASEAN agreements*

Policy implementation has been a central topic for scholars examining political systems globally (O'Toole 1986; 2000; Matland 1995; Hill and Hupe 2002; Oosterwaal and Torenvlied 2012). At its core, implementation is the process of transforming agreed-upon policies from agreements into national laws and regulations. Within ASEAN, this transformation starts when member states ratify the instruments, formally committing themselves. Each instrument sets a specific deadline for member states to complete ratification, integrate the provisions into national legislation, and then report to the ASEAN Secretary-General. The final part of this study aims to assess compliance with ASEAN instruments by evaluating the timeliness and quality of member states' ratification.

**Chapter 5** delves into two primary explanations for compliance from comparative political science. The first underscores the capacity of implementers (e.g., Pressman and Wildavsky 1984; Raustiala and Slaughter 2003). Here, non-compliance is often linked to the limited bureaucratic capacity of implementing agencies within member states. Given ASEAN's diverse nature, member states exhibit significant variations in economic development, governance quality, and administrative capabilities. Such disparities might influence the ratification process. For instance, a country with abundant resources, like Singapore, might expedite the ratification of instruments. Moreover, the capacity to implement can be influenced by internal (political) checks and balances, often more pronounced in democratic systems (e.g., Levy, Young, and Zurn 1995; Haftel and Thompson 2013).

The second explanation adopts a rational choice perspective, suggesting that the policy preferences of implementers influence the speed and quality of ratification (e.g., Thomson, Torenvlied, and Judge 2019). Consider an instrument that sets a specific minimum standard for a product or service to be traded across ASEAN. Each AMS might have its preferred standard, which could be below, match, or exceed the agreed-upon standard. States whose preferences diverge from the agreed standard might have incentives to deviate, potentially leading to non-compliance. The degree of deviation might depend on how the ASEAN standard impacts their domestic industries. For example, states preferring higher standards might not deviate if they can implement standards above the minimum. However, if they are forced to accept products or services with lower standards from other states, they might have reasons to deviate.

To test these theories, **Chapter 5** employs indicators of administrative capacity, democracy levels for each AMS, and the KOF economic globalization index. This index gauges the extent to which a country's economy and regulations are receptive to regional integration and can serve as a reflection of a member state's policy preferences. The analysis uses a dataset with detailed information on adoption dates, ratification deadlines, and the dates when individual AMS report their ratification. The analysis focuses on legal instruments that mandate ratification from all member states.

## 2 Stability and change in ASEAN's policy outputs

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### 2.1 The dynamics of political attention in ASEAN

The allocation of political attention is a ubiquitous feature across political systems, influencing agenda development and, by extension, societies at large (Jones 2001; Kingdon 1995). Given cognitive constraints, governments cannot address every issue simultaneously. In the ASEAN context, policymakers, akin to their global counterparts, are inundated with information reflecting evolving societal demands. This spectrum of information encompasses regional challenges and global affairs, spanning diverse areas like trade, environment, and transportation. Such an information deluge necessitates policymakers to prioritize issues they deem crucial for effective decision-making (Simon 1971; Padgett 1980). Occasionally, previously sidelined issues surge to the forefront, reshaping the policy agenda. For instance, the 1997 Asian financial crisis prompted ASEAN policymakers to pivot towards crafting regional solutions for pressing macroeconomic challenges.<sup>14</sup> Similarly, the Coronavirus pandemic shifted focus away from globally prioritized issues like climate change.

This chapter delves into the evolution of attention across policy areas within ASEAN's agenda from its inception in 1967 to the present. It aims to discern the primary concerns of ASEAN policymakers and their temporal shifts. Notwithstanding ASEAN's longevity and prominence, scholars' and practitioners' views on the organization vary from it being a talking shop to a significant force for regional integration. While much scholarship emphasizes the "ASEAN Way" characterized by consensus-building and conflict aversion (e.g., Caballero-Anthony 2005; Jones and Smith 2007; Kivimaki 2011; Acharya 2014; 2016; Yukawa 2018), they offer limited insights into the evolution of ASEAN's decision-making processes. To bridge this gap, the present study offers a detailed analysis of ASEAN's policy agenda, investigating the factors that shape changes in the magnitude and thematic emphasis of its policy outputs over time.

Theoretically, the study leans on the attention-driven model of decision-making (Jones and Baumgartner 2005a; True, Jones and Baumgartner 2019). This model suggests that the spread of attention across various issues is pivotal, reflecting a political system's adaptability to its evolving environment. Ideally, a system that flawlessly adjusts to global shifts would manifest a consistent distribution of attention over time. Yet, the agendas of many governments exhibit a "punctuated equilibrium" pattern: extended phases of stability interspersed with abrupt, significant shifts in political attention (Jones and Baumgartner 2005b: 337; 2012). Every decision has ramifications, either diverting attention from certain topics or catalyzing

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<sup>14</sup> For a detailed discussion on this event, see Soesastro (1998).

shifts in related policy areas. Core issues, rooted in fundamental state functions like defense, economics, government operations, and foreign affairs, often take precedence (Cohen 1997; Kingdon 1995). Policy outputs, therefore, predominantly revolve around these domains. Comparative studies on the executive agendas of several Western democracies indicate that peripheral issues only ascend the agenda when core topics are less pressing (e.g., Baumgartner et al. 2009b; Jennings et al. 2011; Greene 2016). This raises an intriguing question: Does ASEAN policy agenda reflect the dynamics posited by the attention-driven model, or does it chart a distinct trajectory influenced by the ASEAN Way?

Empirically, the study develops and examines a detailed inventory of all 244 legal instruments that have at least been adopted by ASEAN. Using the coding framework from the Comparative Agendas Project (CAP), the study identifies the range of policy issues ASEAN has tackled since its inception. CAP stands as a significant initiative to classify and track the outputs produced by governments worldwide in response to societal changes (Boydston, Bevan and Thomas III 2014; Bevan 2019). Stemming from the US Policy Agendas Project -initially created by Baumgartner and Jones (1993) to study the policy focus of the US Congress - CAP has expanded over time to cover more than 20 countries, including Brazil, China, Russia, the EU, and Turkey. To our knowledge, there has not been a comprehensive academic effort to classify ASEAN's main outputs across different policy areas.<sup>15</sup> Exploring this novel area of study may offer insights into the policy preferences of governments in various political systems.

The following section delves into the theoretical framework underpinning this study and proposes hypotheses about the variations in the scale and thematic focus of ASEAN's outputs. After outlining the research design, the study proceeds to the analyses, leading to the conclusion.

## **2.2 Punctuated equilibrium theory and its relevance to ASEAN**

When discussing the composition of political agendas, the punctuated equilibrium theory (PET), encapsulated within the attention-driven model, stands as a leading explanation in this research domain. PET focuses on the dynamics of shifts in political attention across various issues. Its applications span the US budget process and public policy (Baumgartner et al. 2009a), comparative politics (Baumgartner et al. 2009b), EU institutions (Alexandrova, Caramia, and Timmermans 2012; Baumgartner, Foucault and Francois 2012), and international organizations (Lundgren, Squatrito, and Tallberg 2018). Yet, its systematic application to ASEAN or other Southeast Asian political systems remains uncharted.

The logic of PET is straightforward. Conceived as an alternative to the incrementalism model, which suggests consistent, minor changes in policy outputs, PET proposes that policy responses to inputs can be sporadic and significant. Ideally, a system would adapt smoothly to

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<sup>15</sup> Two notable exceptions are the work of Cockerham (2010) and Cremona et al. (2013). However, the former primarily delves into the institutional designs of ASEAN agreements, rather than exploring the breadth of policy areas they encompass. On the other hand, the latter focuses exclusively on agreements made between ASEAN as an entity and its external partners.



myriad social and economic demands. If achieved consistently, the shifts in its agenda would be uniformly distributed (Jones and Baumgartner 2005: 120-3). However, in practice, not all policies require simultaneous or equal adjustments. While most need minor tweaks, some demand substantial overhauls. A system that responds aptly to such a dynamic environment would show a uniform distribution of agenda shifts.

Contrarily, PET suggests that political agendas *do not* exhibit this uniform distribution. Instead, they display a pattern characterized by significant central peaks and occasional extreme shifts, as policymakers react sporadically to fresh information. This distribution pattern is termed leptokurtic (e.g., Breunig and Koski 2006). Two primary factors explain this: cognitive limitations and institutional constraints. Cognitive limitations arise from the sheer volume of information policymakers must process. With countless pressing issues, their focus remains on a select few, leading to significant policy shifts when previously overlooked issues suddenly become critical. This phenomenon, where long-neglected issues lead to substantial policy shifts when they finally gain attention, aligns with the “error accumulation model” (Fagan, Jones and Wlezien 2017: 6). The result is an agenda marked by extended periods of stability punctuated by sudden, impactful changes.

Furthermore, institutional friction, understood as the challenges of translating policy inputs into outputs, also contributes to the degree of punctuation across systems (Jones, Sulkin and Larsen 2003). These challenges can arise from formal procedural hurdles or from the very design of the organization. For instance, systems with multiple veto players often face higher decision-making costs (Tsebelis 2002). Additionally, the design of an organization can introduce friction. Centralized political systems, where power is concentrated in a single executive or a small group, can hinder the flow of information, adding to the friction (Lam and Chan 2015; Chan and Zhao 2016). Baumgartner et al. (2009b: 607) note that these institutional challenges cause a system's responses to be disproportionate, with initial *underreactions* due to constraints followed by *overreactions* to accumulated pressures. Thus, systems with significant institutional constraints exhibit more dramatic policy shifts, while those with fewer constraints show more gradual changes.

**Chapter 1** introduced the governance structure of ASEAN, highlighting the Summit as the pinnacle of the organization's policymaking machinery. Comprising the heads of member governments, the Summit plays a foundational role in the ASEAN policy process, initiating new policies and embodying the organization's collective voice. While the actual negotiation and formulation of ASEAN policies, manifested as agreements, occur at the senior official or sub-committee levels, their foundation is rooted in the directives of the Summit. These directives are captured in the Chairman's Statements, which will be discussed in depth in **Chapter 3**, particularly its influence on the adoption of ASEAN agreements. Following each Summit meeting, the presiding member government drafts a statement, summarizing the consensus reached during the meeting and outlining ASEAN's forthcoming objectives and initiatives. Moreover, while the ASEAN Summit does not directly engage in policy coordination - a responsibility of the Coordinating Council<sup>16</sup> - it plays a pivotal role in task

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<sup>16</sup> Art. 8, The ASEAN Charter.

delegation to other institutions and becomes central in arbitrating conflicts, especially when consensus is hard to reach on critical and sensitive matters.<sup>17</sup> Additionally, the Summit's endorsement is essential for all ASEAN agreements. Given its influential role, it is expected that the ASEAN policy agenda, shaped by Summit members, will exhibit attention shifts akin to policy agendas in other political systems. This leads to the first hypothesis:

***HYPOTHESIS 2.1: The trajectory of ASEAN policy agenda reflects the punctuated equilibrium model, marked by prolonged periods of stability punctuated by occasional, significant shifts.***

The allocation of political attention significantly influences the diversity of a policy agenda. This diversity reflects the breadth of issues that capture policymakers' attention. An agenda is considered diverse when it encompasses a wide array of issues, with attention distributed fairly across them (Jennings et al. 2011: 6). However, in practice, not every issue finds its way onto the agenda. Prior research indicates that political systems often prioritize certain "core issues" aligned with their fundamental functions, such as defence, economics, government operations, and international affairs (e.g., Edwards and Barrett 2000).

In the ASEAN context, the emphasis on regional economic integration is evident. This focus, whether rooted in historical experiences and leaders' security perceptions (Ravenhill 2013; Caballero-Anthony 2014) or the belief in economic interdependence fostering regional peace (Aggarwal and Govella 2013: 14), underscores the importance ASEAN leaders place on strengthening trade and production networks. Key milestones, like the 1992 CEPT Scheme for AFTA, the ASEAN Vision 2020, and the AEC Blueprint 2015 and 2025, attest to this priority. Unexpected events, however, can shift this focus. For instance, the Asian financial crisis and the Coronavirus pandemic have both momentarily redirected attention. The pandemic, in particular, prompted a special ASEAN Summit in 2020, emphasizing public health cooperation and sidelining other issues (ASEAN 2020b). This reactive approach was further seen in ASEAN's active engagement with regional and dialogue partners to address the COVID-19 challenges (Ruland 2021; Spandler et al. 2023).

Given these observations, it is plausible to hypothesize that the attention dedicated to core issues during a specific timeframe can determine how secondary issues are accommodated on the agenda. The second hypothesis therefore is that:

***HYPOTHESIS 2.2: Heightened focus on core issues by ASEAN policymakers leads to a more constrained and less diverse agenda.***

Nevertheless, when unforeseen events thrust such new issues onto the agenda and eclipses other peripheral topics, depending on the significance of these emergent issues and their relevance to policymakers (i.e., whether a large number of actors are mobilized), they might either persist on the agenda or fade away quickly. If they remain, it signifies an "issue

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<sup>17</sup> Art. 7 & 20.2, The ASEAN Charter.

expansion" of the policy agenda (Baumgartner and Jones 1993: 17-8). For international organizations, issue expansion can also arise from the inclusion of new members. PET posits that policy venues within a political system are interconnected. Advocates or interest groups, when encountering resistance in one venue, might seek a more receptive environment elsewhere to promote their objectives (Baumgartner and Jones 1991: 1050; Baumgartner 2007: 484). In this context, international organizations can serve as alternative venues for national actors (cf. Lundgren, Squatrito, and Tallbert 2018: 552). If we view international organizations as distinct political systems, then actors facing challenges at the national level might elevate their concerns to the international stage, where these issues might resonate with a broader audience. Alternatively, an expansion in the scope of relevant issues for any member state can also influence other policy venues. For instance, as the EU expanded its membership and jurisdiction, the number of policy issues on its agenda grew over time (Alexdanrova, Caramia and Timmermans 2012). Likewise, beginning with its five founding members, ASEAN has expanded its membership over the years to its current ten nations, welcoming Brunei in 1984, Vietnam in 1995, both Laos and Myanmar in 1997, and Cambodia in 1999. Given this development, it is logical to expect a similar trend in ASEAN's agenda diversity. The third hypothesis claims that:

***HYPOTHESIS 2.3: The ASEAN policy agenda becomes broader in scope as the organization evolves.***

## **2.3 Research design**

### *Data collection and coding*

Data for this study were primarily collected from online databases provided by ASEAN and the Centre for International Law at the National University of Singapore. While ASEAN's database offers a comprehensive list of instruments officially concluded among and between AMS, some of the accompanying details, such as text, are not readily accessible. This gap is filled using the latter database. To gauge the attention each policy area receives, the present study develops a detailed inventory of all legal instruments that are currently in force or have at least been adopted by ASEAN since its inception in 1967. These instruments vary in text length, and extent up to the year 2020.

Policy instruments are the tools governments utilize to address societal challenges and realize their goals. These instruments can take various forms, from taxes and regulations to treaties and agreements. In the context of ASEAN, the term "instrument" encompasses treaties, conventions, agreements, concords, declarations, and protocols, as referenced in the Charter (Art. 52). However, never has it been given a clear definition.<sup>18</sup>

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<sup>18</sup> ASEAN's foundational documents do not provide explicit definitions or criteria to distinguish between different types of instruments.

From a legal perspective, the binding nature of an instrument largely hinges on the terms that convey the parties' intentions. The instrument's name and type serve more as indicators rather than definitive markers of its legal status. Thus, "legal instruments" refer to any written document necessitating signatures, ratifications, or approvals from ASEAN's heads of member governments. These documents outline the rights and obligations of member states in line with international law (ASEAN 2020a). This category includes instruments like mutual recognition arrangements and memoranda of understanding, which are not mentioned in Article 52 of the Charter and typically considered non-binding. Conversely, documents like action plans, blueprints, or joint statements, which merely echo the aspirations of ASEAN national governments, are categorized as political instruments.<sup>19</sup>

As mentioned earlier, there has not been a comprehensive academic classification of ASEAN's outputs across policy areas to date.<sup>20</sup> Therefore, the ultimate task of this study is to identify the range of issues addressed in ASEAN's instruments through content analysis. Each instrument is tagged with a topic code from the Master CAP Codebook, which lists 21 major policy topics and 220 subtopics, accompanied by general coding guidelines (Bevan 2019: Appendix A). Instruments are typically coded based on the single, primary policy area discussed. To illustrate, the 2004 ASEAN Sectoral Integration Protocol for Health Care, which outlines measures to integrate the healthcare sector across AMS, is categorized under the general foreign trade category (code 1800) instead of the general health category (code 300). To capture a more fine-grained picture of the ASEAN policy agenda, subtopic codes are assigned where applicable. The codebook adapted for this study's examination of ASEAN policy agenda can be found in Appendix 2.1.

While the study closely follows the Master Codebook's guidelines, certain situations necessitate additional coding rules. For instance, if an instrument's text is unavailable, it is coded based on similar instruments with the same title from different time periods, assuming they target identical policy areas with minor variations. For instance, the 2007 Supplemental Memorandum of Understanding on the ASEAN SWAP Arrangement does not have an accessible text. Therefore, it is categorized under the competitiveness topic (code 1806), consistent with other ASEAN SWAP Arrangements. In situations where an instrument references multiple subtopics within a major topic, or spans two major areas, this study adopts a different approach: the topic or subtopic with the most provisions is chosen as the representative code. For example, the 2012 Agreement between the Republic of Indonesia and ASEAN concerning the hosting and privileges granted to the ASEAN Secretariat. This agreement is coded as diplomats (code 1929) rather than organizations (code 1926). Additionally, an "Unclassifiable" category (code 24) has been introduced for instruments with limited policy content. Annex XII (List of Products) attached to the 2004 ASEAN Framework

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<sup>19</sup> Aa typology of ASEAN's legal instruments can be found in Cremona et al. (2015: 63-4). It is worth noting that this classification also encompasses instruments agreed upon with ASEAN's external partners.

<sup>20</sup> The sole exception is the work of Lundgren et al. (2023). However, unlike the analysis presented in this chapter, which utilizes legal instruments as indicators of policy outputs, their study specifically focuses on *Ministerial Communiqués* as the key measure of output. Moreover, their investigation is confined a narrower timeframe (1980 to 2015) compared to the extensive span of 1969 to 2020 covered in the current study.

Agreement for the Integration of Priority Sectors is one of those unique cases. Even though it merely contains a list of product proposals from AMS, online databases still recognize it as a legal instrument.

### *Measuring distribution of attention change*

The metrics employed in this study align with those traditionally used in policy agenda research. Scholars in this field typically gauge annual shifts in policymakers' attention and employ kurtosis and L-kurtosis to determine the distribution shape of a system's policy agenda (Baumgartner et al. 2009b; Breunig and Jones 2011). Kurtosis assesses if data are heavy-tailed or light-tailed compared to a normal distribution, while L-kurtosis offers a more robust measure for smaller sample sizes (Royston 1992). Given the myriad policy demands confronting ASEAN policymakers, a balanced and proportional response would yield a normal distribution of policy shifts. Such a distribution has a kurtosis of 3 and an L-kurtosis of 0.123. Values exceeding these indicate a punctuated distribution in ASEAN's policy changes, characterized by a pronounced peak and thick tails (leptokurtic outcomes). Two methods can produce the distribution of annual attention shifts: the "percentage-percentage" and "percentage-count" methods (e.g., Lungrend, Squatrito and Tallberg 2018).<sup>21</sup> Since the dataset collected for this study captures the count of instruments adopted across various policy areas, the latter approach was chosen. It is described by the following formula:

$$p_{it} = 100 \times \left( \frac{x_{it+1} - x_{it}}{x_{it}} \right),$$

where  $p_{it}$  represents the percentage change in policy  $i$  from time  $t$  to  $t + 1$ ;

$x_{it+1}$  is the count of instruments for policy  $i$  that were adopted at the next time point,  $t + 1$ ;

and  $x_{it}$  is the count of instruments adopted for policy  $i$  that were adopted at the current time point,  $t$ .

The Shapiro-Wilks test, a widely accepted method for assessing non-normality (John and Jennings 2010), will also be employed to determine if the data follows a normal distribution.

### *Measuring agenda diversity*

Shannon's H (1948), commonly known as "information entropy," is a prevalent measure used to assess the diversity of a system's agenda over time. Originating from thermodynamics and information theories, entropy has been incorporated into agenda-setting research to gauge the concentration of attention: whether it's narrowly focused on a few topics (low entropy) or spread across various policy areas (high entropy) (Jones and Baumgartner 2005; John and Jennings 2010; Jennings et al. 2011). The maximum entropy value is contingent on the number of policy areas analysed, essentially the breadth of the agenda. In most political systems, it is

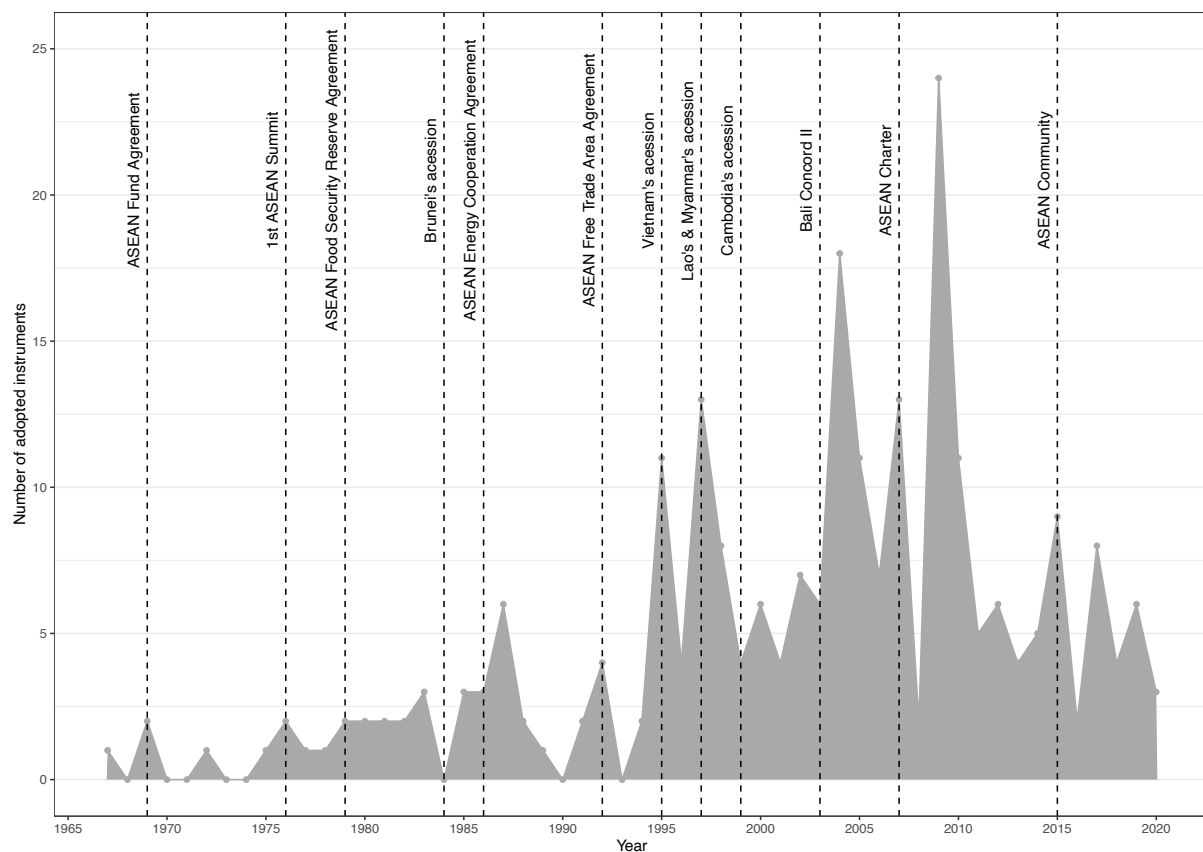
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<sup>21</sup> For a detailed comparison of these methods, see Jones and Baumgartner (2005: 201-2).

rare to observe extreme entropy values, either highest or lowest (0). Typically, entropy oscillates around an intermediate level.

This study examines the diversity of ASEAN policy agenda on an annual basis. Figure 2.1 provides a snapshot of the total number of ASEAN's legal instruments juxtaposed with its institutional evolution over the years. A striking observation is that, relative to other political systems, ASEAN's yearly policy outputs are considerably fewer. There has been a marked shift since 1995. From that year onwards, ASEAN has consistently concluded at least five agreements annually, a number that was previously considered its peak output in the periods before 1995. The peak year for outputs was 2009, when ASEAN policymakers finalized 24 legal instruments. Interestingly, this year does not align with any significant milestone recognized by the organization itself.<sup>22</sup> Furthermore, there are stretches of time, particularly in ASEAN's early years, when no policy outputs were recorded. Considering that entropy is calculated using the natural logarithm of the total number of topics present in the policy agenda for a specific year, and since the logarithm of zero results in undefined values, a value of 0 is assigned to the entropy score (Shannon's H) for such occurrences.

**Figure 2.1.** ASEAN milestones over time



Note: The dashed lines mark ASEAN's developmental milestones.

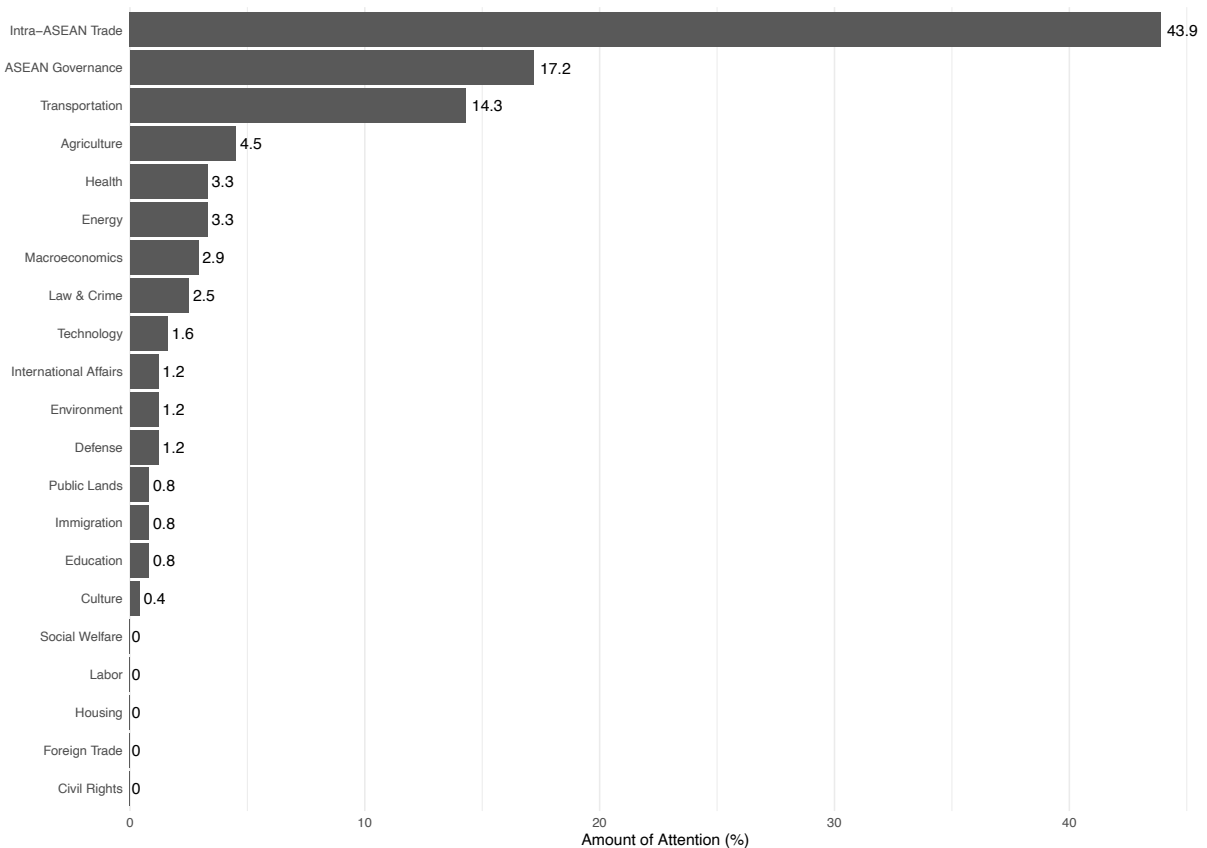
<sup>22</sup> In the same year, two important political documents, namely the Roadmap for an ASEAN Community (2009-2015) and the master plans for building the three key pillars together with action plans for the Initiative ASEAN Integration phase 2 in the 2008-2015 period, were approved. A summary of ASEAN milestones is available at: <https://asean.org/asean-milestone/>

## 2.4 Analysis

### *The distribution of attention across policy areas*

At a cursory glance, ASEAN policymakers seem to focus on a select few topics, with certain issues dominating the output. Over the past five decades, ASEAN has rolled out 244 legal instruments spanning 16 issue areas (Figure 2.2). Notably, intra-trade commands nearly half of the agenda space, with 107 policy instruments dedicated to it. These primarily address the harmonization of tariffs and technical requirements to integrate the national single windows of AMS. The governance and operations of ASEAN come next, constituting 17 percent of the agenda with 42 instruments. As ASEAN's membership expanded from five to ten, the emergence of new institutions and the coordination needs among member states naturally grew. Transportation, pivotal for ASEAN's economic integration, ranks third, comprising about 14 percent of the attention with 35 instruments, mostly concerning cross-border infrastructure and facilitation of goods and services transportation. This trend hints at a “spillover” effect where economic cooperation among AMS paves the way for collaboration in related high-stakes areas.

**Figure 2.2.** ASEAN policy agenda (1967-2020)



Collectively, these three areas make up roughly 75 percent of the agenda. The remaining 25 percent is dispersed over a diverse set of issues, each garnering less than five percent of the total attention. It is evident that ASEAN policymakers do consider domestic public policy sectors like agriculture, health, and energy, with 11 and eight instruments respectively. Yet, universally prioritized areas like macroeconomics, international affairs, rule of law, and defense do not receive commensurate attention from ASEAN leaders. These topics collectively occupy a mere eight percent of the agenda, with 22 instruments over 54 years. Strikingly, there is a complete absence of instruments concerning social welfare, labor, housing, and civil rights. This suggests that ASEAN is not yet poised for deeper integration, in contrast to polities like the EU, which leans more towards domestic policies (cf. Alexandrova, Carammia, and Timmermans 2012: 75-6; see also Lundgren, Squatrito, and Tallberg: 557).

To gain a better understanding of the dynamics of ASEAN policy agenda, we must scrutinize the distribution of relative attention across the 16 policy areas over the years. Before diving deeper, it is important to highlight that the ensuing discussion will reference key milestones and the aggregate output data from Figure 2.1 where applicable.

**Figure 2.3.** Variation in the distribution of relative attention across policy areas over time

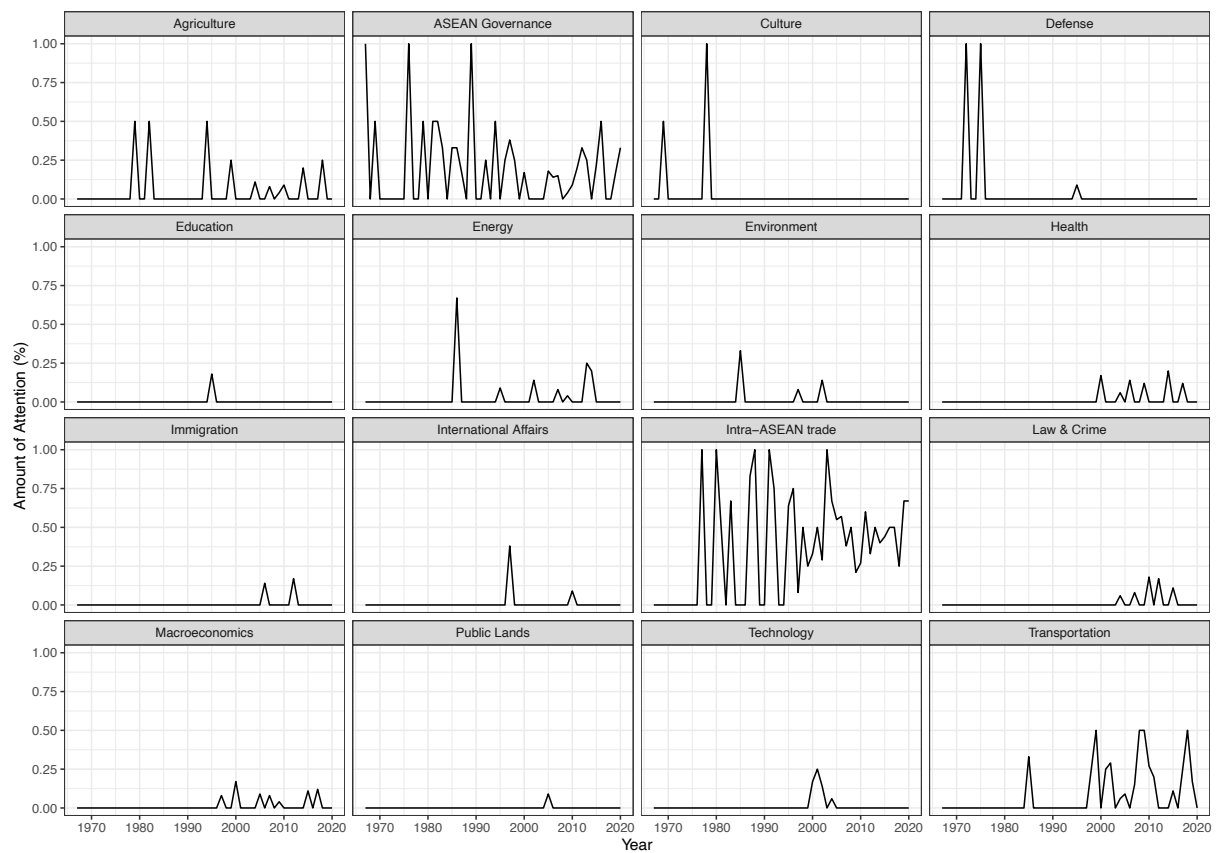




Figure 2.3 illustrates the yearly relative attention distribution among the three most prevalent topics in comparison to other secondary topics. In its formative years, ASEAN's policy activity was relatively subdued (see also Figure 2.1). Only a few instruments were established, spanning a limited set of topics, and attention to these topics exhibited sporadic spikes and drops. The primary topics only began to gain traction in the policy agenda towards the latter half of the 1970s. This shift coincided with the first ASEAN Summit and the signing of the Treaty of Amity and Cooperation in 1976, where ASEAN leaders articulated their vision for a more integrated region, emphasizing enhanced economic cooperation in areas like food, energy, industrial projects, and trade (ASEAN 1976). The focus on these areas only intensified from the late 1980s to the early 1990s, culminating in the 1992 ASEAN Free Trade Area Agreement.<sup>23</sup> Moreover, this trend mirrored global movements towards regionalism, as seen with the Single European Act in 1986 and the North American Free Trade Agreement in 1992. Similar patterns of heightened attention are evident around key milestones in ASEAN's journey, such as the 2007 ASEAN Charter and the 2015 inauguration of the ASEAN Community.

