



# Regulatory responses to the COVID-19 pandemic in Southeast Asia

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Regulation is one of the key tools for governments to respond to the COVID-19 pandemic and look towards recovery. While the pandemic underscores the need for well-designed, evidence-based regulatory policies, the extraordinary pressures imposed by the pandemic often forced governments to shorten procedures and launch new forms of co-ordination to urgently pass regulatory measures. This can make regulatory policy making more challenging, but also provides opportunities to innovate. This policy brief analyses how Southeast Asian (SEA) countries approached these challenges and opportunities, as well as shares lessons learned and practices between the SEA and OECD communities. It draws upon discussions held in the ASEAN-OECD Good Regulatory Practices Network (GRPN), hosted by Viet Nam (2020) and Brunei Darussalam (2021) and co-chaired by Malaysia and New Zealand. An ASEAN-wide survey administered by the OECD Secretariat underpins the findings.

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## Key messages

- Southeast Asian (SEA) countries have been promoting better regulation reforms for several decades, focusing on improving institutions, processes and tools of regulatory policy making. Reforms were mostly to reduce administrative burdens, while governments are increasingly implementing good regulatory practices (GRPs), including regulatory impact assessments (RIAs), stakeholder consultations and ex post reviews. Additional reforms are gaining steam, notably in creating regulatory oversight bodies, improving service delivery through one-stop shops and digital solutions.
- The COVID-19 pandemic has underscored the need for well-designed, evidence-based, co-ordinated and well-enforced regulatory policy to contain and mitigate the effects of the virus, minimise impacts on citizens and the economy, and support recovery efforts. Due to extraordinary time pressures to swiftly develop policies, OECD and SEA countries alike have shortened procedures and launched new forms of co-ordination to urgently pass crisis-related regulations.
- The ASEAN-OECD Good Regulatory Practices Network (GRPN) has met regularly online in 2020-21 to share experiences to support peer learning. Examples shared have included introducing flexibilities around the use of GRPs, relaxed administrative rules, leveraging digital technologies, supporting economic recovery, and preparing government for future crises.
- The OECD also surveyed key GRPN contact points to gain a deeper understanding of these initiatives. The following trends and avenues for further research were identified:
  1. While regulatory policy systems are complex and spread throughout government, pandemic decision making seemed to be centralised in the centre of government and line ministries/departments supported by ad hoc COVID-19 co-ordination structures. Further investigation should explore the effect on government decision making, which may have led to a preference for community-wide policies, such as for all forms of businesses, over targeted and sectoral approaches.
  2. The impact of the pandemic caused changes to existing regulatory requirements, often relaxing or applying them more flexibly, such as by reducing burdens and facilitating compliance. Countries also addressed specific regulatory issues needed to support pandemic responses, such as contact tracing, quarantine rules or restricting movement.
  3. Governments need to review regulatory changes to examine what worked and what did not. Special attention should be paid to learning how to apply these lessons to build flexibility and resiliency into the regulatory policy-making system. Data indicates only a moderate commitment to ex post reviews of regulation by SEA countries going forward, which may want to focus on fast-tracked regulations passed during the pandemic.
  4. Reviews could also explore ways to design “future proof” regulations to cope with crises, including what to activate when a crisis hits or de-activate once it has eased. Investing in deepening regulatory systems to include international regulatory co-operation, oversight and sectoral applications of better regulation principles (e.g. to trade and investment) are possible ways to support such outcomes.
  5. As in the OECD, many SEA countries clearly leveraged digital technologies to adapt quickly and maintain government functions; however, it is unclear what effect this has had on regulatory quality. While respondents did identify that technologies were used broadly to support stakeholder engagement, few respondents noted their use in RIAs or ex post reviews, clearly offering avenues to innovate GRPs.



## 1. Introduction

The COVID-19 pandemic has created an unprecedented global health and economic crisis. The OECD (2021<sup>[1]</sup>) estimates that the pandemic caused world GDP to fall by 3.4% in 2020, with steep declines of as much as one-fifth of output in some advanced and emerging economies in the first half of 2020 (OECD, 2020<sup>[2]</sup>). Global trade also experienced a historic collapse, falling by an estimated 8.5% during in 2020 (OECD, 2021<sup>[3]</sup>). The human toll has been massive: as of early October 2021, the WHO (2021<sup>[4]</sup>) estimates that worldwide cases have exceeded 235 million, resulting in more than 4.8 million deaths. The Southeast Asian (SEA) region accounts for over 43 million cases and nearly 680 000 deaths, though the impact at the country level is heterogeneous with some countries impacted worse than others.

The speed at which the public health and resulting economic crises unfolded has placed immense pressures on governments to react quickly and effectively to protect citizens and businesses. As one of the key policy levers of government, regulation was at the centre of this effort – requiring regulatory decisions at nearly every stage and policy area. At the start of the pandemic, governments passed emergency legislation, implemented lockdowns and containment measures, adapted their governance structures, and enacted other regulatory changes to urgently respond to challenges imposed by the crisis. As subsequent waves of the pandemic have continued in 2021, a return of many of these measures have had lasting effects on the daily life of citizens as governments continue to try and change the behaviour of the public to control and rollback the spread of the virus while keeping their economies afloat (OECD, 2020<sup>[5]</sup>).

While regulation is central to the pandemic response, maintaining regulatory discipline has been challenging. The OECD (2012<sup>[6]</sup>) *Recommendation of the Council on Regulatory Policy and Governance* sets out a robust, internationally-recognised normative framework for better regulation. It encourages policy makers to implement systemic reforms to deliver regulations that meet public policy objectives and have positive impacts via the use of *ex ante* and *ex post* analysis, stakeholder engagement, risk-based approaches, multi-level co-ordination and strong institutional support. However, due to the COVID-19 crisis, governments around the world have been under extraordinary time pressures to swiftly develop policy responses and have often shortened administrative procedures and adopted new forms of co-ordination to urgently pass a range of crisis-related regulations (OECD, 2020<sup>[7]</sup>).

To support countries in responding effectively to the crisis, the OECD brought together its committees and networks to share challenges and opportunities they have faced. In Southeast Asia (SEA)<sup>1</sup>, the ASEAN-OECD Good Regulatory Practices Network (GRPN)<sup>2</sup> has met virtually five times to date during the pandemic, focusing on the changes to regulatory policy making associated with governments' responses to the pandemic and how better regulation reforms can support recovery.

This policy brief<sup>3</sup> is a result of these meetings and presents a summary of the regulatory policy making challenges and opportunities for reform facing SEA countries, gathered from the inputs from the GRPN and the survey responses from the majority of SEA countries<sup>4</sup>. The first section presents a background on better regulation in the OECD and SEA regions, as well as an analysis of how governments have responded to the COVID-19 pandemic. The second section presents the results of the survey of GRPN members, highlighting trends observed.

## 2. Better regulation in Southeast Asia: Before and after the pandemic

Developing and enforcing laws and regulations is one of the key levers for governments to achieve objectives, alongside tax and spending measures, to deliver better outcomes for citizens and businesses. Regulations have a wide variety of purposes, including to impose technical standards, manage risk and promote the proper functioning of the economy while protecting society. They create “rules of the game” for citizens and businesses to abide and promote the efficient functioning of markets, protect the rights and



safety of citizens and the environment, and ensure the delivery of public goods and services. Good regulations create the conditions for economic and social growth, while poorly-designed and cumbersome regulations can stifle it by imposing regulatory burden, resulting in undue costs on businesses and citizens.

Given the vital importance of regulation to the work of governments, countries around the world have been developing approaches and frameworks for “better regulation” for several decades. These have been enshrined in the OECD (2012<sup>[6]</sup>) *Recommendation of the Council on Regulatory Policy and Governance*.

When functioning properly, institutions, tools and processes of regulatory policy making, summarised as “regulatory governance”, helps support better regulatory decision making across government. As in OECD countries, SEA countries have also been focusing on adopting better regulation reforms for decades. This has been supported at the regional level by the Association of Southeast Asian Nations (ASEAN), which encourages reforms and produces guidance for its members, such as the ASEAN (2019<sup>[8]</sup>) *Guidelines on Good Regulatory Practices*. The *ASEAN Economic Community Blueprint 2025* further recognises the importance of good regulatory practices, building upon previous regional declarations such as the Putrajaya Declaration and the Nay Pyi Taw Declaration in 2015 (OECD, 2018<sup>[9]</sup>). The ASEAN Work Plan on Good Regulatory Practice (2016-2025) also aims to embed GRPs in both national and regional level contexts (OECD, 2018<sup>[9]</sup>). Furthermore, the Economic Research Institute for ASEAN and East Asia (ERIA) supports ASEAN with policy-oriented economic research, including in the area of regulation and governance (ERIA, n.d.<sup>[10]</sup>).

In addition, a focus on better regulation can foster more trust in public institutions, and better democratic governance for all, by demonstrating how government decisions can improve outcomes for everyone. The erosion of trust in public institutions has been a recurring issue for many years (OECD, 2017<sup>[11]</sup>); (OECD, 2021<sup>[12]</sup>). OECD research on the determinants of trust in government suggest that perceptions of institutional performance strongly correlate with both trust in government and trust in others, and that perceived government integrity is the strongest determinant of trust in government (Murtin et al., 2018<sup>[13]</sup>). Better regulation plays a substantial role in building trust, including through providing clear, well-reasoned and evidence-based decisions (OECD, 2021<sup>[14]</sup>) and focusing on perceptions of fairness by conducting robust stakeholder consultations that invest in hearing and considering the views of citizens and businesses from the onset, treat them with dignity and respect, and ensure they received honest and helpful explanations (OECD, 2017<sup>[11]</sup>); (Lind and Arndt, 2016<sup>[15]</sup>). The role of regulatory policy in building trust is particularly important in the context of the pandemic. Resolving the health crisis and the ensuing economic and social predicament involves regulatory decisions at nearly every stage and in nearly every area (OECD, 2020<sup>[16]</sup>). The current situation makes the need for trusted, evidence-based, internationally co-ordinated and well-enforced regulation particularly acute (OECD, 2020<sup>[16]</sup>).

This section explores further what better regulation is aligned with OECD normative guidance and practical experience, as well as how SEA countries have adopted associated reforms. It then focuses on the impact of COVID-19 on regulatory policy making in OECD and SEA countries, based on conversations had during the sixth (2020<sup>[17]</sup>) and seventh (2021<sup>[18]</sup>) meetings of the ASEAN-OECD Good Regulatory Practices Network (GRPN). The themes and trends discussed in this section are supported by the results of a survey of SEA countries provided in the next section.

### ***What is better regulation?***

Better regulation incorporates different perspectives into frameworks to promote the design and delivery of more effective policy. It encourages whole-of-government regulatory strategies, encouraging all institutions involved in regulatory policy making – including better regulation units of the centre of governments,<sup>5</sup> ministries/departments, independent regulators, oversight bodies, parliament, and the judiciary – to be aligned in their efforts. This ensures consistency and promotes efficiency in public administration.



One of the main set of tools for doing so are good regulatory practices (GRPs), also known as regulatory management tools, which support policy makers in their efforts to use evidence-based decision making through the policy cycle. These tools include regulatory impact assessments (RIAs), stakeholder engagement, and *ex post* evaluation. Regulatory delivery is supported through enforcement and inspections, which help to make sure regulations are fit-for-purpose and deliver what they are set to achieve (OECD, 2018<sup>[9]</sup>). Better regulation also encourages looking internationally to align approaches through international regulatory co-operation, and incorporates innovative approaches as they are developed.

The use of GRPs has been central to the better regulation agenda, often out of the realisation that countries need to control the “stock and flow” of regulations to ensure efficient functioning of markets and appropriate protection for citizens. Stock-management efforts, including administrative burden reduction programmes, are supported by tools like RIAs and stakeholder engagement to manage the speed and quality of new regulations to slowly re-shape the regulatory stock over time.

In recent decades, GRP provisions have increasingly been included in trade agreements to promote the effectiveness and efficiency of regulations. Recent major trade agreements have included dedicated chapters on good regulatory practices, including the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union; the United States-Mexico-Canada Agreement (USMCA), replacing the North American Free Trade Agreement (NAFTA); and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which involves several SEA governments (Brunei, Malaysia, Singapore and Viet Nam) (Kauffmann and Saffirio, 2021<sup>[19]</sup>). The Regional Comprehensive Economic Partnership (RCEP) agreement also contains a chapter on standards, technical regulations and conformity assessment procedures and various sub-sections on regulation.

The OECD supports countries around the world to monitor and improve regulatory policy making, including through data collected on member countries’ use of regulatory policy and GRPs presented in the Regulatory Policy Outlooks (2015<sup>[20]</sup>); (2018<sup>[21]</sup>); (2021, forthcoming). Data shows, for example, that even though all OECD had a whole-of-government regulatory policy and entrusted a body with co-ordinating regulatory quality across government by the end of 2017, many countries still had incomplete “life-cycles” of regulations, particularly regarding the later stages of enforcing and reviewing them (OECD, 2018<sup>[21]</sup>). A lack of effective GRPs weakens regulatory capacity. This is especially true during times of crisis as governments are expected to be agile in decision-making while being inclusive of stakeholders, including citizens, civil society and businesses.

### ***How SEA countries used better regulation before the COVID-19 pandemic***

Administrative burden reduction has driven the pursuit of GRPs across SEA as governments seek lower compliance costs and simplified regulations (OECD, 2018<sup>[9]</sup>). Burden reduction can be accomplished through a variety of ways, including reviewing the stock of existing regulations to determine what should be repealed or amended and offering one-stop shops and e-services for micro, small and medium enterprises (MSMEs) to more easily access information and comply with regulations (OECD, 2018<sup>[9]</sup>). Additionally, governments can reduce administrative burdens by streamlining both the development of regulations and regulatory service delivery across government ministries and agencies to simplify compliance procedures and reduce costs for citizens, businesses, and the state (OECD, 2018<sup>[9]</sup>).

Prior to the COVID-19 pandemic, various countries in the SEA region had already introduced and adopted specific laws to support the use of GRPs including: Malaysia (National Policy on the Development and Implementation of Regulations, 2013), Cambodia (Government Decision No. 132, 2016); Indonesia (Law No. 12, 2011); Lao PDR (Law on Making Legislation, 2012); Thailand (Article 77 of the 2017 Constitution); and Viet Nam (Law on Promulgation of Legal Normative Documents, 2008). Indonesia also passed the Omnibus Law on Job Creation (UU 11/2020) in late 2020, which aims to promote job creation through, *inter alia*, administrative burden reduction and regulatory reforms.





SEA countries have also been investing resources in moving beyond administrative burden reduction and GRP reforms to more advanced regulatory approaches. This has been evident in forums such as the GRPN. In recent years, in response to both demand from GRPN members and examples from SEA countries, the network has covered issues beyond its initial focus on the three GRPs<sup>6</sup> to a broader discussion on better regulation around the regulatory policy making cycle, in line with the OECD (2012<sub>[6]</sub>) *Recommendation*, and to important sectors for economic regulation in the region. This includes topics related to business registration, one-stop shops, governing in the age of digital technologies, international regulatory co-operation (IRC), SME development, and trade and investment promotion.

This interest has mirrored institutional reforms to regulatory systems at the country level in various SEA countries that are pushing forward various regulatory reforms related to GRPs and beyond. For example, Thailand reformed its Office of the Council of State (OCS) to serve as the regulatory oversight body for the Thai Administration in 2019, in response to the constitutional provision focusing on GRPs noted above. This reform granted powers to the OCS to both encourage the use of GRPs across government via training and capacity building, but also to scrutinise RIAs and consultations and providing their opinion to the Council of State to support decision making (OECD, 2020<sub>[22]</sub>). Similarly, the Philippines created the Anti Red Tape Authority (ARTA) in 2018, inside the Office of the President, as an oversight body responsible for improving the ease of doing business, service delivery and evaluating RIAs (OECD, 2020<sub>[23]</sub>). Since 2010, Viet Nam's Administrative Procedures Control Agency (APCA) in the Office of the Government has been evaluating and simplifying administrative procedures through waves of reforms, beginning with Project 30 in 2007 (OECD, 2011<sub>[24]</sub>) and continuing with second and third waves throughout the 2010s (APCA, 2020<sub>[25]</sub>). In Indonesia, the Investment Co-ordinating Board (BKPM) made changes to its former Online Single Submission (OSS) system based on risk level in response to the Omnibus Law on job creation mentioned above (BKPM, 2021<sub>[26]</sub>). In Malaysia, Futurise was established under the purview of the Ministry of Finance to develop an innovation ecosystem inside the Malaysian government, including undertaking "national regulatory sandboxes" for digital technologies. Better regulation enables governments to respond more effectively to crises. The use of GRPs, even if abridged due to severe time and resource constraints, can strengthen quick government responses to the immediate crisis, while ultimately helping build more resilient risk management systems in the long-term.

