

# **Assessing ASEAN Compliance: New Evidence from Member States' Ratification Records**

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## **Abstract**

This study examines the determinants that affect the ratification timeline for ASEAN agreements among different member states. Shifting the focus from prevalent discussions on compliance mechanisms, the study explores how ASEAN members manage their regional commitments, with an emphasis on administrative capacity, institutional structure, and the degree of agreement with the contents of the treaty. Leveraging an original ASEAN ratification dataset, the study captures a comprehensive picture of intra-regional ratifications, encompassing both enforced and non-enforced legal instruments across member states. The study tests derived hypotheses on a set of 30 instruments from 1972 to 2020, each with explicit ratification deadlines. The findings indicate that more democratic ASEAN members typically delay ratification, while those with efficient bureaucracies expedite the process. Moreover, members expressing certain reservations about the agreement to be ratified are more likely to delay ratification. These findings have important implications for understanding the dynamics of ASEAN's regional integration process.

**Keywords:** compliance, ratification, preferences, ASEAN

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## **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 ASEAN member states (AMS), legal systems operate on the dualist principle (Hoang et al. 2016: 7).<sup>2</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 ASEAN Agreement on Transboundary Haze Pollution (AATHP). 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

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<sup>2</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).

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 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 (Chia 2013: 119-20).<sup>3</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 study'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

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<sup>3</sup> These arrangements aim to standardize the qualifications of professional services among participating member states.

on the ratification and implementation of international treaties (e.g., Chesterman 2015; 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 paper, 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 study 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 study's research design.

## **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>4</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 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, participants who are also implementers here, may possess specialized knowledge within their policy domains or jurisdictions that leads them to favour different approaches (Pham and Thomson 2024). Alternatively, a preference for maintaining the status quo might arise due to ingrained bureaucratic procedures and established interests.

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<sup>4</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.



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. These national bureaucrats shoulder the responsibility of implementing ASEAN agreements within their respective countries.<sup>5</sup> Each member state ratifies an agreement and notifies the Secretary-

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<sup>5</sup> Art. 10, the ASEAN Charter.

General upon its successful completion.<sup>6</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 study focuses on agreements with explicit deadlines.<sup>7</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

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<sup>6</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>7</sup> As outlined in **Section 4**, this specific focus is instrumental for a rigorous examination of how AMS perform in the ratification of regional agreements.

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, 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 (Chachavalpongpon 2008: Chapter 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 (Pham and Thomson 2024). With respect to ASEAN's legal instruments, the primary role of ensuring compliance rests with the Secretary-General, aided by the Secretariat.<sup>8</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, 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>9</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

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<sup>8</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).

<sup>9</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).

has a state called upon ASEAN's dispute resolution mechanism (Gerard 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 are strictly off-limits for civil society input, impeding their ability to identify, challenge, and bring attention to potential breaches (Gerard 2018; Bal and Gerard 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 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; Steunenberg 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 AMS 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 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>10</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 deadlines when adapting EU directives into national laws, resulting in more infringements (Mbaye 2001; Thomson 2007; 2010).<sup>11</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

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<sup>10</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.

<sup>11</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).



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 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 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.

### **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>12</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 AMS, resulting in a total of 758 individual ratification records.<sup>13</sup>

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<sup>12</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>13</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

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. 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).