Over certain periods, such as 1978, 1986, 2000, and 2013 to name a few, the three primary topics witnessed reduced attention, making room for other issues on the ASEAN agenda. However, the focus on these secondary issues was often fleeting. For example, topics like culture, defense, education, public lands, and technology briefly appeared and then vanished from the agenda. Meanwhile, areas like energy, environment, immigration, and international affairs experienced prolonged gaps in attention.

Among these secondary topics, health, law and crime, and macroeconomics consistently resurfaced, albeit at irregular intervals. The health topic debuted on the ASEAN agenda in 2000 with a protocol establishing safety and hygiene standards for food, plants, and animals transiting through member states (ASEAN 2000). While this was initially tied to growing intra-ASEAN trade, the subsequent outbreaks of SARS and H5N1 ensured continued attention to health. Similarly, while the events of September 11 and the Asian financial crisis (and later the Global financial crisis) brought the topics of law and crime, and macroeconomics into ASEAN policymakers' attention, these subjects still experienced intermittent attention, vanishing from the agenda for short periods before reemerging. Collectively, these trends underscore two main observations: (a) the "punctuated equilibria" nature of issue attention shifts, and (b) the persistent prominence of core topics, hinting at an asymmetrical relationship between them and the broader agenda diversity over time.

#### *The distribution of attention changes over time*

Hypothesis 2.1 posits that ASEAN policy agenda exhibits a punctuated equilibrium pattern, characterized by extended periods of stability interrupted by sporadic, significant shifts. Table 2.1 offers a statistical overview of attention shifts in ASEAN policy agenda, including a

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<sup>23</sup> If anything, this is indicative of a lag effect between policymakers' directives contained in ASEAN's political documents and the actual adoption of these directives, which will be further explored in Chapter 3.

normality test and the total count used for the calculations. The observed high kurtosis values (kurtosis = 34.4; L-kurtosis = 0.35) align with this hypothesis. These levels are comparable to those observed in other democratic national and international systems (cf. Baumgartner et al. 2009b; Lundgren, Squatrito, and Tallberg 2018), but notably lower than those in autocratic systems like Hong Kong and China (cf. Lam and Chan 2015; Chan and Zhao 2016). The Shapiro-Wilk test ( $p < 0.001$ ) further corroborates the non-normality, firmly rejecting the notion of a normal data distribution. As the table indicates, attention shifts range from a 100 percent decrease (-1) to a staggering 1100 percent increase (11). On average, there is a roughly 35 percent year-to-year attention shift as indicated by the mean, with a standard deviation of 1.42.

**Table 2.1.** Statistics summary and normality test on annual percentage changes in attention

Min	-1.000
Mean	-0.352
Max	11.000
Standard deviation	1.423
Skewness	4.813
Kurtosis	<b>34.401</b>
L-kurtosis	<b>0.346</b>
Shapiro-Wilk test	<b>0.487***</b>
Observations	128

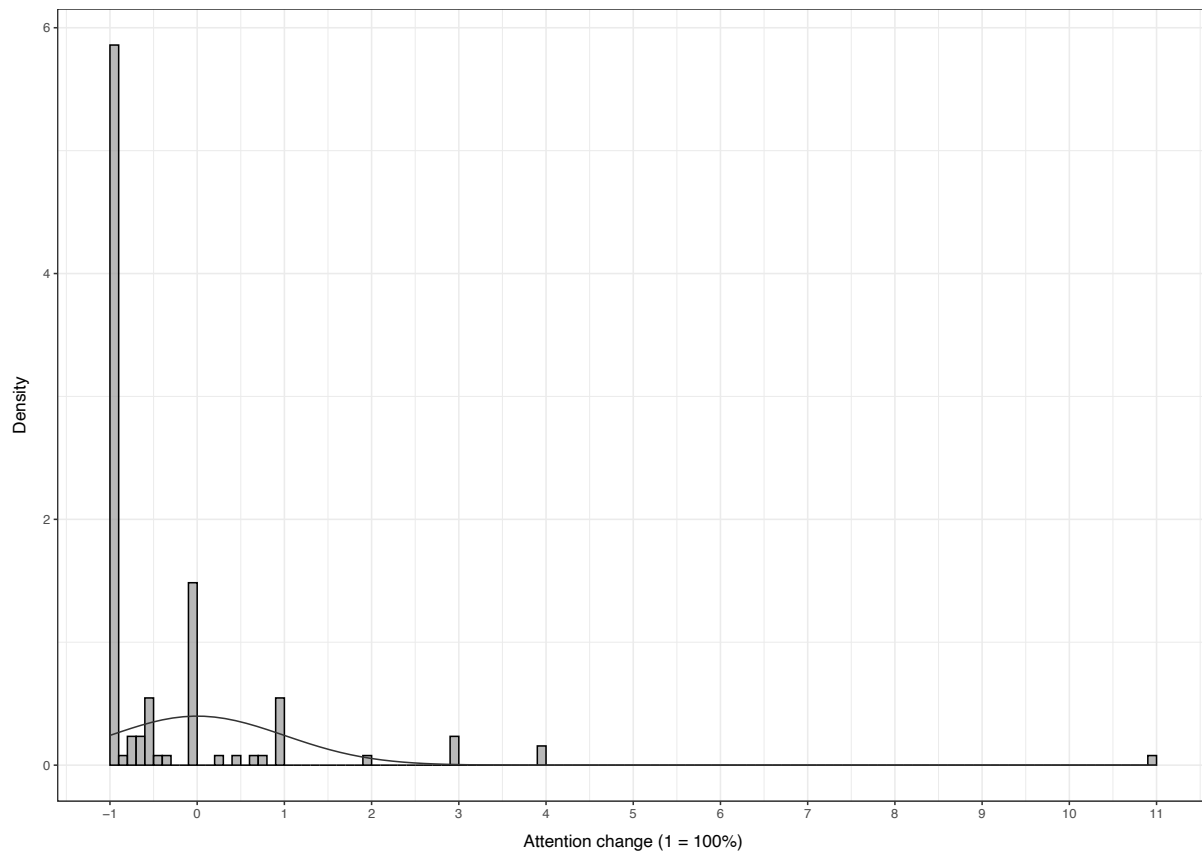
Note: \*\*\*  $p < .01$ .

For clearer interpretation, Figure 2.4 presents a histogram of annual attention shifts across ASEAN's 16 policy areas. The y-axis represents frequency, while the x-axis indicates the magnitude of change. Overlaying this histogram is a standard normal distribution curve for easy comparison. Ideally, if ASEAN leaders adeptly adjust to environmental shifts, their attention distribution would align with this normal curve. Indeed, many observations cluster around zero, indicating stable periods where attention across topics remains balanced.

However, a significant cluster of observations is observed in the negative extreme, highlighting a prevalent trend of issues frequently dropping off the agenda. There is also a pronounced occurrence of medium-sized reductions in attention, typically ranging between a 50 to 80 percent decrease from one year to the next. While such a pattern is less prevalent in other systems, it mirrors trends observed in the EU (cf. Alexandrova, Carammia and Timmermans 2012: 78-9). On the other end of the spectrum, a handful of observations on the extreme right indicate sharp surges or "punctuations" in attention to certain issues. Even though these punctuations are less frequent compared to other systems, their intensity is notably high,

aligning with patterns seen in China, where attention can increase by as much as 1000 percent (cf. Chan and Zhao 2016).<sup>24</sup>

**Figure 2.4.** Distribution of annual attention change, ASEAN’s Policy Agenda (1967-2020)



Together, these patterns indicate that policymakers often either sideline certain (peripheral) issues or decrease attention to multiple existing issues to make room for more pressing matters, as depicted by a surge of 100 percent or more in Figure 2.4. While such trends could be linked to sporadic meetings between member states in ASEAN's early years, another plausible reason might be the organization's rotating Chairmanship. This institutional feature potentially motivates member states to annually reshape the agenda in favor of their interests (e.g., Suzuki 2020). Additionally, the distribution appears leptokurtic and right skewed, with a pronounced peak on the left shoulder and a longer, extended right tail.

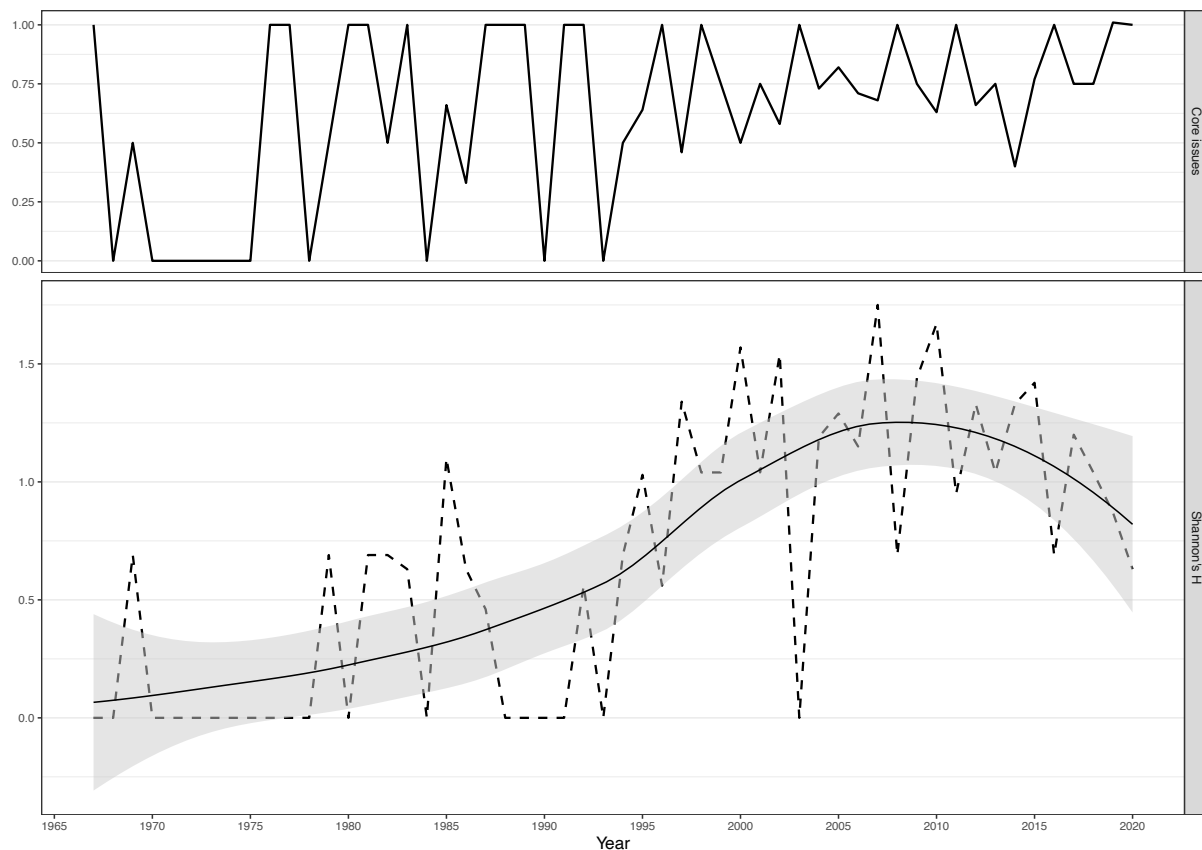
*The diversity of agenda over time*

The second hypothesis (Hypothesis 2.2) suggests that when attention is focused on core policy issues, the ASEAN agenda tends to be more homogenous. The results offer mixed support for this claim. The top panel of Figure 2.6 displays the annual cumulative attention given to three central issues: intra-ASEAN trade, ASEAN governance, and transportation. In contrast, the

<sup>24</sup> The most pronounced shift occurred in 2009 within the Transportation area. That year, member states signed 12 agreements, a stark contrast to just one in the preceding year, marking an astounding 1100 percent increase.

lower panel illustrates the evolution of ASEAN’s policy agenda diversity over time, as represented by the entropy score. Notably, before 1995, as the core issues' attention oscillated between its extremes, entropy also varied frequently. However, 1995 marked a turning point. As the core issues' attention rose to 64 percent from the previous year's 50 percent, entropy also climbed from 0.69 to 1.03, signaling an expansion in policy topics. This year also coincided with Vietnam's entry into ASEAN. This finding suggests that heightened attention to core issues does not necessarily lead to a restricted agenda. Contrary to findings in other national systems where core issues often overshadow secondary ones (cf. Jennings et al. 2011: 1022), ASEAN leaders seem capable of broadening their agenda to address emerging issues without sidelining core topics. This flexibility mirrors choices occasionally made by EU decision-makers within the Council (cf. Alexandrova, Carammia and Timmermans 2012: 83).

**Figure 2.5.** Agenda diversity and impact of core issues



Note: In the upper panel, the y-axis depicts the annual cumulative attention share for core issues, namely intra-ASEAN trade, ASEAN governance, and transportation. The slope in the lower panel illustrates the smoothed trend line for the agenda's entropy.

From 1995 onward, with core issues consistently garnering around 50 percent attention, the entropy fluctuated between 0.75 and 1.5. It dipped when core issues dominated and rose when their prominence waned.<sup>25</sup> This pattern suggests a growing diversity in the ASEAN policy

<sup>25</sup> Except for 2003, when six agreements concluded were exclusively focused on intra-ASEAN trade. This resulted in only one topic on the agenda for that year, and the logarithm of 1 is 0.

agenda over time, lending support to the third hypothesis (Hypothesis 2.3). Hypothesis 2.3 proposes that as ASEAN matures, its policy agenda will diversify. Although the average entropy score stands at 0.66, the trend indicates a gradual rise, nearing 1, though recent years hint at a potential return to the mean. This upward trajectory implies that the breadth of the ASEAN policy agenda expands as the organization evolves. The peak entropy of 1.75 in 2007, with agreements concluded spanning seven policy areas, underscores this point. Notably, 2007 was also the pivotal year when the ASEAN Charter was introduced (see Figure 2.1).

## 2.5 Conclusions

This study offers a systematic examination of the ASEAN policy agenda from its operational inception in 1967 to the present day. Throughout this period, ASEAN underwent significant expansion, with its membership growing from five to ten by 1999. As policy jurisdictions expanded, institutional reform emerged as a pivotal concern for ASEAN policymakers, alongside other high-priority political issues. The present chapter categorizes all legal instruments that have at least been adopted by ASEAN, employing the well-established CAP coding framework to dissect its policy agenda dynamics (e.g., Jones and Baumgartner 2005a; Baumgartner, Breunig and Grossman 2019). Drawing from the Punctuated Equilibrium Theory (PET), the present study formulates three hypotheses to scrutinize the patterns of change in ASEAN policymakers' attention and the evolution of the agenda's composition. The findings challenge the conventional understanding of the "ASEAN way" (e.g., Acharya 1997; 2009; Stubbs 2019; Lee 2022) – a supposed unique approach characterized by informality, consensus-driven decision-making, and flexibility – suggesting that it may not be as distinctive as previously believed.

Firstly, akin to other political systems, ASEAN predominantly concentrates on issues deemed central to its foundational objectives (e.g., Dowding and Martin 2017; Bevan and Jennings 2019; Mortensen, Loftis and Seeberg 2022). Regional trade, ASEAN governance, and transportation emerge as the primary concerns, collectively accounting for 75 percent of the policy agenda. The residual attention spans sectors commonly found in national policy agendas, such as agriculture, labor, energy, macroeconomics, law and crime, and health. Secondly, echoing findings from other policy agenda studies, the analysis uncovers pronounced evidence of “punctuated equilibria,” characterized by sharp fluctuations in attention across 16 policy topics. The observed kurtosis (35.4) and L-kurtosis (0.35) values align with those from diverse national and international policy agendas (e.g., Baumgartner et al. 2009b; Alexandrova, Carammia, and Timmermans 2012; Lundgren, Squatrito, and Tallberg 2018). Intriguingly, the ASEAN policy agenda exhibits characteristics reminiscent of autocratic systems, like Hong Kong, China, and Hungary, marked by pronounced negative shifts and significant punctuations (Lam and Chan 2015; Chan and Zhao 2016; Sebok, Balazs, and Molnar 2022). Such traits might arise as a function of ASEAN's consensus-based decision-making and the diverse preferences of its member states (Lundgren, Squatrito, and Tallberg 2018: 566). These elements inadvertently introduce higher institutional friction, leading to

periodic "punctuations." However, these very characteristics, often referred to as the "ASEAN way," are frequently misinterpreted as being unique to the organization.

Lastly, a noteworthy observation is the absence of a trade-off between core and secondary issues in the ASEAN policy agenda (cf. Jennings et al. 2011). Rather than sidelining core issues, ASEAN policymakers seem adept at expanding the agenda to address emerging concerns. This flexibility, however, appears to be more constrained within secondary issues themselves. Using entropy (Shannon 1948) as an indicator of agenda diversity, the analysis reveals that during periods of reduced diversity, core topics dominate the policymakers' focus, limiting the entry of secondary issues and vice versa. Furthermore, as ASEAN matures, its policy agenda exhibits increasing diversity, although there is indication of a recent return to previous patterns (or the mean).

## Appendix 2.1 Codebook for ASEAN policy agenda

This codebook is a modification of the Master CAP Codebook (Bevan 2019: Appendix A). Alterations are highlighted with the term "NOTE." Newly introduced topics and subtopics are appended with the "ASEAN" suffix.

### 1. Macroeconomics

100: General (includes combinations of multiple subtopics)

*Description: Includes issues related to general domestic macroeconomic policy.*

NOTE: References to equitable and sustainable development should be coded here.

101: Interest Rates

*Description: Includes issues related to inflation, cost of living, prices, and interest rates*

103: Unemployment Rate

*Description: Includes issues related to the unemployment rate, impact of unemployment*

104: Monetary Policy

*Description: Includes issues related to the monetary policy, central bank, and the treasury*

105: National Budget

*Description: Issues related to public debt, budgeting, and efforts to reduce deficits*

107: Tax Code

*Description: Includes issues related to tax policy, the impact of taxes, and tax enforcement*

108: Industrial Policy

*Description: Includes issues related to manufacturing policy, industrial revitalization and growth*

110: Price Control

*Description: Includes issues related to wage or price control, emergency price controls*

199: Other

*Description: Includes issues related to other macroeconomics subtopics*

### 2. Civil Rights

200: General

*Description: Includes issues related generally to civil rights and minority rights*

NOTE: References to women and children related issues should be coded here.

201: Minority Discrimination

*Description: Includes issues related to minority, ethnic, and racial group discrimination*

202: Gender Discrimination and/or Mainstreaming

*Description: Includes issues related to sex, gender, and sexual orientation discrimination*

204: Age Discrimination

*Description: Includes issues related to age discrimination, including mandatory retirement age policies*

205: Handicap Discrimination

*Description: Includes issues related to handicap and disease discrimination*

206: Voting Rights

*Description: Includes issues related to voting rights, expanding or contracting the franchise, participation and related issues*

207: Freedom of Speech

*Description: Issues related to freedom of speech, religious freedoms, and other types of freedom of expression*

208: Right to Privacy

*Description: Includes issues related to privacy rights, including privacy of records, access to government information, and abortion rights*

209: Anti-Government

*Description: Includes issues related to anti-government activity groups, such as local insurgency groups*

299: Other

*Description: Includes issues related to other civil rights subtopics*

**3. Health**

300: General

*Description: Includes issues related generally to health care, including appropriations for general health care government agencies*

NOTE: References to healthcare integration issues should be coded here.

301: Health Care Reform

*Description: Includes issues related to broad, comprehensive changes in the health care system*

302: Insurance

*Description: Includes issues related to health insurance reform, regulation, availability, and cost*

321: Drug Industry

*Description: Includes issues related to the regulation and promotion of pharmaceuticals, medical devices, and clinical labs*

322: Medical Facilities

*Description: Issues related to facilities construction, regulation and payments, including waitlists and ambulance services*

323: Insurance Providers

*Description: Includes issues related to provider and insurer payments and regulation, including other types of benefits or multiple benefits*



324: Medical Liability

*Description: Includes issues related to medical liability, malpractice issues, medical fraud and abuse, and unfair practices*

325: Manpower

*Description: Issues related to the supply and quantity of labor in the health care industry, training and licensing*

331: Disease Prevention

*Description: Issues related to disease prevention, treatment, and health promotion, including specific diseases not covered in other subtopics*

332: Infants and Children

*Description: Includes issues related to infants and children, including coverage and quality of care, health promotion, and school health programs*

333: Mental

*Description: Includes issues related to mental health care and mental health disease*

334: Long-term Care

*Description: Includes issues related to long term care, home health care, the terminally ill, and rehabilitation services*

335: Drug Coverage and Cost

*Description: Includes issues related to prescription drug coverage, programs to pay for prescription drugs, and policy to reduce the cost of prescription drugs*

341: Tobacco Abuse

*Description: Includes issues related to tobacco abuse, treatment, education, and health effects*

342: Drug and Alcohol Abuse

*Description: Includes issues related to alcohol and illegal drug abuse, treatment, education, and health effects*

398: R&D

*Description: Includes issues related to health care research and development*

399: Other

*Description: Includes issues related to other health care topics*

#### **4. Agriculture**

400: General

*Description: Includes issues related to general agriculture policy, including appropriations for general agriculture government agencies*

NOTE: General references to integration for agro-based products should be coded here.

401: Trade

*Description: Includes issues related to the regulations and impact of agricultural intra- and extra-ASEAN trade*

402: Subsidies to Farmers

*Description: Includes issues related to government subsidies to farmers and ranchers, including agricultural disaster insurance*

403: Food Inspection & Safety

*Description: Includes issues related to food inspection and safety, including seafood, and labeling requirements*

404: Marketing & Promotion

*Description: Includes issues related to efforts to provide information on agricultural products to consumers and the regulation of agricultural marketing*

405: Animal and Crop Disease

*Description: Includes issues related to animal and crop disease, pest control and pesticide regulation, and welfare for domesticated animals*

408: Fisheries & Fishing

*Description: Includes issues related to fishing, commercial fishery regulation and conservation*

498: R&D

*Description: Includes issues related to agricultural research and development*

499: Other

*Description: Includes issues related to other agricultural subtopics*

## **5. Labor**

500: General

*Description: Includes issues generally related to labor, employment, and pensions, including appropriations for government agencies regulating labor policy*

501: Worker Safety

*Description: Includes issues related to worker safety and protection and compensation for work-related injury and disease*

502: Employment Training

*Description: Includes issues related to job training for adult workers, workforce development, and efforts to retrain displaced workers*

503: Employee Benefits

*Description: Includes issues related to all employee benefits, pensions, and retirement accounts, including government-provided unemployment insurance*

504: Labor Unions

*Description: Includes issues related to labor unions, collective bargaining, and employer-employee relations*

505: Fair Labor Standards

*Description: Includes issues related to fair labor standards such as the minimum wage and overtime compensation, and labor law*

506: Youth Employment

*Description: Includes issues related to youth employment, child labor and job training for youths*

529: Migrant and Seasonal

*Description: Includes issues related to migrant, guest and seasonal workers*

599: Other

*Description: Issues related to other labor policy*

## **6. Education**

600: General

*Description: Includes issues related to general education policy, including appropriations for government agencies regulating education policy*

601: Higher

*Description: Includes issues related to higher education, student loans and education finance, and the regulation of colleges and universities*

602: Elementary & Secondary

*Description: Includes issues related to elementary and primary schools, school reform, safety in schools, and efforts to generally improve educational standards and outcomes*

603: Underprivileged

*Description: Includes issues related to education of underprivileged students, including adult literacy programs, bilingual education needs, and rural education initiatives*

604: Vocational

*Description: Includes issues related to vocational education for children and adults and their impact*

606: Special

*Description: Includes issues related to special education and education for the physically or mentally handicapped*

607: Excellence

*Description: Includes issues related to education excellence, including efforts to increase the quality of specific areas, such as math, science or foreign language skills*

698: R&D

*Description: Includes issues related to research and development in education*

699: Other

*Description: Includes issues related to other subtopics in education policy*

## **7. Environment**

700: General (including sustainability issues)

*Description: Includes issues related to general environmental policy, including appropriations for government agencies regulating environmental policy*

701: Drinking Water

*Description: Includes issues related to domestic drinking water safety, supply, pollution, fluoridation, and conservation*

703: Waste Disposal

*Description: Includes issues related to the disposal and treatment of wastewater, solid waste and runoff.*

704: Hazardous Waste

*Description: Includes issues related to hazardous waste and toxic chemical regulation, treatment, and disposal*

705: Air Pollution

*Description: Includes issues related to air pollution, climate change, and noise pollution*

707: Recycling

*Description: Includes issues related to recycling, reuse, and resource conservation*

708: Indoor Hazards

*Description: Includes issues related to indoor environmental hazards, indoor air contamination (including on airlines), and indoor hazardous substances such as asbestos*

709: Species & Forest (including palm oil related issues)

*Description: Includes issues related to species and forest protection, endangered species, control of the domestic illicit trade in wildlife products, and regulation of laboratory or performance animals*

711: Conservation

*Description: Includes issues related to land and water conservation*

731: Climate change

*Description: Includes issues related to global warming, greenhouse gas emissions, and carbon dioxide (CO<sub>2</sub>) release*

798: R&D

*Description: Includes issues related to research and development in environmental technology, not including alternative energy*

799: Other

*Description: Includes issues related to other environmental subtopics*

## **8. Energy**

800: General

*Description: Includes issues generally related to energy policy, including appropriations for government agencies regulating energy policy*

NOTE: References to Trans-ASEAN energy projects should be coded here.

801: Nuclear

*Description: Includes issues related to nuclear energy, safety and security, and disposal of nuclear waste*

802: Electricity

*Description: Includes issues related to general electricity, hydropower, and regulation of electrical utilities*

803: Natural Gas & Oil

*Description: Includes issues related to natural gas and oil, drilling, oil spills and flaring, oil and gas prices, shortages and gasoline regulation*

805: Coal

*Description: Includes issues related to coal production, use, trade, and regulation, including coal gasification and clean coal technologies*

806: Alternative & Renewable

*Description: Includes issues related to alternative and renewable energy, biofuels, hydrogen and geothermal power*

807: Conservation

*Description: Includes issues related to energy conservation and energy efficiency, including vehicles, homes, commercial use and government*

898: Energy Research & Development

*Description: Includes issues related to energy research and development*

899: Other

*Description: Includes issues related to other energy subtopics*

**9. Immigration**

900: Immigration

*Description: Includes issues related to immigration, refugees, and citizenship*

901: ASEAN Visa and Entry

*Description: Includes issues related to visa requirements, entry permissions, and regulations for travelers and migrants*

**10. Transportation**

1000: General

*Description: Includes issues related generally to transportation, including appropriations for government agencies regulating transportation policy*

NOTE: References to the standardization and alignment of technical specifications should be coded here.

1001: Mass and Public

*Description: Includes issues related to mass transportation construction, regulation, safety, and availability*

1002: Road and Highways

*Description: Includes issues related to public highway construction, maintenance, and safety*

1003: Air Travel

*Description: Includes issues related to air travel, regulation and safety of aviation, airports, air traffic control, pilot training, and aviation technology*

1005: Railroad Travel

*Description: Includes issues related to railroads, rail travel, rail freight, and the development and deployment of new rail technologies*

1007: Maritime

*Description: Includes issues related to maritime transportation, including maritime freight and shipping, safety and security, and inland waterways and channels*

1010: Infrastructure

*Description: Includes issues related to infrastructure and public works, including employment initiatives*

1098: R&D

*Description: Includes issues related to transportation research and development*

1099: Other

*Description: Includes issues related to other transportation subtopics*

NOTE: General references to dangerous goods should be coded here.

## **12. Law and Crime**

1200: General

*Description: Includes issues related to general law, crime, and family issues*

1201: Agencies

*Description: Includes issues related to all law enforcement agencies, including border, customs, and other specialized enforcement agencies and their appropriations*

1202: White Collar Crime

*Description: Includes issues related to white collar crime, organized crime, counterfeiting and fraud, cyber-crime, and money laundering*

1203: Illegal Drugs

*Description: Issues related to illegal drug crime and enforcement, criminal penalties for drug crimes, including international efforts to combat drug trafficking*

1204: Court Administration

*Description: Includes issues related to court administration, judiciary appropriations, guidelines for bail, pre-release, fines and legal representation*

1205: Prisons

*Description: Includes issues related to prisons and jails, parole systems, and appropriations*

1206: Juvenile Crime

*Description: Includes issues related to juvenile crime and justice, juvenile prisons and jails, and efforts to reduce juvenile crime and recidivism*

1207: Child Abuse

*Description: Includes issues related to child abuse, child pornography, sexual exploitation of children and parental kidnapping*

1208: Family Issues

*Description: Includes issues related to family issues, domestic violence, child welfare, family law*

1210: Criminal & Civil Code

*Description: Includes issues related to domestic criminal and civil codes, including crimes not mentioned in other subtopics*

1211: Crime Control

*Description: Includes issues related to the control, prevention, and impact of crime*

1227: Terrorism

*Description: Includes issues related to regional cooperation in terrorism-related issues*

1230: Human Trafficking

*Description: Includes issues related to the prevention, prosecution, and protection measures concerning the illicit trade and exploitation of individuals, including forced labor, sexual exploitation, and other forms of coercion.*

1299: Other

*Description: Includes issues related to other law, crime, and family subtopics*

### **13. Social Welfare**

1300: General

*Description: Includes issues generally related to social welfare policy*

1302: Low-Income Assistance

*Description: Includes issues related to poverty assistance for low-income families, including food assistance programs, programs to assess or alleviate welfare dependency and tax credits directed at low-income families*

NOTE: General references to issues related to poverty and hunger eradication and Millennium Development Goals should be coded here.

1303: Elderly Assistance

*Description: Includes issues related to elderly issues and elderly assistance, including government pensions*

1304: Disabled Assistance

*Description: Includes issues related to aid for people with physical or mental disabilities*

1305: Volunteer Associations

*Description: Includes issues related to domestic volunteer associations, charities, and youth organizations*

1306: ASEAN Youth Assistance

*Description: Includes issues related to initiatives, programs, and measures aimed at supporting and empowering the youth within the ASEAN community*

1308: Child Care

*Description: Includes issues related to parental leave and child care*

1399: Other

*Description: Includes issues related to other social welfare policy subtopics*

### **14. Housing**

1400: General

*Description: Includes issues related generally to housing and urban affairs*

1401: Community Development

*Description: Includes issues related to housing and community development, neighborhood development, and national housing policy*

1403: Urban Development

*Description: Includes issues related to urban development and general urban issues*

NOTE: References to the ASEAN Smart Cities Network should be coded here.

1404: Rural Housing

*Description: Includes issues related to rural housing*

1405: Rural Development

*Description: Includes issues related to non-housing rural economic development*

NOTE: General references to sub-regional development should be coded here.

1406: Low-Income Assistance

*Description: Includes issues related to housing for low-income individuals and families, including public housing projects and housing affordability programs*

1407: Veterans

*Description: Includes issues related to housing for military veterans and their families, including subsidies for veterans*

1408: Elderly

*Description: Includes issues related to housing for the elderly, including housing facilities for the handicapped elderly*

1409: Homeless

*Description: Includes issues related to housing for the homeless and efforts to reduce homelessness*

1498: R&D

*Description: Includes issues related to housing and community development research and development*

1499: Other

*Description: Other issues related to housing and community development*

## **15. Intra-ASEAN Trade**

1500: General

*Description: Includes issues generally related to regional trade, including appropriations for government agencies regulating regional trade*

NOTE: References to general economic cooperation, trade disputes, and competition issues should be coded here.

