

«EU-ASEAN Perspectives» Policy Paper Series, vol. 2

MAKING INTERREGIONALISM ACTIONABLE

Improving EU-ASEAN Cooperation in Development,
Finance, Trade and Climate Change

D. Brunetto, K. Spandler, N. Stratieva (Eds.)



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LIST OF ABBREVIATIONS

2DS	Two Degrees Celsius Scenario	ESTs	Environmentally Sound Technologies
ACE	Access, Certainty, Efficiency (Bursa Malaysia Stock Exchange Index)	ETS	Emissions Trading System
ACIA	ASEAN Comprehensive Investment Agreement	EU	European Union
ACSC/APF	ASEAN Civil Society Conference/ASEAN People's Forum	FDI	Foreign Direct Investment
AEC	ASEAN Economic Community	FPI	Foreign Portfolio Investment
AIESC	ASEAN Initiative on Environmentally Sustainable Cities	FTA	Free Trade Agreement
AEPF	Asia-Europe People's Forum	ICLEI	Local Governments for Sustainability
AIIB	Asian Infrastructure Investment Bank	ICSID	International Centre for Settlement of Investment Disputes
AMRO	ASEAN+3 Macroeconomic Research Office	ICO	InstitutoCreditoOficial
AMS	ASEAN Member States	IFAIR	Young Initiative on Foreign Affairs and International Relations
APA	ASEAN People's Assembly	IPRs	Intellectual Property Rights
APAEC	ASEAN Plan of Action for Energy Cooperation	ISDS	Investor-State Dispute Settlement
ARISE	ASEAN Regional Integration Support from the EU	ITT	International Technology Transfer
ASEAN	Association of South-East Asian Nations	LDC	Least Developed Country
ASEF	Asia-Europe Foundation	mai	Market for Alternative Investment (Thai Stock Exchange)
ASEM	Asia-Europe Meeting	M&A	Mergers and Acquisitions
ASPEC	ASEAN Patent Examination Co-operation	NDB	New Development Bank
AWGIPC	ASEAN Working Group on Intellectual Property Cooperation	ODA	Official Development Assistance
Bpi	Banquepubliqued'investissements	OECD	Organization for Economic Cooperation and Development
BRICS	Brazil, Russia, India, China, South Africa	PPPs	Public-Private Partnership
C40	C40 Cities Climate Leadership Group	R&D	Research and Development
COP21	21st Session of the Conference of the Parties to the 1992 United Nations Framework Convention on Climate Change	RCEP	Regional Comprehensive Economic Partnership
DC	Developing Country	READI	Regional EU-ASEAN Dialogue Instrument
DG DEVCO	Directorate-General for International Cooperation and Development of the European Commission	RES	Renewable Energy Sources
DG REGIO	Directorate-General for Regional and Urban Policy of the European Commission	SME	Small and Medium Enterprises
DG TRADE	Directorate General for Trade of the European Commission	TPP	Trans-Pacific Partnership
ECAP III	EU-ASEAN Project on the Protection of Intellectual Property Rights	TRIMs	WTO Agreement on Trade-Related Investment
EEAS	European External Action Service	TRIPS	WTO Agreement on Trade-Related Aspects of Intellectual Property Rights
EIB	European Investment Bank	TTIP	Transatlantic Trade and Investment Partnership
ERP	European Recovery Programme	UN	United Nations
		UNCITRAL	United Nations Commission on International Trade Law
		UPCoM	Unlisted Public Companies (Hanoi Stock Exchange Index)

FOREWORD

Interactions between regions are becoming an ever more important part of global politics, and EU-ASEAN relations are assuming a key role in this respect. As the two regional organisations are striving to intensify their cooperation, the need to create knowledge about the potentials and problems of interregionalism is increasing. However, this demand is currently not matched by an appropriate supply of cross-regional networks of knowledge production on EU-ASEAN relations. This is especially so for young academics and professionals, who often have limited access to funding to participate in international conferences.

It is against this background that the Young Initiative on Foreign Affairs and International Relations (IFAIR), a student-led initiative based in Germany, created the EU-ASEAN Perspectives Dialogues in 2013. The idea was simple: bringing students and young professionals from both regions together to discuss current issues in the relations between the two regions and develop topical policy analysis. The problems of geographical distance could be overcome by using web communication technology, such as online conferencing and cloud storage.

After the success of the pilot project, the 2nd edition of the EU-ASEAN Perspectives Dialogue gathered 20 outstanding young people (10 from each region) in March 2015, who jointly developed their expertise in 4 specific policy fields: development cooperation, financial policy, trade and climate change. Their debates resulted in the present paper, which not only provides a state of the art on EU-ASEAN cooperation in the 4 policy fields but also identifies challenges and makes tangible recommendations on how to move ahead. Policy-makers from both regions may find the paper useful, as may anyone interested in the present and future of EU-ASEAN relations.

In the following weeks, the Dialogue participants will discuss the paper findings with stakeholders from both regions. Through a delegation programme in Brussels in June 2015, IFAIR offers them a unique

possibility to engage with decision-makers. Most importantly, however, the Dialogues will continue to provide a network for mutual and intercultural learning among young people. By interacting with peers from the respective other region, participants gain new perspectives about the other but also about politics in their own part of their world.

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Kilian Spandler

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EXECUTIVE SUMMARY

By Nelly Stratieva

In 2015, trends outside the immediate EU-ASEAN relations are infusing fresh vigour into the engagement between the two regions: the two ‘mega-regional’ trade partnerships – Trans-Pacific Partnership (TPP) and Regional Comprehensive Economic Partnership (RCEP), the mounting pressure for a new global agreement on climate at the upcoming Climate Conference in Paris (COP21), the new patterns of aid cooperation and the post-2015 development agenda, the final stretch towards the ASEAN Economic Community (AEC) launch, and the soul-searching re-evaluation of the EU integration model in light of persisting economic and political woes. These challenges are also an opportunity to redefine and energize EU-ASEAN cooperation. The EU joint communication “The EU and ASEAN: A partnership with a strategic purpose”, and more importantly the drastically increased EU budget for activities in ASEAN, is proof that the cordial friendship is set for an upgrade of more practical engagement. Our ten authors from Southeast Asia and Europe lay down their ideas how to improve interregional relations in four policy areas – development, finance, trade, and climate change. This executive summary is a snapshot of the key recommendations in the policy paper.

DEVELOPMENT

The chapter on development scrutinises EU-ASEAN cooperation in the post-2015 development agenda. Key recommendations focus on improving the engagement of civil society and incentivising the private sector, for example through public-private partnerships (PPPs). Other suggestions are on updating the Regional EU-ASEAN Dialogue Instrument (READI) and making use of the full potential of the Asia Europe People Forum. The authors, themselves young researchers and practitioners from Europe and Southeast Asia, recognise the need for more youth exchange programmes between the two regions. They propose not only more government-initiated programmes, but also programmes lead by civil society organisations.

FINANCE

Financial integration under the AEC and new models for funding small and medium enterprises (SMEs) are two areas in which the authors see opportunities for improving interregional exchange. As ASEAN sets out to establish a well-functioning regional financial system, it could benefit from EU assistance on how to balance liberalisation with risk management. The EU should also support the ASEAN Secretariat, and especially the ASEAN Integration Monitoring Office, through capacity-building initiatives. For example, one avenue for improving technical cooperation might be to upgrade the ASEAN Regional Integration Support from the EU (ARISE) programme to include a financial cooperation component. On innovating SME financing, the paper makes multi-level recommendations. At the national and regional level, some suggestions encourage cooperation between statutory agencies, developing SME capital market-based securitisation and non-bank funding options. At the interregional level, an improvement would be to establish dialogue on new financing possibilities for SMEs. The dialogue could include initiatives for low-cost access to research, technology and management know-how, and for improving financial literacy.

TRADE

The chapter tackles two highly contended issues in EU-ASEAN trade – intellectual property rights (IPRs) and investor-state dispute settlement (ISDS). Both instruments aim to inspire investor confidence, and thus more foreign direct investments (FDIs), but raise concerns about infringing on public interest. Our authors suggest ways to soften the negative effects of IPR and ISDS enforcement through complementary actions. Recommendations for improving IPR matters include making use of alternative ‘soft’ legal instruments, supporting the development of ASEAN innovation capacity, and creating ‘IPR helpdesk’-type of support for the ASEAN private sector. On ISDS, the EU could raise ASEAN support for its proposal

to create an international arbitration court and appellate mechanism. Other helpful actions would be the exchange of experience and best practices on investment protection standards, as well as capacity building programmes to help the implementation of the ASEAN Comprehensive Investment Agreement (ACIA).