The OECD has been analysing policy responses to the pandemic across its policy communities via the OECD COVID-19 Digital Hub.<sup>7</sup> A central theme identified through the OECD Regulatory Policy Division's analysis and webinars hosted through its committees and networks is the importance of regulatory decisions at nearly every stage of the COVID-19 crisis (OECD, 2020<sub>[16]</sub>).

As explained in OECD (OECD, 2020<sub>[27]</sub>) by the OECD Health Division, pandemic response requires a package of containment and mitigation policies to address individual and collective behaviour based on four pillars: 1) surveillance and detection; 2) clinical management of cases; 3) prevention of the spread in the community; and 4) maintaining essential services. These four pillars interact and support one another. Either directly or indirectly, regulatory decisions are at the heart of all four of these pillars. As stated in OECD (2020<sub>[16]</sub>), while such emergency regulations need to be adopted quickly, they still need to be based on trusted, evidence-based, internationally co-ordinated and well-enforced principles of better regulation.

In response to the extraordinary time pressure to swiftly develop such policies, evidence shows that countries are generally using shortened administrative procedures and new forms of co-ordinating structures to urgently pass crisis-related regulations (OECD, 2020<sub>[7]</sub>). This has included a variety of measures, such as introducing a range of flexibilities around the use of RIAs that either provide exemptions or allow for simplified forms of analysis for temporary measures, or relaxing administrative rules and regulatory enforcement, especially around the provision of essential goods. Governments have also removed legacy regulatory measures identified as preventing potentially life-saving services, testing or accessing personal protective equipment. While demonstrating the agility of government in response to the crisis, OECD (2020<sub>[7]</sub>) further notes the potential downsides of such approaches and recommends still placing importance on providing evidence-based rationale for emergency regulations. This should be



supported with *ex post* reviews in the future, including sunset clauses and post-implementation reviews, to ensure that the effectiveness and efficiency of the measures is scrutinised and lessons learned.

While the above elements of better regulation focus on the design of regulatory policy, the delivery of regulation is equally important. As the crisis evolved, it became increasingly clear that global trade helped maintain a resilient and robust supply of essential and other goods (Van Assche, 2020<sup>[28]</sup>). Independent economic regulators are one type of agencies that were responsible for supporting the delivery of such products, focusing primarily on maintaining access to markets for essential services such as water, energy, telecommunications and transportation (OECD, 2020<sup>[29]</sup>). This included, for instance, ensuring the flow of goods by relaxing standards for transportation of goods, such as the “green lanes” system established in the European Union (European Commission, 2021<sup>[30]</sup>), or improving trade facilitation, such as through the Authorised Economic Operator programme in Malaysia (JKDM, 2021<sup>[31]</sup>). Some SEA countries also used reciprocal green lanes to facilitate travel between countries and regions, focused mainly on short-term essential business or official travel. This included Singapore, which instituted green lanes with several countries including Brunei Darussalam, People’s Republic of China, Germany, Indonesia, Malaysia, Japan and Korea (ICA, 2021<sup>[32]</sup>). Some of these have been suspended in accordance with the epidemiological situation. The crisis demonstrated the essential role of these measures, as they led and took part in a suite of short term emergency measures to ensure the operation of markets, continuity of service, mitigating the effects on the increasing number of vulnerable customers and maintaining the financial security of network operators. Phasing out these measures will be key to maintaining regulatory predictability and will require *ex post* reviews.

Another key actor in regulatory delivery are enforcement and inspection agencies, who are responsible for maintaining the quality and access to key production and delivery elements such as food or essential goods such as personal protective equipment (OECD, 2020<sup>[5]</sup>). They were also key players in fostering compliance with mitigation measures through targeted, proportionate enforcement and transparent communication with businesses who had to maintain operation during the crisis. This required removing disproportionate or non-risk based administrative barriers to achieve sustained compliance (for more information, see OECD (2018<sup>[33]</sup>) work on enforcement and inspections).

Finally, regulatory innovations were needed to support agile responses. Domestically, governments quickly leveraged digital technologies to monitor the spread of the disease, track and trace individuals, provide opportunities for self-assessment, and support monitoring and containment measures, including quarantines (Amaral, Vranic and Lal Das, 2020<sup>[34]</sup>). Governments also turned to behavioural science to support efforts to encourage rapid and wide spread behaviour change, key to any regulatory measure but a challenging task considering difficult barriers and biases embedded within behaviour change (OECD, 2020<sup>[35]</sup>)<sup>8</sup>. Internationally, the pandemic highlighted the need for collective action across policy fronts; however, evidence shows that many countries’ initial regulatory policy responses to the pandemic were not sufficiently co-ordinated internationally, resulting in ineffective policy interventions, delays (and even shortages) in access to essential goods and administrative efficiency losses (OECD, 2020<sup>[36]</sup>). Moving forward, tackling regulatory challenges across borders in the short- and long-term will be essential. ASEAN Member States are working closely to protect the free flow of essential goods – particularly medical and food supplies – and to keep critical infrastructure and trading routes open, guarding against future shocks under the *Hanoi Plan of Action on Strengthening ASEAN Co-operation and Supply Chain Connectivity in Response to the COVID-19 Pandemic* (ASEAN, 2020<sup>[37]</sup>).

### *SEA countries face similar regulatory challenges*

SEA countries are facing many of the same regulatory challenges as the OECD governments noted above. Travel restrictions are constraining the tourism and hospitality industries, regional supply chains are being disrupted, trade and investment flows have declined, and stringent social confinement measures have decreased consumption, creating ripple effects felt across both MSMEs and large businesses (OECD,



2020<sup>[38]</sup>; (ADB, 2020<sup>[39]</sup>). In response to the crisis, nearly all SEA economies have eased their monetary policies and instigated various fiscal stimulus mechanisms such as salary subsidies, rent support, tax cuts, loan moratoriums, temporary cash transfers, etc. (OECD, 2020<sup>[38]</sup>).

Evidence from the Asian Development Bank's COVID-19 Policy Database shows that economies have remained active in supporting incomes, liquidity, and credit measures (ADB, 2020<sup>[40]</sup>). Central banks continue to play a significant role, not just in promoting liquidity and credit creation, but also in supporting fiscal measures. International assistance has increased significantly, and may continue to rise in the near future. As of June 2020, international assistance to the ADB's Developing Members in the form of grants and loans increased twelvefold to USD 16 billion (ADB, 2020<sup>[40]</sup>).

Governments have also continued to pursue good regulatory practices while striking the balance between short- and long-term regulatory policy responses as well as between centralising decision-making and exercising regulatory flexibility (OECD, 2020<sup>[17]</sup>). Administrative burden reduction remained integral to promoting resilience and stimulating economic recovery during the pandemic. For example, Viet Nam shifted over 1 000 in-person services online in their National Public Service Portal and reformed administrative procedures to support economic growth, even when social distancing (APCA, 2020<sup>[25]</sup>). Similarly, the Philippines Anti-Red Tape Authority quickly streamlined a number of procedures, reducing the number of permits, documents required and time necessary to complete them (APCA, 2020<sup>[25]</sup>).

The pandemic has also created opportunities for regulatory innovation and transitioning towards higher digital government maturity in SEA countries, much as in OECD countries noted above. This was especially geared towards digitalising regulatory delivery services, while also using digital technologies to facilitate implementation of regulatory processes while further protecting public health by reducing person-to-person physical contact (OECD, 2020<sup>[17]</sup>). Digital technologies, some implemented prior to the pandemic outbreak, also helped cushion some of the impacts of pandemic lockdowns (ESCAP, ADB and UNDP, 2021<sup>[41]</sup>). The November 2020 ASEAN Summit saw the updating of the ASEAN Accelerated Inclusive Digital Transformation strategy, including the digitalisation of trade processes for 152 essential goods, and the launch of the Go Digital ASEAN initiative to provide digital tools and skills to small enterprises and youth, and several country-level programmes adopted to both mitigate impact and contribute to recovery (ESCAP, ADB and UNDP, 2021<sup>[41]</sup>). The Go Digital ASEAN initiative was approved by the ASEAN Co-ordinating Committee on Micro, Small and Medium Enterprises (ACCMSME) during its eighth meeting in November 2019, with the goal of expanding opportunity across ASEAN countries, by equipping underserved communities with critical ICT skills to leverage the digital economy, and raise awareness of this opportunity among senior ASEAN officials and ministers (ASEAN, 2020<sup>[42]</sup>). The target beneficiaries are micro and small businesses and underemployed youth, including farmers, home-based handicrafts producers, farming co-operatives, eco-tourism enterprises, small-scale hotels and restaurants, small shops and other traditional modes of employment and income-generation (ASEAN, 2020<sup>[42]</sup>).

However, while digitalisation bears a lot of potential benefits, inclusive recovery also requires policy makers to engage in helping those less able to benefit from these new tools. This accelerated shift towards digitalisation and the adoption of new technologies require MSMEs to be equipped with the ability and capacity to learn new skills continuously and to collaborate with a broad range of stakeholders. Many ASEAN MSMEs still struggle to adopt and use digital technologies and tools, compared with larger companies with more resources to invest in training, reskilling, and upskilling (ERIA, 2021<sup>[43]</sup>), which mirrors difficulties faced by MSMEs in OECD countries (OECD, 2021<sup>[44]</sup>). Moreover, large digital divides within and between countries have meant that not everyone has access to, and can benefit from, accelerated digitalisation. This situation may reinforce risks of an uneven recovery, and requires that rebuilding strategies consider inclusive implementation of digital strategies to ensure no one is left behind (ESCAP, ADB and UNDP, 2021<sup>[41]</sup>). Moreover, digital skills are also important for public sector officials who need to make sure of these technologies, as well as for consumers who need to access digital platforms, such as e-commerce, during times of physical distancing and confinement.





## ***SEA and global recovery will require a focus on better regulation***

Prior to the pandemic, the ASEAN region was one of the fastest growing in the world. While the OECD had forecasted the region to achieve 5.7% GDP growth annually in the 2020-2024 period (OECD, 2019<sub>[45]</sub>), the pandemic resulted in an estimated fall in GDP by 3.4% in 2020 (OECD, 2021<sub>[46]</sub>) – the region's first contraction since the 1997-98 Asian financial crisis (ADB, 2020<sub>[47]</sub>). However, this varies greatly among countries depending on factors such as the length and severity of restrictions and lockdowns, differing initial conditions and economic structures, and government capacity to support households and businesses (OECD, 2021<sub>[46]</sub>). Viet Nam was projected to post the strongest growth rate in 2020 (+2.6%), while the Philippines was projected to experience the sharpest GDP contraction in 2020 (-9.0%) and Cambodia would similarly experience the weakest growth rate (-2.9%) amongst CLM countries (Cambodia, Lao PDR and Myanmar) (OECD, 2021<sub>[46]</sub>).

While the OECD expects global GDP to rebound with a 5.7% growth rate in 2021 (OECD, 2021<sub>[1]</sub>), regions and countries will diverge in their recovery tracks. Given their role in global trade of manufacturing goods, particularly electronics, SEA countries are likely to play an important role in the global economic recovery with an estimated 2021 GDP of 5.1% for the region (OECD, 2021<sub>[46]</sub>).

As previously discussed, regulations play a key role in promoting economic activity while safeguarding individuals, workers and the environment. Better regulation is often assumed to be synonymous with de-regulation, but it is not: regulation is vital. Without it, markets cannot work and the most vulnerable cannot be protected; but countries need regulation that works, both in times of calm and in times of crisis.

It is for these reasons that the ASEAN-OECD Good Regulatory Practices Network (GRPN) focused on better regulation during its sixth (2020<sub>[17]</sub>) and seventh (2021<sub>[18]</sub>) meetings, and developed a survey of its members to provide data to underpin key messages from better regulation practices, initiatives and reforms. A central take-away from these meetings is that implementation of regulatory reforms, including GRPs, can strengthen regulatory frameworks across SEA, which in turn supports both the regional and global recovery. GRPs are useful policy tools in a crisis as they ensure that regulations are effectively designed and implemented to deliver the policy goal that they are set to achieve, as was seen above. This section will end with a brief summary from the various discussions, according to the structure of the GRPN meetings.

### *Reducing burdens to support better regulatory outcomes*

Even if GRPs are abridged due to time and resource constraints, they can strengthen government responses to the immediate crisis while helping build more resilient risk management systems in the long-term. As discussed in the sixth meeting of the GRPN (2020<sub>[17]</sub>), some governments prioritised quick regulatory response delivery, including streamlining regulations for medical equipment and investment. This can be achieved by using fast-track procedures and leveraging existing regulatory flexibility.

Furthermore, countries can still support evidence-based decision making by ensuring that regulations are properly evaluated using *ex post* reviews and sunset clauses to automatically expire COVID-19-related measures. Some governments also rely on informal stakeholder consultations and expert advisory groups to facilitate agile regulatory design and delivery, although special attention should be paid to inclusiveness to ensure that the concerns and inputs of all affected by regulatory changes are considered as much as possible.

### *Leveraging digital tools for more agile regulatory policy making*

The sixth meeting of the GRPN also explored how digital technologies can support governments in maintaining service delivery and stimulating the economy while protecting public health by reducing person-to-person physical contact (OECD, 2020<sub>[17]</sub>). Countries harnessed digital tools and data to strengthen good regulatory practices and improve regulatory design, including broadening stakeholder



engagement to consult with interests groups that have been traditionally less engaged, such as MSMEs. They also helped improve regulatory delivery by easing burdens and compliance costs for businesses and citizens while increasing the efficiency and transparency of regulators, as well as enabled e-inspections, e-accreditation, and e-procurement systems without compromising regulatory quality. Evidenced-based, data-driven decision making can enhance regulatory responses to the COVID-19 pandemic. Digital applications such as real-time websites and mobile phone applications also helped facilitate clear communication and guidance regarding public health measures.

Nonetheless, discussions highlighted that policy makers must be even more attuned to personal freedoms such as privacy as well as data protection and cybersecurity as governments increasingly rely on digital technologies to collect, process and share data, including personal data, to slow the spread of the virus – themes further emphasised in OECD (2020<sup>[48]</sup>); (2020<sup>[49]</sup>). Even prior to the pandemic, emerging technologies posed a number of challenges to governments such as pacing problems, liability attribution, and trans-boundary issues. Digital technologies have forced governments to take new approaches to regulatory policy making, including adopting foresight analysis and horizon-scanning; utilising soft law; and leveraging digital tools, such as single access online portals and digital applications. Furthermore, the integration of IT systems across relevant government agencies and the co-ordination of their regulatory service deliveries are crucial for maximising the benefits of digitalisation.

### *Regulatory reforms to support recovery and prepare for future crises*

The seventh meeting of the GRPN continued the themes explored above, exploring how better regulation can support critical vectors of the economic recovery. SEA countries have performed comparatively well to date in containing and mitigating the spread of the pandemic. This has resulted in smaller shocks to their GDPs compared to many Western nations, and has enabled them to look forward towards recovery earlier. While there are clearly challenges to better regulatory policy making embedded in the changes that occurred due to COVID-19, such as the lack of robust *ex ante* analysis to ensure decisions are made on the best evidence possible, there were also a number of opportunities to “lock in the gains” for improved policy making going forward.

Discussions highlighted that now, more than ever, better regulation reforms are needed (OECD, 2021<sup>[18]</sup>). As economies recover, governments will need to focus on reforms that make investment, trade, and business facilitation easier, especially for MSMEs that make up 70-98% of all businesses across most SEA economies (OECD, 2018<sup>[21]</sup>). This will require a focus on the better regulation fundamentals, including inter-agency co-ordination to align central requirements with the practical experience of technical ministries, departments and agencies and their clients and stakeholders. Furthermore, reducing administrative burdens – both for businesses and citizens, but also within government – can benefit recovery efforts from a whole-of-society perspective, especially with the aid of digital technologies and one-stop shops (OECD, 2020<sup>[50]</sup>). This includes taking an “omni-channel” approach, which advocates for consolidating all government websites into a single domain where the design and architecture of services supports access through any channel, from any device, at any point in a new or existing service journey (OECD, 2020<sup>[51]</sup>). Regulatory innovation, including risk-based approaches and sandboxes, can also provide the necessary flexibility for an agile recovery.

Preparing for the future, it is well noted that the SEA community has a strong basis for better regulatory management. This is supported by sound regional-level efforts led by the ASEAN Secretariat, including ASEAN Guidelines on Good Regulatory Practices (2019<sup>[8]</sup>) from before the pandemic and a priority on better regulation that cuts across the ASEAN Comprehensive Recovery Framework (2020<sup>[52]</sup>) and Implementation Plan (2020<sup>[53]</sup>). ERIA has also supported SEA economies with analysis on regulatory management systems (ERIA, 2020<sup>[54]</sup>).