1501: Banking

*Description: Includes issues related to the regulation of national banking systems and other non-bank financial institutions*

1502: Investment Regulation

*Description: Includes issues related to the regulation and facilitation of securities and commodities trading, regulation of investments and related industries, and exchanges*

1504: Consumer Finance

*Description: Includes issues related to consumer finance, mortgages, credit cards, access to credit records, and consumer credit fraud*

1505: Insurance Regulation

*Description: Includes issues related to insurance regulation, fraud and abuse in the insurance industry, the financial health of the insurance industry, and insurance availability and cost*

1507: Bankruptcy

*Description: Includes issues related to personal, commercial, and municipal bankruptcies*



1520: Corporate Management

*Description: Includes issues related to corporate mergers, antitrust regulation, corporate accounting and governance, and corporate management*

1521: Small and Medium Businesses

*Description: Includes issues related to small and medium businesses, including measures and programs to promote and subsidize them*

NOTE: References to ASEAN industrial projects and the mutual recognition of professional qualifications within member states should be coded here.

1522: Copyrights and Patents

*Description: Includes issues related to copyrights and patents, patent reform, and intellectual property*

1523: Disaster Relief

*Description: Includes issues related to domestic natural disaster relief, disaster or flood insurance, and natural disaster preparedness*

1524: Tourism

*Description: Issues related to tourism regulation, promotion, and impact*

1525: Consumer Safety

*Description: Includes issues related to consumer fraud and safety in domestic commerce*

1526: Sports Regulation

*Description: Includes issues related to the regulation and promotion of sports, gambling, and personal fitness*

1530: ASEAN Single Window (includes integration Work Plan)

NOTE: General references to the facilitation of free movement of goods, capital, and services among AMS are coded here, including tax and custom administration matters. Mentions of integration-related issues should also be coded here, though specific sectoral integration references should be coded under their respective topics.

1531: Harmonization of Technical Requirements

NOTE: This subtopic pertains to the regulation of products not explicitly listed in other sections.

1598: R&D

*Description: Includes issues related to domestic commerce research and development*

1599: Other

*Description: Includes issues related to other domestic commerce policy*

NOTE: General references to e-commerce and e-ASEAN should be coded here.

## **16. Defense**

1600: General

*Description: Includes issues related generally to defense policy, and appropriations for agencies that oversee general defense policy*

NOTE: General references regional peace and security should be coded here.

1602: Alliances

*Description: Includes issues related to defense alliance and agreement, security assistance*

NOTE: References to military or joint exercise within member states and peace-keeping initiatives should be coded here.

1603: Intelligence

*Description: Includes issues related to military intelligence, espionage, and covert operations*

1604: Readiness

*Description: Includes issues related to military readiness, coordination of armed services air support and sealift capabilities, and national stockpiles of strategic materials.*

1605: Nuclear Arms

*Description: Includes issues related to nuclear weapons, nuclear proliferation, modernization of nuclear equipment*

1606: Military Aid

*Description: Includes issues related to military aid to other countries and the control of arms sales to other countries*

1608: Personnel Issues

*Description: Includes issues related to military manpower, military personnel and their dependants, military courts, and general veteran issues*

1610: Procurement

*Description: Includes issues related to military procurement, conversion of old equipment, and weapons systems evaluation*

1611: Installations & Land

*Description: Includes issues related to military installations, construction, and land transfers*

1612: Reserve Forces

*Description; Issues related to military reserves and reserve affairs*

1614: Hazardous Waste

*Description: Includes issues related to military nuclear and hazardous waste disposal and military environmental compliance*

1615: Civil Defense

*Description: Includes issues related to domestic civil defense, national security responses to terrorism, and other issues related to homeland security*

1616: Civilian Personnel

*Description: Includes issues related to non-contractor civilian personnel, civilian employment in the defense industry, and military base closings*

1617: Contractors

*Description: Includes issues related to military contractors and contracting, oversight of military contractors and fraud by military contractors*

1619: Foreign Operations

*Description: Includes issues related to direct war-related foreign military operations, prisoners of war and collateral damage to civilian populations*

1620: Claims against Military

*Description: Includes issues related to claims against the military, settlements for military dependents, and compensation for civilians injured in military operations*

1698: R&D

*Description: Includes issues related to defense research and development*

1699: Other

*Description: Includes issues related to other defense policy subtopics*

**17. Technology**

1700: General

*Description: Includes issues related to general space, science, technology, and communications*

1701: Space

*Description: Includes issues related to the government use of space and space resource exploitation agreements, government space programs and space exploration, military use of space*

1704: Commercial Use of Space

*Description: Includes issues related to the regulation and promotion of commercial use of space, commercial satellite technology, and government efforts to encourage commercial space development*

1705: Science Transfer

*Description: Includes issues related to science and technology transfer and international science cooperation*

NOTE: References to the financing of scientific initiatives should be coded here.

1706: Telecommunications

*Description: Includes issues related to telephone and telecommunication regulation, infrastructure for high-speed internet, and other forms for telecommunication*

1707: Broadcast

*Description: Includes issues related to the regulation of the newspaper, publishing, radio, and broadcast television industries*

1708: Weather Forecasting

*Description: Includes issues related to weather forecasting, oceanography, geological surveys, and weather forecasting research and technology*

1709: Computers

*Description: Includes issues related generally to the computer industry, regulation of the internet, and computer security*

1798: R&D

*Description: Includes issues related to space, science, technology, and communication research and development not mentioned in other subtopics.*

1799: Other

*Description: Includes issues related to other space, science, technology, and communication research and development*

NOTE: References to manpower-related issues should be coded here.

## **18. Foreign Trade**

1800: General

*Description: Includes issues generally related to foreign trade and appropriations for government agencies generally regulating foreign trade*

NOTE: General references to economic cooperation between ASEAN and regional and/or dialogue partners should be coded here.

1802: Trade Agreements

*Description: Includes issues related to trade negotiations, disputes, and agreements, including tax treaties*

1803: Exports

*Description: Includes issues related to export regulation, subsidies, promotion, and control*

1804: Private Investments

*Description: Includes issues related to international private business investment and corporate development*

1806: Competitiveness

*Description: Includes issues related to productivity of competitiveness of domestic businesses and balance of payments issues*

1807: Tariff & Imports

*Description: Includes issues related to tariffs and other barriers to imports, import regulation and impact of imports on domestic industries*

NOTE: References to partners' protection measures on ASEAN member states should be coded here.

1808: Exchange Rates

*Description: Includes issues related to exchange rate and related issues*

1899: Other

*Description: Includes issues related to other foreign trade policy subtopics*

## **19. International Affairs**

1900: General

*Description: Includes issues related to general international affairs and foreign aid, including appropriations for general government foreign affairs agencies*

NOTE: General references to relations and sovereignty with other countries and territories should be coded here.

1901: Foreign Aid (includes aid from developed countries to ASEAN)

*Description: Includes issues related to foreign aid not directly targeting at increasing international development*

1902: Resources Exploitation

*Description: Includes issues related to international resources exploitation and resources agreements, law of the sea and international ocean conservation efforts*

1905: Developing Countries

*Description: Includes issues related specifically to developing countries Developing Countries Issues (for Financial Issues see 1906)*

1906: International Finance

*Description: Includes issues related to international finance and economic development, the World Bank and International Monetary Fund, regional development banks, sovereign debt and implications for international lending institutions*

NOTE: References to ASEAN's interactions with dialogue partners should be coded here.

1910: Western Europe

*Description: Includes issues related to Western Europe and the European Union*

1921: Specific Country

*Description: Includes issues related specifically to a foreign country or region not codable using other codes, assessment of political issues in other countries, relations between individual countries*

1925: Human Rights

*Description: Includes issues related to human rights, human rights violations, human rights treaties and conventions, UN reports on human rights, crimes associated with genocide or crimes against humanity*

1926: Organizations

*Description: International organizations, NGOs, the United Nations, International Red Cross, UNESCO, International Olympic Committee, International Criminal Court*

1927: International Terrorism

*Description: Includes issues related to international terrorism, hijacking, and acts of piracy in other countries, efforts to fight international terrorism, international legal mechanisms to combat terrorism*

1929: ASEAN Diplomats

*Description: Includes issues related to ASEAN diplomats, diplomacy, embassies, citizens abroad, foreign diplomats in member states, visas and passports*

1980: ASEAN Expansion

*Description: Includes issues related to the induction of new member states.*

NOTE: References to the accession of new member states to ASEAN agreements should be coded here.

1999: Other

*Description: Includes issues related to other international affairs policy subtopics*

## **20. ASEAN Governance & Institutions**

2000: General

*Description: Includes issues related to general government operations, including appropriations for multiple government agencies*

2001: Intergovernmental Relations

*Description: Includes issues related to intergovernmental relations, local government issues*

2002: Bureaucracy

*Description: Includes issues related to general government efficiencies and bureaucratic oversight*

2004: ASEAN Officials

*Description: Includes issues related to ASEAN officials not mentioned in other subtopics, pensions and general civil service issues*

2005: Appointments

*Description: Includes issues related to nominations and appointments not mentioned elsewhere*

*NOTE: References to ASEAN Prizes should be coded here.*

2006: Currency

*Description: Includes issues related the currency, national mints, medals, and commemorative coins*

2007: Procurement & Contractors

*Description: Includes issues related to government procurement, government contractors, contractor and procurement fraud, and procurement processes and systems*

2008: Property Management

*Description: Includes issues related to government property management, construction, and regulation*

2010: Scandals

*Description: Includes issues related to public scandal and impeachment*

2011: Branch Relations

*Description: Includes issues related to government branch relations, administrative issues, and constitutional reforms*

2013: Census & Statistics

*Description: Includes issues related to census and statistics collection by government*

2016: ASEAN Institutions

*Description: Includes issues related to the foundation and terms of reference for ASEAN institutions*

2017: ASEAN Treaties

*Description: Includes issues related to the ASEAN anthem, flag, official working language, and financial contributions from member states*

2099: Other

*Description: Includes issues related to other government operations subtopics*

**21. Public Lands**

2100: General

*Description: Includes issues related to general public lands, water management, and territorial issues*

2101: National Parks

*Description: Includes issues related to national parks, memorials, historic sites, and recreation, including the management and staffing of cultural sites*

2102: Indigenous Affairs

*Description: Includes issues related to indigenous affairs, indigenous lands, and assistance to indigenous people*

2103: Public Lands

*Description: Includes issues related to natural resources, public lands, and forest management, including forest fires, livestock grazing*

2104: Water Resources

*Description: Includes issues related to water resources, water resource development and civil works, flood control, and research*

2105: Dependencies & Territories

*Description: Includes issues related to territorial and dependency issues and devolution*

2199: Other

*Description: Includes issues related to other public lands policy subtopics*

**23. Culture**

2300: General

*Description: Includes issues related to general cultural policy issues*

NOTE: References to safeguarding and advancing ASEAN community and culture should be coded here.

**24. Unclassifiable**

**Table 2.1.1. ASEAN Chairmanship**

Member State	Times of hosting ASEAN Summit since 1976
Brunei Darussalam	2
Cambodia	2
Lao PDR	2
Indonesia	4
Malaysia	4
Myanmar	1
The Philippines	4
Singapore	4
Thailand	4
Vietnam	3



### 3 The quantity of ASEAN's policy outputs

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This chapter delves deeper into the analysis of the volume of ASEAN's primary policy outputs. The pronounced intensity of cooperation in specific sectors, notably intra-regional trade, governance, and transportation, necessitates a closer inspection into the underlying dynamics of such phenomena. Central to this chapter is the exploration of the determinants that influence the variations in ASEAN's productivity across different policy domains. To unravel this, the current study scrutinizes various mechanisms that drive legislative activity within the ASEAN framework. This includes an evaluation of the impact of the Chairman's statements, which are released subsequent to each ASEAN Summit meeting, the processes of spill-over characterized by the adoption of ASEAN instruments in alignment with a path-dependent progression of developments, and the influences of regional economic activity.

The Chairman's statement holds a pivotal role as it serves as a barometer for identifying the pressing issues that are at the forefront of ASEAN policymakers' concerns. Despite being issued by the AMS presiding over the chairmanship for that year, the statement encapsulates the unified stance of all ASEAN leaders, mirroring their collective insights on the discussions undertaken during the Summit meeting, as well as delineating prospective objectives or strategies for the organization. Moreover, the unique position of the ASEAN Summit as the central entity to 'deliberate, provide policy guidance and take decisions' elevates these joint statements to a critical reference point within the formal ASEAN decision-making process.<sup>26</sup>

Numerous scholars in the field of political science have examined the extent to which electoral pledges (e.g., Royed 1996; Thomson 2001; Naurin 2011; Thomson et al. 2019) and government speeches (e.g., Jennings, Bevan and John 2011; Mortensen et al. 2011; Kennedy, Alcantara, and Armstrong 2021) shape the eventual decision outcomes across various comparative contexts. Their research converges on a common inference – the focal issues underscored in statements by either elected entities or governing bodies frequently find reflection in the subsequent policies formulated in the corresponding domains. Leveraging this expanding body of literature, this study offers a systematic analysis of the potential predictive capacity of the ASEAN Chairman's statements in shaping its policy trajectory.

In addition to analyzing Chairman's statements, this chapter formulates and tests hypotheses grounded in foundational theories of international cooperation, including neo-functionalism (NF) and theories pertinent to the establishment of preferential trade agreements (PTAs). These theories provide diverse insights into the driving forces behind cooperation.

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<sup>26</sup> Art. 7.2(b), The ASEAN Charter.

Neo-functionalism, a seminal theory of integration, traces its roots to Haas's (1958) work, "The Uniting of Europe," and was later refined by scholars like Lindberg (1963) and Schmitter (1969). At the core of NF is the concept of "spill-over," a process where cooperation in one domain naturally facilitates collaboration in adjacent areas, fostering a cycle of increasing integration across various policy sectors. On the other hand, theories surrounding the formation of PTAs emphasize the causal link between pre-existing trade patterns and the inception of PTAs, as articulated by researchers such as Lawrence (1996) and Antras and Staiger (2012). In essence, these theories propose that trade catalyzes the formation of PTAs, rather than the reverse. This perspective can be extended to a wider array of agreements, including those directly influencing trade, a trend prominently observed in ASEAN. Here, the discourse suggests that established patterns of substantial cooperation, encompassing aspects like goods and services trade or cross-border movement of workers and tourists, engender a necessity for international agreements in these areas.

The findings of this chapter bear significant implications for the assessment of ASEAN as a regional entity. A group of ASEAN observers have criticized its decision-making process, describing it as inefficient and resembling nothing more than a talking shop, as highlighted in studies by Jones and Smith (2006) and Beeson (2009; 2020). Based on this view, it would seem reasonable to expect that there should be a minimal alignment between the objectives outlined in Chairman's statements and the actual policy initiatives undertaken. However, demonstrating a tangible impact of these statements on ASEAN's tangible outputs could effectively counter this narrative, affirming the organization's adeptness in addressing regional challenges. The subsequent section expands upon the theories discussed above within the system of ASEAN's intergovernmental governance and puts forward several hypotheses concerning the variations in the organization's productivity across different issue domains.

### **3.1 Catalysts of productivity**

Government's intentions are arguably one of the primary factors that significantly influence legislative productivity. These intentions are often manifested in the content of party election programs, where a political party pledges to address the preferences of their electorate before an election, and in government speeches, where the incumbent administration outlines the nation's budget, accomplishments, priorities, and proposed legislations. Although these platforms occur at different junctures, they both signify the government's prospective plans. Various studies, employing diverse approaches, have proven that subsequent public policies in different governmental systems align, to a certain degree and under specific conditions, with the commitments written in election programs or government announcements (e.g., Breunig, Grossman and Schnatterer 2019; Thomson 2020).

The link between election program and policy was initially explored through the mandate theory of democratic governance (Birch 1975; Dahl 1991; Klingemann et al. 1994; Budge et al. 1997). This theory posits that most democratic governments are established by political parties that secure a mandate from their electorate to realize the policy initiatives proposed during the election period. These initiatives encapsulate the strategies that garnered

support from their voter base. Given that voters typically support parties whose policy positions resonate with their own preferences, politicians are motivated to fulfill their policy pledges to enhance their prospects of success in subsequent elections (Klingemann et al. 1994: 31).

The fulfillment of these commitments, however, can fluctuate considerably across different governmental systems. Generally, single-party majority systems, where the government executives are constituted by members of the governing party, are more likely to enact election pledges (Klingemann et al. 1994: 17-9). This tendency is partly attributed to encountering lesser opposition when legislating their policy preferences. Furthermore, the absence of other entities to hold accountable for policy failures fosters an additional incentive for government executives to stick to their policy proposals (Lijphart 1999; Soroka and Wlezien 2010). This behavioral dynamic is encapsulated in “the responsible party model” (Ranney 1951; Downs 1957), a phenomenon also observable in other coalition systems comprising two or more parties, albeit with a diminished rate of policy commitment translation into governmental actions. One of the contributing factors to this is the limited availability of government resources. Consequently, commitments articulated by all political parties assuming governmental roles, if not harmonious, find themselves in competition for realization (Thomson 2001: 174).

Moreover, the likelihood of commitments being translated into action is influenced by a myriad of factors beyond the structure of governmental systems, rendering election pledges a somewhat indirect indicator of governmental intentions. Foremost among these considerations are the economic and societal shifts in the milieu where the government functions. These factors can precipitate unforeseen policy developments that diverge from the specific pledges made by parties (Thomson 2001: 182). Unexpected external events, as pointed out in **Chapter 2**, can significantly alter government agendas, with the responses to emergent issues derailing the implementation of initiatives proposed during the electoral period. Additionally, internal competition within ruling parties, even in single-party government systems, has the potential to recalibrate the priorities outlined in the initial policy programs documented in manifestos (e.g., Arter 2013; Selb and Lutz 2015; von Schoultz and Shugart 2017).

Government speeches, on the other hand, are posited to be a more potent determinant of legislative production, offering a clearer insight into the forthcoming policy actions of a government (Breunig, Grossman and Schnatterer 2019: 302). These annual addresses, a staple in nearly every political system, set forth the legislative agenda for the coming year, encompassing both proposed laws and additional initiatives. High-profile instances of these speeches include the U.S. President's State of the Union Address and the British Queen's Speech in Parliament. Due to the public and prominent nature of these addresses, they serve as a platform for voters to gauge the accountability of government executives, potentially influencing future voting patterns based on the fulfillment or neglect of the proposed policies. These speeches, therefore, act as a dynamic tool for incumbents to modify their electoral commitments in response to evolving circumstances and voter expectations, emphasizing necessary changes as part of broader programs (Mortensen et al. 2011: 979-80; Dowding and

Martin 2017: 89). In this sense government speeches can be seen as a reliable harbinger of subsequent legislative activities in specific policy domains.

In a parallel manner, ASEAN maintains a tradition of issuing significant statements post each Summit meeting. Authored by the member state presiding that year, and representing the consensus of other member states, these statements encapsulate recent agreements, focal policy areas, and prospective cooperation initiatives. Given the authoritative nature of the ASEAN Summit, as mandated by the governing regulations of the organization which designate it as the paramount policy-making entity exerting comprehensive control over all facets of governance<sup>27</sup> and emphasizing a collaborative and consensus-driven approach in decision-making,<sup>28</sup> it is reasonable to anticipate that these Chairman's statements significantly influence the adoption of legal instruments in specific policy sectors. These statements, embodying a consensus-driven approach, mirror the collective intention of member states to forge agreements, a process corroborated by previous studies and insights from insiders (e.g., Koh, Manalo, and Woon 2009; Cockerham 2010; Stubbs 2019).

Furthermore, while the policy scope delineated in these statements has expanded over time, the emphasis accorded to each area fluctuates considerably. This variation, reflected in the proportion of the statement dedicated to specific areas, aligns with the findings of the previous chapter, indicating a disparity in the intensity of policy activities across different sectors. This suggests a potential correlation between the policy initiatives highlighted in the Summit's agenda and the existing ASEAN agreements. Consequently, it can be hypothesized that areas receiving greater emphasis in the ASEAN Summit agenda are more likely to witness an uptick in policy adoption. It is important to note that this agenda, encapsulated in the Chairman's statements, outlines the intended policy directions of ASEAN policymakers and differs from the policy agenda discussed in **Chapter 2**, which was assessed based on the actual number of instruments adopted by ASEAN. The first, core hypothesis of this chapter expects that:

***HYPOTHESIS 3.1:** Policy areas that are more prominently featured in the ASEAN Summit agenda are more likely to materialize into legal instruments compared to those receiving lesser emphasis.*

Nevertheless, the formulation and implementation of decisions within ASEAN, as manifested in various agreements, may not solely hinge on the goodwill of member governments. The disparate pace of cooperation within ASEAN, evidenced by the varying number of primary policy outputs, suggests a higher degree of institutionalization in sectors such as intra-trade, governance, and transportation compared to others (**Chapter 2**). In this context, institutions are perceived as intricate networks of rules that orchestrate political, economic, and social interactions among entities within a system (North 1991: 97). Consequently, institutionalization denotes the dynamic process through which these rules and protocols are

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<sup>27</sup> Art. 7.2b, The ASEAN Charter.

<sup>28</sup> Art. 20.1, The ASEAN Charter.

conceived, interpreted, and enforced. This process might be perceived as beneficial by certain AMS, while others might find it less favorable, given that it not only diminishes transaction costs among member states but also necessitates an enhancement of institutional capacity concurrently. In this scenario, member states might find it more advantageous to adapt to the existing conditions, as reversing the outcomes becomes a challenging endeavor, especially with the consensus rule being operative. This entrenches both institutionalization and policy outputs, steering member states towards a trajectory of progressive cooperation from one domain to another. This progressive trajectory of cooperation is adeptly articulated by NF, a seminal theory of integration (Haas 1961; Lindberg 1963; Schmitter 1969; Pierson 1996; Sandholtz and Sweet Stone 1998).

Scholars initially devised NF to explain the market and political integration in the European Coal and Steel Community, and later the European Economic Community (Haas 1958; Lindberg 1963). This theory, building upon earlier functionalist narratives, sought to rationalize the burgeoning international cooperation post World War II (e.g., Mitrany 1966; 1975). It posits that the necessity to address apolitical transnational issues, such as infectious diseases and trade barriers, encourages actors to undertake specific tasks or functions that necessitate collaboration with others. Successful execution of these tasks fosters prolonged cooperation, eventually culminating in institutionalization. NF, evolving alongside the EU integration process, regained prominence with the resurgence of EU integration in the mid-1980s, despite its earlier inability to explain the stagnation of EU integration in the 1970s.

NF, while not offering a unified definition of integration, generally conveys the creation and expansion of distinct institutions as a central aspect of the process (Niemann 2021: 3). It minimizes the role of states, spotlighting instead a broad spectrum of non-state actors pivotal in fostering integration demands. These actors, perceived as rational entities, modify their expectations and activities progressively across time and issue areas, pursuing perceived best interests (Haas 1958: 15). Through collaboration, they realize that they can achieve goals that are difficult to reach when working separately. While Haas primarily focused on non-governmental elites like firms and interest groups, Lindberg (1963: Chapter 4) emphasized the role of national government officials from member states.

Central to this theory is the concept of “spill-over,” developed to explain the dynamics of the EU integration process. It illustrates how integration in one sector can foster integration in others, driven by the establishment of new policies in the initial sector (Haas 1958: 297, 383). This process, often unforeseen by various actors, might deepen mutual dependencies due to potential capacity limitations of some national governments or unforeseen consequences masked by short-term gains (Schimmelfennig 2018: 12-13). Given the near impossibility of policy reversal, member states are encouraged to enhance their implementation capacities. Moreover, the integration of one policy area might necessitate the integration of closely related areas to maintain efficiency, gradually broadening its scope to encompass the entire economy, a phenomenon termed as “functional spill-over” (Haas 1961).

Furthermore, the push for further integration can also originate from EU public servants within newly established institutions. These individuals, representing national member governments, strategically pinpoint issues beyond the purview of individual states and propose

solutions, concurrently persuading other actors of the mutual benefits of supporting such initiatives (Lindberg and Scheingold 1970: 119). Over time, their continuous interaction lays the groundwork for more integrative policy outcomes, fostering a culture of compromise and common interest promotion (Haas 1958: 66), a process known as “political spill-over.”

Finally, and perhaps most importantly, integration also unfolds through “cultivated spill-over,” highlighting the expansive role of distinct EU institutions like the Commission and the Court of Justice (Sandholtz and Stone Sweet 1998; see also Stone Sweet 2010, and Sandholtz and Stone Sweet 2012). These institutions often propose integrative policies autonomously, leveraging the “supranational power” vested by EU treaties to navigate across policy areas, initiate legislation, mobilize support, or impose sanctions for non-compliance, sometimes proposing policies that member states might not have individually considered.

Researchers have utilized NF for decades to analyze the progression of regional policymaking in various parts of the world (e.g., Tannam 2006; Scholten and Scholten 2017). While this theory has been applied to examine ASEAN integration, the majority of these studies have generally concluded that the central tenets of NF are not applicable in the ASEAN context.<sup>29</sup> However, despite the notable absence of a supranational entity in its organizational framework, NF can potentially shed light on the varying rates of legislative production across different issue areas within ASEAN.

Firstly, as highlighted in the preceding chapter, studies indicate that the primary focus of AMS is economic cooperation. The Bangkok Declaration, which marks the inception of ASEAN, underscored the necessity for enhancing trade and collaboration among member states to foster regional development and security (ASEAN 1967). Furthermore, in the early 1970s, ASEAN leaders engaged a UN agency to identify potential avenues for regional cooperation, which subsequently advocated for the liberalization of intra-regional trade (Cockerham 2010: 171). Spurred by the growing communist influence in Vietnam, the founding member states heeded this advice, initiating several agreements that primarily sought to bolster cooperation in trade, food and energy sectors, and industrial projects. This phase also witnessed the birth of the ASEAN Secretariat, an institution tasked with facilitating and overseeing the implementation of ASEAN initiatives by member governments (ASEAN 1976). Drawing from the concept of “functional spill-over,” the inception of trade integration commitments naturally led to the emergence of demands for mechanisms or institutional setups to harmonize the efforts of various governmental agencies across member states, and for a comprehensive ASEAN transportation infrastructure to facilitate the seamless movement of goods and services. These demands, in turn, catalyzed the member states to enhance policy outputs pertaining to ASEAN governance and transportation.

However, a pressing question emerges: why were governance and transportation prioritized in ASEAN's policy agenda alongside trade? One plausible explanation is the varied capabilities of AMS to institutionalize a diverse range of policy areas within a limited timeframe. As highlighted in **Chapter 1**, there exists a significant disparity in the economic development levels and state capacities among member governments. This disparity partly

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<sup>29</sup> See Kim (2014) for a detailed discussion on this matter.

rationalizes the adoption of regional decisions grounded in consultation and consensus, essentially adhering to the principle of the lowest common denominator. Given that national officials collaborate continuously across various ASEAN committees and working groups, member states, guided by the “political spill-over” principle, manage to persuade each other to undertake further commitments in areas closely linked to the initially integrated policy (e.g., Nair 2016; 2021). However, these new commitments necessitate that the newer and economically weaker AMS make adjustments to their existing regulations, ensuring that the gap between their current capacity and the requisite capacity is not excessively large to prevent compliance with their commitments.

In conclusion, NF suggests that the decision to integrate an initial policy domain serves as a catalyst for future cooperative endeavors; however, the scope and depth of this cooperation are constrained by the institutional capacities of the member governments. This also indicates that as individual areas integrate progressively over time, the capacity will expand, paving the way for a more comprehensive pan-ASEAN integration across various issue domains. The second hypothesis is consequently formulated as follows:

***HYPOTHESIS 3.2: Increases in the institutional capacity of AMS will result in increases in the number of legal instruments adopted.***

Another avenue of exploration, as indicated in the discourse surrounding PTAs, posits that intensified economic exchanges between member states serve as the springboard for the development of an ASEAN governmental system. The meteoric rise of PTAs has sparked extensive discussions among scholars and policymakers regarding the primary motivators behind preferential arrangements, their effects on trade flows, the repercussions on member and non-member nations, and their connections to the global trade governance system. Consequently, a rich body of literature has emerged, examining these facets in depth (e.g., Mansfield 1998; Limao 2016; Rodrik 2018; Handley and Limao 2022). Alongside their increasing prevalence, the scope and substance of PTAs have undergone significant transformations. Contemporary agreements encompass a broad spectrum of policy areas, extending beyond tariff liberalization to adeptly navigate the complexities of burgeoning global production networks (Orefice and Rocha 2014).

A growing segment of literature has further delved into the intricacies of PTAs, distinguishing between “shallow” and “deep” agreements (Lawrence 1996: 17). The former refers to agreements primarily focused on border measures, such as offering equivalent treatment to foreign goods and enterprises as accorded to domestic entities. These measures predominantly influence market access without necessitating alterations in domestic policies. In contrast, “deep” agreements encapsulate rules and provisions that supersede the national regulations of member states. While a unified definition of “deep agreements” remains elusive, the term generally encapsulates agreements that address policy areas beyond the purview of the WTO mandate, encompassing domains like environmental protection, investment, and intellectual property rights (e.g., Baccini, Dur and Elsig 2015; Hofmann, Osnago and Ruta 2017; Young 2018; Laget et al. 2020).

Predominantly, deep PTAs are forged in response to the escalating complexity of production networks. The landscape of international trade has evolved to embody intricate dynamics, with corporations increasingly dispersing their production processes across borders to capitalize on cost efficiencies (Baldwin 2011). Similarly, cross-border trades involving specialized inputs sourced from a diverse array of countries engender complex challenges, distinct from those associated with trades involving manufactured goods originating from a single nation. Consequently, the seamless operation of cross-border production necessitates the liberalization and harmonization of national regulations and policies, fostering a climate conducive to deeper integration among nations within the network (Antras and Staiger 2012).

Viewed from this angle, it is plausible to expect that transnational exchanges, especially in the realms of goods and services trade, labor, and traffic flows, catalyze deeper integration among ASEAN member governments. This notion stems from the premise that such exchanges generate a demand for economic governance that the latter can fulfill. This argument is partly anchored in the recognition that ASEAN member countries constitute a vital segment of international production networks, notably in the intermediate goods trade sector (Baldwin 2011; Obashi and Kimura 2017). Given the necessity for heightened intra-regional trade and the prevalent competitive, rather than complementary, nature of most member states' economies (Beeson 2009), the hurdles to such exchanges become apparent and significant to the involved parties. Moreover, to the extent that trade openness amplifies the potential for policy externalities, unilateral approaches prove less effective compared to collective decision-making (Broner and Ventura 2011). Consequently, member states embark on collaborative efforts to forge more agreements aimed at dismantling various national barriers impeding transnational activities, encompassing aspects like tariffs and quotas, national regulatory standards, and other technical obstacles. The third hypothesis posits that:

***HYPOTHESIS 3.3: Increases in cross-border exchanges between AMS precipitate an increase in the number of legal instruments adopted.***

In the diverse landscape of scholarly discourse on ASEAN, various perspectives and emphases have emerged, leading to a range of conclusions. Some argue that regional integration is a bottom-up process, while others contend that economic interdependence among member states is insufficient to propel integration, among other viewpoints (refer to comprehensive reviews by Nesadurai 2017; Stubbs 2019; Lee 2022). Given this backdrop, the hypothesis at hand warrants rigorous testing. The forthcoming analysis aims to furnish critical evidence that will contribute to the ongoing assessment of these diverse perspectives.

### **3.2 Research design**

A comprehensive analysis of the effects of the agenda necessitates a robust dataset. This study assembles a distinctive dataset that encapsulates both the policy and political agendas from 1992 to 2020, spanning across 21 diverse policy domains. The primary hypothesis anchors on the premise that policy topics which dominate policymakers' agendas are more likely to



metamorphose into actual policy outputs. This central hypothesis is further complemented by two additional hypotheses that delve into the impacts of institutional capacity and the extent of cross-border exchange activities on the production of policy outputs. In this section, the focus is on the operationalization of the dependent variable, along with a detailed measurement of the central theoretical concepts: the political or Summit agenda, institutional capacity, and cross-border exchange activities.

### *Dependent variable*

The analysis in this chapter is significantly informed by the findings of **Chapter 2**, which quantitatively analyzed policy outputs across 16 distinct domains. This data serves as the foundation for the current investigation, enabling a nuanced exploration of the variations in policy outputs among these domains. It is well recognized that there exists a notable time lag between the formulation of policy commitments in Chairman's statements and their fruition in the form of agreements. The challenge here is to determine this lag period.

Although the Summit is now convened on a biannual basis,<sup>30</sup> historically, it was not a frequent event. It was only institutionalized during the Fourth ASEAN Summit in 1992, where it was agreed that Summits would be held every three years, supplemented with informal meetings in between. This period marks a significant shift in regional integration, with the initiation of concrete measures directed towards establishing an ASEAN free trade area, a development acknowledged widely by both scholars and practitioners (Deinla 2017: 163; see also Lee 2022: 15). To capture the essence of this transformative phase and to scrutinize the variations in the number of adopted outputs across different policy domains, the analysis incorporates a three-year time lag. This interval not only aligns with the formal summit cycle established post-1992 but also offers a realistic window to observe the transition from policy deliberations to tangible outputs.

The dependent variable in this study, therefore, measures the count of policy instruments adopted in each domain, three years after the Summit statements, commencing from the pivotal 1992 Summit. This operationalization implies that the initial measurement of the dependent variable will be undertaken in 1995. A comprehensive overview of the descriptive statistics for all variables can be found in Table 3.1.1 (Appendix 3.1). Given the exceed amount of zero values in the dependent variable, indicating over-dispersion, the analysis employs negative binomial regression models to ensure robust results.