CLIMATE CHANGE

Interregional cooperation between the EU and ASEAN on climate change is limited. This is mostly due to the widely divergent positions of ASEAN countries and the lack of a strong single voice of ASEAN on the climate debate. The chapter on climate change looks into the opportunities for enhancing ties in three areas – development of renewable energy in ASEAN, subnational-level cooperation, and PPPs. The section on renewables recommends that the EU share its experience in regional coordination, both the success stories and the problems of developing a common renewables market. Policy advice by the Eastern European EU member states might be more relatable to ASEAN countries. In line with the megatrend of urbanisation and its impact on climate, the section on subnational cooperation draws attention to the underutilised potential of city- or regional-level partnerships. Key recommendations include sharing EU best practices in cross-border regional projects and encouraging city-to-city cooperation – either within existing international cooperation platforms, or by launching projects in ASEAN modelled after city-targeting EU projects in other world regions. PPPs can help turn many of the above initiatives into reality. Echoing some of the proposals of the development chapter, the private sector and civil society can also do more in climate change. Clear and transparent regulatory frameworks, information campaigns, and extra support for green companies could galvanise greater private sector interest. PPPs would facilitate technology transfer and innovation, and if academia and civil society become more involved they could safeguard the public interest.



DEVELOPMENT

By Jaya Dani Mulyanto, Chiara De Santis and Elodie Sellier

EU-ASEAN IN THE POST-2015 DEVELOPMENT AGENDA

The recent EU-ASEAN agreement on the establishment of a strategic partnership has enshrined the pressing need for a shift towards a deeper common engagement on key global issues. Cooperation within the framework of the post-2015 sustainable development agenda represents a major chapter in the deepening of EU-ASEAN relations. However, the adoption of the Sustainable Development Goals by the United Nations raises a number of questions on the dynamic of such a partnership. Although the Bandar Seri Begawan Plan of Action adopted in 2012 sets out specifically to deepen institutional, political and security, economic and socio-cultural ties between both regions, certain asymmetries in the relationship persist.

The post-2015 development agenda, on the other hand, will in all likelihood obey to new patterns of cooperation generated and precipitated by the economic dynamics of an increasingly globalised world. South-South financial aid flows, new global economic leaders – the so-called BRICS¹ – and increasing human and capital mobility are the trends of tomorrow. Moreover, underlying issues of region-to-region and elite-driven cooperation models profoundly undermine coherent, consistent and effective development policies. The EU and ASEAN should identify issues of specific interest for both regions; this would undoubtedly strengthen the persuasiveness of their cooperation proposals and, at the same time, would encourage ASEAN countries to elaborate and present a common agenda built around a small pool of real priorities to be pushed at the global level as a single entity. A shift of this kind in the relationship has the potential to increase the relevance of interregional relations in determining global trends.

STATE OF PLAY

In its effort to support ASEAN in its development as a regional organisation, the EU has provided €70 million

1 Brazil, Russia, India, China and South Africa.

at the regional level through the ASEAN Secretariat during the period 2007-2013 and committed to increase the sum to €170 million during the 2014-2020 period. Overall EU aid to Southeast Asia, including through bilateral assistance, has been €2.2 billion between 2007 and 2013 and will increase to €3 billion in the 2014-2020 period.²

The aid is provided to Southeast Asia through a number of thematic and specific projects; among those on a regional basis might be worth mentioning the ASEAN Regional Integration Support by the EU (ARISE), the EU-ASEAN Statistical Capacity Building Program, the EU-ASEAN Project on the Protection of Intellectual Property Rights, the EU support to the ASEAN Border Management Program, the study tour for the ASEAN Inter-governmental Commission on Human Rights funded by the European Instrument for Democracy and Human Rights, the EU support to the ASEAN Coordinating Centre for Humanitarian Assistance and, lastly, the Erasmus Mundus programme.

An important part of the EU-ASEAN cooperation takes place through policy dialogues. To advance specific issues, EU and ASEAN Ministers and officials meet more than 50 times per year.

The Regional EU-ASEAN Dialogue Instrument, or READI, is a four-year initiative of the European Union to support policy dialogues with ASEAN, running from 2011 to 2015. The READI goal is to support the ASEAN Integration process by drawing from the EU experiences and lessons learned. This transfer of knowledge is facilitated by the organisation of several policy dialogues on specific topics. Four components of action had been initially identified: Information and Communication Technology; Energy; Science & Technology; and Disaster Management. However, the flexible features of the Initiative, built to adapt to the evolution of the priorities and of the policies of the two organisations, has allowed its expansion to other themes during the years.

2 Co-Chairs' Statement of the 20th EU-ASEAN Ministerial Meeting, July 23rd 2014, http://eeas.europa.eu/statements/docs/2014/140723_03_en.pdf.

It currently includes six additional components: Education, Human Rights, Capacity Building, Climate Change, Maritime Cooperation and Electoral Observation.

The READI flexibility is surely its main strength. The Initiative's first four years are coming to an end and it will have to be re-thought during the second part of 2015. It has the potential to adapt to the necessities and priorities of the moment, facilitating the EU collaboration to the elaboration of a common strategy at the ASEAN regional level. Its malleable nature also means that this is the instrument that could be used as a forum for the discussion of issues of particular importance for both organisations (migration comes to mind in light of very recent events), as well as the solutions respectively adopted, in a process of mutual learning and best practice exchanges.

CHALLENGES

Unfortunately, the EU as a partner on development issues in the ASEAN region suffers from a lack of visibility because of the predominance of economic and trade themes in the relations between the two regions. In addition, while the EU is eager to be seen as a model, in the ASEAN region, the integration process has clearly been following a very different path. The lack of understanding of the specificity of ASEAN and of its approach diminishes the potentially powerful effects of such an amount of development support aid. On the other hand, in many of the fields where the EU funds development projects, a coordinated regional effort from the ASEAN side is lacking despite the Secretariat's efforts.

These weaknesses, coupled with the asymmetries that often preclude excellent opportunities of mutual learning, are signs of the need to re-think, at least partially, the EU support to development in the ASEAN region in order to make it more effective for both actors.

Against this background, the announcement of the appointment of a European ambassador specifically dedicated to EU-ASEAN relations in September 2014 is a welcome move and constitutes a significant step towards enhanced interregional cooperation. Based in Jakarta, the EU ambassador will coordinate national diplomacies in the Southeast Asia region and contribute to developing a more coherent and consistent EU approach vis-à-vis ASEAN.

Closer political and especially diplomatic dialogue is key for development policies in the region. This is es-

pecially true as currently, at the Brussels level, much of the emphasis is on deepening and reinforcing ties with the two regional rising economic giants, China and India. ASEAN thus finds itself side-lined in the EU's Asia strategy. This entails two major consequences: On the one hand, the EU fails to identify key priorities faced by ASEAN countries and to take into account the major developments that dominate Southeast Asia; on the other hand, the EU's role is reduced to that of a 'donor' in the economic realm, which profoundly undermines Europe's credibility as a potentially equal partner for political and security cooperation.

Overall, the appointment of an EU ambassador demonstrates the growing EU interest in deepening interregional cooperation with Southeast Asia. After a long period of reluctance, hesitancy and criticism towards ASEAN, the EU seems to have finally realised that there is growing potential not only for economic and trade relations, but also for diplomatic, political and socio-cultural engagement and mutual learning. This acknowledgment must stand at the very core of a coherent and consistent development policy.

In 2014, Official Development Assistance (ODA) reached its highest level according to the OECD. The EU took the lead in this respect, becoming the world's largest aid assistance donor with €56.1 billion provided in 2014.³ However, the question of its usefulness and effectiveness is being increasingly debated. Medium and long-term financial assistance often implies the development of a dependency relationship between donors and recipients, which is unlikely to be sustainable in the long run, especially given the increasing difficulties of European countries to meet their ODA commitments since the 2008 financial crisis.

Against this background, recent trends highlight major shifts in the traditional development aid flows patterns. As emerging countries and developing economies gain more leverage in the world's economic order, the traditional North-South dichotomy becomes less pronounced. The establishment of the BRICS New Development Bank (NDB) in 2014 and the forthcoming launch of the Asian Infrastructure Investment Bank (AIIB, strongly supported by China) underline the need for Western donors to engage with new actors in development cooperation.

³ European Commission, Official Development Assistance, data published, Press Release, retrieved from http://europa.eu/rapid/press-release_MEMO-15-4748_en.htm.



To gain more influence and leverage in the region and to better target aid development assistance, the EU needs to take into consideration these new patterns of aid cooperation. The presence of a number of Western countries and developing countries as founding members of the AIIB constitutes an opportunity to harmonise aid delivery standards, to enhance Europe's visibility in the region, and to create opportunities for optimised information-sharing and best practice exchanges. This opens the path for new development assistance patterns, symbolises the near end of North-South asymmetries, and lays the foundation for a level playing field in aid delivery standards.