Keeping a commitment to better regulation reforms will be essential in promoting agility and resilience, including developing ways to improve international regulatory co-operation (IRC) to ensure SEA countries are working together now and in the future to discuss, design, implement and enforce effective regulation (OECD, 2020<sup>[17]</sup>); (ERIA, 2020<sup>[55]</sup>); (ERIA, 2020<sup>[56]</sup>). Effective IRC allows countries to support quick, internationally-aligned responses to cross-border crises and support recovery by lowering regulatory barriers to trade and investment. *Ex post* reviews will be more important than ever, not only to ensure COVID-era policies are properly evaluated but to support broad, system-wide efforts to identify and reduce burdens and modernise regulatory stocks to be more risk-based.

To support these wide-reaching regulatory policy priorities, the OECD worked with GRPN members to conduct a survey of regulatory practices during the crisis to identify trends and support reform efforts. The final section of this paper will present an overview of those results and key findings, with the full results and methodology presented in the Annex.

### 3. Analysis of key findings to support better regulation for COVID-19 responses in SEA countries

Governments are still facing untold pressures in responding to the COVID-19 pandemic. As seen above, national governments around the world, including ASEAN Member States, have passed emergency legislation and enacted non-legislative regulatory changes to urgently respond to daunting public health and economic challenges. Especially in the early days of the pandemic, governments were doing so without precedent or comparative examples (to the magnitude of the COVID-19 pandemic) to enable quick and accurate decision making. This is where international forums, like the ASEAN-OECD Good Regulatory Practices Network (GRPN), played important roles in creating a space for dialogue and mutual learning.

A stronger demand from the network and other policy communities, such as the OECD Regulatory Policy Committee (RPC), has emerged for more evidence of regulatory practices around the world to inform public action. The above sections highlighted findings from OECD COVID-19 Policy Papers, produced in collaboration with the OECD RPC and Network of Economic Regulators, and discussions from the GRPN. While these highlight trends and practices from a qualitative perspective, it is important to dive deeper with data to better contextualise these challenges and opportunities.

The GRPN thus launched a survey of members in September 2020 to gain data points to help build a fuller picture of how governments used regulatory policy making to respond to the crisis. A full explanation of the methodology can be found in the Annex.

This section presents a discussion of the key findings, based on the results of the survey found in the Annex. As these are an overview based on a single survey, further investigation is still needed to determine their full effects on the quality of regulatory decision making.

***Key finding 1: With pandemic decision making more centralised in the centre of government, line ministries/departments seemed to play an important role in regulatory policy making alongside ad hoc COVID-19 co-ordination committees.***

All ten responses noted that the Office of the Head of State and/or Government and relevant line ministries were equally involved in regulatory policy making during the crisis. Seven identified the use of sectoral regulators and better regulation units, and only four identified the use of regulatory oversight bodies. Without further evidence, it is unclear what this means in terms of the quality of regulatory decision from a whole-of-government perspective that usually incorporates a wide variety of actors in regulatory policy making.



This may indicate a number of possible scenarios. One may be that highly centralised, crisis-oriented decision making during the pandemic prioritised advice from units who are already traditionally close to decision makers, compared to those further away or performing scrutiny functions that could potentially slow down decision making. This may have weakened some of these agencies or units. Alternatively, by way of their independence and mandates, many agencies may have continued to make regulatory decisions without necessarily co-ordinating with the central units. There is also a continuum of possibilities between these two options, or may have been addressed through *ad hoc* co-ordination committees, which may have enabled decision makers to access this regulatory advice in different ways, depending on the construction of these committees.

Appropriate post-pandemic review of government performance may want to investigate this further, including what affects, if any, this had on policy making and how those lessons could be learned in preparation for the next crisis. For instance, it is possible that policy decisions were potentially skewed towards broader, more community-wide decisions (i.e. to all types of businesses) compared to targeted or sectoral policies aimed at a subset of the community (i.e. MSMEs). Depending on the results of reviews, focus should also be on returning any mandates, roles and procedures of these agencies following the pandemic.

***Key finding 2: Pandemic-induced changes to regulatory management systems seem to focus on reducing process-oriented burdens, often with a focus on relaxing or applying more flexibility in conducting evidence-based analysis.***

In the context of a fast moving crisis, a focus on burden reduction can help speed up government decision making, and facilitate compliance amongst businesses and citizens as they adjust quickly to a new operating environment, especially to support MSMEs (see a range of examples from Viet Nam and Indonesia in the Annex, Box 1 and Box 2 respectively). For instance, responses highlighted how requirements to conduct regulatory impact assessments (RIAs) or stakeholder engagements were relaxed, suspended or sometimes bypassed altogether in a majority of countries, which was a trend noted in many OECD countries as well.

Evidence from GRPN discussions indicates that *ex ante* evidence and analysis is still collected, but with a focus on qualitative reasoning. Countries are also using innovative avenues to access evidence, such as expert advisory groups or virtual consultations. For example, in Malaysia, the #MyMudah Programme allowed companies and businesses to highlight regulatory issues through the Unified Public Consultation (UPC) Portal, as well as to take part in dialogues organised by the government (see Annex, Box 4).

Responses seem to indicate less of a focus on regulatory delivery and/or sectoral issues, such as MSMEs or enterprise promotion. However, this could also reflect the position of the respondents, who are generally located in better regulation units focused on burden reduction and improving regulatory management systems, and would have more sensitivity to these changes over sectoral changes. A few new regulatory requirements may have also been needed to deal with particular features of the pandemic, such as contact tracing or quarantine rules, which again will require further investigation to ensure this is not a bias of the respondents.

***Key finding 3: Ex post review will clearly play a significant role as countries emerge from the pandemic, especially to lock in the gains from what worked and evaluate decisions made to ensure they remain fit for purpose.***

Seven of ten respondents noted their government plans to use *ex post* reviews, such as sunset clauses or post-implementation reviews, to evaluate regulatory decisions made during the pandemic. While this indicates strong intent, the key for governments will be to ensure these reviews happen in practice and not follow pre-pandemic trends across the world of “setting and forgetting” regulation. It will be key to gain





insights from these reviews as to how flexibility can be built into the regulatory policy making system on an ongoing basis, and make sure to address any changes necessary as governments switch from pandemic to post-pandemic operation.

***Key finding 4: Post-pandemic reform efforts could also focus on exploring ways to “future proof” regulation to cope with crises, including what to activate when a crisis hits or de-active once it has eased.***

Nine out of ten respondents noted that their governments would pursue regulatory management reforms in the next three years, with slightly more respondents stating that these reforms were planned prior to the pandemic versus in direct response to the pandemic itself. These reforms appear to be mostly focused on administrative burden reduction and RIA, which have been popular reforms in the region for some time and perhaps reflecting an inertia towards these types of reforms. Recent such regulatory reforms from before the pandemic in Thailand and the Philippines can be found in the Annex (see Box 3).

Respondents also identified important recovery-oriented reforms, including improving regulatory oversight and supporting trade through reforms like e-customs. International regulatory co-operation approaches (IRC) may thus provide SEA countries with an interesting opportunity to further strengthen regulatory frameworks for trade and investment, as it supports governments’ efforts to reduce domestic burdens for trading and investing and improve evidence-based policy making. A slight majority of respondents did note that they looked to foreign jurisdictions or international organisations to inform domestic policy responses to the pandemic, which is a way that IRC can be used more systematically.

***Key finding 5: As in OECD countries, SEA countries clearly leveraged digital technologies to adapt quickly and ensure governments continue to perform their functions; however, it is unclear what effect this has had on regulatory quality.***

Respondents identified the broad use of digital meeting, social media and webinar platforms, which points towards facilitating government operation and communications by providing transparent, timely and effective information to citizens and businesses to support effective stakeholder engagement. Most often digital technologies were used in containment and mitigation efforts to help track, trace and monitor disease spread. For example, Singapore used the TraceTogether (TT) programme to complement and automate manual contact tracing efforts via a mobile application (TT App) and a physical device (TT Token), as well as the SafeEntry system for public venues (see Annex, Box 8).

However, few respondents noted their use in RIAs or *ex post* reviews. This may offer clear avenues to innovate with regulatory management tools. Some countries have been exploring innovative applications of digital technologies to support outcomes, including promoting more meaningful two-way consultations and improve regulatory delivery that may provide some ideas for the broader SEA community. Though, careful attention will need to be paid to ensuring inclusiveness to avoid exacerbating issues with the digital divide.

## 4. Conclusions

Based on the discussions during the sixth and seventh ASEAN-OECD Good Regulatory Practices Network (GRPN) meetings and the survey of GRPN key contact points, it is clear that SEA countries’ efforts to combat the COVID-19 pandemic were underpinned by their enduring commitment to regulatory reforms. The majority of SEA countries had been committed to better regulation reforms for several decades prior to the pandemic, putting their governments in a position to leverage this knowledge and experience to improve their countries’ pandemic response. Moreover, networks such as the GRPN offered effective



platforms for exchanging ideas and fostering mutual learning to support efforts to update, amend and create new regulatory responses as the pandemic evolved.

Consistent with the experience in many OECD countries, SEA countries quickly enacted administrative burden reduction and process simplification reforms at the start of the pandemic to enable a more agile, inclusive and wide-ranging government response to the pandemic. Coupled with strong centralised decision making, regulation was one of the key levers for SEA countries as they sought policy solutions to the challenges imposed by the pandemic. Digital technologies were also widely used to adapt quickly to the new socially-distanced environment, especially for facilitating stakeholder engagement, and remain an opportunity going forward for improving regulatory quality.

However, while this policy brief presents a snapshot of the GRPN discussions and survey results, it certainly does not paint the full picture. Given that most respondents are located inside better regulation units, either in the centre of government or economy-oriented ministries, discussions and responses clearly highlight the role of simplification and good regulatory practices but focus less on how these tools are being used concretely at the sectoral level. For example, more detail is needed from the perspectives of regulatory ministries, delivery agencies and independent regulators, which may shed more light on how regulatory policies affected important sectoral issues for SEA economies, including for SME development, trade facilitation and investment promotion. More detail is also needed to understand the role that regulatory oversight played in ensuring regulatory quality during the pandemic.

As we move from the immediate crisis response into the recovery phase, these results should encourage SEA countries to engage in systemic reviews of their regulatory policy making system and stock of regulations to ensure they are both fit for purpose and ready for the next crisis. On the former, given the speed at which the pandemic evolved, governments should reflect on how their entire system of regulatory policy making functioned during the pandemic and learn from this experience to both enact any immediate necessary reforms in the short term and prepare for crises in the longer term. On the latter, regulatory decisions made during the pandemic should be subjected to post-implementation reviews to ensure the decisions remain fit for purpose and, if not, removed from the stock of regulation. This would also provide another opportunity for the government to engage in system-wide learning opportunities.

Moreover, forums like the GRPN are well placed to play a central role in supporting governments in this reflection and reform process. This includes providing a platform to share experiences to support mutual learning, as well as access peer support from fellow SEA and OECD countries. The GRPN could also collect these discussions and findings, documenting them to support broader learning opportunities that can benefit ASEAN regional co-operation and sustainable development goals.

## Notes

<sup>1</sup> In this paper, Southeast Asian nations refer to the members of the Association of Southeast Asian Nations (ASEAN), founded in 1967 as an inter-governmental organisation, and that aims to promote an ASEAN Community in accordance with the purposes and principles as stipulated in the ASEAN Charter (2008). There are 10 members of ASEAN: Brunei Darussalam, Cambodia, Indonesia, Lao DPR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam. More can be seen here: <https://asean.org/about-us/>



<sup>2</sup> The GRPN, co-chaired by Malaysia and New Zealand, is comprised of around 70 senior officials responsible for Good Regulatory Practice initiatives in ASEAN Member States, OECD member countries as well as representatives from regional and international organisations. The GRPN fosters the exchange of good practice and mutual learning among policy makers. The Network builds upon the longstanding partnership of the OECD with Southeast Asia on regulatory reform both regionally through APEC and ASEAN and bilaterally with individual ASEAN member states. The sixth (2020<sup>[17]</sup>) and seventh (2021<sup>[18]</sup>) meetings of the GRPN focused on the COVID-19 pandemic.

<sup>3</sup> The brief is part of a series of responses to the COVID-19 crisis developed by the Regulatory Policy Division of the OECD Public Governance Directorate, starting with a framing piece on *Regulatory Quality and COVID-19: Managing the Risks and Supporting the Recovery* (OECD, 2020<sup>[16]</sup>) and encompassing six other contributions (on international regulatory cooperation, removing administrative barriers, improving regulatory delivery, the use of new technologies to expand regulatory capacity, the use of regulatory management tools and the role of regulatory oversight, sector regulation during the COVID-19 crisis, and behavioural insights for fast-paced regulatory policy making). All are available at: [www.oecd.org/gov/regulatory-policy/reg-covid-19-activities.htm](http://www.oecd.org/gov/regulatory-policy/reg-covid-19-activities.htm). It is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries or SEA member states. It was prepared by the Secretariat and submitted for comments to the OECD Regulatory Policy Committee and GRPN. It may be edited and improved over time as more information becomes available.

<sup>4</sup> This paper was prepared by the Regulatory Policy Division, headed by Nick Malyshev, of the OECD's Public Governance Directorate. The authoring team comprised James Drummond, Alexander Bobroske, and Jeeseon Hwang, led by Mike Pfister. The OECD Secretariat would like to thank the GRPN main contact points from SEA countries and regional partners for their support in providing responses to the survey and inputs to drafts of the paper, including: Zainul-Akhyaar Amer Hairunuddin and Yusri Yahya (Brunei Darussalam); Sokha Pech (Cambodia); Diani Sadiawati (Indonesia); Alousana Chandara; Lattanaphone Phonphommavong, Arounyadeth Rasphone, Sengaphone Silaphet, and Nimit Souvanvong (Lao PDR); Mohamad Muzaffar Abdul Hamid, Abdul Latif Abu Seman, Sharhiza Bahari, Edward Blinty, Jamaliah Daud, Samini Ferdous Sandrakantham, Zahid Ismail, Asmawi Noor Saarani, Wan Fazlin Nadia Wan Osman, Jaya Singam Rajoo, Mohammad Alamin Rehan, Hairil Yahri Yaacob (GRPN Co-Chair), and Cham Yin Hwa (Malaysia); Wah Wah Maung (Myanmar); Julie Nind and Mark Steel (GRPN Co-Chair, New Zealand); Karen Isabelle C. Aquitana, Jeremiah B. Belgica, Janalyn B. Gainza-Tang, Giselle Ann T. Melgar, Alyssa P. Pamplona (Philippines); Marvin Chan, Sook Fen Chang, Christopher Lam, John Nehemiah Samuel, and Shun Yin Tan (Singapore); Chintapun Dansubutra, Kanchanapohn Inthapanti Lertloy, Narun Popattanachai, and Orapim Prasong (Thailand); and Quynh Anh, Ngo Hai Phan, Vinh Dang Quang, and Chu Thi Thao (Viet Nam); Alexander Chandra and Julia Puspawati Tijaja (ASEAN Secretariat); and Intan Ramli (Economic Research Institute for ASEAN and East Asia). Thanks are also extended to OECD Secretariat officials who provided comments to the paper, including Martin Forst, Sara Fyson, Arnault Pretet, Camila Saffirio, Silvia Sorescu, Stephen Thomsen, and Andrea Uhrhammer. Sincere thanks are especially extended to the membership of the GRPN who are too numerous to thank individually but provided helpful inputs through their participation in the 6th (2020) and 7th (2021) meetings of the GRPN.

<sup>5</sup> OECD (2019<sup>[85]</sup>) explains that the centre of government (CoG), also known as the Cabinet Office, Office of the President, Privy Council, General Secretariat of the Government, among others, is the structure that supports the Prime Minister and the Council of Ministers (i.e. the regular meeting of government ministers). The CoG includes the body that serves the head of government and the Council, as well as the office that specifically serves the head of government (e.g. Prime Minister's Office).



<sup>6</sup> These are generally regarded as regulatory impact assessments (RIAs), stakeholder engagement and *ex post* review. Collectively, they are sometimes also referred to as “regulatory management tools”. More recently, additional better regulation tools have been considered as part of GRPs, including enforcement and inspections (regulatory delivery) and international regulatory co-operation (IRC).

<sup>7</sup> The Digital Hub can be found here: <https://www.oecd.org/coronavirus/en/>

<sup>8</sup> Behavioural insights is being used by countries around the world. In Southeast Asia, this includes Malaysia, who has a unit in the Malaysian Productivity Commission and includes BI as part of their 12th Development plan, as well as Singapore that has extensive capacity to use BI across their government.





# Annex A. Survey results – Regulatory policy making reforms to support better outcomes during the COVID-19 pandemic

## Methodology

The survey was developed by the OECD Regulatory Policy Division, in consultation with the GRPN co-chairs, Malaysia and New Zealand, as well as the host of the sixth GRPN, the Government of Viet Nam. It consisted of a series of questions according to three broad themes, which mirrored the session themes of the sixth GRPN (OECD, 2020<sup>[17]</sup>): GRPs and burden reduction, digital technologies, and lesson learned going forward. The purpose of the survey was to add evidence and data to the discussions in the GRPN meetings and to inform the network's programme of work. Given the complexity of regulatory issues, the survey was not intended to provide definitive answers to support conclusions about better regulation during the COVID-19 pandemic in the SEA region.