### *Explanatory variables*

The first hypothesis tests the "program to policy linkage," which posits a direct correlation between the emphasis placed on specific areas in Chairman's statements and the subsequent policy outputs in those respective areas. To measure the level of attention various policy domains receive within Summit statements, an exhaustive content analysis of 33 statements

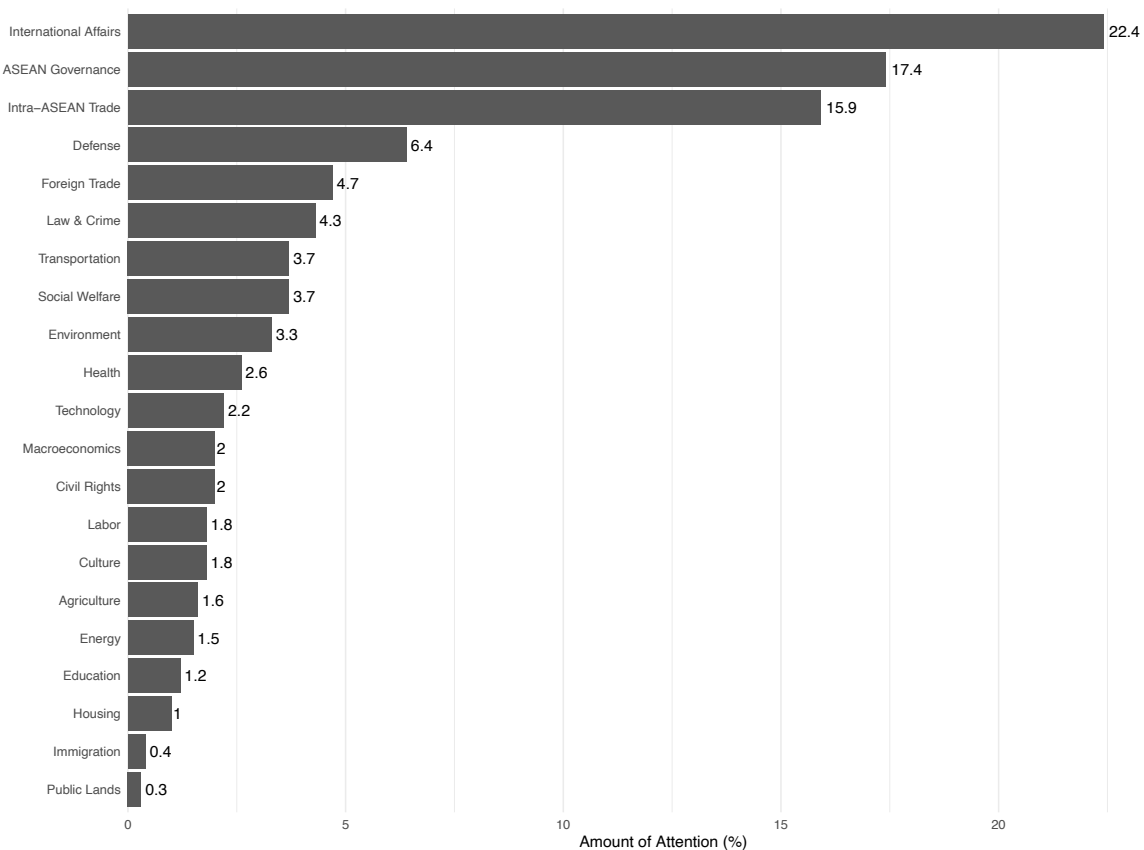
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<sup>30</sup> Art. 7.3, The ASEAN Charter.

issued from 1992 onwards was conducted. This analysis applies the coding guidelines established in Chapter 2 (Appendix 2.1), which were developed based on the Master Comparative Agenda Project codebook.

During this process, each paragraph or major provision within a statement was assigned a primary topic code, reflecting the central policy area discussed. Where relevant, sub-topic codes were also allocated. For instance, the fourth paragraph of the 12th Summit Chair's statement predominantly discusses the future trajectory of ASEAN, meriting a 2000 code assignment (ASEAN 2007). However, due to the explicit references to the Cebu Declaration and the drafting of the ASEAN Charter, it was more appropriately classified under the 2017 code.<sup>31</sup> In the relatively rare cases where a paragraph encompassed multiple areas, the code corresponding to the first mentioned area was chosen to represent that paragraph. Following this categorization, the word counts for each major topic within a statement were calculated, along with the total word count of the statement itself. The attention share for each topic was then defined as the ratio of the word count attributed to a specific topic to the total word count of the statement.

**Figure 3.1.** ASEAN Summit agenda (1967-2020)



<sup>31</sup> It is important to note that introductory remarks, such as “We, the Heads of State and/or Government of ASEAN Member Countries, had a very productive 12th ASEAN Summit Meeting, on 13 January 2007 in Cebu, Philippines,” were not excluded from the analysis, but were instead assigned a 24 code.

Figure 3.1 offers a detailed snapshot of the ASEAN Summit or political agenda, characterized by the relative attention accorded to each policy domain in the Chairman's statements. A striking observation is the prominent emphasis on International Affairs, which tops the agenda at the ASEAN Summit, despite resulting in only two corresponding legal instruments in the policy agenda, as reported in **Chapter 2**. Furthermore, although the attention remains concentrated on a select few topics, the distribution of focus across different topics is more balanced compared to the policy agenda, with nearly all topics receiving some degree of attention. Interestingly, intra-regional trade, which held a prime position in the policy agenda, has descended to the third spot in the Summit agenda, yielding its top position. However, ASEAN governance maintains its second-place rank, commanding a similar level of attention as observed in the policy agenda. Notably, the focus on Transportation has diminished, now ranking equally with Social Welfare and falling below Foreign Trade. These latter topics, despite their noticeable presence in the Summit agenda, have yet to be translated into legal instruments, as detailed in the analysis in **Chapter 2**.

The measurement for member states' institutional capacity is based on two pivotal indicators from the World Bank's Worldwide Governance Indicators: government effectiveness and regulatory quality, which focus on the ability of governments to create and enact sound policies. These indicators allocate scores to countries on a scale ranging from -2.5 to +2.5, with higher values denoting better performance (Kaufmann, Kraay and Mastruzzi 2010: 351). In this study, a unified measure of institutional capacity is created by calculating the average score of these two indicators across all ten ASEAN member states for each year in which legal instruments were adopted in various policy domains (the dependent variable of this study). Specifically, for each relevant year, the scores of the two indicators for each member state are first averaged, and then an overall ASEAN average is computed by taking the arithmetic mean of these averages across all ten member states. This approach yields a single score representing the collective institutional capacity of ASEAN in that year. An increasing trend in this composite score over time would generally indicate an improvement in the average institutional capacity across the member states.

To quantify cross-border interactions within ASEAN, this study employs two metrics: regional trade in goods and services, and the cumulative number of visitor arrivals to ASEAN from each member state. Data for regional trade is available from 2010 onwards, while visitor arrival data starts from 1995. This information is sourced from ASEANstats, the official database managed by the ASEAN Secretariat's Statistics Division. Due to their large values and the skewed distribution of the dependent variable, these indicators have been normalized to a scale of 0 to 1. Similar to the approach taken with the institutional capacity measure, the final metrics are derived from the normalized values of these indicators in the years when the legal instruments for each policy area (the dependent variable) were adopted.

### **3.3 Analysis**

Table 3.1 presents the results from three distinct models, employed as part of the robustness checks. The primary theoretical expectation of this chapter, denoted as Hypothesis 3.1,

suggests that policy areas emphasized in the Chairman’s statements published post-ASEAN Summits are more likely to materialize into legal instruments. Model 1 and Model 3 in Table 3.1 first assess this effect independently and subsequently in conjunction with other explanatory variables. The evidence strongly supports this hypothesis. The coefficients corresponding to the share of policy topics in Summit statements consistently demonstrate significant positivity across the two models. Given this consistency, the focus shifts to the comprehensive Model 3 for interpretation. A coefficient of 0.09 implies that for every one percent increase in the share of areas highlighted in Summit statements, there is a corresponding nine percent increase in the count of agreements for those specific policy domains.

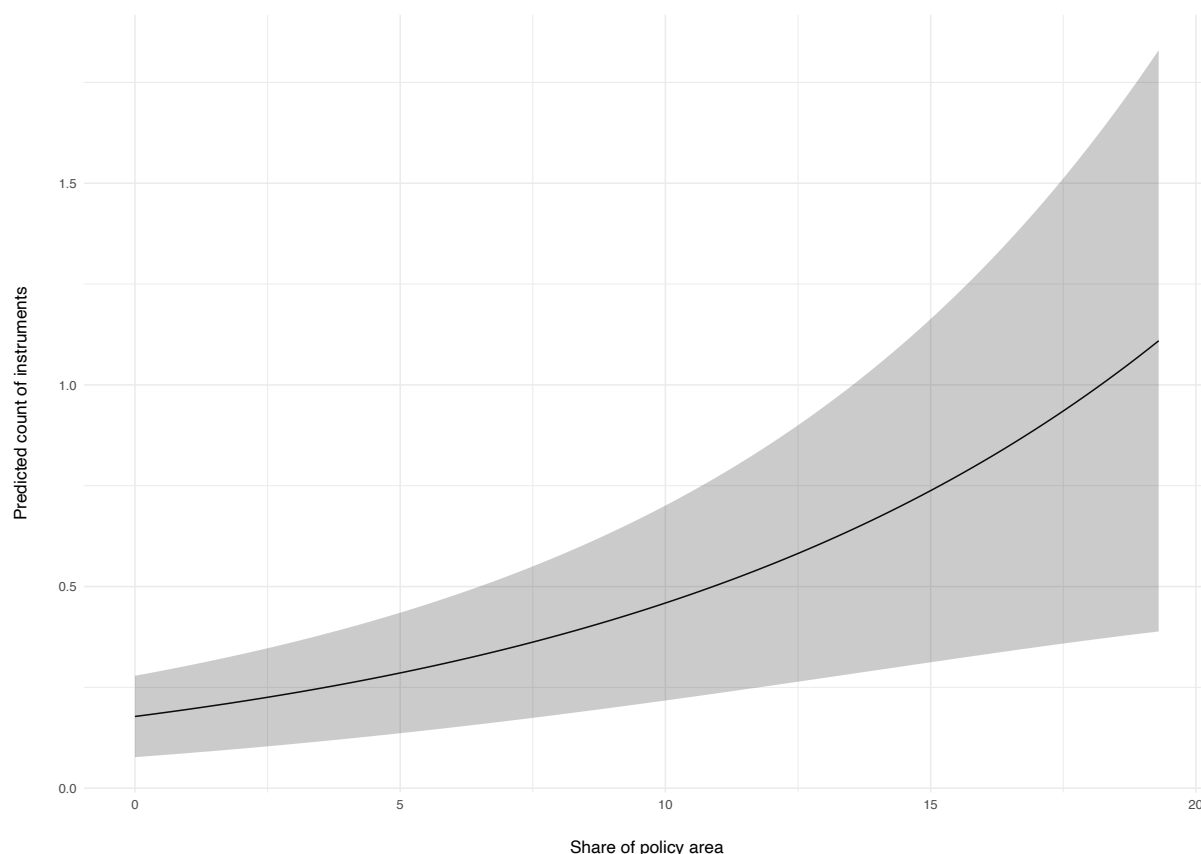
To provide a clearer understanding of this impact, Figure 3.2 visualizes the anticipated number of legal instruments for a topic against its statement share range, drawing from estimates in Model 3 (Table 3.1). The projected count for any topic remains below one when its statement share aligns with the average. However, this count ascends to one once the statement share reaches roughly 18 percent, or two standard deviations above the mean. Given this moderate influence, the study substantiates the empirical connection between ASEAN policymakers' intentions and their subsequent actions, suggesting that the representational linkage observed in other political systems is also operational within ASEAN.

**Table 3.1.** Determinants of the quantity of ASEAN’s policy outputs

	<i>Dependent variable:</i>		
	Number of instruments adopted after three years		
	(1)	(2)	(3)
Summit statement	<b>0.11<sup>***</sup></b> (0.01)		<b>0.09<sup>***</sup></b> (0.02)
Institutional capacity		1.71 (2.84)	2.51 (2.72)
ASEAN trade in goods and services		0.12 (1.50)	0.59 (1.44)
Number of ASEAN visitors		-1.31 (2.40)	-2.21 (2.29)
Constant	-1.86 <sup>***</sup> (0.17)	-0.63 (0.61)	-1.13 <sup>*</sup> (0.58)
Observations	357	252	252
Log Likelihood	-242.60	-172.97	-160.77
theta	0.35 <sup>***</sup> (0.08)	0.29 <sup>***</sup> (0.09)	0.49 <sup>***</sup> (0.16)
AIC	489.20	353.94	331.55

*Note:* \*  $p < 0.1$ ; \*\*  $p < 0.05$ ; \*\*\*  $p < 0.01$ . Negative binomial regressions (standard errors in parentheses).

**Figure 3.2.** Marginal effect of Chairman’s statements



Note: Expected values derived from Model 3 in Table 3.1, holding other variables at their mean values.

Beyond the central "program to policy linkage," this chapter also examines two alternative mechanisms for legislative productivity, drawing insights from NF and the literature on PTAs. It posits that both institutional capacity and transnational exchanges among member states play roles in shaping ASEAN’s policy outputs, as articulated in Hypothesis 3.2 and 3.3. However, the evidence does not align with these hypotheses. While the coefficients for institutional capacity and total intra-ASEAN trade are positive in Models 2 and 3 of Table 3.1, they lack statistical significance. Furthermore, in a deviation from the direction projected by Hypothesis 3.3, the coefficient associated with the number of ASEAN visitors is negative, albeit insignificantly so. The study also explored interaction terms between each of these two explanatory variables and the variable representing the share of policy topic in Summit statements. However, these interactions did not yield any significant result and were consequently omitted from the final analysis.

To validate the robustness of these findings, several supplementary analyses were conducted. The first analysis employed two models with alternative operationalizations of the dependent variable. While the main analysis associates a topic's share (the dependent variable) in the 1992 Chairman’s statement with the total number of legal instruments adopted in 1995, the supplementary analysis correlates the 1992 Summit statement with the count of instruments

adopted in 1996 and 1997, representing four- and five-years post-Summit statements, respectively. The results, presented in Table 3.1.2 of Appendix 3.1, largely mirror the main findings. It is noteworthy that the coefficient for institutional capacity becomes negative and is significant in Model 2 of Table 3.1.2. Although this is not a consistent finding, it suggests potential avenues for future research into the influence of institutional capacity on ASEAN's legislative productivity.

The second supplementary analysis employed zero-inflated Poisson regressions to assess the main findings' sensitivity. This model blends a Poisson regression with a logit model to account for the surplus zeros. The results, displayed in Table 3.1.3 of Appendix 3.1, reveal that while the coefficients for topic share in Summit statements remain positive, they are only significant in Model 1 of Table 3.1.3. The effects are also somewhat diminished compared to the main analysis. However, the negative coefficients in the zero-inflation model indicate that as topic share rises, the likelihood of additional zeros in the number of adopted instruments decreases. These findings align with the results in Table 3.1 but offer more nuanced details.

Lastly, research from other contexts, notably the EU, suggests that the Presidency of the Council can steer political attention by prioritizing certain policy issues (e.g., Tallberg 2003; Arregui and Thomson 2009; Alexandrova and Timmermans 2013; Hage 2017; van Gruisen 2019). Moreover, Thomson (2008; 2011: 236) categorizes leadership roles within the EU Council into “initiating”, “intermediate”, and “finalizing” presidents, and finds that decision outcomes often lean towards the preferences of the “finalizing” president. Drawing parallels in the ASEAN context, Suzuki (2021) offers anecdotal evidence highlighting the influential role of the ASEAN Chair in shaping the agenda. Furthermore, decision outcomes in ASEAN typically align with the Chair's preferences, seldom diverging from their stance. To explore this dynamic further in the ASEAN context, two categorical control variables were introduced, representing the member country holding the ASEAN Chair during the publication of the Summit Statement and the finalization of the instruments. The main findings remained consistent, but there is evidence suggesting the “initiating” Chair, who authored the Summit statement, has some influence. Positive and significant coefficients associated with Cambodia, Myanmar, and Singapore in Table 3.1.4 (Appendix 3.1) suggest that when these states held the Chair position, the number of ASEAN agreements adopted three years post-Summit was significantly higher compared to when Brunei held the position.<sup>32</sup> These finding merit further investigation, nonetheless.

### **3.4 Conclusions**

This chapter provides a comprehensive exploration into the relationship between policy pledges and their eventual outcomes. Drawing from prior studies in comparative politics that delved into the nexus between party pledges (e.g., Thomson 2001; Naurin, Royed and Thomson 2019), governmental speeches (e.g., Mortensen et al. 2011; Breunig, Grossman and

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<sup>32</sup> Models with Myanmar, which has held the Chair position the least since ASEAN's inception (see Table 2.1.1, Appendix 2.1), as the reference category were also tested. These results were not significant.

Schnatterer 2019; Kennedy, Alcantara and Armstrong 2021), and subsequent policy implementations, this research broadens the scope to encompass intergovernmental governance, with a specific emphasis on the conclusions of international treaties. Notably, this research is a pioneering effort in applying text analysis to quantify the political attention given to each unique policy domain pertinent to ASEAN cooperation. It introduces a novel dataset that captures both ASEAN's policy and political agendas, spanning over a quarter of a century across 21 policy areas. Hypotheses are formulated to assess the extent to which the ASEAN political agenda influences the organization's policy outputs and to explore alternative mechanisms for law production, drawing from neofunctionalism - the foundational theory on EU integration - and existing PTA formation literature.

A key insight from this chapter's analyses is the pivotal influence of collective focus on particular policies in guiding the subsequent adoption of ASEAN legal instruments. This main finding supports the view that while the foundational informal principles of ASEAN, often referred to as the "ASEAN way," represent a distinct institutional choice, its operational dynamics as a political system are not unprecedented. Similar "program to policy" linkages observed in other representational systems can also be identified in ASEAN.

Additionally, debates on ASEAN's efficacy as a regional organization often revolve around its perceived relevance, with scholars divided between supportive and skeptical views. The absence of a unified analytical framework to gauge the success of regional organizations means that ASEAN's effectiveness, legitimacy, and efficiency are interpreted differently based on varying theoretical perspectives (Stubbs 2019). While some critiques benchmark ASEAN against select North American and European Union cases (e.g., Beeson 2020; Ravenhill 2008; 2010), this study proposes a systematic approach to assess ASEAN's performance. It underscores the significance of examining its foundational documents to discern policymakers' commitments and subsequent actions. The Chairman's statement, which outlines the primary concerns and future objectives discussed during the Summit meeting - the apex of policymaking - serves as a testament to this (cf. Freistein 2013). To the extent that performance is gauged by the alignment with collective intentions detailed in pivotal documents, ASEAN as a political system effectively meets its objectives.

However, it is essential to recognize that while establishing cooperation through agreements is a step forward, the nature and depth of such cooperation matter significantly. The design of international agreements can vary, and these variations often correlate with cooperation levels (e.g., Raustiala 2005; Pollack 2006; Hooghe and Marks 2015). Just as it leads researchers to reach different conclusions on the impact of ASEAN on regional peace and prosperity (Beeson 2019), the diverse political, economic, and cultural landscapes of ASEAN member states might influence the nature of ASEAN agreements. Such nuance is often overlooked in debates about ASEAN's regional significance. The next two chapters will delve deeper the quality of agreed-upon ASEAN's legal instruments and the extent to which member states comply with these outputs, particularly in terms of timely ratification.

## Appendix 3.1      Supplementary material for Chapter 3

**Table 3.1.1.** Descriptive statistics for variables used in the analyses

Variable	N	Mean	St. Dev.	Min	Max
Number of instruments adopted after three years	357	0.36	1.07	0	12
Number of instruments adopted after four years	357	0.33	1.02	0	12
Number of instruments adopted after five years	336	0.37	1.10	0	12
Share of policy area	441	4.76	7.27	0.00	56.37
Institutional capacity	378	0.12	0.13	-0.09	0.36
ASEAN trade in goods and services	315	0.64	0.34	0.00	1.00
Number of ASEAN visitors	378	0.58	0.32	0.00	1.00

**Table 3.1.2.** Robustness checks using different operationalizations of the dependent variable

	<i>Dependent variable:</i>	
	Number of instruments adopted after four years	Number of instruments adopted after five years
	(1)	(2)
Summit statement	<b>0.10***</b> (0.02)	<b>0.09***</b> (0.02)
Institutional capacity	-2.67 (2.99)	-8.21** (3.25)
ASEAN trade in goods and services	0.38 (1.58)	-1.84 (1.66)
Number of ASEAN visitors	-1.55 (2.53)	3.33 (2.67)
Constant	-0.92 (0.66)	-2.18*** (0.73)
Observations	252	231
Log Likelihood	-165.71	-154.04
theta	0.27*** (0.07)	0.28*** (0.08)
AIC	341.43	318.08

*Note:* \*  $p < 0.1$ ; \*\*  $p < 0.05$ ; \*\*\*  $p < 0.01$ . Negative binomial regressions (standard errors in parentheses). The models replicate Model 3 in Table 3.1.



**Table 3.1.3.** Robustness checks using zero-inflated Poisson models

Count component	<i>Dependent variable:</i>		
	Number of instruments adopted after three years		
	(1)	(2)	(3)
Summit statement	<b>0.05***</b> (0.01)		0.02 (0.01)
Institutional capacity		2.12 (2.61)	2.63 (2.49)
ASEAN trade in goods and services		-0.63 (1.49)	-0.59 (1.42)
Number of ASEAN visitors		-0.05 (2.28)	-0.06 (2.19)
Constant	-0.23 (0.20)	0.26 (0.59)	-0.07 (0.63)
Zero component	<i>Dependent variable:</i>		
	Number of instruments adopted after three years		
	(1)	(2)	(3)
Summit statement	<b>-0.05***</b> (0.02)		<b>-0.13**</b> (0.05)
Institutional capacity		0.76 (3.71)	1.90 (4.28)
ASEAN trade in goods and services		-0.97 (2.06)	-1.12 (2.35)
Number of ASEAN visitors		1.58 (3.18)	1.84 (3.66)
Constant	1.15*** (0.26)	0.45 (0.82)	0.83 (0.99)
Observations	357	252	252
Log Likelihood	-255.74	-173.41	-160.38

Note: \*  $p < 0.1$ ; \*\*  $p < 0.05$ ; \*\*\*  $p < 0.01$ . Standard errors in parentheses. The analysis replicates models in Table 3.1.

**Table 3.1.4.** Robustness checks controlling for potential impact of ASEAN Chairship

	<i>Dependent variable:</i>	
	Number of instruments adopted after three years	
	(1)	(2)
Summit statement	<b>0.09<sup>***</sup></b> (0.02)	<b>0.09<sup>***</sup></b> (0.02)
Institutional capacity	-24.16 (17.10)	-7.59 (6.33)
ASEAN trade in goods and services	-18.47 (13.94)	-18.47 (12.91)
Number of ASEAN visitors	32.28 (24.25)	23.84 (15.61)
Opening Chair ( <i>Reference: BRN</i> )		
IDN	5.69 (3.57)	
KHM	<b>5.42<sup>*</sup></b> (3.18)	
LAO	1.14 (1.05)	
MMR	<b>2.81<sup>**</sup></b> (1.32)	
MYS	1.20 (1.14)	
SGP	<b>6.90<sup>*</sup></b> (3.88)	
THA	-0.30 (1.47)	
VNM	4.19 (2.85)	
Closing Chair ( <i>Reference: BRN</i> )		
KHM		-4.84 (3.74)
LAO		-2.15 (1.39)
MMR		2.02 (1.46)
MYS		2.19 (1.43)
PHL		-1.51 (2.05)
SGP		-3.24 (2.91)
THA		-3.78 (2.88)
VNM		0.10 (1.65)
Constant	-11.97 <sup>*</sup> (6.87)	-3.72 <sup>***</sup> (1.35)
Observations	252	252
Log Likelihood	-155.86	-155.86
theta	0.59 <sup>***</sup> (0.20)	0.59 <sup>***</sup> (0.20)
AIC	337.73	337.73

*Note:* \*  $p < 0.1$ ; \*\*  $p < 0.05$ ; \*\*\*  $p < 0.01$ . Negative binomial regressions (standard errors in parentheses). The analysis replicates Model 3 in Table 3.1.

## 4 The quality of ASEAN's policy outputs

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The diversity in ASEAN's outputs is not limited to quantity but extends significantly to the quality and nature of their contents. These instruments vary considerably, with some featuring detailed and prescriptive provisions that offer little to no room for member states to interpret them differently, while others are crafted with intentional vagueness, granting member states the flexibility to adapt the implementation according to their preferences. For example, Article 5 of the ASEAN Charter states that “ASEAN Member States shall take all necessary measures, including the enactment of appropriate domestic legislation, to effectively implement the provisions of the Charter.” This article underscores the delegation of discretionary power to implementers, a practice that is prevalent in numerous political systems, as documented by Hawkins et al. (2006). This chapter seeks to illuminate this facet of ASEAN's policy-making process by addressing two critical research questions: (1) to what extent policymakers delegate discretionary power to AMS? and (2) under what condition are they likely to do so?

In any studies concerning ASEAN and the way in which decisions are taken within the organization, one cannot overlook the reference to the “ASEAN way.” This approach, deeply rooted in the principles of conflict avoidance and consensus-building, has been the cornerstone for achieving agreements within the ASEAN community, a concept pioneered by Acharya (1997). Many observers attribute the organization's ability, as well as its limited ability, to achieve meaningful steps toward regional integration to this enduring mode of decision-making (Beeson 2009; Stubbs 2019). If conflict avoidance and consensus-seeking are indeed the hallmarks of the ASEAN way, then it is puzzling how the organization managed to reach hundreds of agreements throughout its existence. The present study argues that the calibration of the level of discretion granted to member states in these agreements is part of the detailed implementation of the ASEAN way in practice.

This study aims to make descriptive and theoretical contributions to existing research on ASEAN and delegation. With respect to description, the study offers the first systematic assessment of the degree of delegation in all ASEAN agreements that have been passed since 1967. The theoretical contribution is to elaborate on the implications of two established and complementary perspectives on delegation in the ASEAN context. These theoretical perspectives have been honed and applied in a range of other national and international arenas in research on policy discretion (e.g., Huber and Shipan 2002; Hawkins et al. 2006). According to the transactions costs perspective, policymakers are more likely to delegate in highly complex policy areas, especially when their policy preferences are in line with those of implementers (Epstein and O'Halloran 1999; Pollack 2003; Hooghe and Marks 2015). This is because implementers are equipped with better information resources, and are therefore better-informed about the (in)effectiveness of any particular policy within their jurisdiction. The

consensus-building perspective, by contrast, focuses on collective desires to overcome disagreements among contracting parties during negotiations (Dimitrova and Steunenberg 2000; Thomson and Torenvlied 2011). When policymakers are required to adopt a policy on which common positions are particularly difficult to find, their strong desire for reaching agreement in an efficient and timely manner leads a high level of discretion. At the extreme, a large amount of discretion may be synonymous with symbolic policymaking, in which each party maintaining its current status quo policies. When developing and testing expectations from these perspectives, the study is attuned to the similarities and differences between ASEAN and the other contexts in which they have been applied. For instance, like parts of European Union (EU) policymaking and other international organizations, ASEAN relies mainly on member states to implement its agreements. Compared to the EU, however, ASEAN has weak supranational institutions and its decision-making procedures do not allow any member states to be outvoted.

#### **4.1 Two perspectives on delegation**

Delegation in its broadest sense is the granting of authority by policymakers to implementers that empowers the latter to act on behalf of the former. When delegation is accompanied by the granting of discretionary power, it gives implementers certain leeway, though limited in either time or scope, to select and execute decisions of their choosing (Hawkins et al. 2006). In relation to international agreements, the policymakers are typically national governments, and the implementers too are the same national governments, because international agreements are typically implemented by the states involved. In both national and international settings, delegation has advantages and disadvantages from the standpoint of realizing policymakers' preferences. On the one hand, delegation serves as a form of cooperation, providing solutions to collective-action problems and enabling agreements to be achieved. On the other hand, delegating discretionary power to implementers runs the risk that implementers may select policies that are not in line with policymakers' preferences.

The extent to which discretion is granted to the parties to an international agreement also reveals the depth and form of cooperation involved (Raustiala 2005: 583). Deep cooperation often results in agreements containing detailed and prescriptive provisions that leave their signatories little to no room to make their own interpretations of these provisions. Conversely, shallower cooperation is associated with agreements containing provisions that are left intentionally vague, which gives their signatories more opportunities to adapt the implementation of these provisions in their preferred ways. An example of relatively deep cooperation is the Trans-Pacific Partnership Agreement that governs various regulatory issues and requires significant policy changes from most contracting parties (Lim et al. 2012). The United Nations Framework Convention on Climate Change and related agreements, by contrast, serve as a typical example of the shallow cooperation, requiring for instance all parties to detail their own contributions themselves, while allowing some groups to reflect on their 'special circumstances' (UN 2015: 9, 11).

### *The transaction-costs perspective*

The transaction-costs perspective emphasizes one of the conditions under which policymakers might delegate authority and discretion to implementers, namely where there is a great demand for policy expertise (Pollack 2003: 207). This assumption is central to many models of delegation developed in studies of the US legislative process and subsequently refined in comparative research (e.g., Epstein and O'Halloran 1994; Bawn 1995; Huber 1998). Policymakers must grapple with a large degree of uncertainty in many policy areas, for instance uncertainty about which policies achieve which objectives in which contexts. This uncertainty gives rise to policymakers' demand for policy-relevant information about the state of the world and how to change it. Since it is prohibitively costly for policymakers to acquire this information themselves, they typically rely on specialized government agencies with relevant expertise. In other words, policymakers would incur high transaction costs if they were to specify all policies in detail and monitor whether implementers adhere to those details (Thomson and Torenvlied 2010: 142). Policymakers reduce these costs by granting discretion to implementers, whose policy expertise is often superior to theirs, thereby improving the quality of regulation.

The downside of delegation from the perspective of policymakers is that implementers may enact their own preferred policies instead of policymakers' preferences, which is obviously a concern when policymakers and implementers' preferences differ. Because politicians tend to be poorly informed about policy implementation, it may be hard for them to detect and rectify any policy drift in the implementation stage (Tallberg 2002: 28). Therefore, politicians will try to avoid policy drift by delegating to implementers whose policy preferences are similar or the same as their own preferences (Bendor et al. 2001: 243-44).

In addition to this informational concern, policymakers may encounter the problem that they are unable to bind themselves credibly to uphold a particular policy in the future (Majone 1997: 145; see also Epstein and O'Halloran 1999: 1-4). For example, to fight inflation national politicians may prefer high interest rates may be required at certain points in time. However, the same politicians might feel compelled to reduce rates to stimulate the economy in a bid to win re-election. This inconsistency, largely due to policymakers' need to adapt to new circumstances, is the problem of credible commitment in the transaction-costs perspective (Gilardi 2002: 874; Pollack 2006: 168). One common solution to this problem is to delegate discretionary power to an independent or supranational agency that is free from electoral pressure, thus more capable of adopting and maintaining any given policy in the future. This mechanism is particularly important in international agreements where there is a fine line between policymakers and implementers. It does, however, require a strong supranational agency associated with the relevant international organization, which is not present in some organizations including ASEAN.

### *The consensus-building perspective*

The consensus-building perspective treats the act of delegation as an integral part of the negotiation process, and it centers on the extent to which there are substantive differences in the policy preferences of actors involved in the negotiations (Dimitrova and Steunenberg, 2000; Rosendorff and Milner 2001). The negotiation process consists of parties bargaining collectively over the scope and content of the agreement. The contents of the agreement consist of its detailed provisions, as well as details of how these provisions should be implemented. Even with the best intentions, stalemates can arise. These are situations in which the key negotiators are unwilling to compromise for an extended period of time. One solution to such stalemates is a formalistic and often unfeasible one, namely the substituting the decision rule for a less inclusive one. Inclusive decision rules such as consensus or unanimity are typically associated with gridlock, since opposition from any one of the actors is sufficient to block the adoption of a proposal. Supermajority or majority decision-making rules, by contrast allow some negotiators to be outvoted.

Given that institutional changes such as amending voting rules is arduous, negotiators need more nimble solutions. The consensus-building perspective posits that stalemates can sometimes be overcome by employing special arrangements such as exemptions, opt-out clauses or the delegation of discretionary power (Thomson and Torenvlied 2010: 146). Controversy among contracting parties in relation to proposed international agreements often stems from different national laws and regulations and national governments' eagerness to maintain these national arrangements. By delegating discretion to the national level, negotiators give national governments at least some scope to maintain their existing national arrangements, thereby facilitating agreements in areas that would be impossible to achieve with strict uniform rules. The cost of such delegation is that the agreements become shallower as they guarantee a lower level of harmonization.

## **4.2 Relevance and implications of delegation perspectives in ASEAN**

In the discourse surrounding the ASEAN context, the concept of delegation to member states holds a more significant position compared to delegation to supranational institutions. This is closely aligned with the first mechanism elucidated from the transaction-costs perspective, which underscores the delegation to implementers possessing specialized policy expertise, predominantly represented by national bureaucracies in the ASEAN setting. This mechanism seems to resonate more profoundly with the ASEAN dynamics than the second mechanism from the transaction-costs perspective, which focuses on delegation to an independent agent to circumvent the challenges decision-makers face in establishing credible commitments.