Enhancing civil society collaboration between the EU and ASEAN is a must for a more people-centred development. However, institutional cooperation is still the mainstream method to tackle development problems. While engaging civil society is increasingly important, it faces some challenges.

Firstly, civil society's conditions, roles and problems faced in Europe and Southeast Asia widely differ. In light of such diversity, it is unclear whether a common approach with regard to civil society's role can be developed. For example, while civil society actors in both regions can partner up with public and private sector actors, what relative importance should they ascribe to these options?

Secondly, both ASEAN and the EU are often criticised for their elitist and exclusive approaches, as they both are seen as giving few or no opportunities no opportunities to take part in their decision-making processes.⁴ Therefore, their policies are seen as less beneficial to the majority of the people, despite their claims to become more people-centred. Specifically, development policies have been accused of having little direct impact on people's lives and of favouring small groups while marginalising others.

Lastly, the EU-ASEAN relationship has been accused of reproducing patterns of teacher-student or donor-recipient types of relationship, with the negative effects that local knowledge or wisdom is less appreciated and utilised. In the area of development, this effect is easily discovered as local values, local systems, local people's and vulnerable groups' interests are frequently sacrifici-

ced for purported national interests. Such practices are sometimes legitimised by the demands of regional and/or international cooperation partners.⁵ Under these circumstances, there is space for improvement.

POLICY RECOMMENDATIONS

Upgrading the READI Facility

The READI facility must be updated to respond to ASEAN priority themes in the post-2015 agenda: disaster management, migration flows and minorities' rights constitute just a few examples. READI must be used as a platform to develop a strong position shared by ASEAN members, in order to allow the region to make its voice heard at the global level. At the same time, its potential as a forum of discussion of common issues and mutual learning for both ASEAN and the EU must be explored.

Incentivising the local private sector

The utilisation of public-private partnerships (PPPs), or of other new financing models that involve the private sector, will be critical in the post-2015 agenda in order to capitalise on the strength of the private sector and maximise synergies with ODA. In the lead-up to the ASEAN Economic Community (AEC), ASEAN countries will need heavy infrastructure investments to further develop physical connectivity and people-to-people linkages, and to narrow the development gaps between ASEAN countries. The EU needs to incentivise the local private sector to participate and contribute to financing development projects and programmes. However, this must take place within an efficient and high-quality regulatory and legal framework in order to avoid corruption issues, maximise synergies and benefits, and enhance the attractiveness of these regions. Similarly, implementation monitoring through effective systems of benchmarking and progress indicators is key to the success of PPPs. The EU's vast expertise in decentralised development projects and programmes implementation is crucial in this respect.

Engaging civil society

Both institutions should be more confident about the potential contribution of civil society. There are differences in how decision-makers engage with civil society, but in general the full potential of civil society contribution is yet to be unlocked because of the idea that civil

⁴ A. Chandra, *Civil Society in Search of an Alternative Regionalism in ASEAN*, Winnipeg: International Institute for Sustainable Development, 2009; S. Kroger, *Nothing but Consultation: The Place of Organised Civil Society in EU-Policy Making across Policies*, European Governance Papers, C-08-03, 2003.

⁵ One of the most popular examples of it is the debate about free trade that is frequently linked with regionalism. See: G. Berron, J. Chavez, et al., *Rethinking Regionalism in Times of Crises: A Collection of Activists' Perspectives from Latin America, Asia, Africa and Europe*, Rio de Janeiro: Instituto Equit, 2003.

society's engagement is merely supplementary. Civil society should instead be treated as a vital balance to governments' and markets' interests, thus expanding and transforming the cooperation of PPPs.⁶ This shift will certainly have a positive impact, in promoting a more equal and balanced decision-making. Furthermore, ties between civil society actors of both regions should be strengthened: Existing platforms such as the Asia Europe People Forum (AEPF) should be optimised by enlarging membership and building legitimacy.⁷ AEPF should also engage more effectively with the policy makers, improving its visibility and increasing its influence, and could enhance its link with other relevant entities, such as the Asia Europe Foundation (ASEF) and the Asia Europe Meeting (ASEM).

Empowering the youth

Given the strategic vision for the future potential of youth and the fact that young people are often well-aware and informed about regional cooperation in development, policies should focus on youth and education issues. While government-backed institutions have put in place several educational and cultural exchanges for young people, civil society should also intensify its participation in this area, e.g. by promoting cooperation between the ASEAN Youth Forum and the European Youth Forum.

⁶ One example of the essential role of civil society in the context of PPPs is in safeguarding accountability and transparency.

⁷ It is important to note here that in ASEAN, since the end of 1990s, governance structures that are more responsive to civil society organisations have been established – for example, the ASEAN People's Assembly (APA), which has been succeeded by the ASEAN Civil Society Conference/ASEAN People's Forum (ACSC/APF). This Southeast Asia-focused civil society framework is an important basis for an engagement with other actors in Europe or Asia more broadly.



FINANCE

By Camille Defard and Desmond Soo

FINANCIAL INTEGRATION IN THE ASEAN ECONOMIC COMMUNITY

STATE OF PLAY

The AEC, to be launched by the end of 2015, is expected to bring a number of benefits to the region, boosting intraregional trade and investments. Its architects hope that this will raise ASEAN's attractiveness to external investments and enhance ASEAN's international competitiveness. It will allow ASEAN to be better connected with capital-abundant regions such as the "plus three" countries (China, South Korea and Japan), but also the EU – currently the most important provider of Foreign Direct Investment (FDI) in the region, supplying 25 percent of total FDI.⁸

Capital inflow is vital for the Southeast Asian region. Apart from FDI, it can also take the form of Foreign Portfolio Investment (FPI), which, in contrast to FDI, does not imply the acquisition of a whole company but only a large share of it. FPI therefore involves a much shorter investment horizon. If the local economy happens to face turbulences, it will be easy for the investor to exit the country by selling its shares, while FDI entails longer-run strategies and more stable capital inflow for the local economy.

As it brings much needed investment along with increased financial risks, depending on the type of foreign investment (FDI or FPI), financial integration is likely to be one of the most challenging components of the AEC. Although financial and capital markets improved significantly in the past years, ASEAN national markets remain relatively small and thus vulnerable to external shocks.⁹ Besides, despite rising FDI inflows over the 2000-2012 period, more than half of the ASEAN countries remain capital exporters,¹⁰ although large infrastructure needs and high development potential would call for more external investments. Against

8 G. Almekinders et al., ASEAN Financial Integration, IMF Working Paper, 2015, available at: <http://www.imf.org/external/pubs/ft/wp/2015/wp1534.pdf>.

9 S. Shimizu, ASEAN Financial and Capital Market Integration – Policies and Prospects for Regional Integration, in Pacific Business and Industries Vol. XIV, 2014, No. 54, available at: <https://www.jri.co.jp/MediaLibrary/file/english/periodical/rim/2014/54.pdf>.

10 G. Almekinders et al., cit.

this background, it appears to be expedient to accelerate the expected shifting of capital flows from China to ASEAN (due to China's rising wages¹¹) by enhanced regional integration.

As defined in the AEC Blueprint, integration is to be achieved through the liberalisation of national financial services and capital transactions, as well as the harmonisation of regulations, allowing ASEAN banks to establish branches in other ASEAN Member States (AMS) and making enhanced cross-border financial transactions possible. In this regard, the EU has a strong experience in financial integration, with both important successes and failures.

CHALLENGES

The establishment of the AEC and especially the achievement of regional financial integration is likely to be extremely challenging for ASEAN. The removal of investment barriers among the ASEAN countries will involve increased competition and may not benefit all ASEAN countries equally, as it could bring about greater volatility in some of them.¹² In this regard, it is crucial to move forward gradually while establishing efficient crisis management systems. Additionally, national markets will need to be prepared for an increased flow of foreign capital from inside and outside the region in order to reduce the risk of financial crisis.

In this perspective, a key challenge will be to strengthen the competitiveness of the domestic financial and capital markets, as well as the reduction of the development gap among the ASEAN countries. There are huge differences in the level of development of financial systems, as well as in market size, financial infrastructure and regulations. Whereas Malaysia, Singapore and Thailand are comparable to EU countries in terms of financial assets in percentages of GDP, Vietnam, the Philippines and Indonesia rank among developing countries, while Brunei, Cambodia, Laos and Myanmar have underdeveloped financial mar-

11 World Bank East Asia Pacific Economic Update, 2014, available at: <http://www.worldbank.org/en/region/eap/publication/east-asia-pacific-economic-update>.