The questions were informed by the OECD regulatory policy COVID-19 Policy Papers, cited above. Elements of the survey questionnaire also parallel the OECD's Indicators of Regulatory Policy and Governance (iREG) 2020 survey to enhance direct comparisons between OECD and ASEAN Member States and better inform future analysis. iREG data is presented in the OECD Regulatory Policy Outlooks (2015<sup>[20]</sup>); (2018<sup>[21]</sup>); (OECD, 2021 – forthcoming).

The survey was developed during the spring of 2020, tested amongst the GRPN co-chairs and host in summer 2020, and distributed to all 10 SEA countries in September 2020. GRPN main contact points were used to distribute the survey. Responses were received from all 10 ASEAN countries, most of which coming between October 2020 and January 2021, with two countries arriving in May 2021. This response rate gives the survey a representative sample of SEA nations. However, since the time period for receiving answers was quite wide, there may be some inter-country differences in answers that are a result of answering the survey at different points in time.

The results are presented as aggregated data (anonymised by country) with the exception of cases highlighted in boxes, which were cleared bilaterally with the country through a fact checking process before final publication. The decision to present data in aggregate was to:

- Allow respondents more latitude to answer questions without needing to engage in extensive internal collaboration within their government, which is normally associated with benchmarked data collection;
- Limit the time period between OECD receiving the data and publishing results; and,
- Out of recognition that the survey is meant to provide an indicative sense of trends in the SEA region, and not as an authoritative set of evidence upon which concrete conclusions can be drawn.

This approach allowed the survey to be implemented, answered, analysed and released quickly to help support governments respond to COVID-19 while the pandemic is still present, and as early in the recovery period as possible. Moreover, since information to fact check answers are not always available publicly and, when they are, it may require specific language skills to access, the responses were not checked



further via searches for such data. Respondents were asked to submit supporting information where possible, but this was not made mandatory to minimise the burden on respondents and support a quick turnaround to aid governments respond to the pandemic in the moment.

### *Limitations*

Given the survey's construction, several limitations need to be noted as readers analyse the data. First, this survey is a snapshot from a period of time when the pandemic was still moving quickly and many governments were in the tail end of the first wave, while others were received during second or third waves. This may create differences in how governments view regulatory reforms vis-à-vis the pandemic, as such experiences going through multiple waves may have allowed some governments to further iterate their regulatory systems in response. As a result, while macro trends are still likely to be valid, individual country examples may be somewhat different than when collected. Any further data collections will need to build upon this work and discover what has changed, and why.

Second, the nuance of country-level differences is not apparent in the results or analysis. For example, administrative, political, and societal culture can often have an impact on the way governments approach various decision making processes. This further limits the ability to draw conclusions based on this data, aside from general trends in relation to OECD normative guidance.

Finally, the results reflect individual respondents who work on better regulation in the centre of government who may not have perspective over all aspects, including sectoral applications, of better regulation reforms and regulatory policy making practices in their government. It is possible that at the technical ministry, department, or agency level, practices are different and the survey does not capture these nuances.

Taken together, these limitations encourage readers to approach the results as they are intended: data points that help to bring depth to the discussions held in the GRPN meetings. The OECD encourages further research to explore the various findings to illuminate trends and explanations that are more quantitatively robust.

## **Results part 1: Whole-of-government regulatory response to the COVID-19 pandemic**

OECD normative guidance on better regulation starts with a recognition that countries need commitment from the highest political level to an explicit whole-of-government policy for regulatory quality (OECD, 2012<sup>[6]</sup>). OECD and accession countries continue to invest in this approach, with the vast majority of them adopting an explicit policy promoting government-wide regulatory reform or regulatory quality and established dedicated bodies to support the implementation of regulatory policy (OECD, 2018<sup>[21]</sup>). Evidence similarly shows that SEA countries, by and large, recognise the importance of better regulation reforms and are increasingly investing in various reform efforts (OECD, 2018<sup>[9]</sup>).

In presenting the results of the survey, this first section looks further at these strategic points to pinpoint how and where regulatory decisions are being made and what sort of priorities are being considered by decision makers.

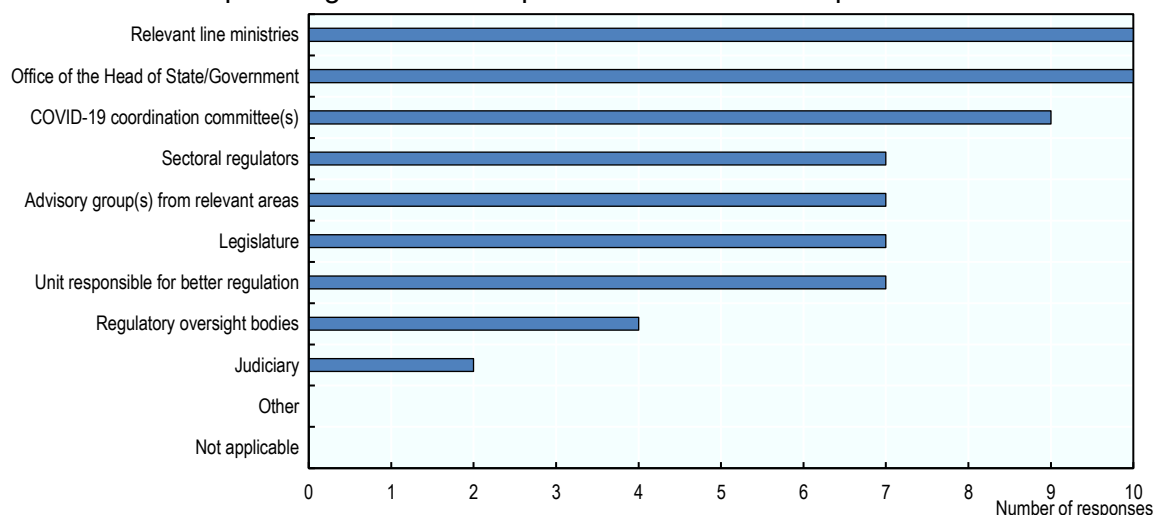
### *Decision making*

Responses from the survey demonstrate the strong role played by the executive branch in SEA countries in responding to the pandemic (see Figure 1). This reflects various realities. First, it is the role of the executive branch, through its units at the centre of government, ministries, departments, and agencies, to govern the country on a day-to-day basis. Second, many countries separate primary law making and subordinate regulations between the legislature and executive, respectively. Finally, when speaking of



better regulation, many of the discussions focus on the tools and processes for developing regulations – i.e. use of regulatory management tools – which is an internal governance issue set by the executive for its own use.

Figure 1. What, if any, entities were involved in the decision making process to adopt, amend or suspend regulations in response to the COVID-19 pandemic?



Note: Title reflects question asked to the respondents. Data reflects the responses from the ten SEA nations who responded this survey via the GRPN main contact point, and does not include data from OECD countries.

Source: Data from the 2020 Surveys on ASEAN Member States' Regulatory Responses to the COVID-19 Pandemic, implemented by the OECD Secretariat.

Some interesting sub-trends emerged. First, and most logically, all survey respondents replied that relevant line ministries and the office of the head of state/government were involved in pandemic-related decision-making process to adopt, amend or suspend regulations. The results show that while crisis decision making is often highly centralised, the model of co-ordination by the centre of government and ministerial involvement and advice through ministries/departments continued during the pandemic. As noted in the OECD (2021<sup>[57]</sup>) *Government at a Glance*, this trend is similar to OECD countries where, among the 26 countries for which data were available, 20 (77%) of centres of government were having to provide support to more co-ordination instances during the pandemic, and more stakeholders participated in co-ordination meetings called by the centres of government (19 out of 26, 73%). One possible side effect of this may be an over reliance on community-wide policy decisions, such as a single policy for all forms of businesses, rather than targeted or sectoral policies geared towards specific subsets of the community, such as MSMEs. Post-pandemic reviews of government policy making during the crisis will need to examine this in more detail to determine if this did happen in practice and, in preparation for the next crisis, how more targeted solutions can also be encouraged during times of crisis.

Second, this model of regulation was strengthened with the agile creation of ad hoc support bodies, which require further study to understand their full role but likely supported improved co-ordination and provided extra advice to the executive branch. Nine out of ten survey respondents replied that COVID-19 committees were involved in the decision-making process to adopt, amend or suspend regulations in response to the pandemic. The effective role of these committees in the actual decision-making process may be a good example of agile governance, pending further review. Moreover, depending on the composition, involving COVID-19 committees in the regulatory decision-making process may have diversified the views involved compared to a solely centrally-run pandemic response.

Third, and contrary to the last point, regulatory bodies further away from the centre of government seemed to be less involved from the perspective of the respondents. This may have had the effect of making



decision making less robust, unless their roles were preserved in other ways such as on the *ad hoc* committees or using their independence to maintain their functions. Seven out of ten respondents reported the involvement of sector regulators in government's response to the pandemic. OECD (2020<sup>[29]</sup>) and (2020<sup>[5]</sup>) note the important role for sector regulators and regulatory delivery agencies in COVID-19 responses. Sector regulators play a large role to ensure that markets function and quality essential services are provided during times of crisis. Regulatory delivery focuses on driving compliance with regulations through enforcement and inspections, which can have direct impacts on access to important pandemic supplies, such as personal protective equipment, while safeguarding everyone against unsafe products. The data collected does not specify how regulatory delivery agencies and systems operate in ASEAN, especially in the context of the pandemic, and would need to be further studied to discover concrete interpretations to these results.

These responses may be interpreted a few different ways. First, it may again represent the perspective of the respondents who are generally located in better regulation units inside government and may not have full visibility over the actions taken by more independent agencies. Second, sector regulators and delivery agencies are often independent from the executive (to varying degrees in different countries), thus being able to make decisions without involving the executive and vice versa (OECD, 2016<sup>[58]</sup>). In this case, they would be responding to the crisis in tandem with centralised efforts, as discussed in OECD (2020<sup>[29]</sup>); (2020<sup>[5]</sup>), but may not be consulted on a day-to-day basis and thus perceived to be less involved. Third, it could be that their involvement is captured in *ad hoc* co-ordination structures, used by nearly all countries according to respondents and may include agencies in these co-ordination structures. Fourth, centralised decisions may override the decisions issued by more independent agencies, which may seem justifiable in a crisis setting but should be evaluated against the purpose behind systems of independent regulators that are intended to protect markets from undue influence (OECD, 2017<sup>[59]</sup>) and to safeguard and enforce strong, fair and quality regulations. Finally, it could just represent a fact that independent sector regulation is less common in the SEA region, and thus would not be a relevant issue for many. The OECD does not have robust data on sector regulation in the SEA region to determine if this would be the case. It is impossible from this data to determine what explanation, or combination thereof, is correct. In fact, this would be the basis of a dedicated study on its own. Post-pandemic reviews of government regulatory policy making performance may want to explore this finding a further to draw appropriate conclusions.

Fourth, better regulation units and regulatory oversight bodies seemed to be less involved in decision-making processes in SEA countries with seven and four respondents, respectively, reporting their involvement. This is likely a result of the bypassing or simplification of internal processes noted above, as such units are often responsible for the quality and supervision of processes and outcomes rather than having technical expertise in a given policy area. While this is understandable to a degree given pressures on governments during the crisis, there may be a missed opportunity for governments to fast-track regulations but still have quality decision making processes. Better regulation units and oversight bodies have deep understanding of GRPs and better regulation, such that they will also likely have the knowledge of what can be bypassed or simplified and what cannot. Moreover, they can likely provide rapid advice to decision makers on the quality of proposals. These results suggest countries would benefit from evaluating and establishing plans for the involvement of such units in preparation for future crises.

### ***Priorities for regulatory policy making***

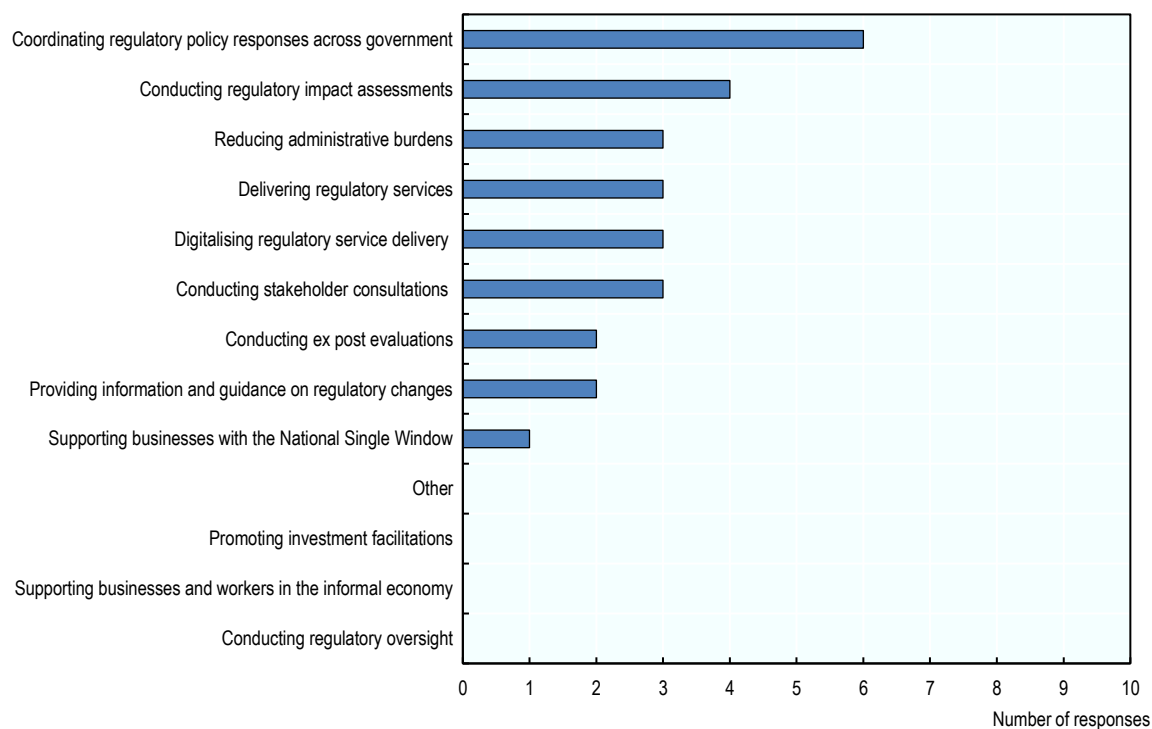
When asked about what regulatory management issues were of most concern, respondents identified co-ordinating regulatory policy responses across government as the most important (see Figure 2). This is consistent with the above findings on centralised decision making, as in times of crisis and with large administrations, inter-agency co-ordination to inform decision making is vital for operational efficiency, transparency, and the coherence of the regulatory response. The centre of government has a key role to play to articulate governments' decision-making, including on regulations, co-ordinate line Ministries and agencies, and create and integrate *ad hoc* structures like the COVID-19 Committee into the whole-of-





government process (OECD, 2020<sup>[60]</sup>). The strong focus on co-ordinating regulatory policy in this survey is conducive to promoting a whole-of-government perspective and improving consistent regulatory delivery.

**Figure 2. What are the top three most important regulatory management issues your government has faced due to the COVID-19 pandemic?**



Note: Title reflects question asked to the respondents. Data reflects the responses from the ten SEA nations who responded this survey via the GRPN main contact point, and does not include data from OECD countries.

Source: Data from the 2020 Surveys on ASEAN Member States' Regulatory Responses to the COVID-19 Pandemic, implemented by the OECD Secretariat.

Conducting regulatory impact assessments was the second most important regulatory management issue with four responses. This may demonstrate a continued commitment to some form of *ex ante* analysis, even if truncated. Reducing administrative burden, delivering regulatory services, and digitalising regulatory service delivery were collectively in third place, alongside stakeholder engagement. These three may be grouped together as they may be related to governments realising that fast response required more agile processes and procedures, especially allowing businesses and citizens to access government services quickly and efficiently remotely. Stakeholder consultations can also support such efforts, helping governments identify measures to simplify and gaining feedback on possible solutions being developed under tight timelines. Conducting *ex post* evaluations was also important but to a slightly lesser extent – consistent as well with the analysis presented in the second part of this section. These results seem to place added weight on the analysis that SEA countries have mainly focused on the traditional better regulation approaches during the pandemic, which were a focus of most SEA countries' reform efforts before the crisis (discussed in Section 2).