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>14</sup>

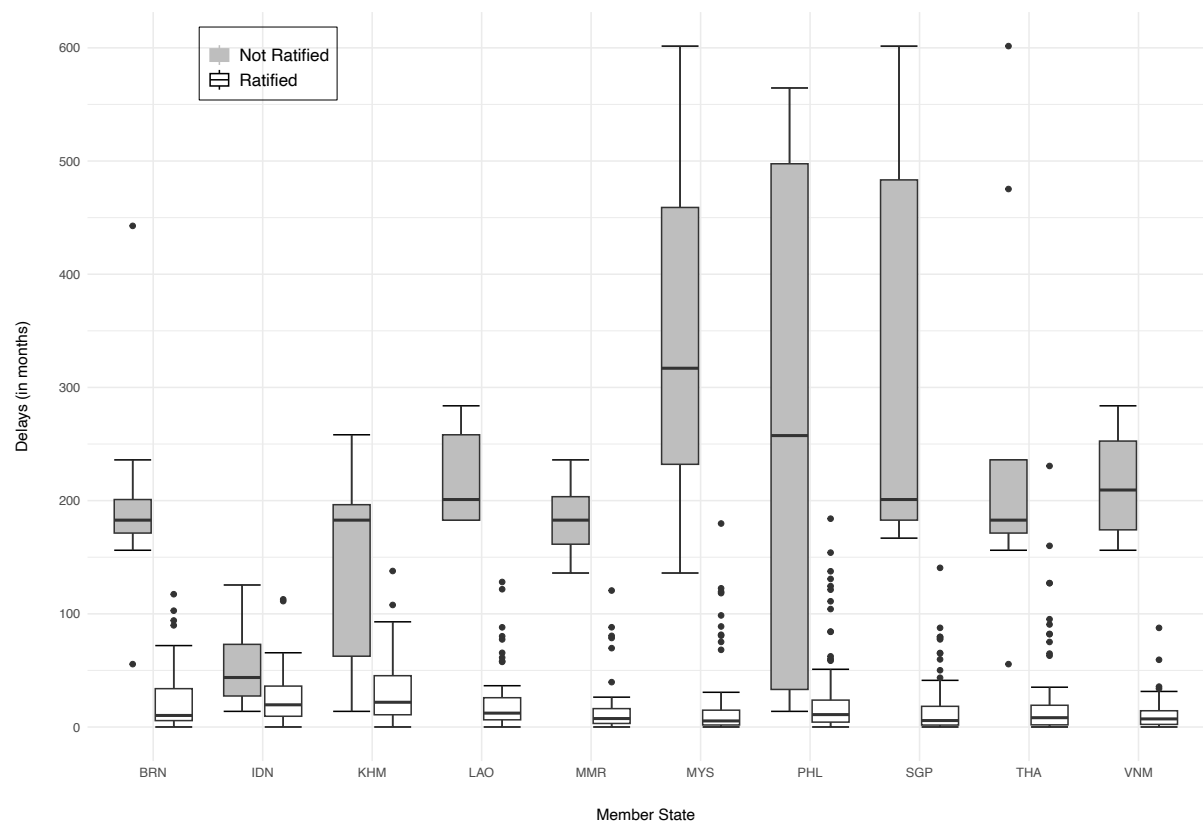
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signed agreements, such instances of accession are not included, which is why the total observation count is not 840.

<sup>14</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 study; thus, they are excluded from the dataset.

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 AMS.

**Figure 1.** Months of ratification delay for ASEAN instruments by member state



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

Figure 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 unratified as of May 31, 2022.

Overall, successful ratifications typically occur promptly. The median duration for ratified instances is one month or so across AMS. 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.

#### **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 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 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 AMS, their administrative capabilities, and democratic standing. Since there is no direct way to measure disagreement with ASEAN agreements, this study relies on the KOF Economic Globalization

Index as a proxy to test Hypothesis 1.<sup>15</sup> This index annually aggregates various dimensions of a country's economic globalization, including trade, regulations, and capital flows (Dreher 2006; Gygli et al. 2019). Drawing on the premise that a state's preference 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>16</sup> This measurement strategy aligns with Hypothesis 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.

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<sup>15</sup> The majority of the instruments examined in this sample concern trade and harmonization matters.

<sup>16</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.



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 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 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 2022: 212). Considering this, the study opts for a more nuanced approach by employing the Winning Coalition measure (W) from the selectorate theory (Bueno 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" 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 6**.