12 Almekinders et al., op. cit.

kets.¹³ The vulnerability of the financial sector of some ASEAN countries should be reduced before going ahead with their liberalisation. Indeed, financial innovation and development, if managed incautiously, can have adverse effects on macro-economic stability.¹⁴ For example, lifting restrictions regarding foreign ownership in the course of the liberalisation of capital transactions will increase the risks of macro-economic instability. Therefore, creating structures that enable ASEAN's financial systems to cope with an increased inflow of capital is an indispensable requirement for financial integration.

Against this background, harmonising financial regulation, especially banking regulation, will be a major task. Commercial banks are the most widespread type of financial institutions in ASEAN and are expected to drive financial integration. In addition, capacity development needs to be addressed in countries which lack financial infrastructure. According to the Asian Development Bank, an adequate institutional framework, including rating agencies and inter-bank markets, should be developed in each country to ensure the well-functioning of the ASEAN financial integration and the soundness of the banks that will take part in it.¹⁵

POLICY RECOMMENDATIONS

In order to establish an efficient and well-functioning regional financial system, ASEAN will have to balance liberalisation and risk management. The EU, which has the highest degree of regional financial integration in the world, should provide assistance to ASEAN in promoting a safe process toward financial integration. Indeed, the EU also had to cope with very heterogeneous countries while building up its economic union.

Besides, the experience of the EU crisis has demonstrated the vital importance of the creation of a supranational oversight framework to prevent damaging financial crisis.¹⁶ Existing regional macroeconomic surveillance programmes, such as the ASEAN+3 Macroeconomic Research Office (AMRO) should be strengthened. The EU should especially collaborate with ASEAN to reinforce the ASEAN Integration Monitoring Office, which was created within the ASEAN Secretariat in 2010 and stands for its own sur-

veillance and capacity building initiative. On a more general note, ASEAN can certainly learn lessons from the EU's history of monetary cooperation and integration about how to manage exchange rate risks. Creating mechanisms for policy consultation and coordination might help Southeast Asia to cope with its challenges.

Although the ASEAN Secretariat's competences are far less extensive than the European Commission's powers, the two institutions can be compared as regards the leading role they are expected to perform in the integration process. However, the ASEAN Secretariat lacks financial and human resources to properly fulfil this highly ambitious task.¹⁷ The EU should therefore help the ASEAN Secretariat build the necessary capacity to successfully manage the integration process by providing financial and technical assistance, for instance through the ASEAN Integration Support from the EU ARISE programme.

ARISE aims at providing technical cooperation to «support the implementation of key regional integration initiative»¹⁸ in ASEAN. However, unlike trade, a financial component is absent of the current framework. In order to achieve an increased financial cooperation between the two regions, it seems crucial to include a financial cooperation programme in the future.

Financial and capital integration is likely to bring about huge benefits in terms of development for the ASEAN countries. The EU, as its «natural partner»¹⁹, should be up to the situation by providing crucial support and foster capacity building in ASEAN, thereby committing itself to a mutually beneficial cooperation.

13 Shimizu, op. cit.

14 A. Schipke, *Frontier and Developing Asia: The Next Generation of Emerging Markets*, 2015, available at: <http://www.elibrary.imf.org/view/IMF071/21132-9781475595512/21132-9781475595512/21132-9781475595512.xml>.

15 Asian Development Bank, *The Road to ASEAN Financial Integration*, 2013, available at: <http://adb.org/sites/default/files/pub/2013/road-to-asean-financial-integration.pdf>.

16 Almekinders et al., op. cit.

17 Ji X., *Why the ASEAN Economic Community will struggle*, The Diplomat, February 2014. Retrieved on 05.05.2015, available at: <http://thediplomat.com/2014/09/why-the-asean-economic-community-will-struggle/>.

18 <http://arise.asean.org/>, retrieved on 06.05.2015.

19 EU-ASEAN: *Natural Partners*, EEAS 2013, available at: http://eeas.europa.eu/asean/docs/eu_asean_natural_partners_en.pdf.



NEW INSTRUMENTS FOR SME FINANCING AND ACCESSIBILITY

STATE OF PLAY

This paper section briefly examines the importance of innovating financing mechanisms and establishing cross-regional dialogue to prioritise Small and Medium Enterprises (SMEs) development as a critical economic policy pillar in Europe and Southeast Asia. Given the significant contribution and influence SMEs, including micro enterprises, have on an economy, it is important to address the challenges and barriers faced, as well as the current practices, and to consider new financial regimes in order to rebal-

ance domestic investments. The section excludes the examination of fundamental corporate strategies but instead recommends possible policy instruments to fund SMEs' growth. Although alternative funding modalities were introduced after the global financial crisis, they are still at their nascent stage of development globally.

CHALLENGES

Table 1 provides an impression of the relative and absolute use of different funding sources of SMEs in ASEAN and the EU. Although there are signs showing that SMEs are seeking alternatives due to restrictions imposed by bank financing, existing financial regimes

Table 1: Differentiation of SMEs funding patterns

Types of funding	ASEAN	EU
Conventional loans (Bank)	15.4 – 34.5% ²⁰ (lines of credit/loans)	32 – 41% ²¹
Internal fundings	75 – 90%	75 – 90%
Non-bank Sector (e.g. shadow banking, private equity, institutions)	Negligible	Typical loan amount of €10m - €50m ²²
Capital Market Financing	SME Equity Market Capitalisation in selected SEA Countries: ²³ Malaysia, ACE Board: US\$2.244bn Philippines, SME Board: US\$14m Thailand, mai Board: US\$4.28bn Vietnam, UPCoM Board: US\$1.386bn	Total of SME securitisations: €16bn during the first 3 quarters of 2013 ²²
Financing schemes, initiatives and assistance	Multi-purpose NGOs and Micro-finance Institutions that operate microfinance programs for poor-pro-funding environment, total loans: ²⁴ Myanmar: US\$120.8m; Cambodia: US\$4.4bn; Vietnam: US\$6.3bn; Philippines: US\$1.3bn; Indonesia: US\$11.3bn Laos: US\$103m	Loan and subsidy programs by public/governmental institutions, e.g. ERP (Germany), BpiFrance, Fondo Italiano d'Investimento (Italy), ICO (Spain)

20 Asian Development Bank, ADB-OECD Study on Enhancing Financial Accessibility for SMEs, 2014, p. 31, available at: <http://www.oecd.org/cfe/smes/adb-oecd-study-enhancing-financial-accessibility-smes.pdf>.

21 Data referring to the last 6 months of 2013 – 2H. See: Deutsche Bank Research, SME financing in the euro area: New solutions to an old problem, 2014, pg. 5, available at: https://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD000000000344173/SME+financing+in+the+euro+area%3A+New+solutions+to+an+old+problem.PDF.

22 PwC, Increasing European SME Access to Credit with Non-bank Lenders, 2014, pg. 4, available at: <http://download.pwc.com/ie/pubs/pwc-ireland-2014-increasing-european-sme-access-to-non-bank-leaders-17-02-2014.pdf>.

23 2012 data. See Asian Development Bank, Asia SME Finance Monitor 2013, 2014, pg. 13, available at: <http://www.adb.org/publications/asia-sme-finance-monitor-2013>

24 <http://www.mixmarket.org/mfi/>.

for SME establishments, ubiquitous in EU and ASEAN, are based on conventional bank-centred funding and/or internal financing. This restricts SMEs' access to loans. In principle, SMEs face common challenges in both regions:

- restricted access to bank financing;
- high lending rates;
- lack of collaterals and/or guarantees pledged by SMEs;
- lack of liquidity and access to secondary markets;
- and lending institutions' perceived risks of SMEs.
- Inherent features of SMEs, such as simpler financial statements, shorter track record and a limited potential for expansion further magnify these problems.

Although studies have shown that SMEs in the EU and ASEAN continue to face difficulties accessing external funds, it remains more challenging in developing Asia, as a higher percentage of its SMEs still rely on internal funding. In 2010, there was a gap financing value of US\$700-800bn in Asia,²⁵ a considerable part of which fell upon Southeast Asian countries. This is largely attributed to a lower level of capital market development, underdeveloped SME financing institutions, and a lack of regulations and information between SME lenders and borrowers. Similar conditions also apply to the EU region: based on IFC Enterprise Finance Gap Database (2011), the formal SME credit gap for Europe and Central Asia was US\$150-190bn.

POLICY RECOMMENDATIONS

The following recommendations address two questions: First, what can Member States of the EU and ASEAN do on a national and regional level to improve the financing possibilities for SMEs? Second, how could the EU and ASEAN cooperate interregionally on this issue?