No respondents chose to include promoting investment facilitation or supporting businesses and workers in the informal economy, while only one respondent included supporting businesses with the National Single Window. This is likely, again, a result of respondents not being in a position to have a broad picture



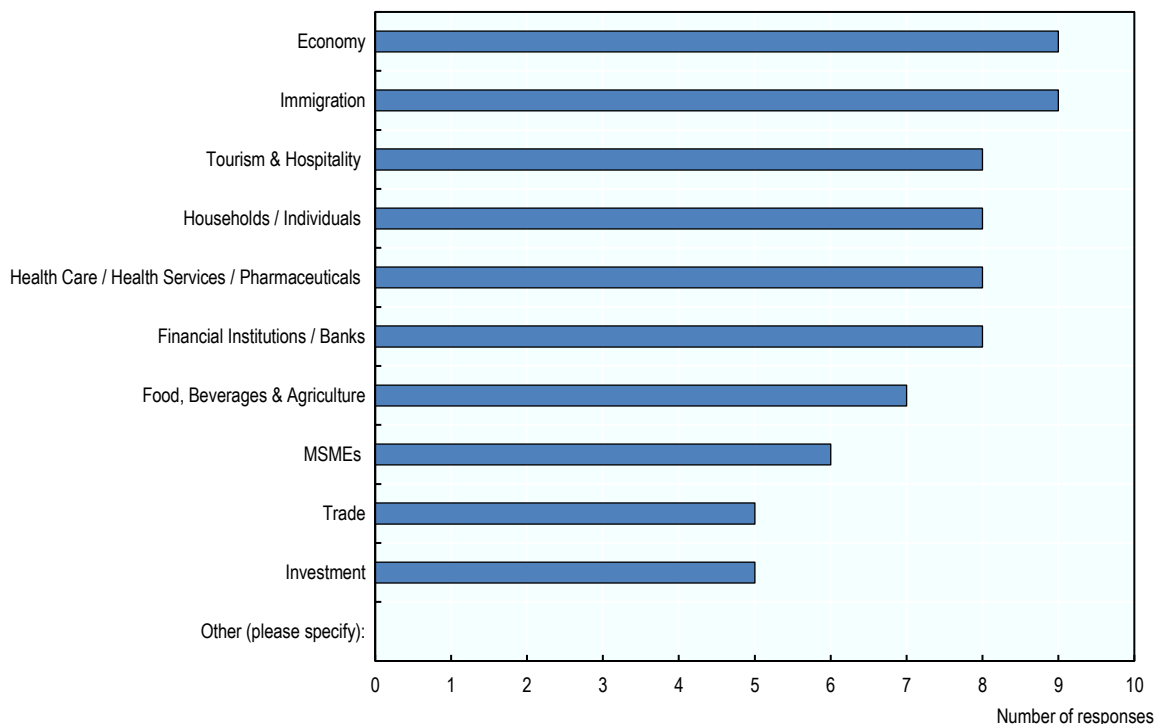
of all activities happening across their government. It also may reflect the fact that these mechanisms were not considered high priority in the response to the pandemic, pointing to a disconnect between the centre of government's wider focus and the need for co-ordinated approaches with technical areas that are left with line Ministries and agencies, such as investment promotion agencies. Post-pandemic reviews may want to investigate this linkage further.

Regulatory oversight was also not considered as central to regulatory management issues facing SEA countries, with no respondents choosing this option. This highlights previous points regarding potentially missed opportunities to include scrutiny into decision making as a method for improving regulatory decisions.

### *Regulatory impacts on sectors in SEA countries*

The COVID-19 pandemic has touched nearly every part of our societies. In response, governments have had to develop policy responses across the board (see Figure 3). Economy and immigration experienced the most regulatory changes in response to the COVID-19 pandemic according to the survey, with nine out of ten countries reporting that significant regulatory changes were made in these sectors. These results reflect the impact that COVID-19 has had on travel and on the economy. However, regulations affecting individuals, health care, food, and financial institutions were all important targets for government to make regulatory decisions to help ease the burden of the pandemic.

**Figure 3. What sectors have experienced significant regulatory changes in response to the COVID-19 pandemic?**



Note: Title reflects question asked to the respondents. Data reflects the responses from the ten SEA nations who responded this survey via the GRPN main contact point, and does not include data from OECD countries. The survey also did not differentiate between domestic and international forums, thus there may be overlap within categories, such as policy areas related to pharmaceuticals, food, MSMEs, etc. with responses like trade.

Source: Data from the 2020 Surveys on ASEAN Member States' Regulatory Responses to the COVID-19 Pandemic, implemented by the OECD Secretariat.



This data reflects findings from the GRPN and other OECD webinars on better regulation to support COVID-19 response, which also highlighted the multi-front battle facing governments around the world. On the one hand, many governments focused on enacting emergency powers to centralise decision-making – especially in the early days of the pandemic. For example, Thailand centralised decision making through the Centre for COVID-19 Situation Administration (CCSA) under the auspice of the Prime Minister after issuing the Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005). Over time, Thailand’s regulatory focus shifted from public health toward economic recovery as the country managed to maintain relatively low numbers of COVID-19 cases. Other governments in the OECD, such as the Netherlands, have benefited from existing regulatory flexibility and limited the number of new regulations adopted by first evaluating if existing legislation can address COVID-19 related challenges (OECD, 2020<sup>[7]</sup>).

On the other hand, governments in SEA also prioritised quick regulatory response to ensure the delivery of essential goods and services. This includes the streamlining of regulations concerning the manufacturing, importing, and exporting of medical equipment and other essential goods and services. Viet Nam issued tax exemptions for medical equipment and sped up registration of in-vitro diagnostic bio-products for COVID-19 testing, allowing for quick circulation of the tests which are approved by the WHO for use in Europe (OECD, 2020<sup>[17]</sup>); (ASEAN and OECD, 2020<sup>[61]</sup>). Viet Nam also supported the testing, evaluation, and circulation licensing for “Vsmart” respirators, the first of which was domestically manufactured only three months after announcing that production would commence. Myanmar similarly aimed to simplify and reduce administrative procedures while expediting approval processes for essential goods and services. Myanmar first focused on the health crisis for two months before launching a new working committee titled “COVID-19 Economic Relief Plan” (CERP). CERP’s mandate is to improve the country’s macroeconomic situation as well as ease the COVID-19 impacts on targeted sectors such as investment, trade, and banking. CERP has taken on a number of COVID-19 related regulatory policy roles, such as expediting regulatory and investment approval processes, simplifying regulations for medical products and infrastructure projects, waiving Food and Drug Administration (FDA) import requirements for products already FDA approved in other countries, and extending online applications. Thailand’s CCSA also supported the facilitation of the import and export of essential goods, particularly during the initial stage of the pandemic within the country.

Many SEA and OECD countries also temporarily cut and deferred fees and taxes to ease economic and regulatory burdens on businesses and households. Viet Nam has reduced electricity prices, cut taxes and extended payment due dates, and worked with commercial banks to temporarily suspend debt, provide credit interest reduction, and exempt and reduce fees such as the interbank transaction fees for small amounts and credit informal subscription fees (OECD, 2020<sup>[17]</sup>); (ASEAN and OECD, 2020<sup>[61]</sup>). Myanmar has also reduced some compliance costs and fees for businesses by as much as 30-75 %, allowed tax deferrals for enterprises, and exempted lease fee charges for affected businesses. Thailand implemented a cash handout policy including the “No one left behind scheme” to support most businesses forced to close with direct monthly credits to their bank accounts for a period of three months. Singapore supported its hard-hit tourism sector by waiving licence fees for hotels, travel agents and tour guides as well as by paying the cleaning charges for hotels that provided accommodation for confirmed and suspected cases of COVID-19 infections (ASEAN and OECD, 2020<sup>[61]</sup>). OECD countries have also implemented similar policies (OECD, 2021<sup>[62]</sup>). Chile, for example, granted more credits and the extension of state guarantees for loans to the private sector, along with tax relief, early income tax refund and postponement of income tax. Australia agreed to a nationally consistent approach to hardship support across the essential services for households and small businesses, and Germany extended the suspension of the obligation to file for insolvency as part of a broader package of reforms intended to support businesses.

Viet Nam is a case of continuing to pursue a previously planned third phase of regulatory reforms and administrative burden reduction despite the ongoing crisis. In December 2019, the government of Viet Nam launched a new National Public Service Portal, which integrated over 1 000 public services online and has



already saved an estimated \$300 million. The new digital portal has reduced administrative burdens on businesses while protecting public health by reducing the need for person-to-person contact. Viet Nam also aims to reduce or simplify 20% of regulations and 20% of compliance costs for individuals and businesses by 2025 (Resolution 68/NQ-CP 2020).

### **Micro, small and medium-sized enterprises**

Since MSMEs form the backbone of most economies, the survey asked additional questions that focused on MSMEs regulation. This is especially important for the SEA region where governments have placed a focus on regulatory responses to support the tourism and hospitality sectors (as seen in Figure 3), which are often dominated by MSMEs. Regulatory burden is a particular cause for concern in SEA as MSMEs make up 70%-98% of all businesses in almost all ASEAN Member States yet only account for less than 30% of value added or exports (OECD, 2018<sup>[9]</sup>). Moreover, MSMEs are at a relative disadvantage when being asked to comply with regulatory requirements as, compared with their larger counterparts, MSMEs are often disproportionately affected by increasing stock and flow of regulations and may lack the adaptive capacity to comply with the regulations (OECD, 2018<sup>[9]</sup>). While a burdensome regulatory environment may only irritate a larger enterprise, it can cripple an MSME that may not have the time and capacities to analyse and comply with regulatory requirements (OECD, 2018<sup>[9]</sup>).

MSMEs face regulatory challenges associated with their size, which restricts opportunities to benefit from economies of scale and difficulties in navigating legal landscapes. They also face significant challenges linked to information asymmetry, technology and digital skills, and resource constraints, such as access to finance for investment (OECD, 2018<sup>[9]</sup>). Moreover, a significant percentage of Southeast Asian MSMEs operate informally, presenting a serious challenge for policy makers trying to develop dedicated regulatory solutions through the market (OECD, 2018<sup>[9]</sup>).

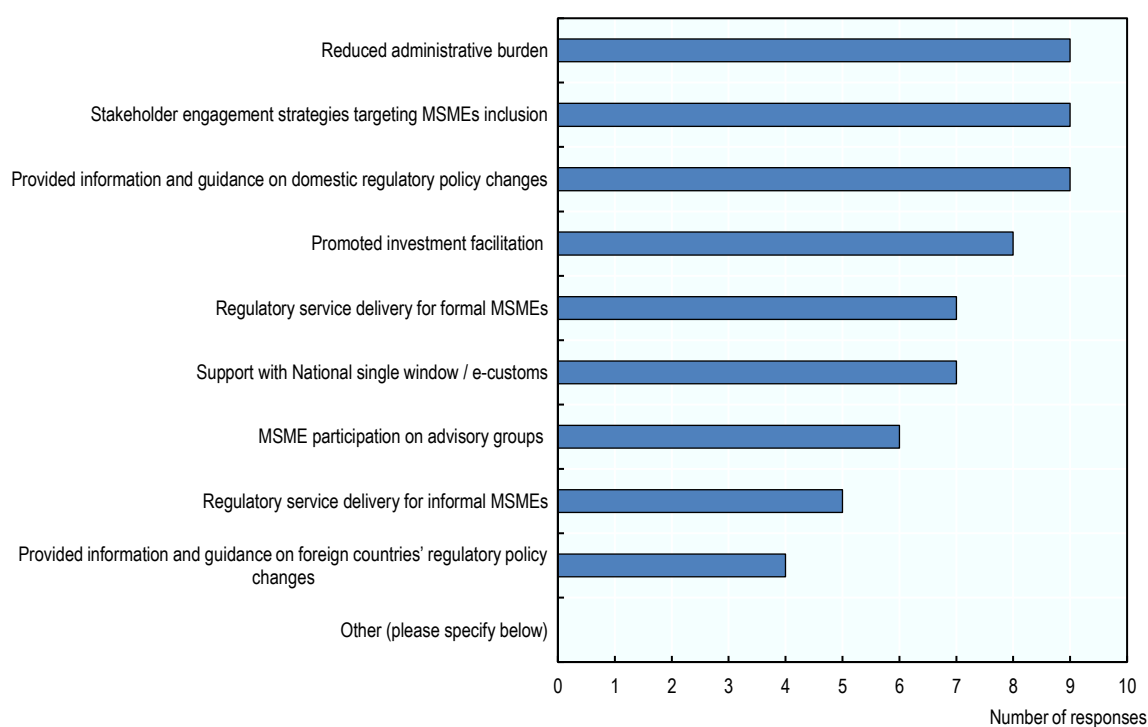
In recent years, governments across the region have made it a priority to improve regulatory policy and delivery to support the development of MSMEs (OECD, 2018<sup>[9]</sup>). For all businesses, but especially MSMEs, GRPs facilitates a stable and enabling regulatory environment that can help boost investment, trade, and entrepreneurship (OECD, 2018<sup>[9]</sup>). ASEAN Member States have introduced regulatory policies targeted specifically at MSMEs. For example, Cambodia and Viet Nam both offer simplified taxation schemes to allow MSMEs to file taxes less frequently than larger corporations as well as exempt certain MSMEs from taxes entirely (OECD, 2018<sup>[9]</sup>). Many ASEAN Member States distinguish their support offered to MSMEs according to their size (i.e. staff employed or annual turnover) but this does not adequately reflect on other characteristics of business operations such as if the businesses operate online or whether they trade in goods or services, which may be more relevant factors for targeted regulatory interventions (OECD, 2018<sup>[9]</sup>).

Figure 4 identifies regulatory changes due to COVID-19 specifically oriented to MSMEs<sup>1</sup>. Reduced administrative burden, stakeholder engagement strategies targeting MSMEs inclusion and providing information and guidance on domestic regulatory policy changes were the most common regulatory policy changes targeted specifically for MSMEs as a response to the COVID-19 pandemic. The large majority reported these specific regulatory policy changes. In addition, regulatory changes aimed at promoting investment in SMEs were implemented in most countries. Delivering services to formalised MSMEs and supporting them with national single windows were also popular, and are consistent with above analysis indicating government's recognition that rapid regulatory changes were needed to facilitating business operation through the crisis. Also, more than half of respondents noting MSMEs participation in advisory groups may indicate that inclusion of MSMEs in stakeholder consultation efforts is recognised by SEA countries as important to regulatory policy during the pandemic.





**Figure 4. As a response to the COVID-19 pandemic, were any specific regulatory policy changes targeted specifically for MSMEs (micro, small and medium-sized enterprises)?**



Note: Title reflects question asked to the respondents. Data reflects the responses from the ten SEA nations who responded this survey via the GRPN main contact point, and does not include data from OECD countries.

Source: Data from the 2020 Surveys on ASEAN Member States' Regulatory Responses to the COVID-19 Pandemic, implemented by the OECD Secretariat.

The least common changes were seen in regulatory service delivery for informal MSMEs and providing information and guidance on foreign countries' regulatory policy changes with five and four respondents implementing these regulatory changes, respectively. As a significant percentage of Southeast Asian MSMEs are unregistered and operate informally, the results imply that inclusion of MSMEs regulatory changes may not make an impact on all MSMEs. Moreover, not providing information and guidance on foreign countries' and markets' regulatory policy changes can continue to impede on MSMEs' abilities to explore foreign markets, limiting them to domestic markets. Box 1 gives details on how Viet Nam supported MSMEs using administrative burden reductions during the pandemic, while Box 2 provides information on how Indonesia is using digitalisation to support MSMEs in response to the pandemic.



### Box 1. Viet Nam's Support for MSMEs during the COVID-19 pandemic

In response to the crisis, the government implemented a number of quick administrative procedures to support businesses:

- The State Bank of Viet Nam (SVB) was directed to launch a credit support package worth VND 250 trillion for businesses and the Ministry of Finance to offer a support package of VND 30 trillion to compensate the losses due to containment measures.
- Fiscal measures were introduced by the government, with a few explicitly targeting MSMEs. These include lowering corporate income tax for MSMEs and first 3-year exemption of business registration tax for MSMEs.
- Deferral measures were also pursued, with the Finance Ministry proposing fee and tax exemption and reduction solutions to help firms, especially MSMEs, cope with the difficulties posed by the outbreak.
- Direct assistance to companies was also provided. The government provided a relief package to those affected by COVID-19, employers were allowed to borrow from the Viet Nam Social Policy Bank with zero interest rate over 12 months to pay salaries for their furloughed workers in the three-month period, and additional financial support was given to individual business households with yearly revenues below VND 100 million who have to temporarily close down as part of the Government's stay-at-home order and social distancing measures.
- Other measures included exempting business registration taxes for new household businesses (one year exemption) and SMEs (three year exemption), the SME Development Fund lowering lending interest rates by two percentage points and renewal of work permits for foreign professionals, business managers, and technical workers.

Source: (APCA, 2020<sup>[25]</sup>); (ASEAN and OECD, 2020<sup>[61]</sup>); (IMF, n.d.<sup>[63]</sup>)

### Box 2. MSMEs and digital transformation in Indonesia in response to the COVID-19 pandemic

Economic slowdown due to the pandemic has affected nearly every sector in Indonesia, with MSMEs in particular experiencing difficulties. According to the Katadata Insight Center survey (KIC) conducted in June 2020, about 47% of MSMEs in Indonesia report being in danger of going out of business.