Despite the extensive discussions on this topic, it is noteworthy that there has been a conspicuous absence of concrete quantification of the degrees of delegation within ASEAN instruments to date. This study seeks to bridge this gap, positioning itself as a pioneer, or at the very least, as one of the initial endeavors in this domain, offering a nuanced analysis of the delegation dynamics in the ASEAN context.

The prevailing consensus in contemporary scholarship on ASEAN is that the reins of power firmly rest in the hands of national governments, with minimal constraints either from

the citizenry or from supranational entities (e.g., Jones and Smith 2007; Nesadurai 2017; Beeson 2019). Echoing this sentiment, Woon (2017) noted that while the ASEAN Charter has fortified the organization's legal and organizational structure, it essentially codified the existing "ASEAN way" into its institutional framework, with power remaining centralized within member governments and public participation being markedly limited (Quayle 2012; Gerard 2014). As stipulated in Article 7 of the ASEAN Charter, the ASEAN Summit, which encompasses the heads of member governments, stands as the paramount policy-making entity within the organization (ASEAN 2007). This structure implies that any contentious proposals are subject to the Summit's scrutiny and are prone to dismissal in the absence of consensus. Furthermore, despite the establishment of additional ASEAN organs to facilitate the integration agenda, these entities are notably under-resourced and lack the requisite authority to execute or enforce regional agreements (Beeson and Stone 2013: 171). Article 11 of the ASEAN Charter delineates the roles and functions of other ASEAN institutions, such as the Secretary-General and Secretariat, explicitly stating the absence of enforcement power concerning member states fulfilling their commitments. Given this backdrop, the first descriptive hypothesis is therefore:

***HYPOTHESIS 4.1: ASEAN agreements grant more discretion to national actors than to supranational institutions.***

The transaction-costs perspective's focus on policy expertise and information asymmetry as drivers of delegation are particularly apt in the ASEAN context. The Summit consists of career politicians and only discusses the most important and sensitive issues. Negotiations on technical and non-sensitive issues predominantly occur at the committee and working group levels (Deinla 2017: 130). Officials operating at these levels are typically national bureaucrats, well-versed in specific policy domains they are engaged with. However, they face a formidable challenge: the inability to fully foresee the repercussions of various policy initiatives across the diverse national landscapes due to the extensive range of issues under consideration and the pronounced disparities in the legal systems of member states. Consequently, it becomes exceedingly impractical and resource-intensive for political leaders or senior officials to dedicate the necessary time and effort to comprehend the potential impacts of policies across the multifaceted national and sub-national jurisdictions across ASEAN. Moreover, the costs associated with gathering sufficient information to make workable detailed rules are particularly high in areas of policy that involve high levels of information intensity or complexity. This leads to the following expectation:

***HYPOTHESIS 4.2a: ASEAN agreements involving higher levels of information intensity grant more national discretion.***

The transaction-costs perspective also directs our attention to the fact that disagreements among policymakers and implementers may lead to policy drift, and that policymakers may prevent drift by delegating to implementers only when their preferences align. In ASEAN,

where member governments are both policymakers and implementers, this mechanism implies a negative relationship between political controversy at the decision-making stage on a proposed agreement and delegation to member states in the contents of the agreement reached. When member states disagree on a proposal, but nonetheless manage to reach an agreement, their divergent preferences indicate that they have at least some incentives to deviate or drift from the agreement when implementing it. According to the logic of transaction costs, policymakers would prefer to bear the costs of formulating detailed rules for implementers if they fear that delegating discretion to those implementers would lead to policy drift. Considering this logic of the transaction-costs perspective, we would expect the following relation:

***HYPOTHESIS 4.2b:** ASEAN agreements that have been the subject of more controversy among member states at the time at which the agreements were proposed grant less discretion to member states.*

Contrary to the transaction-costs perspective, the consensus-building perspective posits that disagreements between contracting parties holding different policy positions can be resolved by delegating discretion to the involved parties (Dimitrova and Steunenberg 2000; Holzinger et al. 2011). Negotiations over ASEAN agreements apply consensus-based decision making, which involves lengthy deliberations through which all members must approve each decision. Granting member states discretion, at least when contention arises, allows them to maintain their existing national arrangements and accelerates the process of decision making. Such conflict avoiding behavior accords with at least some interpretations of the ASEAN way, which fosters a harmonious and collaborative environment. Consequently, the following hypothesis accords with both the consensus-building perspective and common understandings of ASEAN.

***HYPOTHESIS 4.3:** ASEAN agreements that have been the subject of more controversy among member states grant more discretion to member states.*

### **4.3 Research design**

The cases examined in this study consist of 235 legal instruments from the policy outputs dataset introduced in **Chapter 2**.<sup>33</sup> These instruments were originally compiled by the ASEAN Secretariat and published on the official ASEAN website. All instruments were included in order to obtain a comprehensive overview of delegation in ASEAN. This selection includes several different types of instruments (Table 4.1). The types of instruments are distinct from each other in terms of their legal status and the level of detail they contain. However, neither the founding documents nor the Charter lay out a clear definition for each of these types, and

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<sup>33</sup> The selected legal instruments exclude four founding documents of ASEAN as the study is interested in delegation within ASEAN structures, rather than delegation in the formation of ASEAN itself. The selection also excludes six minor instruments that are no longer in force and for which the texts are no longer available.



existing practice suggests that there is overlap between them and possibly inconsistency in the types of instruments used for essentially the same purpose. For example, a memorandum of understanding has been used for instruments that are both legal and non-legal in nature (Abdul Aziz and Dehousse 2016). It might be the case that agreements and protocols contain more provisions that are widely accepted by member states, which may in turn affect the amount of discretion granted in these instruments. It may also be the case that the level of technical detail or information intensity varies across types of instruments. Since these variables feature in the theoretical mechanisms, the analyses should control for the type of instruments.

**Table 4.1.** Types of ASEAN instruments

	Quantity
Agreement	71
Charter	2
Convention	2
Memorandum of Understanding	27
Mutual Recognition Arrangement	14
Protocol	116
Treaty	2
Total	235

*Dependent variable: Discretion*

The present study focuses on the varying levels of delegation across ASEAN agreements and over time. An established measure of discretion, initially formulated by scholars such as Epstein and O'Halloran (1999), and further developed by Franchino (2004; 2007), has been *adapted* for this analysis. According to these scholars, discretion is embedded in the major provisions of a law. Laws that contain relatively many provisions that grant exemptions, flexibility, or other expressions of discretion (that is: laws with a high delegation ratio) are said to delegate more discretionary powers to implementers. A meticulous analysis of the text of all 235 legal instruments was conducted, with each significant provision being coded based on its potential to delegate discretionary power.

In the context of this study, a provision grants discretionary executive powers if it allows implementers to select one of several policies, even if that choice is limited to a small set of allowable policies within a limited period of time.<sup>34</sup> Discretion often entails rather technical provisions. For example, Article 6 of the ASEAN Multilateral Agreement on Air Services contains the provision that ‘a Contracting Party [*member state*] may withhold, revoke, suspend, impose conditions on or limit the operating authorization and technical permission of

<sup>34</sup> It is important to note that the interpretation of discretion in this study diverges from the ones referenced. Specifically, this research does not consider the procedural constraints associated with discretionary powers, a factor emphasized in previous works on delegation (cf. Franchino 2007: 283).

an airline or airlines of another Contracting Party whom they have evidence for violation of aviation security provisions of this Article, if they would not reach an agreement within 15 days; a Contracting Party may take interim action prior to the expiry of 15 days when required by an emergency' (ASEAN 2009). This provision gives AMS the discretion to require that the national aeronautical authority of the member country at fault must provide a credible reason for what happened within 15 days of the first consultation request.

The main dependent variable is the count of the instrument's major provisions that grant discretionary powers to member states when examining the extent to which an instrument delegates national discretion. There are a large number of instruments that grant no discretion whatsoever, even given a rather generous interpretation of discretion as explained above (Figure 4.1). This so-called over-dispersed distribution of discretionary power has also been observed in previous research on delegation in other systems, such as the EU (Thomson and Torenvlied 2011). The present study also examined the extent to which instruments delegate supranational discretion. In that case, it focuses on the count of the instrument's major provisions that grant discretionary power to the ASEAN Secretariat or Secretary-General.

### *Policy complexity*

The complexity metric draws inspiration from the policy complexity measure devised by Hurka and Haag (2020), encompassing four equally weighted components. The initial component is the sheer length of the agreement, encompassing the count of provisions present in both the preamble and the main body of each agreement. This dimension serves as an indicator of the workload that policymakers and implementers are expected to navigate. Subsequently, the depth of each agreement is incorporated into the measure. This involves identifying the number of paragraphs and subparagraphs contained within each agreement. Here, a single paragraph within an article is designated as level 1, while numbered sub-paragraphs nested within that article are classified as level 2. Any sub-points found within one or more of those level 2 paragraphs are categorized as level 3 paragraphs, and so on. Following this classification, the average depth score is then computed as follows:

$$\frac{(\text{number of level 1 elements}) + 2 \times (\text{number of level 2 elements}) + \dots + n \times (\text{number of level } n \text{ elements})}{\text{total number of elements}}$$

The minimum depth is 1, which indicates an agreement containing single paragraph articles only. Otherwise, the higher the score, the deeper the agreement is.

The third and fourth components of the complexity measure refer to the degree of interdependence both between and within agreements. The third component is the number of external references (to other legal instruments), and the fourth component is the number of internal references (to other articles/provisions of the same instrument). These four individual components were then transformed into Z-scores so that they were based on the same scale. Subsequently, the final complexity measure was derived from the average of these four Z-scores. Considering the skewed distribution of this measure and the over-dispersed nature of

the dependent variable, a log transformation was applied to this explanatory variable to improve the fit for the models under consideration.

This measure of complexity is a considerable advance on the way in which complexity has been measured in much prior research on delegation in other contexts. These often rely on the number of recitals as a proxy variable to measure a given law's degree of complexity or information intensity. Recitals precede the body each law. They give reasons for the contents of the articles and major provisions (e.g., Franchino 2007; Migliorati 2019; Thomson and Torenvlied 2010). Aside from being a rather rudimentary measure, the number of recitals is not a feasible approach in the ASEAN context. ASEAN agreements include a preamble, rather than recitals. This may be due to the 'soft law' approach of ASEAN, which enables member states to commit to agreements while maintaining more sovereignty (Abbot and Snidal 2000: 436-41). Preambles are quite distinct from recitals, particularly in that they contain fewer references to other instruments to which the present one relates.

### *Policy conflict*

Policy conflict is a key part of the theoretical perspectives on delegation, both in the transaction-costs perspective and the consensus-building perspective. This study operationalizes policy conflict through the lens of economic and political heterogeneity among member states, given that such diversity often gives rise to varying policy positions during the negotiation phases of proposed laws. A range of studies on decision-making in ASEAN underscore the significance of domestic politics in negotiations (Nesadurai 2003; Jones 2010), while others emphasize the role of regional economic structures (Ravenhill 2008; Plummer 2009), or a combination of both politics and economics (Kim 2011; Suzuki 2020). This study takes the view that policymakers' preferences are influenced by both their states' economic and political structures. Adopting an ASEAN policy instrument generally implies a shift toward deeper integration, as common rules and policy harmonization are required to regulate cross-border interactions. The greater the heterogeneity among member states, the most difficult such harmonization becomes, at least for the states that have to change. In terms of political heterogeneity, the most relevant difference is between democratic and authoritarian regimes, and ASEAN has cases of both and intermediate types of regimes. Such political diversity can be a source of disagreements on normative issues, such as human rights. Similarly, controversies regarding regulatory issues often stem from substantial differences regarding levels of economic development.

To measure economic heterogeneity, an indicator from the KOF dataset (Gygli et al. 2019), specifically the *de jure* economic globalization, was employed. This is an annual measure of each country's exposure to economic globalization in terms of the domestic rules and regulations that govern trade in goods, services and finance into and out of the country. When member states' scores differ from each other, this implies that some are relatively more open or closed than others. The standard deviation of these scores was computed to gauge the extent of economic structure heterogeneity among ASEAN member states, using data from two

years prior to the adoption of the legal instrument.<sup>35</sup> This is because it may take a few years for governments to negotiate an instrument.

Following a similar procedure, the study employed the Polity2 scores from the Polity dataset (Marshall et al. 2019) to account for political heterogeneity. This measure captures the political regime type ranging from autocracy (-10) to democracy (+10). This is based on the assumption that governments of different political systems may hold different positions in specific policy areas.

### *Other controlling factors*

Several characteristics of the instruments themselves are included as control variables in this analysis. First, as discussed previously, a control variable distinguishing between agreements, protocols, and other forms of instruments is included. This is to account for the potential variations in delegation levels that might be inherently associated with different types of instruments, ensuring that the results are not influenced by such simple differences.<sup>36</sup> Second, a variable is introduced to account for policy salience, which is determined based on the number of media reports concerning each instrument, as sourced from ProQuest's Asian news stream database. The media reports were accumulated over a span of 15 months, encompassing the 12 months leading up to and the 3 months following the signing of an instrument. This helps in gauging the level of attention and significance attributed to each policy instrument in the public domain.

Furthermore, the study controls for the policy area in which each instrument is located. Building on the categorization of ASEAN's policy outputs detailed in **Chapter 2**, which utilized the coding framework established by the Comparative Policy Agendas Project, a dummy variable was created. This variable serves to distinguish between instruments that are centered on trade and harmonization (coded as 1), and those that are primarily about national policy (coded as 0).<sup>37</sup> While the latter category might have implications beyond borders, they do not necessitate as extensive a harmonization of regulations as the former. In addition to these characteristics of instruments, the analysis also considers the number of member states

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<sup>35</sup> The use of standard deviation, as opposed to range, offers a more nuanced understanding of the economic heterogeneity, as it considers the dispersion of all individual member states' scores, rather than just the gap between the most and least globalized states. This approach thus provides a more accurate reflection of the overall economic diversity within the ASEAN, capturing the subtleties and complexities of the economic landscapes across member states.

<sup>36</sup> It could be posited that the selection of a policy instrument is intrinsically linked to the chosen path of implementation, and consequently, to the delegation decisions. Basically, when determining the extent of discretionary power to be delegated to national governments, ASEAN policymakers might opt for a specific type of instrument. While this line of reasoning holds merit, it appears that most controversies or conflicts predominantly emerge during the negotiation phase, a stage at which the instrument type has already been decided, as substantiated by numerous case studies featured in this research. Therefore, it becomes imperative to distinguish between the predetermined level of discretion and the level that emerges as a result of the phenomena being investigated here.

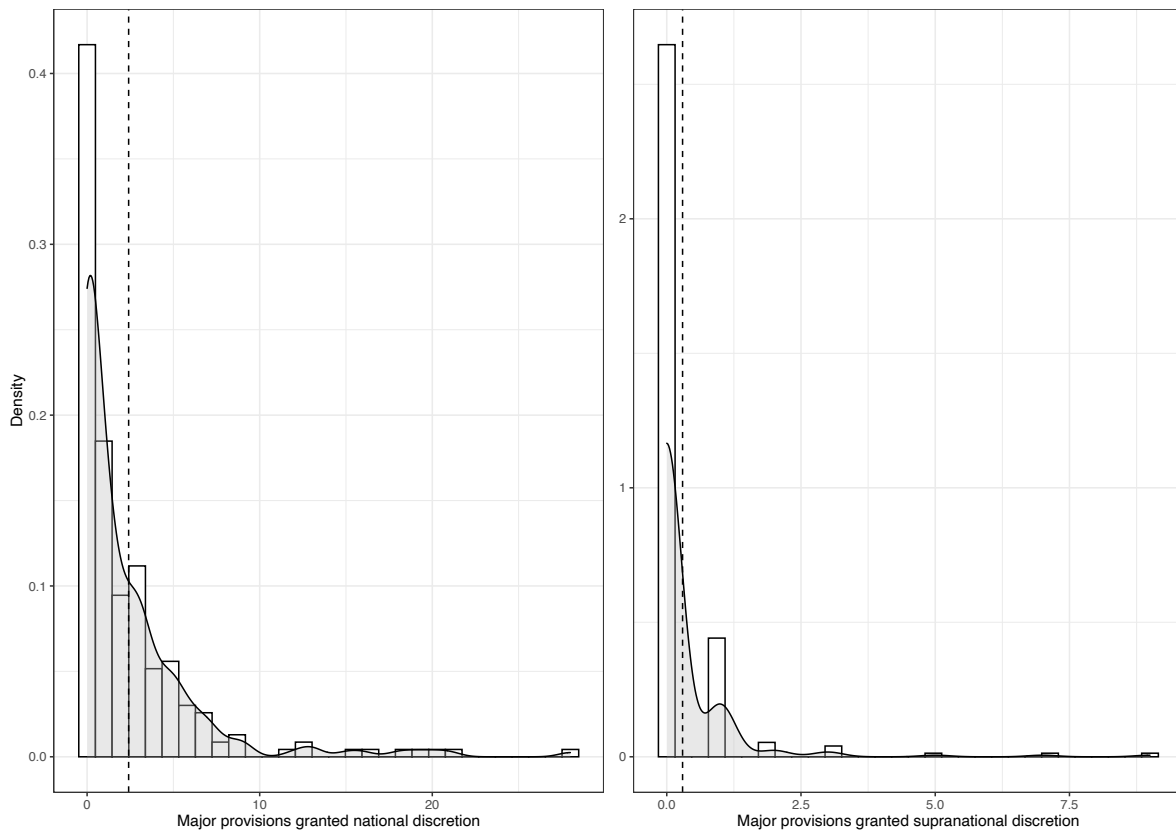
<sup>37</sup> The following policy topics were categorized as trade harmonization topics: domestic commerce and (intra-ASEAN trade); healthcare; agriculture; immigration; and transportation. Other topics included coordination of national policies, such as in law and order and macroeconomics, but did not concern trade directly.

at the time of the adoption of each instrument. This is to explore the possibility that the levels of delegation might vary in correlation with the accession of new member states, thereby potentially influencing the dynamics of agreement and policy formulation.

#### 4.4 Quantitative findings

The evidence clearly supports the first expectation that delegation to member states happens frequently compared to delegation to ASEAN institutions. Figure 4.1 shows the distribution of national and supranational discretion in ASEAN. In a large minority of instruments, 98 out of 235 cases, national discretion is equal to zero. By contrast, in a large majority of instruments, 196 cases, there is no delegation granted to supranational institutions. The dashed lines represent the average number of major provisions granting discretionary power. On average, across the 235 instruments, 2.4 provisions grant delegation to member states. The average number of major provisions granting discretion to ASEAN institutions, such as the Secretariat, is significantly smaller at only 0.3 provisions ( $p < 0.001$ ).

**Figure 4.1.** Distribution of national and supranational discretion in ASEAN



Note: The dashed lines represent the average number of major provisions granting discretionary power.

The evidence also supports the hypothesis (Hypothesis 4.2a) derived from the transaction-cost perspective that policy complexity is associated with more delegation to member states. In line with Hypothesis 4.2a, the coefficient associated with policy complexity is positive and significant. This is also a substantively important effect as indicated from the expected values of national delegation at different values of policy complexity. Figure 4.2 (left panel) indicates that controlling for other variables, the expected number of discretionary provisions for member states increases from 0 to 2.4 as the level of complexity of an instrument rises from 0 to 0.95, which is from the minimum value to approximately one standard deviation above the mean.

**Table 4.2.** Determinants of delegation in ASEAN

	<i>Dependent variable:</i>	
	Major provisions giving national discretion	
	Model 1	Model 2
De jure economic globalization (sd)	<b>-0.27***</b> (0.09)	<b>-0.52***</b> (0.19)
Polity2 regime spectrum (sd)	-0.32 (0.21)	0.12 (0.32)
Policy complexity	<b>2.73***</b> (0.26)	<b>3.55***</b> (0.32)
Number of member states ( <i>Reference: 5</i> )		
Number of member states (6)	0.28 (0.37)	-0.32 (0.44)
Number of member states (7)	0.58 (0.62)	-0.93 (1.02)
Number of member states (9)	0.29 (0.57)	-0.41 (0.87)
Number of member states (10)	0.52 (0.40)	<b>-1.17*</b> (0.66)
Type of instruments ( <i>Reference: Agreements</i> )		
Protocols	<b>-0.78***</b> (0.20)	-0.44 (0.29)
Other types	<b>0.35*</b> (0.18)	0.24 (0.29)
Policy salience ( <i>Reference: Not mentioned at all</i> )		
Mentioned once/twice	0.10 (0.18)	-0.39 (0.25)
Mentioned three/more times	-0.32 (0.23)	<b>-1.36***</b> (0.40)
Policy area (trade/harmonization)	0.24 (0.16)	
Constant	4.28** (1.83)	5.81* (3.25)
Observations	235	113
Log Likelihood	-378.78	-161.49
theta	2.57*** (0.56)	4.79*** (1.72)
AIC	783.57	346.98

*Note:* \*  $p < 0.1$ ; \*\*  $p < 0.05$ ; \*\*\*  $p < 0.01$ . Negative binomial regressions (standard errors in parentheses).

As a robustness test, additional models were examined with the main components of the complexity measure entered as separate variables, namely average depth and the number of major provisions.<sup>38</sup> The results are presented in Table 4.1.2 (Appendix 4.1). Both components demonstrated positive and statistically significant impacts on national delegation.

The evidence also supports Hypothesis 4.2b from the transaction-costs perspective that there is a negative relation between controversy and delegation to national implementers. At the same time, this evidence of course contradicts Hypothesis 4.3 from the consensus-building perspective, which posits the opposite relation. Specifically, greater economic heterogeneity among member states is significantly and negatively associated with delegation. This is a substantively important effect in terms of its magnitude. Figure 4.2 (right panel) shows the decrease in the expected count of discretionary provision for member states at different levels of economic heterogeneity among member states. At the lowest observed level of economic heterogeneity, the expected number of discretionary provisions is 3.2. When the level of economic heterogeneity is average, the expected number of discretionary provisions decreases to 1. At a relatively high level of economic heterogeneity, corresponding to one standard deviation above the average, the expected number of discretionary provisions decreases further to 0.8.

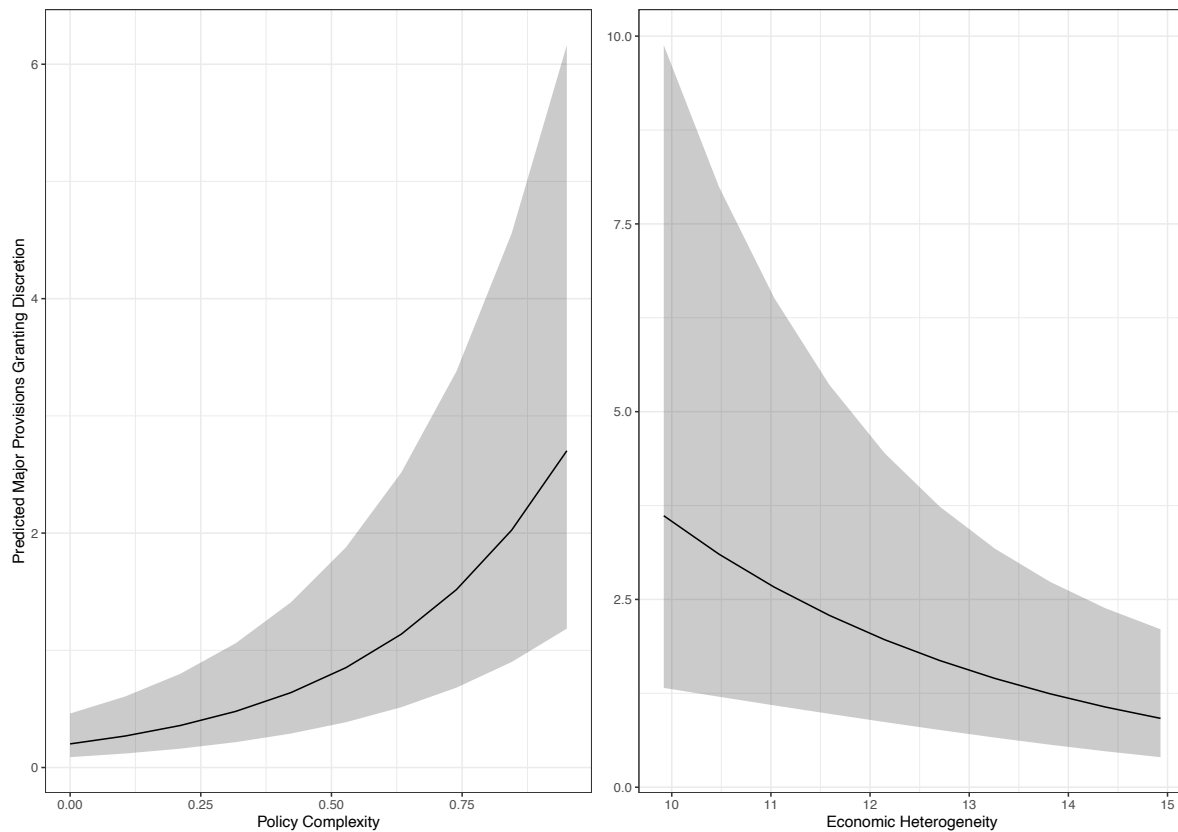
It is noteworthy that the economic measure of heterogeneity is significant and negative, but not the measure of political heterogeneity based on the degree of democracy. This implies that it is economic heterogeneity, rather than political institutional heterogeneity, that is the main driver of controversy among member states that affects the design of legal instruments.<sup>39</sup> Given the effects of economic heterogeneity, I repeated the analysis focusing on the subgroup of legal instruments concerning economic issues, by combining the Macroeconomics and Intra-ASEAN Trade policy topics. As shown in Model 2 of Table 4.2, the results are consistent, and perhaps more importantly, the effects of both economic heterogeneity and policy complexity are much stronger in this subgroup of economic instruments.

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<sup>38</sup> This variable, denoting the “total number of major provisions,” indicates the length of the instrument, differentiating it from the first component of the complexity measure - structural length - which *does include* provisions contained in the preamble. It is anticipated that instruments of greater length will delegate a higher degree of discretion. Given the strong correlations between this variable and the quantities of internal ( $r = 0.8, p < 0.001$ ) and external ( $r = 0.6, p < 0.001$ ) references, these latter elements were not included as separate variables.

<sup>39</sup> I also explored an interaction term between policy complexity and economic heterogeneity in the main model. Analyzing the interplay between these two variables could offer interesting insights into the circumstances under which policymakers deem delegation as an optimal choice. For instance, given a policy bias (or conflict), one would expect that their choice would go for delegation only when the relative importance of complexity is higher. In other words, as complexity intensifies, the marginal effect of conflict on delegation is anticipated to be positive, suggesting that policymakers might be willing to give up some control, despite existing policy biases. The analysis reveals a significant negative coefficient for the interaction term ( $p = 0.06$ ), denoting a substantial influence on the delegation decision as both policy complexity and economic heterogeneity escalate concurrently. Interestingly, while not achieving statistical significance, the coefficient associated with economic heterogeneity transitions to a positive value. Furthermore, the influence of complexity seems to amplify threefold compared to its manifestation in Model 1 of Table 4.2, while retaining its statistical significance ( $p = 0.01$ ).

**Figure 4.2.** Effects of complexity of laws and economic heterogeneity among states on national discretion



Note: Expected values derived from Model 1 in Table 4.2, holding other variables at their mean (median for nominal ones) values.

There are few noteworthy findings in relation to the control variables and since these were not theorized, they warrant a brief discussion. The main purpose of including these controls is to give us greater confidence in the findings relating to the theoretical mechanisms. One of the main control variables distinguishes between different types of instruments. Protocols are significantly associated with less delegation to national governments compared to agreements, while other types of instruments have a significantly positive effect on delegation. One possible explanation for this finding is that close reading of protocols contained in the dataset reveals that they frequently serve as extensions of the primary framework agreements, thereby addressing negotiated issues with a higher degree of specificity and detail.

It is notable that generally, the number of ASEAN member states and the level of policy salience do not correlate with varying levels of delegation. However, in the economic cases subgroup analyzed in Model 2 of Table 4.2, it appears that instruments adopted during the ten-member state phase of ASEAN delegate significantly less compared to the initial phase with five members. Likewise, instruments reported at least three times in the media confer markedly less discretionary power compared to those scarcely reported. This aligns with established research indicating that an increase in decision-making actors can complicate the process and



elevate the risk of policy drift, a phenomenon documented in various political systems (e.g., Hosli 1999; Konig and Brauning 2004: 421) and research contexts (e.g., Summel 1902). This seems to be applicable to the ASEAN scenario as well. The reduced delegation observed in frequently reported policy instruments, on the other hand, might stem from the heightened accountability brought about by media scrutiny. Policymakers, aiming to safeguard their reputation and credibility, might opt to retain tighter control over the implementation of such policies to prevent potential backlash from perceived policy missteps or inconsistencies. This approach resonates with an aspect of the ASEAN way in practice, emphasizing diplomatic face-saving or avoidance of embarrassment (Nair 2019; 2021).

#### **4.5 Cases that illustrate the theoretical perspectives**

This section highlights three cases that illustrate the theoretical mechanisms contained in the two contrasting theoretical perspectives. First, the Medical Device Directive illustrates the positive relation between highly complex, technical proposals and relatively large amounts of delegation to national implementers, in line with the transaction-costs perspective (Hypothesis 4.2a). Second, also in line with the transaction-costs perspective (Hypothesis 4.2b), the Intergovernmental Commission on Human Rights (AICHR) shows how disagreement among decision-makers, which in ASEAN are also national implementers, can be associated with low levels of national discretion. Third, the Agreement on Transboundary Haze Pollution (AATHP) illustrates how, in accordance with the consensus-building perspective (Hypothesis 4.3), controversy among decision-makers may be resolved with relatively large amounts of national delegation. This third case shows that although the consensus-building perspective is not supported by the weight of comparative quantitative evidence, it can provide a compelling interpretation of particular cases of delegation.

The 2014 ASEAN Medical Device Directive as an example of a highly technical agreement that delegates a substantial amount of discretionary power to member states. The Directive aims to harmonize national medical device regulations, which would help to create a single ASEAN market for medical devices. It lays out technical and safety requirements for device registration, a regional post-marketing alert system, and, most notably, a risk-based classification system for medical and diagnostic devices. This classification follows the Global Harmonization Task Force's and the EU's models (Schoener and Hoxey 2019). Pursuant to Article 4, the classification system consists of four groups, into which each medical device is placed: A (low risk), B (low to moderate risk), C (moderate to high risk), and D (highest risk) (ASEAN 2014). The higher the risk, the longer the evaluation time for the device takes. This system requires that countries running their own classification regime, such as Indonesia and Thailand with three-tier classification systems, have to adjust their systems (Wong and Tong 2018: 440, 584-85). The complexity of the medical device approval system also relates to the fact that different ASEAN member states classify the same device into different risk categories. For example, contact lenses are classified as a class B item in Malaysia and Singapore, but Indonesia places contact lenses into class C (Qualtech 2018). This can lead to variations in the turnaround time for medical device approval across different member states. As might be

expected in the case of such technically intricate policies, at least from the perspective of the transaction-costs perspective, the Directive grants considerable discretion to member states. Of the agreement's 114 major provisions, 18 granted discretionary power to member states.

Negotiations on the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2007 illustrate the linkage between controversy and delegation, and in line with the transaction-costs perspective shows how disagreement can be associated with low levels of discretion. The negotiations on the AICHR took place during the discussions on the ASEAN Charter. This was a highly controversial proposal on which opinion was sharply divided among two groups of ASEAN members. On the one side, a group led by the Philippines argued that the body should have a monitoring function, which would be similar to that of a regional court or commission (Koh et al. 2009: 59). This regulatory-based approach was generally in line with these states' national laws, since the National Human Rights Commissions had already been established in Philippines, Indonesia, Malaysia and Thailand. On the other side, Cambodia, Laos, Myanmar and Vietnam proposed a more limited approach in which the regional human rights institution would act as a consultative body only. This would retain national authority in this sensitive area (Renshaw 2019: 47). Pursuant to Article 14.2 of the Charter, the controversy was resolved by a ministerial intervention indicating that the AICHR's mandates would be determined later (ASEAN 2007). Negotiations on the AICHR's terms of reference were concluded two years later, in July 2009, and concluded that the AICHR should be a consultative body only (Tan 2011). In terms of delegation, the Charter only grants a modest amount of discretion to member states in four out of its 196 major provisions. This aligns with the expectation that when implementers' policy preferences diverge from the contents of a law to be implemented, such as the divergence between the Philippine and other governments' preferences from the outcome of the negotiations, decision-makers formulate laws that grant little delegation.

The 2002 ASEAN Agreement on Transboundary Haze Pollution (AATHP) was the subject of a very high level of controversy regarding environmental governance in ASEAN (Varkkey 2014; Nesadurai 2018). In line with the consensus-building perspective, the case illustrates how controversy can be resolved by delegating discretionary power to national implementers. Seven of the agreement's 117 major provisions grant discretionary power to member states, which is well above the average of all laws.