On the national and regional level, as regulators of all elements of monetary policy, banking and finance,

²⁵ S. Shinozaki, ADB Working Paper Series on Regional Economic Integration – A New Regime of SME Financing in Emerging Asia: Empowering Growth-Oriented SMEs to Build Resilient National

Economies, 2012, available at: <http://www.adb.org/publications/new-regime-sme-finance-emerging-asia-empowering-growth-oriented-smes-build-resilient>.

central banks are the primary addressees of guidance to improve the situation of SMEs. In particular, the following recommendations should be considered by EU and ASEAN central banks:

- develop SME capital market-based securitisation, bond instruments and non-bank avenues of funding (crowd-funding and clustering financing schemes);
- develop a supporting ecosystem to increase the liquidity of SME securities in secondary markets;
- establish dialogue and co-operation among statutory agencies to support funding and development of cross-regional SME business ecosystems (establishing regulatory frameworks and diversify mechanisms for “needs-by-stage” developments of SME business cycles);
- and improve SME financial literacy (financial management and services).

To promote monetary and credit stability for SME financing, new funding mechanisms, for example capital market-based securitisation, first need to be regulated for provision of finance. This should be followed by innovation on existing policies. For example, SMEs need to be given the option to roll over loans to non-banks/government schemes at lower rates. Establishing these foundations will ensure that a critical mass for capital-market based investment ecosystems can develop. Moreover, such a framework will protect private and accredited investors from risky SME businesses/start-ups.

An efficient and effective approach towards developing these new instruments would be to first segment the SME business model and then institute cost-effective financing options (provided by private and/or government-based entities at more competitive rates vis-à-vis banking institutions and comparable to MNCs borrowing rates) for different development stages. This financial liquidity can stimulate organic growth for SMEs and a favourable environment for repayments. Access to specific-needs financing can be integrated under one financial agency (a government body or an international organisation), or through separate entities. The former option is recommended as it is an administratively more efficient and cost-effective set-up.

As iterated, a healthy growth of the SME sector is instrumental in spurring socio-economic develop-



ment. To enhance macro-economic indicators, it is pertinent for policymakers to address the specific challenges faced by SMEs at different stages of development, analyse market drivers and customise appropriate solutions for various business sectors. For example, while green financing is potentially a powerful model, it might not be an economically viable solution to achieve full-scale production for SME tech pilot plants that are very capital and research and development (R&D) intensive. Such specialised models do not guarantee success or profits in the long-run when contending for a market share with the conventional energy sector, whose production has become more cost-effective and sustainable due to intensive research.

How can the EU and ASEAN work together interregionally on these issues? Essentially, cross-regional dialogue and exchange of knowledge would be useful in improving financial literacy and developing SMEs in both economic blocs. For instance, government budgets to subsidise green programs are very limited to non-existent in many ASEAN countries as of date. The EU can contribute by providing low-cost access to research, technology and management know-how to develop this financing model as a sustainable mechanism. Of course, it should be noted that energy security in relation to technology can be a politically sensitive agenda.

Acknowledging that a one-size-fits-all approach is futile, it is necessary to establish a cross-regional dialogue to understand the market demand-supply equilibrium in both regions. Based on this, an organic coordination among regulations, policies and execution of both financing access and its supporting infrastructures can be developed. For example, in developing capital markets, the concerns, interests and incentives of all actors have to be aligned, including SMEs, investors, stock exchanges, advisory services, listing agents, lawyers, auditors, PR agencies, accountants and rating agencies.²⁶

²⁶ Bain & Company Inc., Institute of International Finance, Restoring Finance and growth to Europe's SMEs, 2013, available at: http://www.bain.com/Images/REPORT_Restoring_financing_and_growth_to_Europe%27s_SMEs.pdf.





TRADE

By Dr. Anna Katharina Stahl and Dang Huyen-Anh

INVESTOR-STATE DISPUTE SETTLEMENT

STATE OF PLAY

Most trade agreements contain dispute settlement provisions to ensure that the agreements can be enforced and that potential disputes can be settled. Different types of dispute settlement exist, including the so-called “Investor-to-State Dispute Settlement” (ISDS).²⁷ ISDS is an instrument of public international law, which allows foreign investors to seek an arbitral tribunal in case the host state violates the rights granted to the investor under international law, and to claim damages. According to estimates of the EU, there are currently more than 3000 international investment agreements with ISDS provisions.²⁸ In the context of ISDS, different arbitration institutions exist, which can be chosen by the disputing parties (i.e. the investor and the defending state) on a case-by-case basis. Specialised investment tribunals include the International Centre for Settlement of Investment Disputes (ICSID), set up under the World Bank, as well as the Commission on International Trade Law (UNCITRAL), based on UN rules.

Since 2000, and especially after the entry into force of the Treaty of Lisbon, which included FDI as part of the common commercial policy,²⁹ the EU has started to include disputes settlement provisions in its trade agreements. This key shift in EU trade policy bears important consequences for ASEAN countries. Initially, negotiations over a Free Trade Agreement (FTA)³⁰ between the EU and the regional group of seven ASEAN countries were launched in July 2007. Yet, after major difficulties, the negotiations were suspended in December 2009

and it was decided that the EU-ASEAN FTA negotiations would be replaced by bilateral negotiations with individual ASEAN countries.³¹ Among the ASEAN countries, Singapore was the first to sign an FTA, which contains provisions on investment protection.³² Moreover, the EU is engaged in negotiations for FTAs with Malaysia, Vietnam and Thailand – which also involve discussions on investment protection provisions.³³

Parallel to FTA negotiations between the EU and individual ASEAN countries, AMS have begun to harmonise their domestic legislation in line with common protection standards, on the basis of the ASEAN Comprehensive Investment Agreement (ACIA),³⁴ which entered into force in 2012. Investment protection is one of the four pillars of ACIA, along with liberalisation, promotion and facilitation. The ACIA allows ASEAN-based investors to rely on an ISDS system.³⁵

CHALLENGES

Despite recent efforts, both by the EU and ASEAN, to foster investment protection on the basis of ISDS, a number of challenges remain. A key issue concerns the arbitration institutions carrying out ISDS. For the moment, no international arbitration tribunal exist. Moreover, there is no appellate mechanism for challenging decisions by ISDS tribunals. In order to create a more coherent system, the EU has called for the establishment of a permanent arbitration court, as well as an international appellate mechanism, in the context of the current negotiations of the Transatlantic Trade

27 D. Gaukrodger and K. Gordon, Investor-State Dispute Settlement: A Scoping Paper for the Investment Policy Community, OECD Working Papers on International Investment, 2012/03, 2012, available at: <http://dx.doi.org/10.1787/5k46b1r85j6f-en>.

28 European Commission DG Trade, Investor-to-State Dispute Settlement (ISDS). Some facts and figures, 12 March 2015, available at: http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153046.pdf.

29 Art. 3(1)e and 207 TFEU.

30 European Commission DG Trade, Overview of FTA and other trade negotiations, 5 May 2015, available at: http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.05.05.pdf.

31 European Commission, EU and Singapore conclude investment talks, Press Release 17 October 2014, available at: http://europa.eu/rapid/press-release_IP-14-1172_en.htm.

32 http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152845.pdf.

33 European Commission, EU Investment Negotiations with China and ASEAN, Memo, 18 October 2013, available at: http://europa.eu/rapid/press-release_MEMO-13-913_en.htm.

34 [http://www.asean.org/images/2012/Economic/AIA/Agreement/ASEAN%20Comprehensive%20Investment%20Agreement%20\(ACIA\)%202012.pdf](http://www.asean.org/images/2012/Economic/AIA/Agreement/ASEAN%20Comprehensive%20Investment%20Agreement%20(ACIA)%202012.pdf).

35 OECD, Southeast Asia Investment Policy Perspectives, 2014, available at: <http://www.oecd.org/daf/inv/investment-policy/Southeast-Asia-Investment-Policy-Perspectives-2014.pdf>.

and Investment Partnership (TTIP) with the US.³⁶ Although there has been no official ASEAN position on the EU's proposition so far, it has caused some controversy among other EU trading partners.³⁷ In particular, they have raised concerns that the EU proposition could harm their sovereign right to issue national regulations protecting the public interest in areas such as public health and safety.³⁸ These apprehensions could be particularly relevant for AMS, which have enshrined national sovereignty as one of the pillars of the ASEAN Community.

POLICY RECOMMENDATIONS

Against the background of current negotiations towards FTAs between the EU and several ASEAN countries, particular attention should be attributed to the following policy recommendations:

- Within the broader EU-ASEAN dialogue, European and ASEAN policymakers should exchange experiences and best practices related to investment protection standards;
- on the basis of the European Commission's regulatory efforts, the European Investment Bank (EIB) should increase its investment activities in the ASEAN region;
- the EU and single member states should provide particular support to ASEAN countries for the implementation of ACIA, for instance through specific capacity building programmes;
- in addition to bilateral exchanges, the EU and ASEAN should rely on multilateral channels such as the WTO Agreement on Trade-Related Investment Measures (TRIMs). Moreover, the EU should consult various ASEAN stakeholders regarding its proposition of establishing an international arbitration court and appellate mechanism.