MSMEs account for 60% of Indonesia's GDP and absorb more than 90% of the workforce. The Government of Indonesia recognises their importance and is pursuing ways to aid the digital transformation of MSMEs in addition to providing legal assistance, social assistance spending and capital expenditure. The Government has provided training covering use of platforms, assess to financing and developing digital businesses. Other steps to pursue MSME digitalization in Indonesia include:

- Human resource capacity building through eduKUKM, webinar series, smart campus, digital heroes.
- Promoting MSME products through local communities and applications.



- Supporting the process embedding digitalization through foster brothers and the UMKM digital catalogue.
- Promotion and marketing support through billboards, product promotions, MSME Integrated Business Service Center (PLUT), and product reviews conducted on applications by artists and other influencers.

Source: Information provided by the Government of Indonesia via the *2020 Surveys on ASEAN Member States' Regulatory Responses to the COVID-19 Pandemic*.

## Results part 2: Good regulatory practices

As discussed previously, GRPs are the backbone of the better regulation framework espoused in the OECD (2012<sup>[6]</sup>) *Recommendation of the Council on Regulatory Policy and Governance*. They refer to *ex ante* regulatory impact assessments (RIAs), stakeholder engagement and *ex post* reviews, which work together to gather and use evidence to drive better regulatory decision making throughout the policy cycle.

This section discusses the results of the survey for the three GRPs, starting first with a description of the use of each GRP by SEA countries before the pandemic based on the OECD (2018<sup>[9]</sup>) review of all SEA countries. It then presents the results and tries to provide some context based on the analytical work conducted in the series on OECD Policy Responses to COVID-19.

### *Regulatory impact assessment (RIA)*

RIAs are *ex ante* evaluations that provide crucial information to decision makers on whether and how to regulate to achieve public policy goals (OECD, 2012<sup>[6]</sup>). A well-functioning RIA system can promote policy coherence by illustrating the inherent trade-offs within regulatory proposals, such as balancing between economic growth and environmental protection while maximising the overall societal well-being (OECD, 2018<sup>[21]</sup>). RIA may quantitatively measure costs and benefits of a regulation while also incorporating qualitative elements. A range of methods can be applied when conducting RIA such as cost-benefit analysis and multi-criteria analysis (OECD, 2018<sup>[9]</sup>). The most common types of RIA mandated in OECD countries include various economic impacts, such as on competition and MSMEs, the environment, the public sector, and the budget (OECD, 2018<sup>[21]</sup>).

Most ASEAN Member States introduced RIA prior to the crisis, although they are not always mandatory or fully implemented (OECD, 2018<sup>[9]</sup>). Malaysia stands out as a regional leader and has successfully embedded RIA across government ministries since 2013 under their National Policy on the Development and Implementation of Regulations (OECD, 2018<sup>[9]</sup>); (Government of Malaysia, 2013<sup>[64]</sup>). Viet Nam has required impact assessment for new legislation, ordinances, and decrees since 2008 (OECD, 2018<sup>[9]</sup>). Cambodia has mandated the use of RIA and is undertaking activities to sensitive different ministries on its application and expand its use (OECD, 2018<sup>[9]</sup>). Thailand and the Philippines have both recently adopted significant reforms to their RIA systems (see Box 3).

### **Box 3. RIA reforms in Thailand and the Philippines prior to the crisis**

#### **Thailand**

In 2017, Thailand wrote better regulation into its new Constitution, which initiate a new set of major reforms to further develop Thailand's regulatory management system. At the heart of this reform were updates to their system of RIA, which was first introduced in 1998. In 2004, in an effort to improve



regulatory practice, the Council of Ministers mandated that RIA be conducted in line with the OECD Reference Checklist for Regulatory Decision Making prior to the introduction of a legislative bill, though this was often completed by state agencies as a checklist and rarely as a full RIA. The new Constitution, implemented by the 2019 *Act on Legislative Drafting and Evaluation of Law, B.E. 2562*, imposes significant upgrades including the mandatory use of RIAs, stakeholder engagement, and *ex post* reviews, as well as assigns responsibility to conduct regulatory oversight and scrutiny to the Office of the Council of State. These reforms also follow on mid-2010s reforms that includes updates to the system of *ex post* reviews and simplifying licensing, both in 2015, as well as a “Regulatory Guillotine” project in 2017 to streamline unnecessary regulations.

### Philippines

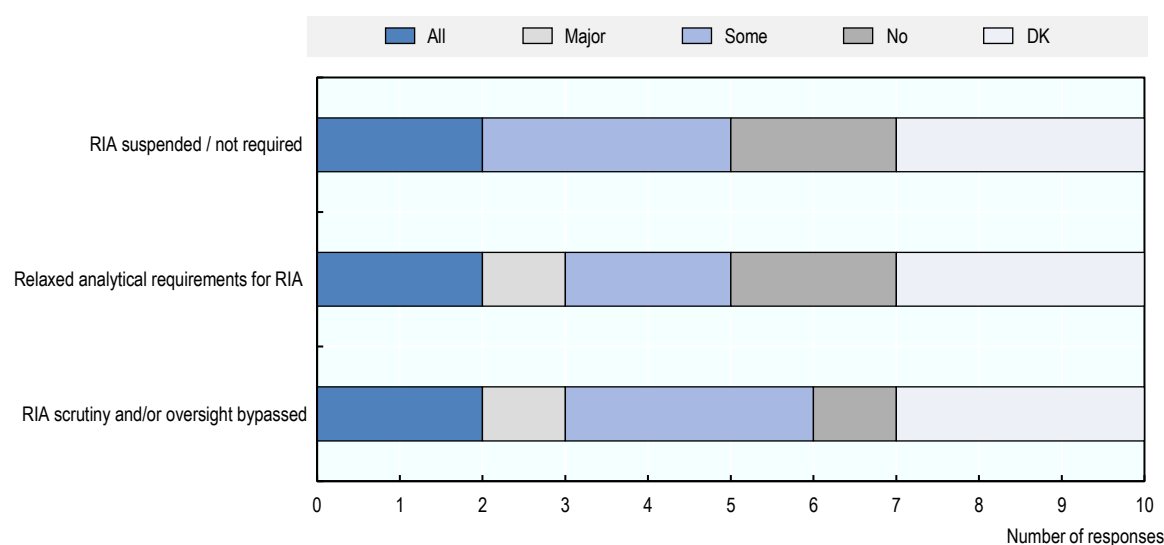
In 2016, the Philippines created the Anti-Red Tape Authority (ARTA), which serves as a central regulatory oversight body with control of the RIA process and is attached to the President’s Office. ARTA began by working to draft the RIA Manual and the guidelines, with the University of the Philippines Public Administration Research and Extension Services Foundation, Inc. – Regulatory Reform Support Program for National Development (UPPAF-RESPOND), to facilitate the broad adopting of RIA around the government. The new guidelines are already being used by the Department of Finance, Department of Labour and Employment, and Department of Tourism to produce better regulation in accordance with regulatory best practice principles. While RIA is still in early stages of implementation, the government has gained expertise from pilot RIAs and reform initiatives including “Project Repeal,” which is a government-wide regulatory reform initiative to repeal outdated rules and reduce the cost of doing business.

Source: (OECD, 2020<sup>[22]</sup>); (OECD, 2020<sup>[23]</sup>); (ARTA, 2020<sup>[65]</sup>); (National Competitiveness Council, n.d.<sup>[66]</sup>)

The need for rapid responses to COVID-19 has led many administrations in the OECD to introduce shortened legislative procedures for implementing crisis responses. These have included utilising fast track or emergency legislation for measures to be rapidly implemented. These by-pass the ordinary procedures for making regulations, in derogation of existing rules, leaving significantly less time for scrutiny of the measures through RIA, stakeholder consultation and parliamentary scrutiny (OECD, 2020<sup>[7]</sup>). The same trend can be seen in ASEAN, as the majority of ASEAN member states that participated in the survey adjusted requirements for RIA (see Figure 5).



**Figure 5. In response to the COVID-19 pandemic, was the requirement for a regulatory impact assessment (RIA) adjusted?**



Note: Title reflects question asked to the respondents. Data reflects the responses from the ten SEA nations who responded this survey via the GRPN main contact point, and does not include data from OECD countries. “DK” is an abbreviation for “don’t know,” which was an option in the list of response choices.

Source: Data from the 2020 Surveys on ASEAN Member States’ Regulatory Responses to the COVID-19 Pandemic, implemented by the OECD Secretariat.

Out of the seven SEA countries that responded to the question, all noted some level of suspension or relaxed requirements for RIAs. Moreover, six out of seven respondents bypassed RIA scrutiny and/or oversight in some way. Though there is significant heterogeneity within this response, since three of these six indicated this happened for all or major regulations with the other three indicating this occurred for some regulations. This response mirrors developments in many other OECD countries. Many administrations have introduced flexible measures around their RIA procedures in response to COVID-19. These flexibilities have included outright exemptions from the requirement to produce RIA for regulatory proposals responding directly to COVID-19 related legislation, whilst generally still requiring RIA for non-COVID-19 regulations (OECD, 2020<sup>[7]</sup>).

Five of seven respondents did note that some RIA requirements were relaxed, as opposed to completely bypassed or suspended. This may demonstrate that countries are still using evidence-based decision making even in times of crisis, albeit in a more simplified way. RIA is a complex process with many sub-components and processes. So it may be that certain elements of RIA were suspended (i.e. full cost-benefit analysis) or bypassed (i.e. scrutiny), but that essential parts of RIA that can be done relatively quickly were kept (i.e. problem definition and a qualitative assessment of options).

A similar trend can be seen in many other OECD administrations as well. Around one-third of OECD economies already have some sort of simplified RIA process in place for temporary measures such as during a crisis. Australia, New Zealand, the Czech Republic, among others, have explicit RIA exemptions regarding temporary measures in response to the COVID-19 pandemic (OECD, 2020<sup>[7]</sup>).

Many countries (including those that provided RIA exemptions) have tried to ensure that policy documents still endeavour to discuss impacts, at least qualitatively, and provide evidence-based rationale, even if this looks different to traditional RIA (OECD, 2020<sup>[7]</sup>).





### *Stakeholder engagement*

Engaging with those concerned and affected by regulation is fundamental to improving the design of regulations, enhancing compliance and increasing public trust in government (OECD, 2018<sup>[21]</sup>). Stakeholders include citizens, businesses, consumers, and employees (including their representative organisations and associations), the public sector, non-governmental organisations and international trading partners (OECD, 2012<sup>[6]</sup>). These diverse groups can contribute their own experiences, expertise, and perspectives to help regulators avoid unintended consequences and impractical policy implementations through the use of physical and virtual public meetings, informal consultations, expert advisory groups, online comments for proposals and other engagement procedures (OECD, 2018<sup>[21]</sup>).

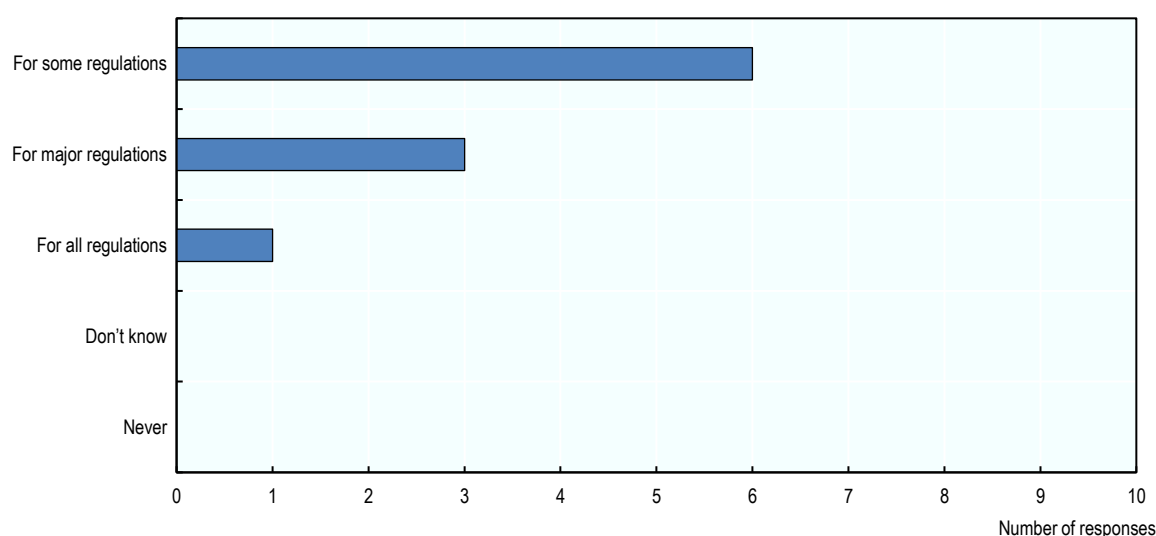
Before the COVID-19 pandemic, a recent OECD study found that public consultations are the most common form of stakeholder engagement used by ASEAN Member States (OECD, 2018<sup>[9]</sup>). Public consultations involve a two-way dialogue between the government agency and the stakeholder to raise public awareness and understanding of new laws while helping make regulatory policy making more inclusive, accountable, and efficient (OECD, 2018<sup>[9]</sup>). In 2018, public consultations were mandatory in Lao PDR, Myanmar, Thailand, and Viet Nam while Brunei, Malaysia, and Singapore had developed guidelines for stakeholder engagement throughout the regulatory process (OECD, 2018<sup>[9]</sup>). Indonesia and the Philippines also practiced public consultations, although it is not mandated by law (OECD, 2018<sup>[9]</sup>). Engaging the private sector was a top priority for the government in Cambodia and Viet Nam (OECD, 2018<sup>[9]</sup>).

Some ASEAN Member States have taken public consultations to virtual platforms in order to expand their engagement with stakeholders across the country. Indonesia developed the digital consultative tool Hukum Online to engage citizens while allowing legal experts to respond to queries. Singapore also uses online stakeholder engagement tools such as REACH, which is targeted towards citizens, and a Pro-Enterprise Panel (PEP).

Figure 6 shows how SEA countries are using stakeholder engagement during the COVID-19 pandemic. Results positively show that all countries used some form of consultation in their COVID-19 regulations. In SEA, the distribution is skewed towards some regulations, but this may be an effect of COVID-19 responses particularly, which place an emphasis on fast government responses and may require shortened or bypassed procedures.



**Figure 6. How often did the government conduct stakeholder consultations on draft regulations that were a response the COVID-19 pandemic?**



Note: Title reflects question asked to the respondents. Data reflects the responses from the ten SEA nations who responded this survey via the GRPN main contact point, and does not include data from OECD countries.

Source: Data from the 2020 Surveys on ASEAN Member States' Regulatory Responses to the COVID-19 Pandemic, implemented by the OECD Secretariat.

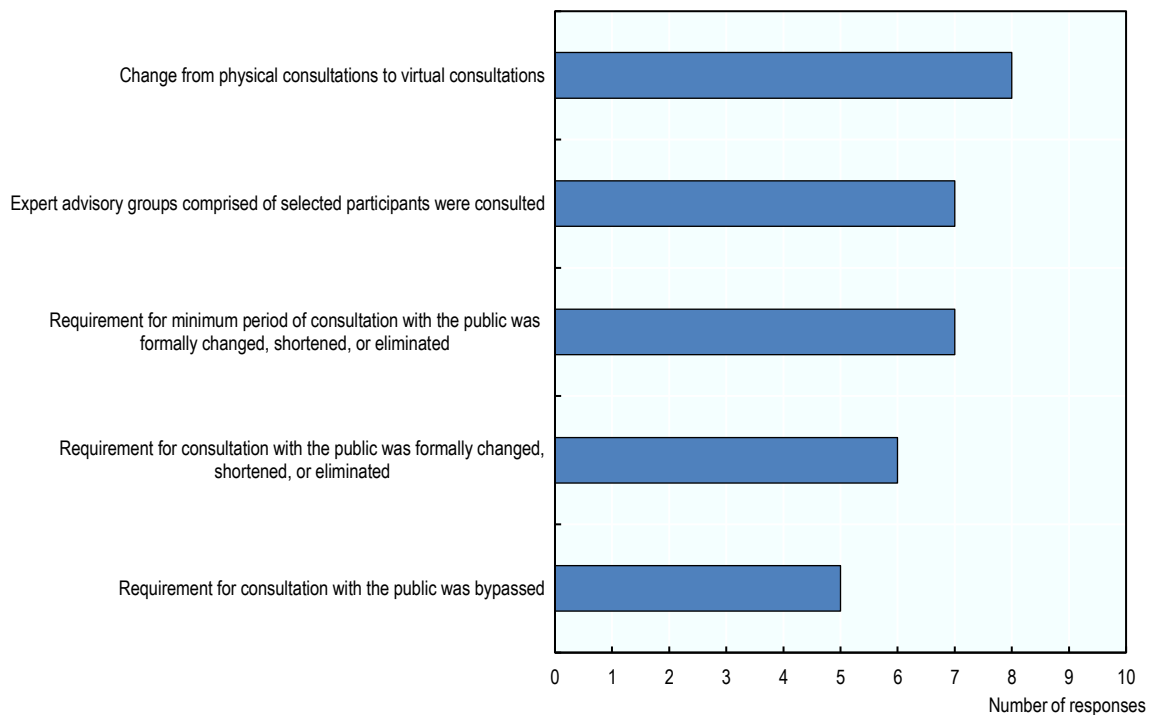
Figure 7 provides further data, showing that the majority of respondents noted that countries changed from physical consultations to virtual consultations. This demonstrates that consultations have adapted to social distancing and continued, even when not viable in a physical environment. It also shows that seven of ten countries changed, shortened or eliminated requirements and minimum consultation periods, while half of respondents noted that their government allowed for bypassing of consultations altogether. Given that OECD (2018<sup>[9]</sup>) noted that public consultation was the most common form of stakeholder engagement used by SEA countries before the pandemic, this evidence certainly indicates the degree to which countries have had to rapidly adapt the design of regulations in the face of COVID-19. However, it also does suggest that regulations are being developed via less robust design methods, lending further weight to the need to conduct appropriate *ex post* reviews and use automatic mechanisms, such as sunseting, to ensure regulations do not cause unintended long-term harm.