The AATHP addresses the repeated practice of open burning, which have caused severe economic damage and health concerns across the region. The haze originates mainly from Indonesia, where the palm oil industry is well established. Four rounds of negotiations on the proposed AATHP were held between March and September 2001. Previous analyses of this case suggest that the ASEAN way, particularly the avoidance of overt conflict, hindered the effectiveness of the agreement (Varkkey 2020). Indeed, it was clear that member states had starkly different stances on the matter. Four countries - Brunei, Singapore, Thailand, and the Philippines - were the downwind victims of the haze, thus in the camp that favored a zero-burning policy. Indonesia was reluctant to agree to any arrangements that upset the status quo, since they were the source of the problem and did not want to bear the costs of solving it. In the same vein, Malaysia had a conflicting interest as some of the largest Malaysian oil palm

plantation firms were operating in Indonesia (Nesadurai 2018: 207-9; Varkkey 2020: 168). Other members did not take strong positions, since they did not experience any direct damage. Moreover, supporting a change to the status quo might have unintended consequences on their agricultural sectors (Nguitrageol 2011: 368). Eventually, this agreement was concluded with the signing of all ten member states. Pursuant to Article 1.3 and 1.13, the agreement delegated the authority to self-regulate ‘controlled burning’ practices to member governments (ASEAN 2002). Therefore, on the key issue that the agreement purported to address, and that was the subject of protracted disagreement among states, national governments retained substantial discretion.

#### **4.6 Conclusions**

This study extends an established comparative research program on delegation to ASEAN. It examines new evidence consisting of the coding of over 8,500 major provisions in all 235 available ASEAN legal instruments. It also assesses the relevance of two distinct explanatory perspectives on delegation. The new descriptive information indicates that delegation to ASEAN member states occurs moderately frequently. On average, 2.4 percent of provisions in ASEAN laws grant at least some discretion to member state governments. While a modest number, this is at a comparable level to that found in previous comparative research on delegation in other contexts (e.g., Epstein and O'Halloran 1999; Franchino 2004; 2007). As expected, delegation to supranational actors, such as the ASEAN Secretariat, is much rarer. Delegation has been conceptualized as a form of cooperation in a wide range of contexts (Hawkins et al. 2006: 3-40; see also Hooghe and Marks 2015). Notwithstanding the distinctive characteristics of the ASEAN way, ASEAN agreements bear this prominent hallmark of cooperation that has been found in many other national and international contexts. Moreover, the modest level of national delegation in ASEAN suggests that the agreements themselves do far more than leave member states free to make their own arrangements. Instead, ASEAN laws generally contain rules that apply to all states equally, which when implemented correctly brings greater harmonization.

The weight of evidence supports theoretical propositions derived from the transaction-costs perspective (e.g., Epstein and O'Halloran 1994; Bawn 1995; Huber 1998). The kernel of this perspective is that when delegating discretionary power to implementers, policymakers seek to avoid the costs associated with gathering specialist technical information themselves, and the costs of monitoring and sanctioning implementers who are prone to policy drift. Consequently, ASEAN agreements that are more complex - or more information intensive in the language of transaction-costs theory - are associated with significantly more national discretion. This first key finding relating to the transaction-costs perspective suggests that both the technical contents of policy proposals and the distribution of technical knowledge drive the design of ASEAN laws. In ASEAN, the preponderance of technical knowledge is located at the national level, while ASEAN policymakers are mostly generalists and supranational institutions are relatively weak.

The second key finding in relation to the transaction-costs perspective is that more economic heterogeneity among member states is associated with lower levels of national delegation. Economic heterogeneity underlies many differences in policy preferences among states on economic regulatory issues. Because ASEAN members are both policymakers and implementers, such differences in policy preferences imply that at least some members have incentives to deviate from collective outcomes that apply to all ASEAN states equally. According to the logic of transaction costs, granting delegation to implementers who have incentives to deviate would exacerbate the potential for policy drift, which can only be ameliorated by costly monitoring and sanctioning mechanisms. The fact that an economically diverse ASEAN grants modest levels of national delegation implies that ASEAN policymakers do not shy away from difficult decisions that require states to live with outcomes they may not prefer. The ASEAN way does not appear to place excessive emphasis on conflict avoidance in this respect.

The consensus-building perspective on delegation posits that policymakers delegate authority to themselves as a way of resolving controversy and is therefore the antithesis of the transaction-costs perspective (Dimitrova and Steunenberg 2000; Thomson and Torenvlied 2011). It is perhaps surprising that the evidence on delegation in ASEAN provides little support for the consensus-building perspective, because it resonates with at least some descriptions of the ASEAN way. It would, however, be counterintuitive if ASEAN policymakers always rejected the opportunity to delegate authority to themselves when the stakes are high. Indeed, **Section 4.5** presented some anecdotal evidence from the controversial Agreement on Transboundary Haze Pollution that they sometimes do so. It is likely that the logic of the consensus-building perspective applies only to certain instruments or to particular issues within certain instruments on which member state's preferences diverge markedly.

These findings have important implications for the long-standing debate on the ASEAN way. Traditionally celebrated for its emphasis on consensus and non-interference, the ASEAN way is often perceived as a unique model of regional cooperation (e.g., Haacke 2003; Acharya 2009; Caballero-Anthony 2022). The evidence that ASEAN's delegation practices are strategically adapted to manage cooperation in complex issue areas and economic diversity among its members prompts us to reconsider this perspective. It suggests that the ASEAN way is not merely about avoiding conflict or maintaining sovereignty. Rather, it presents an institutional design choice that mirrors practices seen in other contexts, and that strategically harnesses the collective capacities of its members to navigate complex regional challenges. In this sense, ASEAN demonstrates a form of regional cooperation that is not static but dynamically adjusts its institutional formality and levels of delegation according to the demands of the moment. This is in line with the finding that states are finding new ways to cooperate without making strict promises or giving up too much sovereignty (Westerwinter, Abbott, and Biersteker 2021; Vabulas and Snidal 2023).

Furthermore, while the insights gained from ASEAN's delegation patterns offer valuable lessons, it is crucial to recognize that these practices may not be universally applicable across all regional organizations. Just as we have observed a specific pattern of delegation within ASEAN, shaped by its unique challenges and institutional history, other regional bodies

may exhibit similar or divergent delegation strategies based on their problem structures. However, this does not imply a one-size-fits-all solution or that a path-dependent approach to delegation is inevitable. Just as it was incorrect to assume the EU model could be universally applied, it is equally mistaken to presume that other organizations should mirror ASEAN's institutional design choices simply because they share certain similarities.<sup>40</sup> Each regional organization operates within a distinct political, economic, and cultural milieu, which in turn necessitates tailored approaches to governance and cooperation.

The next step in developing knowledge of delegation in ASEAN could investigate these conditions with more in-depth comparative case studies that focus on the negotiations prior to the adoption of agreements. Such case studies could detail the parts of proposed agreements that were controversial and how these controversies were resolved as a way of shedding more light on the mechanisms that lead policymakers to grant national delegation.

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<sup>40</sup> Nevertheless, Chapter 6 touches on both the similarities and systematic differences between delegation to member states in EU and in ASEAN.

## Appendix 4.1      Supplementary material for Chapter 4

**Table 4.1.1.** Descriptive statistics for variables used in the analyses

Variable	N	Mean	St. Dev.	Min	Max
Major provisions granting national discretion	241	2.41	3.91	0	28
Major provisions granting supranational discretion	241	0.29	0.94	0	9
De jure economic globalization (sd)	239	14.11	0.82	9.92	15.44
Polity2 regime spectrum (sd)	239	6.72	0.63	4.61	7.83
Structural length	241	45.02	52.31	0	422
Average depth	235	1.89	0.47	1.00	2.98
Number of external references	235	7.54	7.22	0	81
Number of internal references	235	5.23	11.15	0	87
Policy complexity	235	0.64	0.31	0.00	2.12
Number of major provisions	241	35.39	45.95	1	375

**Table 4.1.2.** Robustness checks using individual components of policy complexity measure

	<i>Dependent variable:</i>	
	Major provisions giving national discretion	
	Model 1	Model 2
De jure economic globalization (sd)	<b>-0.26<sup>***</sup></b> (0.09)	<b>-0.74<sup>***</sup></b> (0.20)
Polity2 regime spectrum (sd)	-0.32 (0.21)	0.12 (0.33)
Average depth	<b>1.06<sup>***</sup></b> (0.21)	<b>1.76<sup>***</sup></b> (0.30)
Number of major provisions	<b>0.01<sup>***</sup></b> (0.001)	<b>0.01<sup>***</sup></b> (0.002)
Number of member states ( <i>Reference: 5</i> )		
Number of member states (6)	0.23 (0.37)	-0.47 (0.44)
Number of member states (7)	0.51 (0.62)	<b>-1.87<sup>*</sup></b> (1.06)
Number of member states (9)	0.27 (0.57)	-1.05 (0.88)
Number of member states (10)	0.49 (0.40)	<b>-1.51<sup>**</sup></b> (0.69)
Type of instruments ( <i>Reference: Agreements</i> )		
Protocols	<b>-0.63<sup>***</sup></b> (0.21)	-0.24 (0.30)
Other types	<b>0.37<sup>**</sup></b> (0.18)	0.20 (0.31)
Policy salience ( <i>Reference: Not mentioned at all</i> )		
Mentioned once/twice	0.12 (0.18)	-0.23 (0.26)
Mentioned three/more times	-0.21 (0.23)	<b>-0.97<sup>**</sup></b> (0.40)
Policy area (trade/harmonization)	<b>0.43<sup>***</sup></b> (0.16)	
Constant	3.25 <sup>*</sup> (1.86)	7.59 <sup>**</sup> (3.35)
Observations	235	113
Log Likelihood	-377.85	-160.14
theta	2.51 <sup>***</sup> (0.53)	4.44 <sup>***</sup> (1.59)
AIC	783.70	346.27

*Note:* \*  $p < 0.1$ ; \*\*  $p < 0.05$ ; \*\*\*  $p < 0.01$ . Negative binomial regressions (standard errors in parentheses). The models replicate Model 1 and 2 of Table 4.2 respectively.

## 5 Compliance with ASEAN agreements

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### 5.1 Member states' ratification timeliness and commitment strength

To what extent are there differences among member states in their timing of ratification with ASEAN legal instruments? The answer to this descriptive question is relevant to the compliance of collective decision-making outcomes within ASEAN. When the decision-making process transforms diverse and competing policy preferences into single legal instruments, member states are then required to implement ASEAN decisions contained in these instruments at their national level. This may involve adjusting current national laws and regulations or establishing new procedures and institutions. More importantly, this implementation process starts with the ratification of the instrument by national governments, thereby formally binding themselves to its provisions. In most AMS, legal systems operate on the dualist principle (Hoang et al. 2016: 7).<sup>41</sup> This principle necessitates that a country first approves or ratifies an international treaty or agreement via domestic legislation before its provisions can be incorporated into national law (Harris and Sivakumaran 2015: 68). Thus, ratification can be viewed as a fundamental precursor to the domestic implementation of any ASEAN agreement.

Available evidence suggests that there is a considerable variation among member governments regarding the time elapsed between signature and individual ratification across a broad range of ASEAN legal instruments. Consider, for example, the significant disparities observed in the case study of the 2002 AATHP from the previous chapter (**Section 4.4**). Here, Indonesia took nearly 13 years to ratify the agreement, while six other members, led by Singapore, completed ratification within a year. Such non-compliance may have substantial negative impact on the effectiveness of regional integration. The ASEAN Economic Community (AEC) Scorecard, which is a monitoring mechanism developed and maintained by the Secretariat to track the implementation of ASEAN decisions, suggests that delays in member states' ratification of economic agreements align with a low implementation rate (68.2%) for both Phase 1 and 2 of the AEC Blueprint (Basu Das 2013: 16). The 2012 Scorecard's report further underscores this point, stating that as of December 2011, only 137 (or 74.5%) out of 184 legal instruments signed under AEC had gone into force. The remainder still awaited ratification by member states (ASEAN Secretariat 2012: 25).

While the Scorecard does not provide specific reasons for the delays, it is reasonable to argue that these reported lapses in timely ratification by AMS, though indirect, qualify as an

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<sup>41</sup> Note that even for those members, such as Vietnam, that allow a treaty to be directly applied at the domestic level, national decision-makers are still required to make a decision to agree to be bound by the treaty. For more detailed information, see Phan (2019).



indicator of *relative* compliance. Strictly speaking, full compliance is a complex concept to measure, as it encompasses not just appropriate policies enacted by national agencies, but also proper conduct by street-level bureaucrats delivering services to the public. *Delays* in this context specifically refer to the extent to which national approvals or ratifications, as reported by member states, exceed the deadlines specified in the agreements. Detailed information on the duration taken by any member state to ratify any of these instruments are readily accessible. Moreover, since ratification initiates the compliance process, as described earlier, any potential deviation can be identified early.

By contrast, the implementation rates outlined in the Scorecard are derived from reports submitted by member states to the Secretariat concerning their national laws. These figures might mask instances of non-compliance, as there is no guarantee that the reported national laws adequately transpose the signed ASEAN agreements. For instance, the 2012 Scorecard's report shows that all member states had fully implemented ASEAN decisions related to the promotion of free flow of skilled labour during Phases 1 and 2 of the AEC. Contrarily, despite having signed a number of the sector-specific Mutual Recognition Arrangements, Thailand did not put into place any domestic legislation needed to implement these agreements (Siow Yue 2013: 119-20).<sup>42</sup>

In addition, the level of commitment of participating countries to an international agreement is notably reflected in the temporal dynamics of the ratification process. In particular, the speed at which these countries ratify a treaty can gauge the extent of their commitment and adherence to the terms and stipulations outlined in such treaty (e.g., Dai 2007; Morrow 2007: 259-60; Simmons 2009). Accordingly, if a member state proceeds to ratify an ASEAN agreement swiftly, it can be interpreted as a demonstration of its robust commitment. Such expeditious ratification suggests that the country acknowledges the substantial benefits tied to participation and is dedicated to fulfilling the agreement's obligations. Conversely, delays in ratification implies a lukewarm commitment to the agreement, which could hint at internal discord or reluctance to comply with the agreement's provisions. Such discord may stem from domestic veto players and the opposing interests (Mansfield and Milner 2012: 40, 55-57; Haftel and Thompson 2013), while reluctance could originate from disagreements over the contents of the agreement during the negotiation stage prior to the agreement's adoption (Torenvlied 2000; Thomson, Torenvlied and Judge 2020).

The present chapter's focus on the timing of national ratifications in accordance with ASEAN laws marks a significant departure from traditional approaches to compliance research on ASEAN. Most existing studies tend to treat compliance as an *isolated* concept, detached from the broader ASEAN policy process where member states are both decision-makers and implementers. Some studies predominantly focus on mechanisms (or lack thereof) at the regional level that could enhance compliance, while overlooking both the structural constraints present at the national level and the impact of the characteristics of international negotiations on the ratification and implementation of international treaties (e.g., Chesterman 2015;

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<sup>42</sup> These arrangements aim to standardize the qualifications of professional services among participating member states.

Beckman et al. 2016). Meanwhile, others solely consider national attributes such as the effectiveness of the public bureaucracy as drivers of (non-)compliance (e.g., Goltermann and Borzel 2012; Quah 2016). This chapter, by contrast, adopts a more comprehensive approach, considering both regional and national factors, and demonstrates that a member state's level of compliance with regional decisions, as evident through delays in national ratifications, is conditioned by both the regional negotiation processes involved in ASEAN agreements, and the specific national characteristics of the member states. In doing so, it links different stages of the ASEAN policy process: the negotiation (or policy formulation) stage and the subsequent implementation stage.

This approach offers a re-evaluation of the conventional interpretation of ASEAN compliance. It conceptualizes compliance not as an isolated event, but as an integral component within a chain of interconnected cooperation processes. Each stage in this chain both shapes and is shaped by the preceding and succeeding stages. This point of departure is inspired by Fearon's (1998) characterization of international cooperation as a complex, two-step process. Initially, it involves dynamic navigation through a bargaining problem to reach an agreement, and then transitions to the stages of implementation, monitoring, and enforcement of that agreement. Fearon (1998: 274-75) further argues that states are more likely to deviate from implementing certain parts of agreements when those parts do not align with their preferences. This notion finds corroboration in Buchanan and Keohane's (2011: 408-9) assertion that compliance with global institutions or international agreements is indeed influenced by the preferences or interests of parties involved during the bargaining phase that takes place before the adoption of these institutions. These arguments are particularly relevant in the context of international organizations like ASEAN, where the lines between political decision-makers and implementers are often blurred, making the negotiation and enforcement stages of cooperation intricately linked.

Prior research on AMS compliance with international human rights treaties lends considerable plausibility to the proposition that the timing of national ratifications of an ASEAN agreement is influenced by the preceding negotiations surrounding the proposal of the agreement. As observed by Davies (2014: 422), the six member governments which had expressed reservations towards key treaties did not proceed to ratify optional protocols that would have expanded the treaties' scope and detailed obligations. In addition, anecdotal evidence from research on the role and capacity of administrative agencies across five AMS suggests that member states' individual characteristics can indeed impact the timing of national ratifications. Studies by Quah (2016: 467-73) and colleagues concluded that AMS with more conducive policy environments and a more skilled civil service demonstrated greater effectiveness in implementing ASEAN decisions at the national level.

However, these studies are inherently limited by their case-specific focus. The propositions discussed would gain stronger substantiation if the same findings could be demonstrated across a wide range of observations. This is precisely what this chapter aims to accomplish. Therefore, the subsequent section will formulate hypotheses regarding variations in compliance, followed by an outline of the original ASEAN ratification dataset on which these hypotheses will be tested and a detailed description of this chapter's research design.

## 5.2 Two explanations of (non-) compliance in ASEAN

How do we explain the variation in member states' ratification of ASEAN legal instruments? The existing literature offers two established approaches: preference-based and state-based explanations. The former underscores policy preferences of the implementers regarding the agreements to be implemented, while the latter stresses variations among states, such as governance structure, as influencing compliance capabilities. Although both approaches have garnered support in different contexts through both qualitative and quantitative methods, they remain less explored and rigorously tested in ASEAN.

Preference-based explanations emphasize the explanatory power of implementers' policy preferences in relation to the decision outcomes they are charged with implementing (e.g., Torenvlied 2000; Thomson, Torenvlied and Arregui 2007; Thomson, Torenvlied and Judge 2020). Studies of this tradition are grounded in the rational choice models whose core assumption is that individuals or organizations act rationally, making decisions that are in line with their goals. This implies that such actors would choose the most optimal option from a range of possibilities, considering both their intended goals and any constraints tied to each alternative. Rationality, in this context, refers to a balance in decision-making that emerges from the confluence of personal values, intended outcomes, possible courses of action, and the standards applied in decision-making (Torenvlied 2000: 20). For actors to reach such a balance, it is essential that they have sufficient information about all these aspects. Thus, it is expected that each actor should fully comprehend: a) the potential courses of action available, b) the goals they want to achieve, and c) the possible positive and negative repercussions of each action on the attainment of their goals, as well as the likelihood of these repercussions. The 'best' or most optimal decision is then determined by the specific approach or standard chosen by the actor. For instance, an actor could opt for a course of action promising the greatest possible improvement - a strategy known as maximization - or one offering an acceptable improvement in the shortest amount of time, known as satisficing. The principle of maximization is central to purely rational behaviour, suggesting the pursuit of the maximum possible payoff from each decision, regardless of the context of the decision.

Building on these principles of rationality and decision-making, it is assumed that each implementer has unique preferences regarding the policy decisions they are responsible for carrying out.<sup>43</sup> These individual preferences play a critical role in shaping the approach to implementation, and the difference between an actual decision and an implementer's preference is identified as one of the conditions under which non-compliance occurs (Weingast and Moran 1983; McCubbins, Noll and Weingast 1989; Shepsle 1992). In the spatial model of politics, policies are commonly represented on one-dimensional "policy spaces", which encompass the status quo, the policy decision passed by the legislature, and all potential policy

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<sup>43</sup> It is important to recognize that each implementer is actually a complex composite of numerous individuals with differing interests. For these implementers to partake in a multilateral decision-making process, it is essential to reconcile these internal differences. The policy alternatives they represent is therefore an aggregation of these varied interests.

alternatives (Bendor and Meirowitz 2004; Thomson et al. 2006). The policy decision is the outcome of political decision-making and represents the prescribed alternative that the implementers are expected to implement. However, given that implementers each have a unique position on this one-dimensional space, if the decision outcome are distant from their preferred positions, it may create an "incentive to deviate" (Matland 1995; Oosterwaal and Torenvlied 2012; Thomson, Torenvlied and Judge 2020).

Suppose that a trade agreement specified a certain minimum standard of a product or service for it to be traded across participating countries. Regulatory agencies across participants might favour standards that are below, at par with, or above this international benchmark. Participants with preferences that differ from the level agreed might be inclined to stray from the agreement, potentially resulting in non-compliance. This propensity to deviate can stem from several factors. For example, as discussed in **Chapter 4**, participants who are also implementers here, may possess specialized knowledge within their policy domains or jurisdictions that leads them to favour different approaches. Alternatively, a preference for maintaining the status quo might arise due to ingrained bureaucratic procedures and established interests.

To mitigate non-compliance risks and reap the benefit from common measures, policymakers employ various enforcement mechanisms. One common strategy is designating a specific agent to monitor policy implementation. Should any deviations arise, this agent can intervene to guarantee compliance. The logic here is simple: if non-compliance results in tangible negative consequences, it becomes a rational choice for implementers to adhere to the prescribed laws out of self-interest (Buchanan and Keohane 2011: 408). Studies within the EU (Thomson 2010; Zhelyazkova 2013) and the US federal system (Yackee and Yackee 2010; 2016) contexts have demonstrated that an enforcement agent, armed with substantial supranational and legal powers, can drive compliance effectively under certain conditions. Another method is to lean on the "fire-alarm" oversight mechanism (McCubbins, Noll and Weingast 1987; 1989). This method encourages the public and non-state actors to oversee the activities of implementers. Should they notice any discrepancies in policy implementation, they can promptly alert policymakers. For example, the pivotal role of NGOs cannot be overstated in contexts like global environmental (Raustiala 1997; Dai 2002), labor governance (Hassel 2008), and arms control regimes (Coe and Vaynman 2020). These organizations vigilantly observe state actions, pinpoint non-compliance cases, and sound "alarms" when they detect significant transgressions.

These overarching arguments are directly pertinent to the ratification of ASEAN's legal instruments. Decision-makers within ASEAN encompass heads of member states in the Summit - the apex decision-making body - as well as sectoral ministers and national officials from member states in other decision bodies at both ministerial and senior official levels (Chapter 1). These national bureaucrats shoulder the responsibility of implementing ASEAN agreements within their respective countries.<sup>44</sup> Each member state ratifies an agreement and

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<sup>44</sup> Art. 10, the ASEAN Charter.

notifies the Secretary-General upon its successful completion.<sup>45</sup> However, these agreements do not take immediate effect. One goes into force for all member states either when the Secretary-General receives the final member state's instrument of ratification or a specified period after this last receipt. Some agreements define clear deadlines for member states to incorporate them into domestic legislation, while others remain ambiguous. The present chapter focuses on agreements with explicit deadlines.<sup>46</sup>

At its core, the preference-based explanation implies that if an AMS (fundamentally) disagrees with the terms of an agreement, they are less likely to comply. ASEAN agreements usually reflect a compromise among member states, each harbouring distinct preferences regarding the depth of regional integration. To illustrate, imagine a hypothetical policy scale that ranges from 0 to 100, where higher numbers signify deeper levels of regional integration in a particular area. Let's assume an agreement scores a 50 on this scale, representing a balanced compromise among member states. Member states with preferences above this midpoint on the policy scale are likely to be more enthusiastic about the level of regional integration that the agreement promotes. For these states, the terms of the agreement are consistent with, or even fall short of, their ideal level of integration. Therefore, they have an inherent incentive to expedite the ratification process, moving swiftly to implement the agreement's terms. Conversely, member states with policy preferences below this 50-mark will have an incentive to delay the ratification process. Essentially, for these countries, the agreement represents a higher level of integration than they might be comfortable with.

This tendency can be largely traced back to domestic political configurations (Moravcsik 1997: 518). Deepening cooperation, especially in the form of opening up economies to regional trade and exposing local firms to wider competition, can be met with resistance. This is particularly true when powerful domestic interest groups oppose the incorporation of the agreed-upon policy. A case in point is Indonesian government's delay in ratifying the 2002 AATHP, as mentioned earlier. Both influential stakeholders in the palm oil industry and parliamentary members vehemently opposed the AATHP ratification bill (Hurley and Lee 2020).

Such domestic influence is not limited to economic agreements. High-profile political agreements, for instance, the 2008 ASEAN Charter, also witness varying degrees of domestic resistance. During the negotiations for the 2008 ASEAN Charter, which addressed the formation of an ASEAN human rights Commission and its mandate (**Chapter 1**), member states also exhibited divergent stances concerning the need for a robust enforcement system and the allocation of resources for ASEAN operations and institutions. A coalition led by Indonesia and supported by Myanmar, the Philippines, and Thailand not only postponed the ratification but also questioned the final draft's legitimacy (Chachavalpongpun 2008: Chapter

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<sup>45</sup> In a limited number of cases, member states are required to deposit or notify their instruments of ratification to entities or institutions other than the Secretary-General. For instance, the 1972 Agreement for the Facilitation of Search for Aircraft in Distress and the Rescue of Survivors of Aircraft Accidents mandates that ratification instruments be submitted to the Ministry of Foreign Affairs of Singapore.

<sup>46</sup> As outlined in Section 5.4, this specific focus is instrumental for a rigorous examination of how ASEAN member states perform in the ratification of regional agreements.

1). Moreover, segments of the Indonesian parliament and academic circles voiced reservations about the Charter's language, specifically pointing out ambiguities in budget allocations and the degree of public involvement. After all, governments might agree to things on the global stage, but those agreements can fall apart if the country's internal situation changes or if other important groups within the country do not give their thumbs up.

The preference-based explanation also directs our attention to the regional compliance system, which may condition the impact of states' incentives to deviate (e.g., Keohane, Moravcsik, and Slaughter 2000). Here, ASEAN's formal institutions appear underdeveloped, evidenced by the limited delegation of supranational discretion in its agreements as detailed in **Chapter 4**. With respect to ASEAN's legal instruments, the primary role of ensuring compliance rests with the Secretary-General, aided by the Secretariat.<sup>47</sup> Despite the introduction of the 2008 ASEAN Charter, designed to transform the organization's approach to implementation and oversight, the Secretary-General's duties largely remain the same. As laid out in the Charter (Art. 11), their mandate strictly confines them to monitoring member states' compliance and furnishing annual reports to the Summit, devoid of any authority to enforce corrective actions when deviations arise. Other institutions, whether sectoral ministerial, senior officials bodies, or those based on specific treaties, bear similar monitoring responsibilities (Phan 2014). However, this mandate is applied inconsistently, given that a number of post-Charter agreements do not specify clear monitoring procedures (Beckman et al. 2016: 137).

In the realm of dispute settlement, ASEAN boasts a regional system that, on the surface, appears robust, especially in the context of economic agreements. A standout feature of this system is the "negative consensus" rule. This ensures that once a member state initiates the arbitration process, it will proceed, culminating in the arbitrator's decision. Failure to comply with the arbitrator's verdict can lead to a (temporary) suspension of privileges for the offending member state unless there is a consensus to prevent this action.<sup>48</sup> However, to the extent that the system has capacity to impose tangible penalties into which member states would factor their cost-benefit analyses when contemplating deviations from an agreement, it seems to lack real-world effectiveness. From its origination in 1996 to its latest iteration in 2019, not once has a state called upon ASEAN's dispute resolution mechanism (Gerald 2018: 218). This inactivity brings into question its relevance or potential utilization by any member in the foreseeable future. Moreover, while a weak formal dispute settlement might still deter non-compliance due to the fear of detection by "fire-alarms" (Hafner-Burton and Tsutsui 2005; Marcoux and Urpelainen 2013), this informal enforcement method falters when it hinges on the participation of non-state actors in ASEAN activities. The involvement of these actors, especially civil societies, is dictated by the nature of the issue at hand. Controversial subjects

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<sup>47</sup> It is important to note that before the Secretariat's inception in 1976, ASEAN agreements lacked provisions detailing the monitoring of member states' compliance. For an in-depth analysis, see Beckman et al. (2016: Chapter 3).

<sup>48</sup> 2004 ASEAN Protocol on Enhanced Dispute Settlement Mechanism (art. 16) and 2019 counterpart (art.18). For an in-depth analysis of the evolution of ASEAN's dispute resolution mechanisms, see Tan (2022).

are strictly off-limits for civil society input, impeding their ability to identify, challenge, and bring attention to potential breaches (Gerald 2017; Bal and Gerald 2018).

In the absence of robust explicit and implicit enforcement tools within ASEAN, the primary determinant of compliance becomes the member states' alignment with the intended agreement. Consequently, the first hypothesis posits that:

***HYPOTHESIS 5.1: Member states whose preferences, shaped by their domestic configurations, diverge from an ASEAN agreement are more likely to delay ratification.***

Differences in terms of policy preferences are not the only factor causing ratification delays. Country-specific characteristics, as highlighted by state-based explanations, also play a significant role in how swiftly (or slowly) agreements are ratified. Studies grounded in this tradition contend that when countries enter international negotiations, they usually do so with genuine intentions to follow through (e.g., Chayes and Chayes 1995; Weiss and Jacobson 1998; Raustiala and Slaughter 2003). This is because international negotiations are not simple or quick affairs. They demand a lot of time and often draw in a variety of experts, diplomats, and leaders. The process of reaching an agreement comes with its own set of compliance costs. These might be direct expenses, political costs from making certain compromises, or even the missed opportunities elsewhere. Countries with no genuine intention to uphold their commitments would not be willing to bear these costs. Thus, if a country does not follow through on an agreement, it is more likely a consequence of unexpected hurdles rather than a calculated decision to back out.

These hurdles, given that ratification is fundamentally a domestic process, often arise from limited resources, whether in manpower or expertise (e.g., Downs, Rocke and Barsoom 1996; Haas 1998). This, however, does not imply that involuntary non-compliance is restricted to economically disadvantaged countries. For example, research from the EU reveals that a government's administrative capacity significantly influences its compliance rates, with some countries complying less than others due to such constraints (Mbaye 2001; Hille and Knill 2006; Steunenber and Kaeding 2009; Borzel 2022). In an expansive study of the ratification of over 2000 bilateral investment treaties, Haftel and Thompson (2013) observed that governments lacking adequate administrative capabilities often encounter heightened challenges in foreseeing and resolving domestic ratification hurdles, leading to delays. This observation extends to international trade agreements as well (Molders 2016; Wuthrich 2020).

The applicability of this line of reasoning to ASEAN and its member states gains further credence from existing literature and case studies. Earlier studies have already pointed to the constraints of limited institutional capacity in ASEAN countries as an impediment to their ability to comply with binding legal arrangements (Narine 2002: 131). Hamilton-Hart's (2003) work, for instance, highlighted specific gaps in governing capacity, especially in countries like Indonesia, the Philippines, and Thailand, which face challenges in engaging with complex cooperation projects compared to their more advanced regional partners. In contrast, Singapore emerges as an exemplar of efficient bureaucracy, consistently leading in the implementation rate of ASEAN policies due to its highly trained and competent civil servants (Quah 2018). At

the other end of the spectrum, countries like the Philippines lag behind due to systemic inefficiencies and corruption within their public bureaucracy, affecting operations at both governmental and street levels (Reyes 2010; 2016). Vietnam's case illustrates another dimension; while its implementing agencies have gradually improved over time, they still face challenges stemming from a lack of human resources and expertise, hampered by uncompetitive wages compared to the private sector and a “favour-based work culture” (Acuna-Alfaro and Tran 2016; Vu et al. 2021). Given the variation in bureaucratic efficiency among ASEAN member states and its evident impact on their ability to ratify agreements, it is reasonable to expect that this factor plays a significant role in the ratification process. This thus leads to the second hypothesis:

***HYPOTHESIS 5.2: Member states with more efficient bureaucracies are more likely to expedite ratification of ASEAN agreements.***

One might also argue that treaty ratification processes may be driven more by the inherent institutional structures, which in turn are conditioned by a country’s political system. Different political systems dictate different procedures and checks for ratifying international treaties. For instance, in a presidential system like that of the U.S., while the president holds the authority to sign treaties, it is the Senate's responsibility to provide its advice and consent for ratification. Conversely, parliamentary systems, depending on whether they are unicameral or bicameral, have their own unique processes. Moreover, these systems differ in the constitutional traditions and voting requirements for ratification. Some treaties may be directly applied without a formal legislative vote, while others might need approval from a simple majority or even variations of a supermajority. Another layer of complexity arises in federal systems where regional or local governments have a say on treaty matters. Empirical studies, such as those by Haftel and Thompson (2013) and Wuthrich (2020), have underscored that the presence of stringent checks and balances within political institutions can delay the ratification of international treaties.