³⁶ http://trade.ec.europa.eu/doclib/docs/2015/may/tradoc_153408.PDF.

³⁷ S. Donnan, EU Calls for Global Investment Court, Financial Times, 5 May 2015, available at: <http://www.ft.com/intl/cms/s/0/c1f2c4b2-f34a-11e4-8141-00144feab7de.html#axzz3a8UH5dzZ>.

³⁸ <http://www.ictsd.org/sites/default/files/review/bridgesweekly19-16.pdf>.

INTELLECTUAL PROPERTY RIGHTS

STATE OF PLAY

Apart from ISDS, intellectual property rights³⁹ (IPRs) have gained increasing prominence in EU trade agreement negotiations with AMS, and in the list of trade-related grievances in both regions. Indeed, the EU and, more recently, AMS have carried out concrete initiatives to push forward interregional collaboration in IPRs, in addition to their own domestic and regional policy.

With innovation and the trademark system being the backbone of its competitive advantages, the EU has tried to strengthen the international enforcement of IPRs in various ways⁴⁰ and is, in fact, one of the leading proponents of IPRs globally.⁴¹ Vis-à-vis ASEAN, the EU realises this mandate through promoting the enforcement of national and international IP laws, pushing for FTAs that include a comprehensive IPRs chapter, offering technical assistance via intellectual property dialogues, working groups⁴² and supporting their firms in ASEAN IPR issues.

In a synchronising effort, ASEAN has established the ASEAN Working Group on Intellectual Property Cooperation (AWGIPC).⁴³ Its work closely relies on the ASEAN IPRs Action Plan 2011-2015, the Work Plan for

³⁹ According to the World Intellectual Property Organization (see: WIPO Intellectual Property Handbook: Policy, Law and Use, 2004, p. 3, available at: <http://www.wipo.int/about-ip/en/iprm/>), "Intellectual property, very broadly, means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields."

⁴⁰ These approaches include, but are not limited to, establishing a well-functioning enforcement regime and multilateral IP agreements (see: <http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/>). Besides, the EU is a key proponent of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), see: http://www.wto.org/english/tratop_e/trips_e/trips_e.htm) as a member of the World Trade Organization (WTO) and the WIPO. It also supports such IP agreements on patents as the Patent Law Treaty, PCT and Budapest Treaty (<http://www.wipo.int/treaties/en/>).

⁴¹ As of 2013, the EU currently holds 17% of global patents in force, including both resident and abroad count by applicant's origin, compared to the US's 26% and ASEAN's 0.16%, according to the WIPO IP Statistics Data Center (<http://ipstats.wipo.int/ipstatv2/>).

⁴² Dialogues and working groups with ASEAN countries include the EU-Indonesia Business Dialogue, the EU-Philippines Working Group on Trade and Investment, the EU-Vietnam Working Group on Trade and Investment and an IP Dialogue with Thailand.

⁴³ "The AWGIPC is the sectoral group responsible for IP issues in the region" and "The target for the AWGIPC is to transform ASEAN into an innovative and competitive region through the use of IP for their nationals and ensuring that the region remains an active player in the international IP community", see: <https://www.aseanip.org/About-Us/About-AWGIPC>.



ASEAN Cooperation on Copyrights, and on collective and individual endeavours.⁴⁴

An EU-ASEAN concerted effort, aiming at facilitating the globalisation and harmonisation of IPRs, has brought about the EU-ASEAN Project on the Protection of Intellectual Property Rights (ECAP III): currently in phase II, it aims at strengthening ASEAN's IPR capacity in administration and enforcement, legal and policy frameworks, brand development and regional integration and collaboration.

CHALLENGES

Despite initiatives from both sides, a number of controversies have arisen regarding the inclusion of an IPR chapter in potential FTAs between EU and ASEAN states, because strict IPRs can also have a negative effect on developed and developing countries (DCs).

Amongst the concerns of ASEAN⁴⁵ is the long-disputed international technology transfer (ITT) efficiency.⁴⁶ The conflict here is that the EU wants to accelerate the transfer of environmentally sound technologies (ESTs) to tackle climate change, but at the same time it creates a hidden protectionism scheme by raising intellectual property standards too high in the host countries and subsequently enlarging the technology gap.

For these reasons, preferences with regard to IPR agreements differ. For example, Indonesia raised the wish to exclude patent protections for ESTs,⁴⁷ while the EU wants to negotiate on the basis of TRIPS-Plus regulations,⁴⁸ and some AMS have already com-

promised in treaties with terms out of the scope of TRIPS. In addition, the least developed AMS will find it difficult to catch up technologically with the more developed ones.

POLICY RECOMMENDATIONS

IPRs are important to interregional EU-ASEAN and intraregional ASEAN trade in the sense that they facilitate ITT and investor confidence, which in turn promotes trade. Therefore, they should be treated as a means to an end, not the other way around. Built on that basis, and with the ASEAN IPR Action Plan 2016-2020 coming up, the following recommendations are proposed:

Firstly, ASEAN is building innovation capacity and the ability to receive ITT, in terms of skills, human resources and infrastructure. On the one hand, this progress will be reinforced with the support of the EU, with special training programmes in IPRs policy-making and enforcement for both governmental officials and young people from AMS. On the other hand, the absorptive capacity should be enhanced by the AMS and their domestic firms themselves, through means such as fostering public R&D and awareness and investing on capital goods and equipment.

Secondly, other instruments in addition to IPRs can be used in order to achieve sustainable ITT. These include "soft" legal instruments such as shrink-wrap licenses and technological protection mechanisms, a mix of financial instruments, such as a reduction in patent fees, licensing subsidiaries and fines, and streamlining licenses on favourable terms for least-developed AMS.⁴⁹

Thirdly, a one-size-fits-all strategy will hardly be feasible. IPR concessions for LDCs should be considered, especially when the EU justifies its motive on a normative ground. Concerns also exist on the possibility that IPRs might not actually impact the economy of both developed and developing countries, because imitation is rather a question of time, and because without the capacity to acquire advanced technology know-how, AMS will not profit from it.

44 These approaches include the formation of the ASEAN Patent Examination Co-operation (ASPEC) in 2009 as well as national programmes and institutions by individual AMS.

45 In the ASEAN IPR Action Plan 2011-2015 (p. 1, available at: <http://www.asean.org/archive/documents/ASEAN%20IPR%20Action%20Plan%202011-2015.pdf>), AMS state that while developed countries worry that the "existing international treaties are insufficient to protect their growing IP interest," the DCs and LDCs have to cope with "protections that restrict access to essential medicines, knowledge, information and communication technologies, and other key development resources."

46 ITT encompasses transfer of technical information, tacit know-how and performance skills, technical materials or equipment, jointly or as individual elements, with the intent of enhancing the technological capacity of the recipients.

47 Earth Negotiations Bulletin, Summary of the Bonn Climate Change Talks, 10-14 August 2009, available at: <http://www.iisd.ca/download/pdf/enb12424e.pdf>.

48 While TRIPS only includes basic terms that are flexible for interpretation, TRIPS-Plus includes terms that either cover subjects excluded from TRIPS provisions or provide more protection for the same subjects in TRIPS.

49 K. E. Maskus and R. L. Okediji, Intellectual Property Rights and International Technology Transfer to Address Climate Change: Risks, Opportunities and Policy Options, in: ICTSD Intellectual Property and Sustainable Development Series, Issue Paper No. 32, 2010, p. 38, available at: <http://www.ictsd.org/downloads/2011/12/intellectual-property-rights-and-international-technology-transfer-to-address-climate-change.pdf>.

Lastly, it is necessary for ASEAN and the EU to collaborate on assisting the Southeast Asian private sector, as firms are the driving force of growth and the loci where IPR infringements occur. Besides creating a welcoming and transparent environment for FDI, ASEAN versions of such models as the EU's IPR helpdesk should be established to provide domestic firms with guidance on compliance. Moreover, as tacit knowledge is gaining growing importance in the advancement of technology, this government support is of crucial importance for firms to undertake M&A from abroad, acquiring know-how in a cost-effective way.⁵⁰

50 D. Ciuriak and D. Biernen, How Can Companies in Emerging Markets Acquire New Technology?, 2015, available at: <https://agenda.weforum.org/2015/04/how-can-companies-in-emerging-markets-acquire-new-technology/> (accessed on 5 May 2015).