One additional interesting finding is the relatively common use of expert advisory groups, which were identified by seven of ten respondents. This suggest governments are looking for ways to conduct engagements that are sufficiently broad, but in a short time frame. The key factor to the successful use of such advisory groups is on their initial construction – if they do not involve a broad range of voices, including traditionally marginalised groups, or are dominated by large business interest, then the resulting advice will not reflect the views of all stakeholders and risks being partial.

Still, during crisis periods, stakeholder consultations and expert advisory groups can facilitate more rapid, adaptable, and agile regulatory design and regulatory service delivery. Malaysia's MyMudah Programme helps facilitate co-operation between government and the private sector, including through online consultations (see Box 4). The Netherlands serves as an example in the OECD of how to informally speed up consultation periods and government deliberations for COVID-19 related regulations. For example, the Cabinet can ask the Council of State for urgent advice on regulatory matters, which has been accomplished as fast as one to two days on multiple occasions over the last few months. Box 5 provides some additional examples from OECD countries.



**Figure 7. Have any of the following aspects of stakeholder engagement procedures been adjusted for regulations regarding the COVID-19 pandemic?**



Note: Title reflects question asked to the respondents. Data reflects the responses from the ten SEA nations who responded this survey via the GRPN main contact point, and does not include data from OECD countries.

Source: Data from the 2020 Surveys on ASEAN Member States' Regulatory Responses to the COVID-19 Pandemic, implemented by the OECD Secretariat.

#### Box 4. Malaysia's MyMudah Programme

In July 2020, the Malaysian government created the MalaysiaMudah or #MyMudah Programme, which was made through the decision of the Economic Action Council (EAC) meeting chaired by the Prime Minister. The objectives of the programme are to assist companies and businesses which are burdened by unnecessary regulations, bureaucracy or red tape and to reduce compliance costs, create jobs and stimulate the economy.

Through the #MyMudah Programme, companies and businesses can highlight their regulatory issues through the Unified Public Consultation (UPC) Portal as well as take part in dialogues organised by EAC and MPC. The highlighted issues are then analysed by the The Special Task Force to Facilitate Business (PEMUDAH) and escalated to the EAC meetings to be assessed before a decision is made. The decisions made at EAC meetings are implemented by ministries and state governments. PEMUDAH monitors the performance of every ministry and state government by making periodic reports to the EAC in order to ensure measurable outcome. (Malaysia Productivity Corporation, 2020)

The #MyMudah Programme has facilitated the resolution of more issues related to regulatory burden. This has enhanced the ease of doing business for local industry and encourages economic growth and job creation.

Source: (MPC, 2020<sup>[67]</sup>); (MPC, 2021<sup>[68]</sup>)



### Box 5. Stakeholder engagement during COVID-19 – examples from OECD countries

Comprehensive stakeholder engagement with all potentially affected parties on urgent measures has become much more challenging during the crisis, due to restricted timelines to prepare legislation. Many administrations have taken a flexible approach, including shorter consultation periods and focusing consultation activities on smaller selected groups of stakeholders including social partners, local governments or major NGOs.

For example, in Norway a number of temporary COVID-19 related new regulations have been fast-tracked through the parliament with very minimal public consultation (generally of two to three days), but with significant input in the drafting from the main labour and industrial organisations. In Canada, the Treasury Board Secretariat (TBS) has exempted COVID-19 related regulations from pre-publication and has considered more limited public consultations due to the urgency and time-limited nature of many of these instruments. Moreover, TBS has provided regulators with flexibility e.g. for legislation responding to COVID-19, it is seeking a qualitative description of costs and benefits and an identification of impacted stakeholders (rather than a full consultation). Other administrations, including the EU Commission, have adopted a phased approach to consultations, focusing on the most urgent ones and allowing more time for initiatives that can be delivered at a later stage.

Source: (OECD, 2020<sup>[7]</sup>)

### Ex post evaluation

The stock of regulations has grown rapidly in most countries, which is why the OECD (2012<sup>[6]</sup>) *Recommendation* calls on governments to “conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives”. *Ex post* reviews complete the ‘regulatory cycle’ and help decision makers determine the benefits and costs of repealing or amending existing regulations while also providing lessons to improve the design and enforcement of new regulations (OECD, 2018<sup>[21]</sup>).

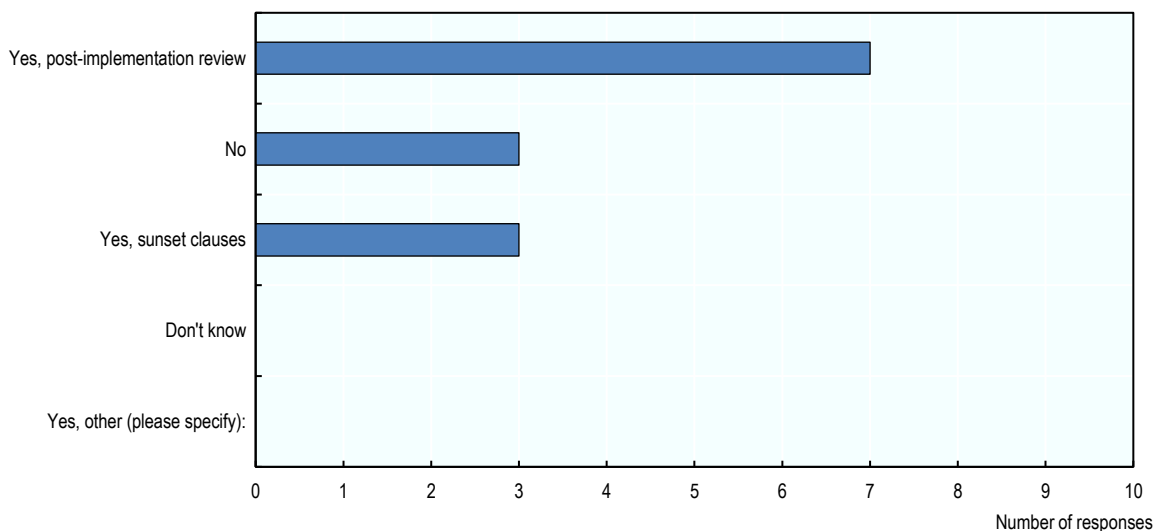
Requirements to trigger *ex post* reviews can include “thresholds,” where the expected compliance costs of the regulation are above a certain monetary level, as well as automatic evaluation requirements and “sunsetting” clauses, where the regulation is automatically repealed after certain period of time (OECD, 2018<sup>[21]</sup>). Governments also may pursue ad hoc reviews of the stock of existing regulations, which often is principle-based (OECD, 2018<sup>[21]</sup>).

Despite its importance to closing the regulatory policy making cycle, data indicates that *ex post* review systems in most OECD countries are still rudimentary at most (OECD, 2018<sup>[21]</sup>). Moreover, recent reforms tend to focus on improvements to oversight, quality control and systematic adoption, but are still largely under developed in terms of effective implementation. This is similar to the SEA region, where the use of *ex post* reviews remained limited among SEA countries. Research has shown that only a few countries such as Brunei, Malaysia, the Philippines and Singapore conduct some reviews of regulations after they are implemented, and most typically on an ad hoc or project-by-project basis (OECD, 2018<sup>[9]</sup>). Prior to the crisis, Thailand notably had already developed procedures to embed sunset clauses into regulations (OECD, 2018<sup>[9]</sup>).



In response to the crisis, the majority of SEA survey respondents indicated that they planned to undertake *ex post* reviews of regulations, mostly in the form of post-implementation review but also by using sunset clauses (see Figure 8). However, results are still split as three respondents replied that there were no plans for *ex post* review for regulations arising from the COVID-19 pandemic. While these indicate future plans to conduct *ex post* review, the key will be for countries to actually conduct them as planned. Evidence from OECD analysis, mentioned above, notes that *ex post* review systems are still underdeveloped compared to RIAs or stakeholder engagement, with governments often adopting a “set and forget” approach (OECD, 2020<sup>[69]</sup>). These findings also largely mirror trends in OECD countries (OECD, 2020<sup>[7]</sup>).

**Figure 8. Are any of the following *ex post* evaluations planned to be undertaken for regulations stemming from the COVID-19 pandemic?**



Note: Title reflects question asked to the respondents. Respondents could choose yes to both post-implementation reviews and sunset clauses, which is why the totality of responses is 13 (more than the 10 respondents indicated). Data reflects the responses from the ten SEA nations who responded this survey via the GRPN main contact point, and does not include data from OECD countries.

Source: Data from the 2020 Surveys on ASEAN Member States' Regulatory Responses to the COVID-19 Pandemic, implemented by the OECD Secretariat

SEA and OECD countries should be encouraged to consider a stronger focus on *ex post* reviews of emergency measures in the future, given the above trends towards bypassed or simplified RIAs and consultations. Having an exemption from the requirement to carry out *ex ante* reviews should not mean that these “emergency” regulations adopted in haste receive “carte blanche” treatment and can forgo any scrutiny of their impacts (OECD, 2020<sup>[7]</sup>). In fact, the opposite is true – it is important that fast-tracked or emergency regulations, as well as any administrative flexibilities or relations of certain rules, undergo some form of review in the future to ensure that the effectiveness and efficiency of these measures are scrutinised and lessons learned inform responses to future crises (OECD, 2020<sup>[7]</sup>).

Some countries are even hard coding such *ex post* reviews into their emergency legislations (OECD, 2020<sup>[7]</sup>). Australia, Canada and the United Kingdom have implemented post-implementation review clauses to offset the effects of waived and/or simplified stakeholder engagement periods and RIA at the front-end of regulatory design. The Netherlands and other OECD countries have adopted sunseting to automatically expire COVID-19 related regulations. While the Netherlands does not have a formalised fast-track procedure for emergency regulations, the government follows a *de facto* fast-track procedure as relevant regulatory discussions occur with a high-degree of urgency.





## Results part 3: Leveraging Digital Technologies for More Agile Decision Making

The GRPN focused on how SEA and OECD countries are increasingly utilising digital technologies in their approach to regulation, especially in response to the COVID-19 pandemic. This applies both to government co-ordination, as well as to communication with the public. The digital economy offers unprecedented opportunities for businesses, including MSMEs, to participate in global value chains whether they grow larger or not. The internet can enable even a single-person enterprise to export through e-commerce or social media transactions (OECD, 2018<sup>[9]</sup>).

Likewise, for governments, taking advantage of digital technologies can help policymakers deliver smarter policies, regulations and services to its citizens and businesses (OECD, 2019<sup>[70]</sup>). The digitalisation of public sectors encompasses transformative elements on being digital by design, data-driven, government as a platform, open by default, user-driven and proactive (OECD, 2020<sup>[71]</sup>). Recognising the importance of using digital technologies for better governance, the Master Plan on ASEAN Connectivity (MPAC) 2025 focuses on three key linkages: physical connectivity; people-to-people connectivity; and institutional connectivity (ASEAN, 2016<sup>[72]</sup>). ASEAN is also currently developing its “Consolidated Strategy on the 4IR for ASEAN”. Regulatory excellence is deemed a strategic area in the MPAC as a way for policymakers to support improvements in both physical and people-to-people connectivity (OECD, 2018<sup>[9]</sup>). In addition, the OECD has been evaluating the impact of digitalisation on regulatory policy making and supporting members by developing solutions (see Box 6). While this survey focuses on a very broad view of the use of digital tools in regulatory policy making, potential future research could dive deeper into how digital tools can support specific aspects of recovery, including economic outcomes such as e-commerce, businesses and consumers.

### Box 6. Emerging technologies and new regulatory approaches

Digitalisation resulting from emerging technologies has posed regulatory challenges which were exacerbated by the COVID-19 Pandemic. These challenges include a pacing problem, designing “fit for purpose” regulatory frameworks, regulatory enforcement and institutional and trans-boundary challenges. New regulatory approaches that address these challenges are encouraged to follow principles of effective and innovation-friendly rulemaking, including:

- Considering effective governance and institutional set ups that supporting effective, agile and future-proofed regulation, including the role of oversight, foresight, and inter-ministerial co-operation
- Designing fit for purpose regulation, including adapting the use of regulatory management tools
- Addressing the abolition of borders through international regulatory co-operation
- Adapting enforcement to a new normal

In response to these challenges, the OECD is developing the *OECD Recommendation for Agile Regulatory Governance to Harness Innovation* with principles to provide a conceptual framework and relevant policy guidance for using and adapting regulatory policy and governance in the face of the regulatory challenges and opportunities arising from innovation. The Recommendation was in public consultation at the time of writing this paper.

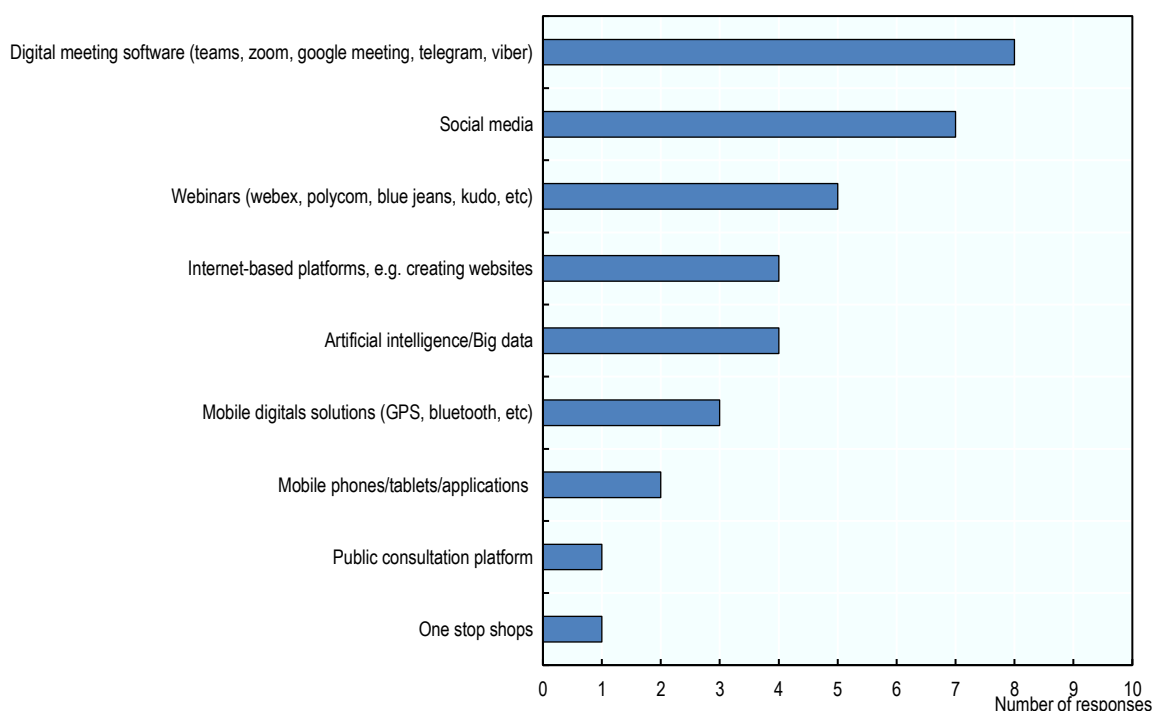
Source: (OECD, 2021<sup>[73]</sup>); (OECD, 2020<sup>[74]</sup>); (OECD, 2019<sup>[70]</sup>).

All ten respondents to the survey to GRPN members noted that their government has used digital technologies to improve regulatory management and/or regulatory responses during COVID-19 to some extent (Figure 9) The results show that digital meeting software were the most commonly used, followed



by social media and webinars software. This highlights two essential focuses of government early in the pandemic: facilitating government operation and providing transparent, timely and effective information to the public. OECD (2020<sup>[71]</sup>) further notes that social media and webinars are often used to provide information to the public and to communicate regulatory changes.