Such structural constraints are indicative of dispersed or decentralized authority, which belong to democratic political systems.<sup>49</sup> States with deep-rooted democratic institutions often distribute authority across multiple levels of governance, ensuring a balance that upholds individual freedoms and rights while preventing unchecked majoritarianism. Such dispersion of power, theoretically, can prolong the ratification process, *ceteris paribus*. By contrast, centralized systems, where power is consolidated within a few hands or entities, tend to be more prompt in complying with international laws compared to their decentralized counterparts (Levy, Young and Zurn 1995: 315-16). Again, this is empirically evident in the EU context, where member states with more decentralized political structures are more likely to miss

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<sup>49</sup> While democracies also exhibit variations in the degrees of power sharing and the strength of their institutional frameworks, leading some to be more susceptible to changes than others (e.g., Lijphart 1999; Levitsky and Murillo 2009; Mainwaring 2018; Weyland 2020), that nuanced distinction is not the focus here.



deadlines when adapting EU directives into national laws, resulting in more infringements (Mbaye 2001; Thomson 2008; 2010).<sup>50</sup>

In ASEAN, this broader argument concerning the influence of political structure on ratification processes becomes particularly compelling given the diverse political landscapes among its member states. The ten member states have a variety of governance systems, spanning electoral democracies like Indonesia and the Philippines, to single-party systems in Malaysia and Singapore, a military-controlled presidential system in Myanmar, absolute monarchy in Brunei, constitutional monarchies in Cambodia and Thailand, and socialist regimes in Vietnam and Laos. Despite this diversity, research into the internal workings of these political systems is notably scarce, a limitation well-documented across various disciplines including political science (e.g., Morgenbesser and Weiss 2018).

In addition, the type of constitution a member country follows, whether monist or dualist, appears to have less impact on the ratification process. For instance, Vietnam follows a monist constitution but still subjects a treaty to intense scrutiny before determining its applicability (Phan 2019: 207-9). In contrast, Indonesia could, before 2014, expedite the process, allowing the president to unilaterally ratify international treaties without parliamentary oversight (Syarip 2020: 412). This suggests that compliance (failure) is more a function of how power is distributed within the political system of a member state rather than its constitutional framework per se. Consequently, it can be anticipated that in ASEAN members with more democratic structures, where authority is dispersed across multiple levels of governance and subject to stronger checks and balances, the ratification process is likely to be more time-consuming.

***HYPOTHESIS 5.3: More democratic member states are more likely to delay ratification of ASEAN agreements.***

Despite the theoretical plausibility of this hypothesis, there is a compelling counterargument based on democracies' strong commitment to the rule of law. In democratic systems, the rule of law and democratic governance mutually reinforce each other, creating a feedback loop that strengthens both (Downs 1957; Lijphart 1999; Maravall and Przeworski 2009). When a democratic government enters into a treaty, it does so under public scrutiny and must answer to various stakeholders, including voters, interest groups, and opposition parties. This accountability mechanism is core to most democratic theory. Fulfilling international commitments swiftly therefore can serve as a testament to effective governance, particularly when these commitments align with domestic policy goals. This is especially relevant given that research indicates democracies are more likely to honour international cooperation, particularly in environmental issues (Lantis 2006; Bernauer et al. 2010; Mansfield, Milner, and Rosendorff 2017). Furthermore, studies across various types of democratic settings have

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<sup>50</sup> A large body of literature also suggests that a more fragmented political system is likely to result in decreased governmental effectiveness. Key contributions to this field include studies by Tsebelis (2002), Soroka and Wlezien (2010), and Calvo (2014).

consistently shown that democratic governing parties are generally committed to fulfilling their election pledges (Thomson et al. 2017; Naurin, Royed, and Thomson 2019). Consequently, rather than causing delays, the strong rule-of-law ethos in more democratic ASEAN member countries could theoretically hasten the treaty ratification process, making them more punctual in fulfilling international obligations compared to other forms of governance.

### 5.3 ASEAN ratification dataset (ARD)

To test the hypotheses formulated, a specialized dataset capturing member states' ratification behaviour is essential. Despite numerous references to ASEAN's compliance problem in existing literature, remarkably, no study has ever approached the issue through empirical analysis.<sup>51</sup> This research fills that critical gap. It represents a pioneering effort to scrutinize ASEAN's compliance landscape through a comprehensive empirical lens. Specifically, the ARD presented here encompasses the full scope of ratification performance for all 84 legal instruments adopted between the 1970s and the early 2020s that *mandate* ratification from all ASEAN member states, resulting in a total of 758 individual ratification records.<sup>52</sup>

This ratification-focused dataset is a subset of a more comprehensive ASEAN instrument dataset assembled for the broader scope of this thesis. The distinctiveness of the ARD lies in its exclusive focus on active ASEAN legal instruments, comprising both those that are in force and those still pending ratification. By contrast, the datasets employed in previous chapters also included instruments that have been terminated. It should be noted that this focus is also partly necessitated by the unavailability of ratification records for terminated instruments in the ASEAN Secretariat's database.

By and large, ASEAN legal instruments in the ARD can be classified into two types based on their ratification requirements: those with specific deadlines for ratification and those without. Regardless of whether they have a deadline, all instruments only come into force after every member state has submitted their instruments of ratification to the ASEAN Secretariat. This common practice of requiring complete ratification serves as a mechanism to prevent free riding in international cooperation (Elster and McPherson 1993; Ostrom 2003). The benefits of cooperation only materialize when the final member state ratifies the instrument, thereby activating its binding nature and triggering full-scale cooperation. This ensures that each member state is fully committed to the agreement, mitigating the risk of selective compliance and setting a level playing field for all involved. Similar practices have been observed in other regional organizations, such as MERCOSUR (Arnold 2017).

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<sup>51</sup> The sole exception is the work by Beckman et al. (2016). While their research acknowledges the importance of domestic factors in regional cooperation, it does not specifically delve into ratification as a distinct aspect of compliance. As a result, many questions regarding the relationship between these domains remain unanswered.

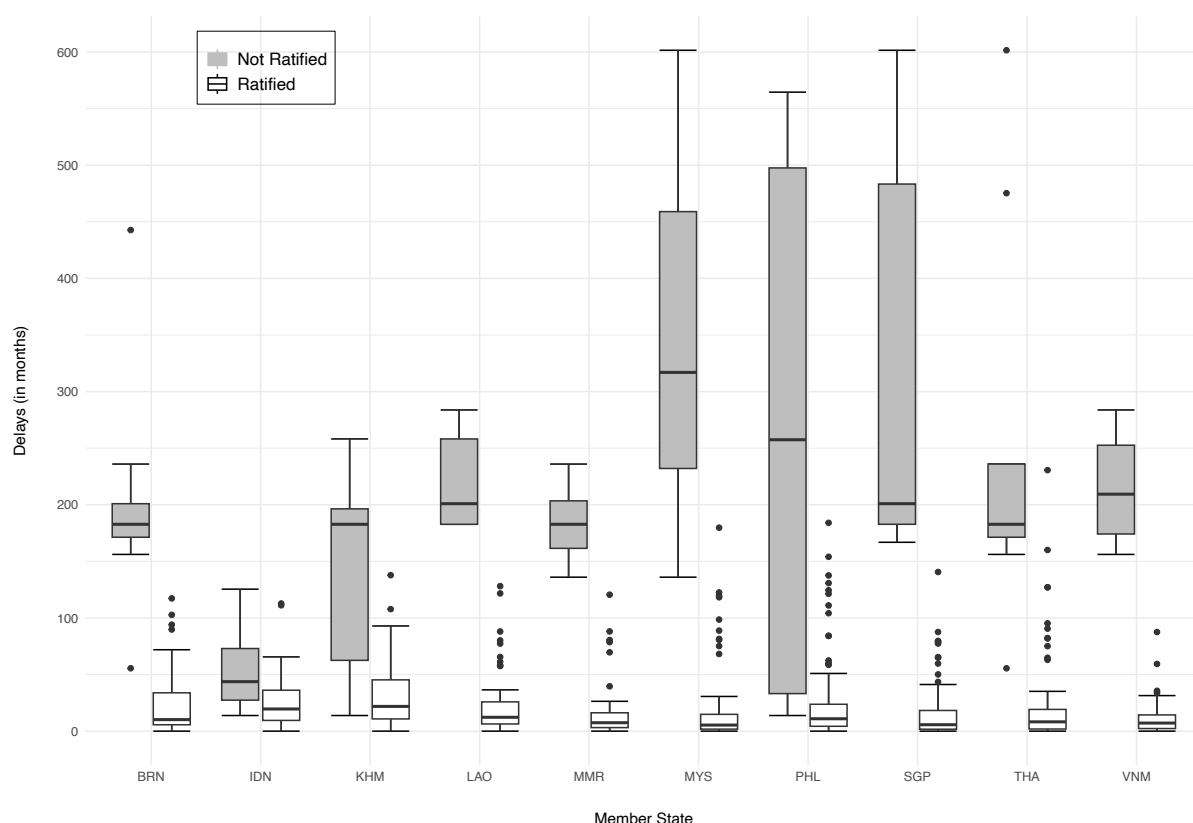
<sup>52</sup> Member states joining ASEAN after an agreement has already entered into force are required to *accede* rather than ratify it. Since accession does not require a signature and this study focuses specifically on compliance with signed agreements, such instances of accession are not included, which is why the total observation count is not 840.

Instruments with deadlines often stipulate a three-to-six-month period (90 to 180 days) for ratification following the date of signing. The rationale for the presence or absence of such deadlines remains unclear, although one may speculate that instruments with deadlines are perceived as more critical, necessitating timely commitment from member states.<sup>53</sup>

For the purpose of this research, delays in ratification are coded differently for each type of instrument. For instruments without specific deadlines, delays are calculated as the time elapsed between the date of the instrument's formal adoption and the date it receives national ratification or approval for each individual member state. For instruments that include specific deadlines, delays are measured as the period extending from the stipulated deadline to the date of national ratification by each respective member state. This approach allows for a nuanced understanding of compliance timelines among ASEAN member states.

Figure 5.1 features a set of box plots that illustrate the distribution of ratification delays for ASEAN legal instruments, grouped by individual member states. The data points represent unique member state-instrument dyads. White box plots capture the delays associated with ratified instances, while the grey ones highlight delays for instances that remain unrated as of May 31, 2022.

**Figure 5.1.** Months of ratification delay for ASEAN instruments by member state



Note: Member states are represented by their respective ISO codes.

<sup>53</sup> In contrast, there are also instruments that come into force upon ratification by a subset of member states or those explicitly willing to participate. These variations introduce different dynamics in ratification behaviour and are not the focus of this chapter; thus, they are excluded from the dataset.

Overall, successful ratifications typically occur promptly. The median duration for ratified instances is one month or so across ASEAN member states. The data is right-skewed, indicating that while the majority of ratifications occur swiftly, there are outliers that take much longer. Specifically, these outliers are more than three times the interquartile range. Additionally, there are several extreme values that stretch to six to eight times the interquartile range, suggesting a marked variance in ratification times across different instruments and member states. For example, Thailand took an astonishing 19 years to ratify the 1975 Agreement for the Facilitation of Search for Ships in Distress and Rescue of Survivors of Ship Accidents. Similarly, the Philippines and Malaysia each took approximately 15 years to ratify the Protocol to Implement the Second Package of Commitments on Financial Services under the 1995 ASEAN Framework Agreements on Services and the Protocol 9 Dangerous Goods under the 1998 ASEAN Framework Agreement on the Facilitation of Goods in Transit, respectively.

When it comes to unratified instances, the distribution of delays is more uniform, with median values for most member states hovering around 200 months, or approximately 16 years. Two notable exceptions are Malaysia and the Philippines, which have exhibited protracted delays of around 317 and 258 months (roughly 26 and 21 years), respectively. Indonesia, despite facing criticism for a 12-year delay in ratifying the AATHP, actually has the shortest median delay for unratified instances, standing at approximately 40 months. Within individual countries, Malaysia, the Philippines, Singapore, and Thailand show not only longer median delays but also extreme outliers. These outliers suggest that ratification for some cases has been in limbo for upwards of 40 years, exceeding 500 months. In contrast, newer member states like Brunei, Laos, Myanmar, and Vietnam demonstrate less variation in their delays. This discrepancy is likely due to the fact that these newer members joined ASEAN more recently and therefore do not have long-pending agreements dating back to the organization's early days.

It is also worth noting that the decision to measure delays at the level of member state-instrument dyads contributes to these variations. Each dyad is unique. For the same agreement, some member states may have completed ratification while others may still be contemplating it. After all, these variances highlight the necessity of examining both ratified and unratified instances in understanding ASEAN compliance behaviour. While many ASEAN instruments achieve relatively swift ratification, there are instances where certain member states face systemic delays.

#### **5.4 Research design**

This study employs a sample of 30 legal instruments sourced from the ARD, each stipulating a specific ratification deadline. Member states are required to notify or deposit their instruments of ratification by this deadline to either the Secretary-General or the designated entities. This focus serves a dual purpose.

Firstly, agreements without deadlines introduce an ambiguity that can muddle the analysis. In the absence of a firm deadline, assessing the efficiency of ratification performance across different member states becomes problematic. On the flip side, agreements with deadlines serve as an unambiguous yardstick for gauging both the effectiveness and efficiency of the ratification process. Missed deadlines translate directly into instances of non-compliance, thereby simplifying the analytical process. Secondly, a Welch's t-test supports this choice by showing no significant difference in ratification delays between agreements with and without deadlines ( $t = -0.79, p = 0.42$ ). This suggests that focusing on time-bound agreements does not introduce a bias in the study's findings.

As for other potential issues of selection bias, the legal instruments in the sample were concluded between 1995 and 2020. This extensive timeframe is beneficial as it allows for a comprehensive analysis of both ratified and pending instruments. By incorporating such a broad time range, the study captures various stages of ratification across member states, thereby enhancing the robustness of the findings.

### *Dependent variable*

As described in **Section 5.3**, the main unit of analysis is the member state-instrument dyad. The event of interest here is whether individual member states ratify (coded 1) or do not ratify (coded 0) ASEAN instruments at the designated deadlines. The dependent variable thus measures the delay in months between the stipulated deadline for ratification and the date the respective member state's instrument of ratification is received by the designated institution. The range of this variable spans from 0 to 317 months, with a median delay of 7.4 months, across a total of 294 observations. Among these observations, 52 cases (or 17.68% of the dataset) had zero delay, meaning the instruments of ratification were received on or before the stipulated deadline. To make these cases remain in the Cox proportional hazard model analysis, I added a nominal delay of one day (approximately 0.0328 month) to each observation in the dependent variable. As of the data collection cut-off date (31 May 2022), 44 (or 15%) cases had not reported national ratification. For these censored cases, the duration of the delay is calculated as the number of months from the deadline to the end of the data collection period.

### *Independent variables*

The key explanatory variables in this analysis include the policy preferences of ASEAN member states, their administrative capabilities, and democratic standing. Since there is no direct way to measure disagreement with ASEAN agreements, this study continues to rely on the KOF Economic Globalization Index as a proxy to test Hypothesis 5.1.<sup>54</sup> This index annually aggregates various dimensions of a country's economic globalization, including trade, regulations, and capital flows (Dreher 2006). Drawing on the premise that a state's preference

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<sup>54</sup> The majority of the instruments examined in this sample concern trade and harmonization matters, as outlined by the coding procedure for a control variable detailed in Section 2.4, Chapter 4.

for regional integration is shaped by its domestic policy landscape, this study hypothesizes that member states with KOF values below the ASEAN average are likely to favour reduced integration and may exhibit lower levels of compliance with regional agreements. Conversely, states scoring above the average on the KOF index are anticipated to have a greater appetite for integration and are expected to be more compliant with ASEAN agreements. To facilitate cross-member comparison, this variable has been transformed into z-scores.

For each member state, the preference variable is calculated as the average of these z-scores across a three-year period, ending two years prior to the agreement's adoption. The final variable then takes the absolute value of this mean score. This methodological choice aims to most accurately reflect states' preferences at the time of negotiation. This period captures the earliest commitment states make toward an agreement, potentially before public or internal political pressures have significantly influenced policy.<sup>55</sup> This measurement strategy aligns with Hypothesis 5.1, which suggests a linkage between states' policy preferences during the negotiation phase and their subsequent implementation actions.

The other relevant theoretical independent variables, namely administrative capacity and level of democracy, are measured based on a three-year average, ending two years prior to the year in which individual member states formally deposited their instruments of ratification. Given the focus of the study is on how these member states' characteristics influence the ratification process, it is logical to measure them at a point closest to when this influence would be most salient.

Under Hypothesis 5.2, it is posited that governments facing bureaucratic constraints will likely experience delays and challenges in the ratification process. Essentially, effective bureaucracy, characterized by competent civil servants and streamlined processes, is indispensable for implementing the complex reforms and legal preparations necessitated by regional integration. To assess such bureaucratic (in)capabilities across AMS, the study utilizes the "Government Effectiveness" indicator from the Worldwide Governance Indicators database (Kaufmann, Kraay, and Mastruzzi 2010). This metric encompasses key bureaucratic attributes such as the quality of civil services and the quality of policy formulation and implementation. Notably, this indicator has been employed in past research to study the pace at which EU directives are nationally transposed (e.g., Toshkov 2010; Zhelyazkova 2013).

As for Hypothesis 5.3, the focus shifts to the democratic nature of the member states and the distribution of power within their institutions. While there are numerous measures of regime type or democracy, the concept of democracy remains highly contested, especially in the context of Southeast Asia (Rodan 2018; Beeson and Hewitt 2021: 212). Considering this, the study opts for a more nuanced approach by employing the Winning Coalition measure (W) from the selectorate theory (Buono de Mesquita et al. 2003). One of the key insights from selectorate theory is that the size of the W is a pivotal variable for understanding the nature of governance within a state. More importantly, the theory departs from simplistic "democratic"

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<sup>55</sup> It is also worth noting that measuring preferences closer to the time of ratification could also be valid, particularly if one assumes that a state's policy preferences remain relatively stable over time. While this argument might hold true for some of ASEAN's more autocratic governments, it is not universally applicable across all member states.

or "non-democratic" labels and offers a continuous scale based on the size of the winning coalition (Bueno de Mesquita and Smith 2022: 370). In this framework, democracies generally tend to have larger winning coalitions compared to non-democratic regimes. This is because the political survival of leaders in democratic settings often relies on a broad-based coalition that reflects the diverse interests and voices within the electorate. In contrast, non-democratic regimes may secure power through a smaller coalition, often limited to an elite group. This enables a far more nuanced assessment of the level of democracy among ASEAN member governments.

### *Modelling approach*

The study presents parsimonious models, focusing exclusively on explanatory variables that hold significant theoretical interest. Each of these variables will be assessed individually to ascertain their unique contributions to the outcome, prior to their integration into a comprehensive multivariate analysis. In the context of the models concerning member states' preferences, a Cox proportional hazards model is employed unless the Grambsch and Therneau test for proportionality indicates a violation of this assumption. The test results suggest that policy preferences have a non-uniform effect on the dependent variable in some specific models ( $\chi^2 = 6.26, p = 0.01$ ). Consequently, the proportionality assumption is relaxed by letting this (offending) preference variable interact with the natural logarithm of time ( $\ln(t)$ ). This adjustment permits the effect of the variable to fluctuate over the duration preceding the ratification (Box-Steffensmeier and Zorn 2001). Furthermore, given that the observations stem from various member states ratifying identical instruments, I employ robust standard errors clustered by instrument in all models. This method aids in accounting for potential unobserved random effects at the instrument level.

Finally, a series of additional tests are conducted to examine the robustness of the findings against alternative model specifications and explanations. These supplementary analyses employ different measures for the aforementioned independent variables and incorporates controls for well-established attributes inherent to both ASEAN instruments and member states. A comprehensive discussion of these analyses is available in **Section 5.6**.

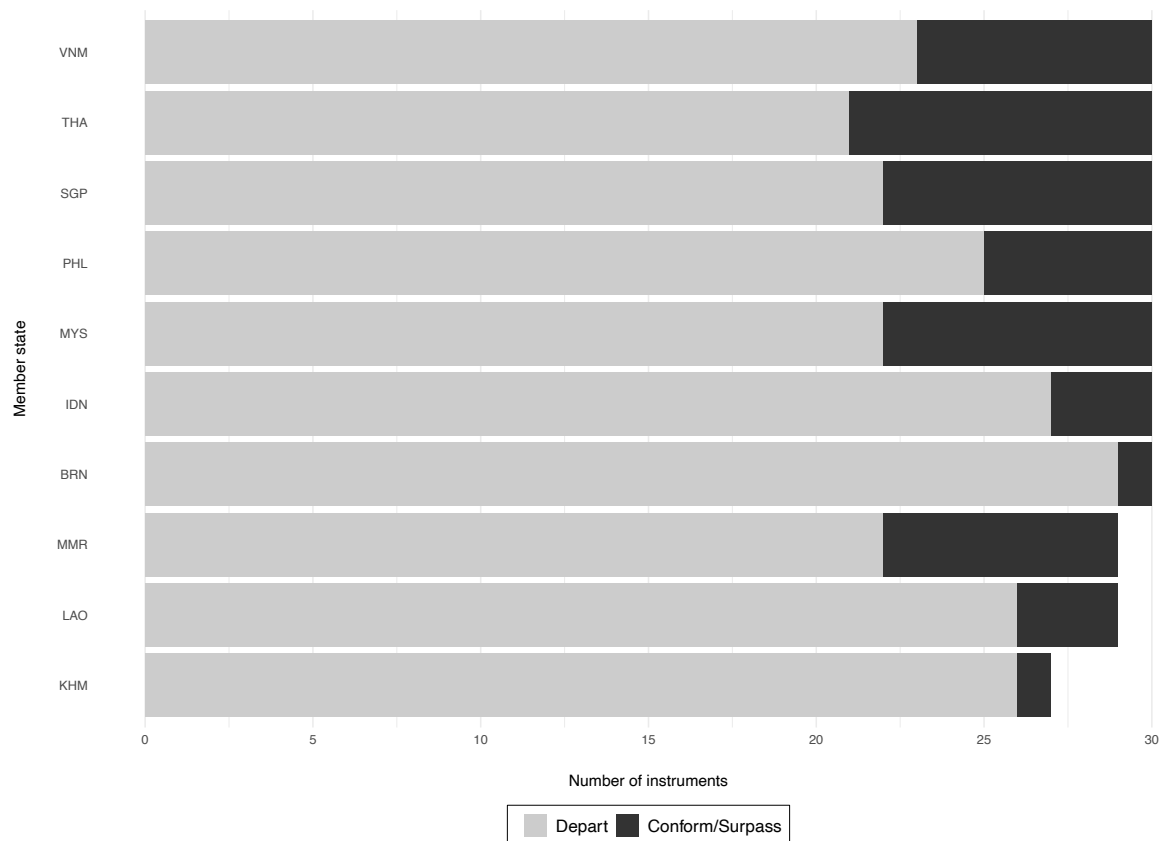
## **5.5 Findings**

### *Descriptive analysis*

Figure 5.2 provides a clear picture of the varying ratification performances among the member states, spanning across 30 legal instruments. In this figure, cases where member states comply with or surpass the stipulated deadlines are categorized as "Conform/Surpass", while those falling behind or failing to meet the deadlines are labelled as "Depart". It is also important to note the differing levels of responsibility among member states due to their staggered entries into ASEAN. Laos and Myanmar, having joined in 1997, were involved in the negotiation and

signature of 29 instruments. Similarly, Cambodia, entering later in 1999, is accountable for the ratification of only 27 instruments negotiated post their accession.

**Figure 5.2.** Relative ratification performance of ASEAN member states with time-bound agreements



Note: Member states are represented by their respective ISO codes.

Notably, ASEAN member states tend to deviate from the stipulated deadlines more often than they comply with them, despite their initial commitments. Among the ten, Brunei exhibits the most significant tendency to miss deadlines, failing to meet them in 29 out of 30 instances. This is closely followed by Indonesia, which has 27 instances of deviation. Cambodia and Laos each have 26 instances, and the Philippines has veered off schedule in 25 cases. Meanwhile, the remaining five member states - Vietnam, Myanmar, Malaysia, Singapore, and Thailand - have slightly lower frequencies of deviation, ranging from 21 to 23 cases out of their respective total commitments. However, this still represents a substantial number of missed deadlines, indicating a pervasive issue with compliance across the board.

There are also striking contrasts in the performance metrics of member states when considering the instances of compliance or surpassing the deadlines. On one side of the spectrum, old member states such as Thailand, Malaysia, and Singapore showcase the highest levels of adherence, each fulfilling or exceeding their obligations in 8 to 9 instances. This trend is arguably reflective of their advanced development status compared to other members. Conversely, the Philippines and Indonesia, despite being among the founding states, exhibit



compliance rates akin to Laos, and even trail behind newcomers like Myanmar and Vietnam - members of the so-called CLMV group. The former pair succeeded in meeting or surpassing deadlines in only 3 to 5 instances, as opposed to the 3 to 7 instances recorded by the latter group. Further down the scale, Brunei and Cambodia have comparable performances, with each country only managing to meet or exceed the stipulated deadlines in a single case.

### *Explanatory analysis*

Before delving into the findings, it is important to remark that the coefficient in a Cox regression analysis represents the effect of an independent variable on the hazard, or in other words, the rate at which the event of interest (in this case, ratification) occurs. Exponentiating these coefficients yields the hazard ratios, which are presented in Table 5.1. A positive coefficient indicates an acceleration in the hazard, while a negative one denotes a reduction. Thus, the hazard ratios in Table 5.1 quantify the changes in the hazard corresponding to a one-unit increase in the relevant explanatory variables. A hazard ratio of 1 means the variable has no effect, a hazard ratio greater than 1 indicates an increase in the hazard (faster ratification rate), and a hazard ratio less than 1 indicates a decrease in the hazard (slower ratification rate). Note that the following discussion will touch on both the coefficients and hazard ratios, whereas the table only refers to the latter.

Hypothesis 5.1 posits that the member states of ASEAN who have policy preferences (influenced by their domestic configurations) that are not aligned with a particular ASEAN agreement will be more likely to deviate from the stipulated ratification deadline of that agreement. As shown in Model 1 of Table 5.1, when analysed individually, the effect of diverging member states' preferences on the timeliness of their ratification process is negative and significant. More precisely, a unit increase in the preferences variable decreases the likelihood of ratifying ASEAN agreements on or before the designated deadlines by 9 percent over time (i.e.,  $1 - 0.91$ ). However, this effect pivots to both positive and significant when analysed in the full model (Model 5, Table 5.1), and I will elaborate on this later.

Given that a majority of the ASEAN agreements examined in this chapter are primarily focused on intra-regional trade or related matters, this finding implies that states irrespective of whether they favour standards above or below the consensus articulated in an agreement (a variance reflected in the extent to which their KOF values deviating from the ASEAN average), are predisposed to violate the defined timelines, thereby delaying the ratification of the respective agreement. This pattern is reasonably foreseeable in scenarios where the ensuing decisions align with inferior standards, notably diverging from the aspirations of states with more ambitious policy preferences. However, it appears counterintuitive for these states, exhibiting KOF values that transcend the ASEAN average, to habitually delay their legislative approval. Particularly in policy areas like data privacy, where the establishment of "higher" benchmarks – superseding the stipulated regional norms – may not necessarily enhance citizen protection, especially when data are hosted in nations maintaining weaker legal safeguards as per the ASEAN agreement guidelines. In such scenarios, states with KOF values higher than the ASEAN average would be incentivised to ratify swiftly, or at least comply with deadlines,

positioning themselves favourably to immediately capitalize on the potential benefits upon the agreement's full activation. Hence, I further dissect this analysis by separately examining instances where member states have KOF values higher and below than the ASEAN average.

As evidenced in Model 2, Table 5.1, the coefficient for states predisposed to exceed the deadlines (marked by KOF values surpassing the ASEAN average) is positive but not statistically significant. The Grambsch and Therneau test confirms that the preferences variable in this model does not violate the proportional hazards assumption ( $\chi^2 = 1.82$ ,  $p = 0.18$ ), implying a constant effect of this variable on the hazard function over time. However, this effect is not statistically distinguishable from zero. Conversely, for states inclined to deviate from the deadlines (characterized by KOF values falling below the ASEAN average), the coefficients are negative and statistically significant, as indicated in Model 3, Table 5.1, with a hazard ratio of 0.87. This means that for each unit increase in the preferences variable - defined as the absolute deviation of policy preferences of those member states gravitating towards a deviation from the consensus established during the signing of an ASEAN instrument - there is a 13 percent decrease in the likelihood of these states completing their national ratification in a timely manner. Consequently, this indicates that the observed trend of non-compliance with ratification deadlines is particularly prominent among member states whose policy preferences are below the consensus delineated in the ASEAN instruments, a trend reflected by their lower-than-average KOF values. This propensity towards delay could be attributed to the substantial policy adjustments they are required to undertake at a national level to align with their initial commitments. Hence, this subgroup seems to be a notable determinant in the observed association between policy preference deviation and delayed ratification.

Hypothesis 5.2 and 5.3 derived from state-based explanations of non-compliance, posit that states endowed with substantial administrative capacity tend to exhibit higher compliance levels, whereas states governed by more democratic structures are somewhat less inclined to adhere to predefined ratification deadlines. The results presented in Model 4 of Table 5.1 reinforces these contentions. Remarkably, the administrative capacity variable sports a hazard ratio of 2.89, signifying that a unit increment in this metric potentially amplifies the probability of adhering to ratification deadlines by a factor of approximately 2.89, relative to the baseline hazard function. This substantiates the robust role an efficient administration plays in ensuring timely compliance with agreements. Conversely, the democracy variable presents a negative coefficient, echoing a hazard ratio of 0.18. This alignment with the hypothesis indicates a significant reduction in the likelihood of meeting the ratification timelines by about 82%, as the size of the winning coalition expands. This trend underscores the intricate, and at times, time-consuming nature of democratic deliberations, which, while fostering inclusivity, might inadvertently protract the ratification timelines.

**Table 5.1.** Cox regression analyses of ratification delays for ASEAN legal instruments (1995-2020)

	<i>Dependent variable:</i>				
	Ratification delay (in months)				
	Combined incentive (1)	Incentive to comply (2)	Incentive to deviate (3)	Country-specific characteristics (4)	Full model (5)
Preferences $\times \ln(t)$	<b>0.91<sup>***</sup></b> (0.03)		<b>0.87<sup>***</sup></b> (0.05)		
Preferences		1.01 (0.10)			<b>1.31<sup>*</sup></b> (0.14)
Administrative capacity				<b>2.89<sup>***</sup></b> (0.33)	<b>3.91<sup>***</sup></b> (0.42)
Level of democracy				<b>0.18<sup>***</sup></b> (0.36)	<b>0.18<sup>***</sup></b> (0.42)
Administrative capacity $\times$ Level of democracy				<b>0.22<sup>*</sup></b> (0.58)	<b>0.10<sup>***</sup></b> (0.81)
Observations	255	128	127	203	181
No. of Events	215	106	109	203	181
Log Likelihood	-1,047.48	-446.74	-452.63	-868.96	-753.62
Wald Test	8.08 <sup>***</sup>	0.01	7.58 <sup>***</sup>	27.44 <sup>***</sup>	21.65 <sup>***</sup>

*Note:* <sup>\*</sup> $p < 0.1$ ; <sup>\*\*</sup> $p < 0.05$ ; <sup>\*\*\*</sup> $p < 0.01$ . Hazard ratios are shown instead of coefficients. Robust standard errors clustered by instrument in parentheses.

Furthermore, I also explored an interaction term between these two variables in the model - representing states embodying democratic governance structures fortified with an efficient bureaucracy. While one might theorize that the convergence of democratic principles with bureaucratic efficiency could potentially streamline the ratification process, the finding suggests a contrary trend. States encapsulating both democratic governance structures and proficient bureaucracies are 78 percent less likely to meet the ratification deadlines, as depicted in Model 4 of Table 5.1. Nevertheless, this finding borders on marginal significance, only affirmed at a 10% confidence level ( $p = 0.105$ ).<sup>56</sup>

When being analysed together in Model 5 (Table 5.1), the influences of administrative capacity and the level of democracy persist, signifying their continued substantial impact on the likelihood of adhering to ratification deadlines. In stark contrast to the finding in Model 1, which analyses the effects of policy preferences in isolation, policy preferences now manifest a significant positive correlation with timely ratification ( $p = 0.056$ ). Additionally, this impact remains stable over time (i.e., not violating the proportional hazard assumption). While this seems to parallel the rationale previously established for member governments with KOF values exceeding the ASEAN average, it also opens up an avenue of speculation for states with policy preferences that fall below the ASEAN consensus. Despite the prospect of substantial economic incentives which might spur these member states to expedite ratification, the intricacies involved in aligning their national policies to meet the higher regional standards cannot be overlooked, particularly if there are substantial gaps to bridge. In order to check whether this shift to a positive effect remains consistent when evaluated in tandem with other influential factors, and to ascertain the persistent influences of administrative capacity and democracy level for member states with varied compliance incentives, two separate analyses were conducted, replicating the state-based explanations and the comprehensive model for states with KOF values both above and below the ASEAN average.

Table 5.2 presents the results of these bifurcated analyses, where the first two models replicate the state-based explanation analysis, followed by the latter two emulating the full model displayed in Table 5.1. The most remarkable finding is that the significant impact of democracy levels in influencing the compliance tendencies of states, irrespective of their incentives to either exceed or deviate, across all model instances. Furthermore, while the influence of administrative capacity and its interaction with democracy levels bears a significant imprint on compliance adherence within states inclined to deviate, it appears conspicuously absent in states leaning towards exceeding the standards.<sup>57</sup> In addition, it is notable that the policy preferences of member states, whether surpassing or falling short of the consensus established in ASEAN agreements, uniformly exhibit a negative bearing on the

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<sup>56</sup> Removing the interaction term from the model leads to significant shifts in the hazard ratios of the individual explanatory variables. The administrative capacity variable drops to 1.28, indicating a dampened yet positive effect on adherence to ratification deadlines. In contrast, the level of democracy variable rises to 0.33, suggesting a reduced yet still present tendency for democratic structures to delay ratifications, especially when analysed alongside administrative capacity.