CLIMATE CHANGE

By Agathe Anne Schibler, Juliene Svetlana Cruz and Dr. Katarzyna Nawrot

RENEWABLE ENERGY

STATE OF PLAY

The International Energy Agency recently published its World Energy Outlook, and its conclusions are final and without appeal, but predictable: for a successful 2°C Scenario (2DS)⁵¹, the current global R&D investments, notably in renewables, should be at least 3 times higher than what they account for now. Thus, the EU and ASEAN, like the rest of the world, share the challenge of significantly raising their shares of renewable energy, for a sustainable energy security and for a minimised dependence on energy imports.

With its early recognition of the need to reduce dependence on fossil fuels and become a carbon-free economy, the EU considers climate as one of its flagship projects. The share of renewables in the EU energy mix stood at 14.1 % in the EU-28 in 2012,⁵² and the target within the 2030 Climate and Energy Package is raising it to 27% in 2030.⁵³

Considering the various geographic and climate settings of its members, ASEAN has a strong potential for renewables. After gas-fired and coal-powered power plants, geothermal and hydropower plants account for the largest renewable energy sources within ASEAN, to the point that they should contribute to quadruple the total renewable energy capacity in ASEAN-6 by 2030.⁵⁴ After having met its 10% target by 2009, ASEAN has set a target for re-

newable energy of 15% of its total power capacity by 2015 with its Plan of Action for Energy Cooperation (APAEC) 2010-2015, where renewables are the second key initiative of the Energy Security Plan.

In addition to both regional organisations' renewable energy commitments, the existing EU-ASEAN cooperation has taken a further step towards climate change mitigation. The EU has raised its financial support for ASEAN's regional development, and climate change accounts as «one of the focal areas for EU-ASEAN cooperation», where «joint activities on climate change, in particular regarding mitigation through renewable energy (...) are set to expand in the years ahead».⁵⁵ EU bilateral support to adapt to ASEAN countries' various levels of development complements EU direct support to ASEAN and its Secretariat, thus reaching a total of almost 3 billion for the period 2014-2020.

CHALLENGES

The Sword of Damocles over ASEAN's prospects on renewables is the growth-vs-environment dilemma. ASEAN's fast economic growth and the increasing energy demand often clash with its environmental protection and climate change mitigation targets. Three additional challenges hinder ASEAN's development of renewables:

- i. Environmental and socio-economic challenges – the exploitation of renewable resources has displaced inhabitants and its costs have harmed more vulnerable parts of the population;
- ii. technical and financial limitations – coal remains the most economically competitive source of energy, research on renewables is still underdeveloped and ASEAN has not reached its full capability to produce and use renewables;

51 2DS denotes the vision of a sustainable energy system of reduced Green House Gas and Carbon Dioxide Emissions by 2050 in order to limit global warming to 2°C.

52 Eurostat, 2014 Renewable Energy Statistics, available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Renewable_energy_statistics.

53 European Council, 23 and 24 October Meeting Conclusions, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/145397.pdf.

54 French Embassy in Singapore, Les énergies renouvelables en ASEAN: les promesses d'un marché émergent, 17 September 2013, available at: <https://www.tresor.economie.gouv.fr/File/390750>. ASEAN-6 denotes the five founding member states of Indonesia, Malaysia, the Philippines, Singapore and Thailand plus Brunei.

55 EEAS, The EU and the ASEAN: Towards an Ever Stronger Natural Partnership, 22 July 2014 Statement, available at: http://www.eeas.europa.eu/statements/docs/2014/140722_03_en.pdf.

iii. and structural differences – the development of renewable energy markets remains unequal among ASEAN countries.⁵⁶

The latter challenge might be the most harmful for ASEAN because it impedes common and coordinated ASEAN action. This stands in the way of a region-to-region strategic partnership with the EU on renewables. The concept of «common but differentiated responsibilities» is recognised but not yet articulated in ASEAN, making it difficult for the EU to formulate and implement policies or projects with ASEAN as a whole. Instead, EU-AMS, bilateral and differentiated approaches are applied. For example, EU action on green growth in the Mekong Delta region differs from its engagement with Malaysia on the same topic.

POLICY RECOMMENDATIONS

Experience sharing for regional coordination

Because it also encompasses the problem of different political, development and energy profiles, the issue of structural differences is pressing for both the EU and ASEAN. The EU has tried to account for heterogeneity by adapting its energy and environmental policies, and to some extent managed to overcome them. It proved that regional policies can be built upon the idea of «common but differentiated responsibilities», although some of its success is debatable, e.g. the experience with Poland and the EU Emissions Trading System (ETS). In that sense, the EU could provide assistance in shaping a common ASEAN position, sharing its positive results but also its pitfalls. In the meantime, a «multi-layer cooperation mechanism»⁵⁷ with ASEAN countries could take the different stages of development and potentials for renewables into account and further guide the countries towards regional cooperation.

Education and awareness

Studies and research should be further encouraged by setting up common research centres or platforms, and by increasing the exchange of best practices across the regions. Because of their experience with financial and development challenges, Eastern European countries would be the most legitimate EU

member states to provide policy advice.

The mobility of researchers, academics or private sector experts, as well as policy makers from the EU to the ASEAN can be improved within an EU-funded scheme. Although some EU projects on cooperation in science, technology, and sustainability already exist, more can be done to share practical experience on the conduct of experimental research on renewables, or on its management and funding at the policy level, such as the Marie Curie fellowship programme.

Lastly, by setting up climate-related educational campaigns in Southeast Asia, the EU and ASEAN would help sensitising civil societies' to environmental and energy issues. Wide public awareness of the need for sustainable development is key to the success of the renewable energy drive.

Short-term financial tools and investments for long-term opportunities

Once the positive impacts on the environment and the economy are acknowledged on a wider scale, there will be significant business opportunities for green and low-carbon industries. Enhancing the market presence of leading European companies, or of their R&D facilities, in the Southeast Asian energy market would be a way to take a long-lasting stake in the region. From a corporate point of view, it makes excellent business sense to gain this first-mover advantage since the ASEAN energy market is expected to become one of the largest demand energy markets – an opportunity that is said to be as beneficial for the EU as the Chinese or Russian markets. Giving an environment and energy focus to the upcoming Horizon 2020 calls for projects would be a way to financially support local initiatives for renewables through an already existing and successful EU scheme.

SUBNATIONAL LEVELS OF COOPERATION

STATE OF PLAY

International cooperation on climate change at the subnational level, such as city-to-city and cross-border regional cooperation, has gained an excellent track record in effectiveness. At this level, it is easier

⁵⁶ Economy Watch, The renewable energy alternative for ASEAN, 27 December 2014, available at: <http://www.economywatch.com/features/The-Renewable-Energy-Alternative-for-ASEAN.12-27-14.html>.

⁵⁷ Agora Asia-Europe (FRIDE), Mapping EU-ASEAN Relations, March 2014, available at: http://fride.org/download/Mapping_EU_ASEAN_Relations.pdf.



to identify practical initiatives that can lead to real improvements in people's lives and the environment. Some subnational level ties are already present, but there is still a big gap, both in EU-ASEAN linkages, and in intra-ASEAN connectivity. Internally, ASEAN is gradually becoming aware of the untapped potential of the subnational level of cooperation. The ASEAN Initiative on Environmentally Sustainable Cities (AIESC) and the ASEAN Governors and Mayors' Meeting are some examples of developing such cooperation. Still, these efforts are in their initial stages and are actively pursued only by a few AMS. Most of the European support is carried out through projects initiated by EU member states, rather than the EU as a whole. An example of this is the ASEAN-German Technical Cooperation "Cities, Environment, and Transport in the ASEAN Region", which adopts a participatory approach of different actors in the subnational level. Nevertheless, the EU as a whole has been actively supporting cooperation on the subnational level within ASEAN, for example through funding for projects in the Greater Mekong Sub-region.

CHALLENGES

Some of the main challenges to greater subnational level cooperation on climate change between EU and ASEAN are the lack of an overall framework for such partnerships, and the varying degree of prioritising climate change mitigation efforts.

ASEAN has very limited specific mechanisms for promoting and encouraging such cooperation on climate change. Frameworks and initiatives under the ASEAN Cooperation on Environment as reflected in the ASEAN Socio-Cultural Community Blueprint 2009-2015 are quite broad, and thus, less actionable. Many EU and international platforms for subnational cooperation already exist, e.g. World Cities, the Covenant of Mayors, ICLEI, C40 and sister cities agreements. However, they either do not include the ASEAN region,⁵⁸ or there are very few ties between EU and ASEAN cities.⁵⁹

⁵⁸ For example, the World Cities project for EU-Third Countries Cooperation on Urban and Regional Development only targets China, India, Japan, and Canada. The European Commission's Directorate General for Regional and Urban Policy aims at promoting sustainable regional development in non-EU countries through international cooperation. Unfortunately, ASEAN is not present in the list of partnerships.