## 5 Findings

### *Descriptive analysis*

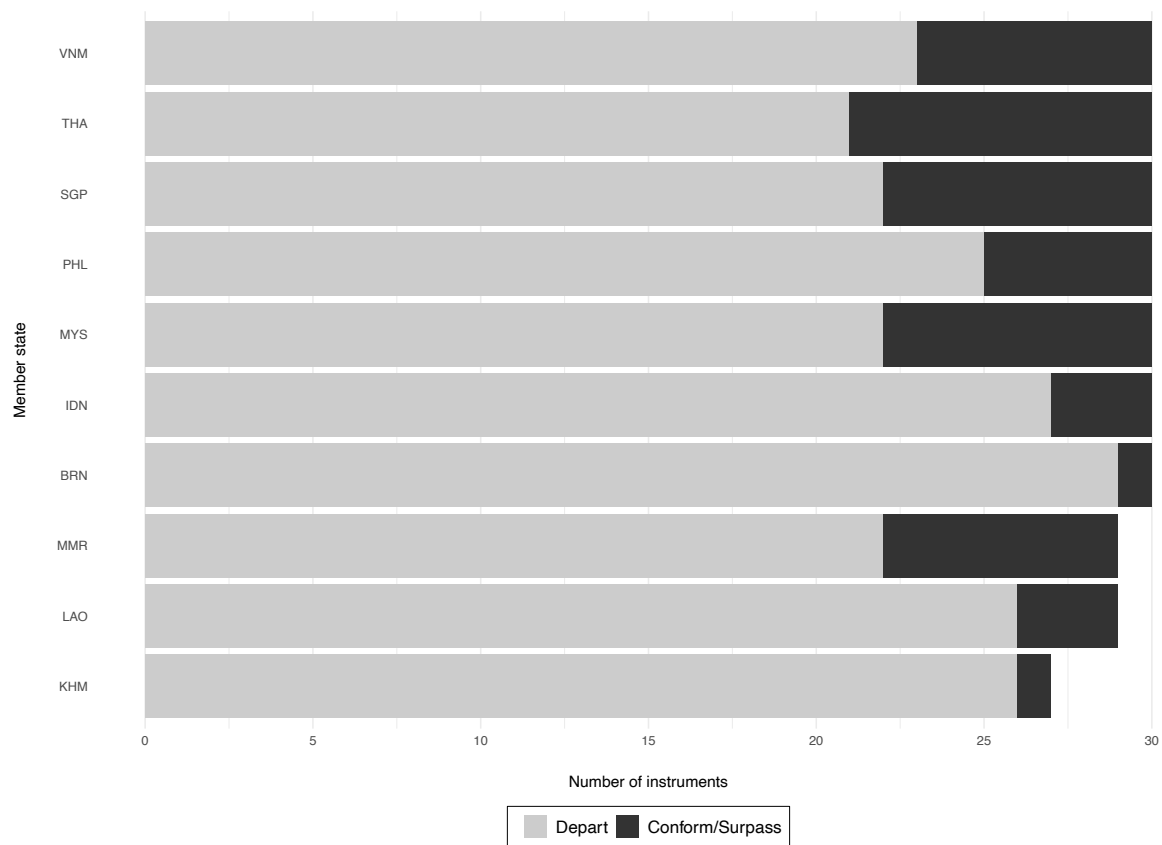
Figure 2 provides a clear picture of the varying ratification performances among the member states, spanning across 30 legal instruments. In this figure, cases where member states comply with or surpass the stipulated deadlines are categorized as "Conform/Surpass", while those falling behind or failing 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.

Notably, AMS 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 eight to nine 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 three to five instances, as opposed to the three to seven 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.

**Figure 2.** Relative ratification performance of AMS with time-bound agreements



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

### *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 1. A positive coefficient indicates an acceleration in the hazard, while a negative one denotes a reduction. Thus, the hazard ratios in Table 1 show 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 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 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 1), and I will elaborate on this later.

Given that a majority of the ASEAN agreements examined in this research 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 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 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 2 and 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 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 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</b> <sup>***</sup> (0.03)		<b>0.87</b> <sup>***</sup> (0.05)		
Preferences		1.01 (0.10)			<b>1.31</b> <sup>*</sup> (0.14)
Administrative capacity				<b>2.89</b> <sup>***</sup> (0.33)	<b>3.91</b> <sup>***</sup> (0.42)
Level of democracy				<b>0.18</b> <sup>***</sup> (0.36)	<b>0.18</b> <sup>***</sup> (0.42)
Administrative capacity $\times$ Level of democracy				<b>0.22</b> <sup>*</sup> (0.58)	<b>0.10</b> <sup>***</sup> (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 1. Nevertheless, this finding borders on marginal significance, only affirmed at a 10% confidence level ( $p = 0.105$ ).<sup>17</sup>

When being analysed together in Model 5 (Table 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

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<sup>17</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.

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 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 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>18</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 probability of adhering to ratification deadlines, albeit this effect does not achieve statistical significance (Model 3 & 4, Table 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 1 and 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

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<sup>18</sup> In Model 2 of Table 2, the impact of the democracy level proves significant when evaluated without the inclusion of the interaction term.

compliance, particularly within the cohort of states inclined to stray from the established ASEAN consensus.

**Table 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 $\times \ln(t)$				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 $\times$ 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).

Recent research on delegation in ASEAN highlights that protocols, compared to agreements, grant national governments less discretion, whereas other types of instruments provide a broader scope of autonomy (Pham and Thomson 2024: 21). 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 A2 (Appendix A), 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 A3 (Appendix A), which mirrors Models 3 and 4 from Table 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 A3). 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 automatically result in 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.

## Appendix A      Supplementary material

**Table A1.** 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 A3.** 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 A2.** 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 (1)	Incentive to deviate (2)	Incentive to comply (3)	Incentive to deviate (4)	Incentive to comply (5)	Incentive to deviate (6)
Preferences $\times \ln(t)$		<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 $\times$ 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.

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