<sup>57</sup> In Model 2 of Table 5.2, the impact of the democracy level proves significant when evaluated without the inclusion of the interaction term.

probability of adhering to ratification deadlines, albeit this effect does not achieve statistical significance (Model 3 & 4, Table 5.2).

Nonetheless, these findings bolster the credibility of the hypothesis that democratic governance structures exert considerable influence on the compliance behaviours of AMS with respect to ratification deadlines. In a nuanced validation of Hypothesis 5.1 and 5.2, the results partially affirm the dual phenomena where divergent policy preferences exert a negative influence, and bureaucratic efficiency manifests a positive impact on the likelihood of compliance, particularly within the cohort of states inclined to stray from the established ASEAN consensus.

**Table 5.2.** Cox regression analyses of ratification delays for sub-groups

	<i>Dependent variable:</i>			
	Ratification delay (in months)			
	<i>Member states' characteristics models</i>		<i>Full models</i>	
	Incentive to comply	Incentive to deviate	Incentive to comply	Incentive to deviate
	(1)	(2)	(3)	(4)
Preferences × ln( <i>t</i> )				0.96 (0.05)
Preferences			0.70 (0.27)	
Administrative capacity	8.40 (1.77)	<b>1.30<sup>***</sup></b> (0.48)	5.84 (1.76)	<b>1.30<sup>**</sup></b> (0.46)
Level of democracy	<b>0.07<sup>***</sup></b> (1.35)	0.23 (0.52)	<b>0.05<sup>***</sup></b> (1.40)	<b>0.21<sup>***</sup></b> (0.51)
Administrative capacity × Level of democracy	0.03 (3.03)	<b>0.23<sup>***</sup></b> (0.71)	0.09 (2.95)	<b>0.24<sup>***</sup></b> (0.70)
Observations	79	102	79	102
No. of Events	79	102	79	102
Log Likelihood	-265.43	-365.70	-264.99	-365.59
Wald Test	10.33 <sup>**</sup>	35.78 <sup>***</sup>	11.77 <sup>**</sup>	37.89 <sup>***</sup>

Note: \*  $p < 0.1$ ; \*\*  $p < 0.05$ ; \*\*\*  $p < 0.01$ . Hazard ratios are shown instead of coefficients. Robust standard errors clustered by instrument in parentheses.

## 5.6 Robustness checks

To test the robustness of these findings, additional analyses are carried out. The first one examines whether the results are sensitive to alternative model specifications and explanations. As mentioned at the outset of the primary analysis, the models showcased only incorporate the central explanatory variables, since the scope of this study does not extend to examining the influences of other variables that predominantly vary across instruments or member states. Nonetheless, all models were re-run separately for member states with incentive to either exceed or deviate, incorporating two supplementary control variables: one that distinguishes between agreements, protocols, and other instrument categories, and another which serves as a binary indicator identifying whether the state in question is a member of the CLMV group (coded 1).

**Chapter 4** underscores that protocols, in comparison to agreements, offer lesser discretion to national governments, while other types of instruments provide a broader scope of autonomy. Consequently, one might theorize that the constrained discretion accorded by protocols negatively impacts the likelihood of adhering to ratification timelines, in contrast to the flexibility afforded by other instrument types, given the disparate degrees of implementational freedom encapsulated within these instruments. Furthermore, the economic disparity between the more established, wealthier member states and the newer, less affluent CLMV countries has historically constituted a formidable barrier to achieving economic integration (Nesadurai 2008: 237; Ravenhill 2008). As such, though the CLMV countries are routinely granted extensions or exceptions to facilitate the harmonization process, it remains anticipated that these member governments are more likely to miss the designated ratification deadlines.

The findings, reported in Table 5.1.2 (Appendix 5.1), demonstrate robustness across all models. Analysing the control variables, protocols exert a consistent but non-significant negative influence on compliance. Interestingly, the influence of other types of instruments on compliance seems to oscillate, presenting a significant negative effect for member governments with KOF values exceeding the ASEAN average, but shifting erratically for those inclined to deviate, particularly in the preference models. One possible explanation is that states with policy preferences that exceed the thresholds defined in ASEAN instruments might undervalue these instruments, potentially adopting a wait-and-see approach with members harbouring preferences lower than the thresholds. Moreover, the CLMV group tends to fall short of meeting stipulated deadlines, especially those with deviation incentives signified by their lower-than-average KOF values. This cohort of member states notably presents a substantially reduced probability of complying with the prescribed ratification schedules, indicating a significant area of concern for compliance.

The second analysis employs two distinct variables to examine the sets of hypotheses that are rooted in state-based explanations. Initially, I use the "Control of Corruption" indicator, another feature of the Worldwide Governance Indicators database (Kaufmann, Kraay, and Mastruzzi 2010), to gauge the administrative competence of AMS. This measure, which fluctuates between -2.5 and 2.5, serves as a proxy for administrative quality, indirectly

assessing the prevalence of corruption - a notorious issue in numerous member governments (e.g., Rubasundram and Rasiah 2019). Corruption typically indicates a deviation from established administrative protocols such as impartiality, transparency, and oversight, often culminating in the inefficient allocation of public resources. This variable is constructed in a way similar to other variables utilized to explore state-based explanations in the main analysis. Next, I construct a binary variable encapsulating the regime types of individual member states, utilizing the Polity2 scores extracted from the Polity dataset (Marshall et al., 2019). This variable categorizes governments as democratic (coded as 1) if they have a Polity2 score of 6 or higher in a particular year, and non-democratic (coded as 0) otherwise.

The results in Table 5.1.3 (Appendix 5.1), which mirrors Models 3 and 4 from Table 5.2, reveal that when corruption is mitigated in states harbouring more progressive policy preferences than the consensus, a significant surge in compliance with ratification timelines is observed, escalating to double or even quintupling, particularly under democratic governance (Model 1, Table 5.1.3). Additionally, the combination of democratic leadership and good administration still significantly affects compliance, although not as strongly, especially in countries that are motivated to deviate. Interestingly, this group of member states, despite embracing higher policy standards as indicated by surpassing the average ASEAN KOF values, are now exhibiting a reduced tendency to meet the stipulated ratification deadlines. This might be because the "Democracy" variable uses a stricter criterion to define what a democracy is, which in turn reduces the number of cases considered democratic. Despite these nuances, the results are consistent with the main analysis, highlighting the intricate and multi-layered nature of how governments work.

## **5.7 Conclusions**

This study was designed to explore and test various hypotheses concerning the compliance of member states with the agreed-upon ASEAN legal instruments, particularly the speed with which they ratify these instruments. Going beyond traditional research, which either homes in on regional compliance mechanisms or attributes national bureaucracy efficacy as compliance drivers (e.g., Goltermann and Borzel 2012; Chesterman 2015; Beckman et al. 2016; Quah 2016), this study adopts a more comprehensive approach. It takes into account both regional negotiation dynamics and individual member states' distinct characteristics, thereby linking various stages of the ASEAN policy process: the decision-making and subsequent implementation stages. Building on previous scholarly discussions (Fearon 1998; Buchanan and Keohane 2011), the study conceptualizes compliance not as an isolated phenomenon but as a pivotal part of a sequence of cooperative processes heavily influenced by the initial negotiation phase.

Furthermore, the study presents new, substantial evidence, encompassing 294 individual ratification performances across 30 legal instruments adopted between 1995 and 2020. Distinct from other instruments adopted by the organization, the ones examined in this research come with specific deadlines, obliging member states to convey their national approval or ratification to the respective entities within a set timeframe. To explain variation



in compliance, the study developed hypotheses focusing on the influences of member states' policy preferences concerning the instruments during the decision-making stage, as well as their distinct national characteristics.

The analysis conducted in the present study unveils several important findings. Firstly, the preferences of member states, or national implementers, in relation to the decision outcomes contained in ASEAN instruments significantly influence compliance. A state tends to delay ratifying an instrument if it finds that its own preferences clash with the actual decisions outlined in that instrument. This aligns with the first hypothesis, which posits that states are less likely to comply with instruments that do not resonate with their stance. However, this tendency is predominantly observed in implementers that are motivated to deviate and whose policy preferences falling short of the consensus established in ASEAN instruments. Interestingly, the study does not find evidence to either support or refute this phenomenon in the subgroup of member states that are motivated to comply and whose preferences exceed the consensus. This nuanced understanding of compliance incentives draws on the foundational work by Dimitrova and Steunenberg (2000: 212–13; see also Thomson, Torenvlied and Judge 2020) concerning EU directives. Contrary to the unexpected compliance patterns noted in these studies, where actors who are inclined to deviate do not always choose to do so, and those motivated to comply often demonstrate high compliance rates, the dynamics within ASEAN member governments present a different picture. Here, governments that lean towards deviation actively choose to do so, while those with incentive to comply do not significantly influence the probability of compliance. This behaviour seems to be shaped by the lack of both explicit and implicit robust enforcement mechanisms within the ASEAN framework, coupled with a rule requiring unanimous ratification. Theoretically, the absence of stringent enforcement mechanisms encourages states to diverge, and in conjunction with the unanimous ratification rule, dissuades those with incentive to comply from doing so, given the knowledge that states inclined to deviate would have already taken that route.

Secondly, aligning with the second and third hypotheses, differences among member states also significantly influence the probability of compliance. All analyses point out that member states with a more democratic governance structure tend to lag behind in meeting ratification deadlines. This observation corroborates the theory that decentralized political systems are often entwined with compliance issues (Levy, Young, and Zurn 1995; Thomson 2010). Moreover, the findings highlight that a state's administrative capacity or bureaucratic efficiency exerts a positive influence on the likelihood of compliance, especially among the group of states that are prone to deviating from the established ASEAN consensus. While it might not convey the exact same notion, it is worth noting that bureaucratic inefficiency is a more prominent factor in explaining noncompliance within the EU member states (Mbaye 2001; Falkner et al. 2004; Angelova, Dannwolf and Konig 2012). However, and perhaps more intriguingly, states characterised by both democratic governance structures and proficient bureaucracies seem to lag in adhering to the ratification deadlines in ASEAN. This suggests a complex and nuanced interaction of governance elements in shaping compliance outcomes, a phenomenon that warrants further investigations in order to understand the underlying mechanisms.

Nonetheless, this study is not without its limitations. While the focus on delays in meeting ratification deadlines serves as a significant and worthy indicator, it could potentially be complemented by more direct measures of compliance at the national level in future research. The act of ratification does not unequivocally translate to the transposition of the instrument into national laws. Moreover, the data reported by member states and consolidated by the ASEAN Secretariat does not unequivocally confirm the accurate transposition of these instruments into national frameworks. Looking ahead, future studies might conduct comprehensive comparative case studies to shed light on the extent to which individual national laws align with the actual outcomes outlined in ASEAN instruments.

Another notable practical difficulty that plagues ASEAN compliance research is the lack of accessible information on the drafting process of ASEAN instruments. This gap in data makes it nearly impossible to accurately gauge which aspects of the instruments member states agree or disagree with, presenting a significant hurdle in developing precise measures of member states' policy preferences. Despite this, there remains a burgeoning opportunity to innovate in the development of more precise and robust measures of member states' policy preferences concerning ASEAN instruments or the encompassed outcomes. The preference metrics utilised in this study serve as a preliminary proxy, aggregated at the instrument level, and may not fully encapsulate the diverse preferences member states may harbor towards various outcomes within a single ASEAN instrument. By linking more nuanced measures of compliance and well-defined indicators of member states' preferences for deviation or compliance, future research can pave the way for more refined analyses of preference-based explanations, further enriching the discourse in this domain.

**Table 5.1.1.** Descriptive statistics for variables used in the analyses

Variable	N	Mean	St. Dev.	Min	Max
Delay	295	40.07	65.91	0.03	316.94
Preferences	255	0.71	0.61	0.01	2.17
Administrative capacity	230	0.15	0.98	-1.61	2.36
Level of democracy	217	0.51	0.23	0.10	0.83
Control of corruption	203	-0.36	0.97	-1.64	2.32

**Table 5.1.3.** Robustness checks using different measures of state capacity and democracy

<i>Dependent variable:</i>		
Ratification delay (in months)		
<i>Full models</i>		
	Incentive to comply (1)	Incentive to deviate (2)
Preferences $\times \ln(t)$		0.98 (0.05)
Preferences	<b>0.36*</b> (0.67)	
Corruption control	<b>2.00**</b> (0.40)	1.11 (0.40)
Democracy (Binary)	0.96 (0.41)	<b>0.21***</b> (0.37)
Corruption control $\times$ Democracy	<b>4.93*</b> (0.89)	<b>0.25*</b> (0.72)
Observations	79	101
No. of Events	79	101
Log Likelihood	-265.35	-363.08
Wald Test	9.83**	33.38***

Note: \*  $p < 0.1$ ; \*\*  $p < 0.05$ ; \*\*\*  $p < 0.01$ . Hazard ratios are shown instead of coefficients. Robust standard errors clustered by instrument in parentheses.

**Table 5.1.2.** Robustness checks controlling for characteristics of instruments and member states

	<i>Dependent variable:</i>					
	Ratification delay (in months)					
	<i>Preferences</i>		<i>States' attributes</i>		<i>Full models</i>	
	Incentive to comply	Incentive to deviate	Incentive to comply	Incentive to deviate	Incentive to comply	Incentive to deviate
	(1)	(2)	(3)	(4)	(5)	(6)
Preferences × ln( <i>t</i> )		<b>0.87***</b> (0.05)				0.93 (0.05)
Preferences	0.99 (0.1)				2.14 (0.95)	
Administrative capacity			5.65 (2.91)	<b>4.04***</b> (0.77)	1.33 (3.68)	<b>4.35**</b> (0.67)
Level of democracy			<b>0.02***</b> (2.09)	<b>0.002***</b> (0.69)	<b>0.01**</b> (2.26)	<b>0.001***</b> (1.61)
Administrative capacity × Level of democracy			0.05 (4.94)	<b>0.002***</b> (1.55)	0.16 (5.09)	<b>0.002***</b> (1.56)
Type of instruments ( <i>Reference:</i> Agreements)						
Protocols	0.66 (0.28)	0.73 (0.37)	0.61 (0.30)	0.68 (0.28)	0.62 (0.31)	0.68 (0.28)
Other types	0.81 (0.21)	<b>1.76*</b> (0.32)	<b>0.67**</b> (0.56)	1.02 (0.25)	<b>0.66**</b> (0.21)	0.97 (0.26)
CLMV (Binary)	0.97 (0.17)	0.94 (0.20)	<b>0.51*</b> (0.48)	<b>0.08***</b> (0.63)	0.22 (1.21)	<b>0.07***</b> (0.64)
Observations	128	127	79	102	79	102
No. of Events	106	109	79	102	79	102
Log Likelihood	-445.37	-450.58	-263.07	-359.64	-262.77	-359.24
Wald Test	3.17	36.45***	28.59***	75.34***	35.32***	67.35***

Note: \*  $p < 0.1$ ; \*\*  $p < 0.05$ ; \*\*\*  $p < 0.01$ . Hazard ratios are shown instead of coefficients. Robust standard errors clustered by instrument in parentheses.

## 6 Beyond the ASEAN Way

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This chapter summarizes the findings from the previous chapters, which explored the primary outputs of ASEAN's intergovernmental governance system using contemporary political science theories and methodologies. Each chapter highlighted an important aspect of these outputs. Here, the focus shifts to synthesizing these insights and understanding their broader implications. The discussion encompasses three core dimensions related to ASEAN's political system: the evolution of the policy agenda, the volume and calibre of its outputs, and the compliance of member states.<sup>58</sup>

### 6.1 Stability and change in ASEAN policy agenda over time

ASEAN policymaking processes bear striking resemblances to mechanisms observed in both national and international political systems. Three hallmark features commonly identified across diverse polities are also evident in the ASEAN policy agenda. Firstly, while policy changes predominantly demonstrate stability and incremental evolution, there are distinct moments of "punctuated equilibria" where sudden and significant shifts occur (Baumgartner, Jones, and Mortensen 2018). **Chapter 2** of this thesis delved into these shifts, examining year-on-year variations in ASEAN's adopted agreements across an array of policy domains. The findings revealed that the ASEAN policy agenda indeed mirrors this pattern, albeit with specific nuances. Notably, there is a pronounced frequency of issues being dropped, marked by a 100 percent decrease, paired with intense "punctuations" that can surge up to 1100 percent. This pattern aligns with trends observed in authoritarian states. The precise reasons behind this pattern remain open to interpretation and warrant further research. They could range from institutional inertia, reminiscent of democratic systems, to the suppression of information, a trait often seen in illiberal regimes (e.g., Chan and Zhao 2016; see also Sebok, Balazs, and Molnar 2022). However, within this study's scope, such volatile policy shifts suggest that ASEAN's member governments prioritize emerging, pressing issues, often sidelining less critical ones. These emergent issues can stem from external environmental factors or be internally driven by individual member states.

The second feature is related to the composition of the legislative agenda. Political systems, whether at the national or international level, have distinct characteristics that shape their legislative agendas. At the national level, the focus often revolves around core functions like the economy, defence, and foreign policy (e.g., Jennings et al. 2011). International systems, on the other hand, vary based on their purpose (e.g., Lenz et al. 2014). General-purpose entities like the UN and EU have broader agendas, while task-specific ones like the ILO and WTO are narrower in scope. ASEAN's

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<sup>58</sup> It should be noted that the subsequent sections offer a summary of the primary empirical findings from this study. They are not intended to encompass every effect examined in the individual chapters. Consequently, certain factors, especially those related to controls or interactions, may not be addressed in this concluding chapter.

policy agenda, emphasizing intra-regional trade, organizational governance, and transportation, distinctly diverges from typical national polities. Instead, it aligns more closely with entities like the African Union, which prioritizes economic development and organizational governance (cf. Lundgren, Squatrito, and Tallberg 2018: 557).

Finally, another noteworthy consistent feature pertains to the potential for the agenda to expand over time, especially when new issues maintain their presence after being introduced. In national contexts, this can arise from two mechanisms: reframing existing issues or “venue shopping,” where issues travel to new policy venues. In international systems, the primary driver for agenda expansion tends to be the latter, with policy issues moving from new jurisdictions to existing ones as a result of enlargement (e.g., Alexandrova, Carammia and Timmermans 2012). ASEAN policy agenda mirrors this pattern, expanding when new member states join or when focus on core issues diminishes. Notably, unlike some systems that might sideline secondary issues, ASEAN, much like the European Council, adeptly manages to address both core and emerging topics simultaneously by expanding the agenda space (cf. Jennings et al. 2011: 1022).

In addition, these findings offer valuable insights into the ongoing debates surrounding the organization (e.g., Ba 2020; Beeson 2020). A key insight from Easton’s (1957: 395) conceptual framework of system analysis suggests that in the absence of clear system inputs, policy outputs can serve as direct reflections of the priorities, values, and concerns that dominated the input phase. From the results presented, it becomes clear that since its very inception, ASEAN’s overarching objectives have consistently leaned towards enhanced economic cooperation and bolstered institutionalization. This trajectory is further validated by key ASEAN documents, including the Bali Concord (I & II) and the ASEAN Community Vision for both 2020 and 2025.

However, it is also noteworthy that ASEAN’s journey has not been static. Contrary to what some observers have suggested, there have been significant shifts in its approach. These changes have prompted ASEAN to broaden its policy horizons, now encompassing areas that are typically addressed by national systems. Nevertheless, this expansion remains somewhat constrained, indicating a cautious approach to policy diversification.

To the extent that an organization’s effectiveness hinges on its capacity to realize its stated objectives (Stubbs 2019: 925), ASEAN’s performance appears *more commendable* than what some of its critics might concede. It is also worth noting that while there have been years where ASEAN produced no outputs, potentially attributable to its underdeveloped institutionalization, there has been a marked shift since 1995. From that year onwards, ASEAN has consistently concluded at least five agreements annually, a number that was previously considered its peak output in the periods before 1995. This uptick in agreements not only underscores its growing institutional maturity but also its commitment to its objectives. More importantly, these objectives and the resultant performance, deeply rooted in ASEAN’s official records, remain steadfast. They present a consistent narrative that remains unaltered, irrespective of the theoretical lens applied in its examination.

This dynamic interplay between external and internal policy demands, resulting in specific outputs, encapsulates the essence of a political system as conceptualized by Easton (1957: 387-88). It underscores the imperative to view ASEAN’s decision-making through the prism of a political system, delving into how diverse inputs or competing policy demands culminate in collective decisions. While the “ASEAN Way” literature aptly identifies variations in institutional form, it may be misleading by ascribing institutional design exclusively to regional factors. A more comprehensive

exploration, such as the one presented in this thesis and grounded in appropriate theoretical frameworks tested against empirical evidence, would offer a richer understanding of the phenomenon.

## 6.2 Assessing the quantity and quality of ASEAN agreements

What do the previous analyses imply for our understanding of ASEAN agreements? A prevailing sentiment among scholars is that ASEAN agreements are primarily shaped by member states' geopolitical and strategic imperatives, rather than genuine motivations for regional integration. As a result, these agreements often appear to prioritize form over function, leading to documents that may lack specificity and depth (e.g., Jones and Smith 2006; 2007; Ravenhill 2010; Beeson 2019). This perspective has become something of a conventional wisdom in academic circles. While various iterations of this argument exist, each nuanced by the theoretical underpinnings of the analysts behind them, several consistent critiques emerge. These typically revolve around the primacy of member states' national interests, a decision-making process anchored in consensus and non-interference, and the nature of the decision outcomes. The findings of this thesis, while perhaps not exhaustive in addressing all these critiques, certainly shed light on many of them, offering a more nuanced understanding, if not a complete rebuttal.

The first critique posits that AMS consistently prioritize their individual national interests and sovereignties over collective objectives (e.g., Narine 2008; Jones 2012; Khoo 2015). This critique essentially assumes that the interests of member states remain static across different policy negotiations and timeframes - an assumption that seems overly simplistic. The underlying premise of this critique can be understood as if member states exhibit divergent interests and a lack of cooperation on one issue or agreement, they are likely to replicate this behaviour across other issues or agreements within the same domain. However, evidence from **Chapter 2** challenges this notion. The descriptive analysis demonstrates that AMS have successfully reached agreements not only in areas where they share common values but also in domains traditionally reserved for national governments, such as Macroeconomics and Law and Crime. These are areas where one would expect potential differences among member states.

One might argue that policy outputs might only provide a limited view, potentially missing the intricate web of inputs or interests that shape a political system. This is further complicated by the opaque nature of decision-making, where the true interests of member states might not always be evident. To gain a more comprehensive understanding, **Chapter 3** delved into the Chairman's Summit Statement, a key document within ASEAN. This statement, representing the unified position of ASEAN leaders during their Summit gatherings, was scrutinized to determine its alignment with the diverse interests highlighted by the ASEAN policy agenda. Interestingly, the analysis revealed that even though the statement touches upon a wide array of subjects, there is a consistent emphasis on two primary issues from the policy agenda. Easton (1957: 396-97) once suggested that a system might not capture every demand from its constituents. Yet, the fact that certain secondary topics have been elevated to formal agreements counters the foundational assumptions of this first critique.

Furthermore, the statistical analysis underscores a clear pattern: in any given year, if a topic occupies at least 18 percent of the Chairman's statement, an ASEAN agreement on that topic is likely to be concluded. This pattern suggests that the real crux of the matter is not the divergence of

individual states' interests but rather the mechanisms through which these competing interests are reconciled into collective decisions. This in turn leads us to the remaining two critiques.

The second and third critiques targeting ASEAN's consensus-based decision-making and the perceived ambiguity in some of its agreements are intertwined. Before casting judgment on ASEAN, critics should recognize that even the EU - a polity they frequently hold as a benchmark - often relies on consensus (unanimity) in its decision-making processes (Thomson 2011: 250; Novak, Rosenberg and Bendjaballah 2021). If the EU, with its diverse member states, can navigate the complexities of consensus-based decision-making to conclude thousands of agreements, why should the process be deemed ineffective for ASEAN?

It is a misstep to label consensus-based decision-making as inherently ineffective and to link it directly to ASEAN's challenges in reaching agreements on specific issues. Such a viewpoint is not only reductive but also misleading. Continual disagreement outcomes on certain topics do not necessarily paint a comprehensive picture of the entire decision-making process. Indeed, the nature of decision outcomes can provide insights into the underlying process. Just as the EU's myriad of agreements reached through consensus offers a window into its decision-making dynamics, the characteristics of ASEAN's decision outcomes can similarly shed light on its processes. Thus, rather than dismissing ASEAN's approach based on select disagreements, a more nuanced understanding requires examining the broader patterns and characteristics of its decision outcomes.

A defining characteristic of ASEAN agreements, which aligns with the third critique, is their variability in specificity. Some agreements are meticulously detailed, leaving minimal room for interpretation, while others are intentionally broad, allowing member states flexibility in implementation. This variance represents the delegation of discretionary power, a common feature in many political systems. However, much of the existing literature, including works by Cockerham (2010) and Deinla (2017), misdirects its focus on ASEAN institutions as the primary beneficiaries of this delegation. In reality, given that member governments in ASEAN play dual roles as both decision-makers and implementers, the spotlight should be on the extent of discretion these agreements grant to member states. **Chapter 4**'s empirical analysis underscores this, revealing that ASEAN predominantly delegates to member states rather than its supranational bodies. This discretion tends to increase in technically demanding agreements and diminishes when there is a wider divergence in economic policy preferences among member states.

Drawing parallels with delegation in the EU, especially when considering the research by Thomson and Torenvlied (2011) — which shares a similar research design with this study — both similarities and contrasts become evident. Despite the EU's more expansive integration, the pattern of national discretion in its laws is strikingly similar to that of ASEAN. The average discretion ratio in EU laws is 10 percent for member states, while those in ASEAN's is just under 6 percent.<sup>59</sup> However, a nuanced difference emerges when examining the impact of policy complexity on delegation. Both entities exhibit a positive correlation in this regard, but the contexts in which they operate differ. ASEAN agreements are invariably reached through unanimity, while the EU's decision-making oscillates between qualified majority voting and unanimity.

Another difference is evident in how each political system handles internal disagreements. The EU, when faced with internal conflict, tends to grant more discretion to national implementers

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<sup>59</sup> The ratio of discretion is simply calculated by dividing the number of major provisions that grant discretionary power by the total number of major provisions, expressed as a percentage.



(Thomson and Torenvlied 2011: 156). In contrast, ASEAN leans towards more prescriptive laws. This can be attributed to the differing norms around the urgency of consensus. ASEAN's fewer agreements, compared to the EU's vast legal corpus, suggest a greater willingness to *indefinitely delay* contentious proposals. This reflects ASEAN's unique decision-making ethos, which contrasts with the EU's drive to consistently reach decisions (cf. Thomson 2011: 281).

Lastly, the balance between delegation to member states and supranational institutions differs between ASEAN and the EU. In ASEAN, there is a positive correlation between provisions granting discretion to both entities ( $r = 0.34, p < 0.001$ ). This suggests a collaborative approach to mitigate non-compliance risks when agreements delegate discretionary power. ASEAN policymakers put a check on member states' ability to deviate from agreements by giving some authority to ASEAN institutions to guarantee proper implementation of adopted policies. Indeed, ASEAN agreements frequently include provisions specifying the monitoring function of the Secretary-General/Secretariat or other treaties-based bodies. The EU, on the other hand, the correlation is significant and negative ( $r = -0.30, p = 0.01$ ; Thomson and Torenvlied 2011: 149). This suggests a more binary choice, EU legislators either granting discretion to national entities, bearing the risk of non-compliance, or centralizing authority in supranational bodies to ensure accurate implementation (Franchino 2007: 186).

In essence, while ASEAN and the EU share some decision-making characteristics, their approaches to consensus, delegation, and conflict resolution highlight distinct regional identities and strategies. Therefore, labelling consensus-based decision-making as inherently flawed or attributing ASEAN's challenges in finalizing certain agreements directly to this approach is not only an oversimplification but also misleading. Such perspectives risk overlooking the complexities and nuances inherent in ASEAN's decision-making process and can be reductive in understanding the broader dynamics at play.

### **6.3 Member states' compliance with ASEAN agreements**

Is ASEAN grappling with a compliance issue? This question, particularly regarding whether the unique "ASEAN Way" contributes to non-compliance, has been a focal point for many scholars. Dosch (2017: 44-5) highlights that ASEAN's regional integration approach, rooted in the "ASEAN Way," has led to notable delays and missed deadlines, especially concerning the implementation of a single market encompassing the free flow of goods, services, investment, capital, and skilled labour (also echoed by Ravenhill 2009). Similarly, Beeson (2019) pinpoints the "ASEAN Way" as a primary reason for ASEAN's limited tangible outcomes. While this approach may indeed bolster regional trust and cohesion, it seemingly promotes inertia among member states when confronted with intricate challenges, such as the persistent non-compliance with AATHP (as detailed in Chapters 4 & 5). I concur with these evaluations, positing that without clear enforcement mechanisms within ASEAN, member states might feel inclined to deviate from their collective agreements. However, this tendency can also be traced back to the negotiation stages preceding these commitments and the individual member states' characteristics.

**Chapter 5** delves into the factors influencing the timeliness of ASEAN member states' ratifications of agreements, particularly examining the impact of divergent preferences and country-specific attributes such as administrative capacity and democratic levels. The descriptive analysis

uncovers that of the 84 active ASEAN legal instruments (those in force and awaiting ratification), ratified agreements typically experience a swift turnaround of about a month. However, there are stark contrasts with pending ratifications, some of which have been delayed for decades. Notably, Malaysia and the Philippines stand out with prolonged delays of 26 and 21 years, respectively.

The statistical analysis suggests that member states, which exhibit disagreement with certain aspects of an agreement, as reflected in their policy preferences falling below the agreement's standards, tend to miss the stipulated ratification deadlines. Interestingly, there is no discernible trend for states whose policy preferences exceed the agreement's standards. This indicates that primarily those states with a motivation to deviate carry their policy preferences from the decision-making phase into the implementation stage.

However, the nuanced relationship between individual policy preferences and ratification delays might be obscured due to the indirect measurement of member states' preferences concerning ASEAN agreements. Given the unavailability of specific proposal details, it might be an oversimplification to assume a member state's inclination to deviate based solely on its proxy of policy preferences. Compliance is multifaceted, and ratification is merely the initial phase. Beyond ratification, member states must integrate ASEAN agreements into their national laws. It is plausible that while states might align with the majority of an agreement, they could have reservations about specific sections or provisions. In such cases, they might adhere to ratification timelines but later adapt measures during transposition to better align with their policy preferences on contentious parts of the agreement. That said, future research could benefit from a more direct measure of compliance, such as the quality of national transposition by member states to examine how closely their national laws align with the collective provisions set out in ASEAN agreements. However, this approach presents challenges, as it would necessitate detailed information on both the preferences of member states regarding the provisions and their respective national laws.

Beyond the individual incentives of a member state to deviate, certain characteristics of the state, such as its administrative capacity and democratic level, play a pivotal role in determining compliance with ASEAN ratification deadlines. Interestingly, among those member states inclined to deviate from the ASEAN consensus, a robust administrative capacity or bureaucratic efficiency positively correlates with compliance likelihood. Furthermore, our analysis reveals a significant relationship between a state's democratic governance and its compliance behaviour. Specifically, states with more democratic structures tend to experience delays in meeting ratification deadlines. This result aligns with previous findings suggesting that decentralized political systems often grapple with compliance challenges (e.g., Levy, Young, and Zurn 1995; Thomson 2010).

## **6.4 Concluding remarks**

This thesis delves deeply into the intricacies of ASEAN's policymaking, juxtaposing them against both national and international political paradigms. Theoretically, this study offers a rejuvenated lens through which to view the "ASEAN Way," advocating for a more refined interpretation than traditionally held beliefs. It accentuates the significance of interpreting ASEAN's decision-making as a dynamic political system, spotlighting the inherent complexities and subtleties of the organization's *modus operandi*. Moreover, this research offers a unique opportunity to apply, evaluate, and potentially refine modern political science theories and concepts within a context often viewed as

distinct from Western norms. By scrutinizing ASEAN, a polity deeply anchored in its unique historical and cultural milieu, the study broadens the horizons of political science theories and concepts, pushing them beyond conventional Western-centric viewpoints (cf. Acharya 2016). This methodology not only amplifies our grasp of ASEAN but also exemplifies the versatility and global relevance of political science theories when judiciously contextualized.

On the empirical front, the study navigates the intricate terrains of ASEAN policy agenda, its accords, and the compliance patterns of its member governments. Through meticulous analysis, the research unveils discernible patterns and trajectories, enriching our comprehension of the organization's fabric. It illuminates the evolving priorities of ASEAN, the driving forces behind its accords, and the myriad elements influencing member state allegiance. Yet, it is imperative to acknowledge that this exploration does not claim to be exhaustive of the ASEAN decision-making landscape. Rather, equipped with a dataset that encapsulates pivotal facets of ASEAN's policy outputs, this thesis aspires to be a cornerstone for subsequent scholarly pursuits. It endeavours to sow the seeds for future academic explorations, catalysing deeper inquiries into the foundational motives that guide states in crafting institutions that simultaneously uphold sovereignty while championing consensus-driven resolutions. In essence, this thesis not only augments the scholarly narrative on ASEAN but also furnishes pivotal insights for decision-makers, academics, and stakeholders eager to decode the nuanced mechanics of this regional organization.

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