⁵⁹ Nine leading ASEAN cities (Jakarta, Kuala Lumpur, Bangkok, Manila, Vientiane, Phnom Penh, Ho Chi Minh City, Singapore, and Yangon) have a combined number of 144 sister cities around the world, of which only 7 are EU cities.

Another challenge is making climate change a priority for all AMS. Less developed countries within ASEAN focus more on pursuing economic development and addressing social issues. Due to this, AMS differ in their appreciation of climate as an important policy issue. Some states, such as Malaysia and Vietnam, utilise subnational cooperation on areas such as renewable energies and empowerment of their localities, while less developed countries, such as Cambodia, are still in the early stages of drafting national policies on climate change mitigation. Interestingly, most of these are initiated and supported by specific European countries, such as Germany and Switzerland.

POLICY RECOMMENDATIONS

Cross-border regional cooperation

One area for deepening ties could be in the promotion and management of cross-border cooperation. This is particularly relevant, in light of the upcoming AEC and its focus on ASEAN connectivity. Cooperation in this area can serve as a source of mutual learning for both EU and ASEAN. The EU can offer its best practices and lessons learned from decades of managing cross-border regional programmes, while ASEAN can be an inspiration with its different environmental setting and ways of cooperating, e.g. the Singapore-Johor-Riau Growth Triangle. To better share its experience in cross-border regional projects, DG REGIO, with the assistance of EEAS, DG DEVCO, and DG TRADE, should develop international cooperation projects with ASEAN. Here, the support by individual EU member states for specific projects, especially those supporting subnational cooperation, can complement or serve as a model. Subnational cooperation could become more effective by focusing on specific sectors, as exemplified by the initiative on the Greater Mekong Sub-region and the ASEAN-German Technical Cooperation mentioned above.

City-to-city cooperation

The EU and ASEAN can further develop city-to-city cooperation for promoting sustainable, green urban development. EU projects with different countries, such as the World Cities project and the EU-China Smart and Green City Cooperation, can serve as models. Alternatively, existing networks for international cooperation between cities can provide the framework for creating EU-ASEAN cities' partnerships. EU funding can be used to encourage the initial establishment of ties between EU and ASEAN cities.

Horizontal and vertical coordination

Subnational cooperation between the EU and ASEAN is possible given the existing initiatives from EU countries in some ASEAN countries. However, this will take some time since this approach is not yet explored among ASEAN countries as a form of cooperation on climate change. This kind of cooperation needs a specific mechanism – a body overseeing cooperation of the different subnational levels within one country. This body would ensure that the policies are coordinated and in line with the overarching framework, not only on the national but also on the regional level. Although the main purpose of utilising subnational level of cooperation is to have more flexibility and room for decision in the hands of the local stakeholders, a vertical link from the bottom to the top is also important. Through such channels, sub-national actors can learn and adopt detailed and well-planned policies from the national level, while national governments can also learn from grassroots, local-level experiences.

PUBLIC PRIVATE PARTNERSHIPS

STATE OF PLAY

The crucial starting point in the climate change discussion within the context of ASEAN-EU cooperation is the perception of the environment as a public good and therefore as an issue of global concern. The ultimate goal of climate change policies is to build a green economy by promoting environmentally friendly investments, technologies and innovations, energy use diversification including the use of renewable energy sources (RES), and public and civil society awareness.

To achieve these aims, cooperation between public and private stakeholders is advisable and significant. Public-private partnerships (PPPs) are various forms of cooperation between the public and private sector, aimed at realising a project or a service traditionally provided by the public sector.⁶⁰ The partnership is based on the complementarities of the parties involved, and it draws on the advantages of risk sharing, as well as the division of tasks, responsibilities, and most of all funding, in order to achieve goals in

⁶⁰ This definition is also used by the European Commission – see its Guidelines for Successful Public-private Partnership, March 2003, p. 16, available at: http://ec.europa.eu/regional_policy/sources/docgener/guides/ppp_en.pdf.

the most effective and efficient way.

PPPs thus might play a particularly important role in climate change mitigation and in the implementation of policies to protect the environment – in Europe, Southeast Asia, and at the trans-border level. They might also serve as a more efficient and commonly used instrument for perusing climate change-related projects and policies compared to conventional approaches of environmental cooperation.

CHALLENGES

ASEAN initiatives on PPPs see them as an innovative financing mechanism for realising infrastructures, as can be seen in the organisation's Master Plan on ASEAN Connectivity as a part of ASEAN Economic Community. They are hardly conceived as a tool in climate change mitigation. Consequently, the potential for interregional PPP projects with a clear focus on climate change issues remains untapped. Particularly suitable areas for such projects could be water management (water supply and waste water), municipal waste management, green infrastructure, transport, and urban congestion. PPPs have long been promoted by the European Commission and some EU member states as an effective instrument in projects and services. Their experience might serve as source of inspiration and best practices.

POLICY RECOMMENDATIONS

Climate change requires close and effective cooperation of all the parties involved, because environmental damages do not respect national borders. By virtue of their set-up, PPPs involve heterogeneous actors from the public and the private sector, and could accommodate for the voice of civil society and academia. PPP initiatives should be promoted on all levels of cooperation – interregional, regional, national, but also subnational.⁶¹

The private sector

The private sector has proven to be more successful than the public one in many aspects with impact on climate change, e.g. innovation and resource efficiency. PPPs can therefore be a useful means of promoting innovation, technology transfer, diffusion and absorption. However, the private sector also requires support to fulfil its positive potential in green PPP initiatives. This would entail the use of various

⁶¹ See the previous paper section "Subnational levels of cooperation" for more on this subject.



stimulus instruments, such as access to capital, facilities for start-ups, protection of IPRs, environmental standards policy, investment funds, technology funds and climate funds, and other incentives to attract the private sector to invest in R&D and technologies for the environment. Climate funds at the regional or interregional level might bring effective benefits. In addition, it is necessary to circulate information about these existing instruments of support and the government priorities in environmental policies. Cooperation on green initiatives via FDI from EU to ASEAN countries should be further strengthened, as EU companies can thus share their expertise in eco products and services with ASEAN countries.

Clear policies and rules

The public sector (state and regional institutions) have a crucial role in providing a clear and stable regulatory framework for PPPs and relevant climate-focused policies. The high investments and long-time horizons of PPP projects require a consistent public policy. In addition, the process of selecting project partners might be vague. In some ASEAN countries, there is an issue of 'picking the winners' by the state agencies and the transparency of public procurements could be improved.

Involving academia and civil society

Academia and civil society should also have a role in the development of PPPs. Civil society can complement the work of the public sector in ensuring that PPP projects benefit the environment and the public interest. The Triple Helix cooperation mode, which provides for interactions between the government, the private sector and research institutions, leads to more effective and closer cooperation and to tangible effects on specific policies. Therefore, comprehensive governance mechanisms on climate change issues building on innovation networks between industries, science and research institutes, and the state itself, should be enhanced:

- State authorities at regional and interregional level should take the lead and elaborate on ways to support the cooperation between public and private sector, academia and science in climate change policies;
- Government agencies can provide additional funds and increase expenditure for R&D in areas of established priorities. In addition, benefits would come from a cooperation with

renowned institutions worldwide which are leaders in environmental studies and in advanced technologies;

- Universities and institutes should establish and promote research dedicated to the environment. They should cooperate with the private sector to precisely identify needs of the market, for innovation and employment possibilities.





CONCLUSION

By Daniele Brunetto

EU-ASEAN cooperation is at a crucial point. While the EU is still struggling with slowing economic growth and challenges to the process of integration, ASEAN makes every effort to become more people-centred and to deliver a single market (the long-awaited AEC), by end-2015.

Despite their preoccupation with internal issues, both organisations have worked hard in the past years to make their cooperation valuable, credible and enduring, putting a lot of effort in forging closer ties in trade, finance, development and climate policies – to name a few.

This paper highlighted some of the current challenges and faux pas in EU-ASEAN cooperation, but also provided concrete and actionable policy recommendations which can help policy makers make this cooperation a cornerstone of the emerging multipolar world order. Some of the key issues identified include the lack of joint EU-ASEAN action on the global arena and the persistence of asymmetries in the EU-ASEAN relationship. Development gaps and varying priorities among AMS also impede a common ASEAN stance on various issues, which in turn is an obstacle to EU-ASEAN cooperation.

Notwithstanding these and other challenges, there are clearly identifiable ways in which EU-ASEAN cooperation can move forward. One of the key, cross-cutting recommendations suggests that interaction should take place on multiple levels, including the sub-national one, thus unleashing the potential of a multitude of actors.

One can be sure then that the next steps for this fruitful cooperation will be ambitious, and can expect more from this partnership: We believe that the recommendations presented in this paper could help make interregionalism actionable.



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