**Figure 9. What type of digital technologies were used by SEA governments in response to COVID-19?**



Note: Title reflects question asked to the respondents. Data reflects the responses from the ten SEA nations who responded this survey via the GRPN main contact point, and does not include data from OECD countries.

Source: Data from the 2020 Surveys on ASEAN Member States' Regulatory Responses to the COVID-19 Pandemic, implemented by the OECD Secretariat.

Taken together, this may suggest that governments recognise the power of technology to improve communication internally and externally. In that regard, it appears crucial that governments use digital technologies to promote two-way communications and openness. These are enshrined in OECD recommendations, including the OECD (2012<sup>[61]</sup>) *Recommendation of the Council on Regulatory Policy and Governance*, OECD (2014<sup>[75]</sup>) *Recommendation of the Council on Digital Government Strategies*, and OECD (2017<sup>[76]</sup>) *Recommendation of the Council on Open Government* that all encourages active involvement of stakeholders in all phases of the policy making process. Moreover, the draft OECD (2017<sup>[77]</sup>) *Best Practice Principles on Stakeholder Engagement in Regulatory Policy* further highlight this in the context of regulatory policy making. Such two-way conversations can have swift and direct impact on trust in government, as well as help generate behavioural benefits of procedural fairness to improve compliance with regulatory decisions (Lind and Arndt, 2016<sup>[15]</sup>). Given the power of digital technologies, governments now more than ever have the ability to facilitate such conversations. OECD (2020<sup>[71]</sup>) notes that countries have adapted their face-to-face consultation processes, such as citizens juries, to take place online and to a more constrained timeline.



### **Digital technologies for regulatory management tools**

Notably, results in Figure 9 do not indicate clearly that digital technologies are being used to support public consultations in the SEA region, with only one response to this end. This may be linked to earlier findings, whereby there is evidence of stakeholder engagement being reduced or bypassed as a result of the pandemic. It also may be tied to the use of digital meeting software/chats, as it is possible that consultations were conducted using these platforms. It also again may reflect the position of the respondents, who are in better regulation units charged with encouraging the use of stakeholder engagement but not necessarily conducting it themselves and using digital technologies. Future research in this area may want to explore the how digital technologies are being used to support stakeholder engagement in further detail.

Digital technologies used for regulatory management were less common, especially for *ex post* evaluation and RIA. However, all respondents but one indicated that they used digital technologies for stakeholder engagement – another divergence from a previous question that requires further exploration. Widespread use of digital technologies in conducting stakeholder engagement reflects a problem shared by many other countries as well. Choosing the appropriate consultation tools (e.g. ICT consultation tools) has been particularly important in light of the reduced timelines in developing COVID-19 responses and the impossibility of conducting face-to-face meetings with stakeholders (OECD, 2020<sup>[71]</sup>). In terms of regulatory delivery, there are interesting examples of the ways countries have used digital tools to ensure compliance with regulatory standards and protections for citizens and society are maintained (see Box 7).

#### **Box 7. Digitalising regulatory delivery with the Finnish Safety and Chemicals Agency**

The Finnish Safety and Chemical Agency (Tukes) is a licensing and supervisory authority that promotes the safety and reliability of products, services and industrial activities. It serves as an example of developing digital practices to support regulatory delivery.

E-inspections and e-accreditation, which were developed and used to some extent before the beginning of the pandemic, were expanded during the pandemic. They require clearly defined and communicated procedures and practices, such as:

- Importance of careful planning (virtual tools, brake away rooms etc., testing of tools in advance)
- Use of videos during communication
- Not too large groups
- Clearly defined agenda and inspection plan
- Materials well in advance
- Self-assessments also well in advance
- Video stream or photos from the site

One of the current research and development projects at Tukes is the digitalisation of services and operations, and the transfer to primarily digital services. E-inspections and accreditation raise the quality and transparency of regulatory delivery while lowering burdens on businesses. They also contribute to Tukes' goal to ensuring that operations are effective, transparent, reliable, based on information and strong expertise.

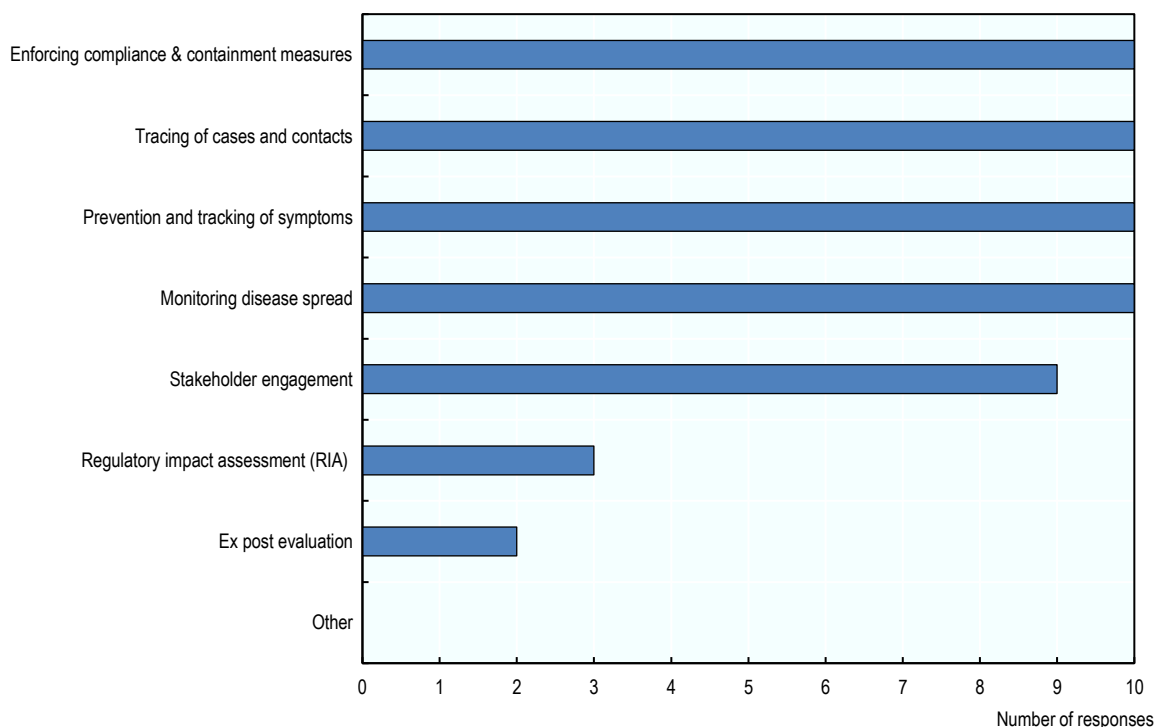
Source: (TUKES, 2020<sup>[78]</sup>)



### Digital technologies for improved regulatory responses to the pandemic

Figure 10 provides further details on how technologies are being used to improve regulatory responses to the COVID-19 pandemic. All respondent indicated that their country used digital technologies to enhance regulatory policy responses to the pandemic. All ten respondents reported use of digital technologies in enforcing compliance and containment measures, tracing of cases and contacts, prevention and tracking of symptoms and monitoring disease spread. The results show that use of digital technologies was a very common form of response for that purpose, and that the technologies were mainly used in measures to control the spread of the virus itself. Box 8 provides an example from Singapore, which developed two digital-based systems to support contact tracing.

**Figure 10. Have any of the following digital technologies have government used to improve regulatory management and/or regulatory policy responses to the COVID-19 pandemic?**



Note: Title reflects question asked to the respondents. Data reflects the responses from the ten SEA nations who responded this survey via the GRPN main contact point, and does not include data from OECD countries.

Source: Data from the 2020 Surveys on ASEAN Member States' Regulatory Responses to the COVID-19 Pandemic, implemented by the OECD Secretariat.

#### Box 8. Using digital technologies to support the COVID-19 response in Singapore

##### Digital contact tracing tools

Singapore's TraceTogether (TT) Programme is a key initiative that complements and automates manual contact tracing efforts. It consists of both a mobile application (TT App) and a physical device (TT Token). The TT Programme uses Bluetooth technology for communication between Bluetooth-enabled devices to arrive at estimates of the proximity and duration of a user's contact with other users. The data exchanged is anonymised, encrypted and stored only on users' devices, along with strict data



usage protocols to ensure data security and privacy. The TT Tokens are physical alternatives to the TT App, and function in a similar manner. The TT Tokens were introduced to ensure inclusivity for the digitally excluded, as not everyone has access to mobile devices, and some are less digitally-savvy such as senior citizens and young children. The TT App is built on the BlueTrace protocol. The open source code has been published on GitHub, so that other organisations and countries can build similar Bluetooth-based contact tracing solutions suited to their local context.

### SafeEntry System

SafeEntry is a national digital check-in/out system that logs identifying details of individuals visiting public venues such as malls and healthcare institutions, as well as workplaces and places of worship. SafeEntry helps support and quicken efforts by providing authorities with an automated activity map of Covid-19 cases, and a record of individuals who enter and exit these places. Together with a suite of digital contact tracing tools and solutions, SafeEntry reduces the time needed to identify potential close contacts of COVID-19 patients and helps identify potential clusters. Members of public check in for SafeEntry using either the TT App or Token. The combination of TraceTogether and SafeEntry strengthens digital contact tracing, saves time, enabling better management of community cases and identification of clusters.

Source: Information provided by the Government of Singapore via the *2020 Surveys on ASEAN Member States' Regulatory Responses to the COVID-19 Pandemic*, with information from (Government of Singapore, 2021<sup>[79]</sup>).

## Results part 4: Reforming Regulatory Systems to Prepare for Future Crises

The final section of the survey seeks to uncover how better regulation can support recovery from the pandemic and help prepare for future crises to support more resiliency in regulatory systems. This includes reforms intended to leverage international regulatory co-operation and reforms to implement and enhance better regulation.

### *International regulatory co-operation (IRC)*

IRC can be defined as any step taken by countries (or jurisdictions) to promote some form of co-ordination or coherence in the design, monitoring, enforcement, or *ex post* management of regulation (OECD, 2013<sup>[80]</sup>); (OECD, 2018<sup>[21]</sup>). IRC can be bilateral or multilateral and taken through either formal or informal procedures (OECD, 2013<sup>[80]</sup>); (OECD, 2018<sup>[21]</sup>). Well-informed IRC reduces inconsistencies and uncertainty and acts as a critical driver of regulatory performance and societal benefits (OECD, 2018<sup>[21]</sup>). These benefits include improved safety and strengthened environmental sustainability, administrative efficiency gains and cost savings for the government, businesses, and citizens, and increased trade and investment. For example, a recent study by the International Federation of Accountants (IFAC) and the Business and Industry Advisory Committee (BIAC) on regulatory divergence in the financial sector showed that regulatory divergence cost financial institutions around 5 to 10% of their annual global turnover (roughly USD 780 billion per year), with the heaviest burdens weighing down on smaller organisations (OECD, 2018<sup>[21]</sup>). Unco-ordinated domestic regulatory action has often been emphasized over international regulatory co-operation in the context of pandemic response. However, IRC can play a key role in preventing ineffective policy interventions and delays and shortages of medical and other essential products during the COVID-19 pandemic. As a result, IRC can prevent what otherwise would be a loss in administrative efficiency and trust in government. IRC will be critical to ensure that a future safe and effective vaccines can be quickly brought to market.





In the survey of GRPN members, seven of ten respondents indicated that their country had used an analysis of foreign or international jurisdictions or international organisations to inform the development of regulatory policy responses to the pandemic (see Figure 11). These can be, for instance, jurisdictional scans or a review of internationally-developed recommendations or standards that can be adopted domestically. Out of the respondents that replied that they did use IRC, the largest proportion of countries relied upon international organisations as a source of guidance. The second most common was on OECD members, while reliance on other ASEAN members and other countries was the least common.

**Figure 11. What jurisdictions or international organisations were relied upon and for what regulatory purposes?**



Note: Title reflects question asked to the respondents. Data reflects the responses from the ten SEA nations who responded this survey via the GRPN main contact point, and does not include data from OECD countries.

Source: Data from the 2020 Surveys on ASEAN Member States' Regulatory Responses to the COVID-19 Pandemic, implemented by the OECD Secretariat.

International organisations (IOs) extend the reach of national governments to other platforms for data and experience sharing; as well as consensus building and the adoption of common approaches (see Box 9). During the COVID-19 crisis, IRC can promote work sharing, mutual learning and pooling of resources between governments, support availability of essential goods and enable the interoperability of essential services and cross-border activities (OECD, 2020<sup>[36]</sup>). Therefore, in order to fully reap the overall benefits of IRC during a crisis, co-operation with other OECD member states as well as with Southeast Asian and other countries in conjunction with co-operation with international organisations is encouraged.

### Box 9. Role of international organisations in international regulatory co-operation

Many private international standard setting organisations are providing no-cost public access to relevant standards to promote supply of critical products. For example:

- The International Organisation for Standardization (ISO) has made available 28 ISO standards related to medical devices (ISO, 2020<sup>[81]</sup>), and has co-ordinated with the International Electrotechnical Commission (IEC) to make standards for critical care ventilators freely available (IEC, n.d.<sup>[82]</sup>).



- The American Society for Testing and Materials (ASTM) 2020 allows access to 24 standards used for personal protective equipment including face masks, medical gowns, gloves, and hand sanitizers (ATSM, n.d.<sup>[83]</sup>).
- In reaction to the pandemic, the International Medical Device Regulators Forum (IMDRF) published a list of standards indicating how to apply them in different jurisdictions including the EU, Australia, Brazil, Canada, the People's Republic of China, Japan, the Russian Federation, Singapore, South Korea and the US (European Commission, 2020<sup>[84]</sup>).

These efforts can help countries with limited prior production or import of critical products to rely on international standards to increase their availability. For instance, in Chile, a public-private initiative has enabled the domestic production of ventilators in response to the emergency by basing their technical specifications on ISO and IEC standards (Socialab, 2020<sup>[85]</sup>).

Source: (OECD, 2020<sup>[36]</sup>)

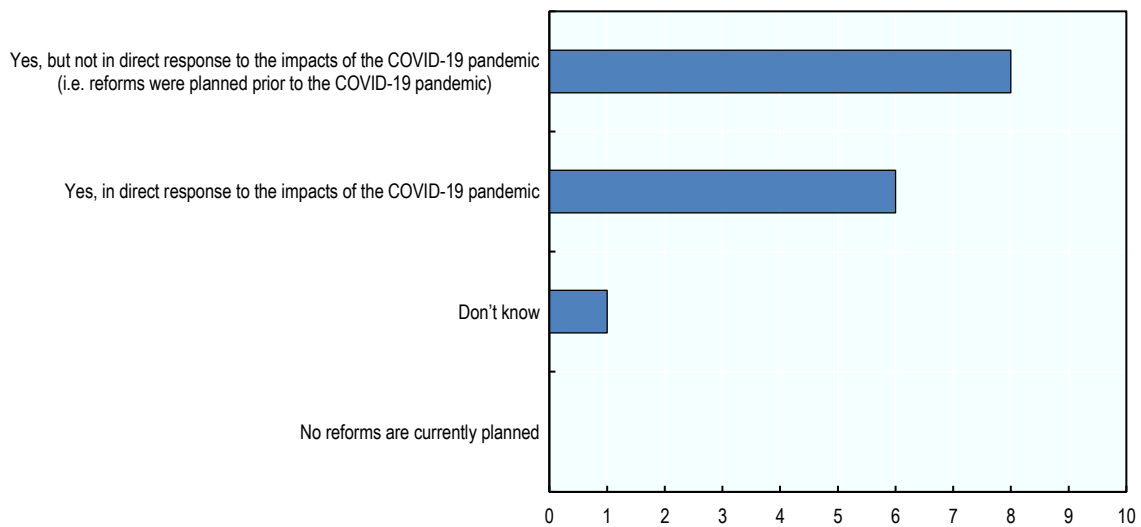
### *New opportunities for regulatory reforms*

An important message received by governments as a result of the COVID-19 pandemic is that they need to see how more agile and resilient systems of government can be constructed. The results of the survey, GRPN discussions and OECD policy papers certainly attest to the breadth and depth of the impacts on regulatory policy making in the SEA and OECD regions. The key question is whether these challenges also help inform governments on how to lock in any gains from these reforms and pursue further reforms in response.

Figure 12 illustrates positive responses to this question. Virtually all governments are indicating their intentions to pursue future regulatory reforms, split between continuing to pursue reforms that were underway before the pandemic and pursuing reforms in direct response to the pandemic. In fact, several countries are pursuing reforms both as a result of the pandemic and as a result of prior reform plans. This demonstrates the dynamism towards regulatory reform in the SEA region that started long before the pandemic, as noted earlier. Many countries are seeing possible opportunities for new reforms based on their experience from the previous year. Given the timing of this survey – still in the midst of the pandemic's lifespan – it is possible that another polling of members would foster more responses in favour of COVID-related reforms.



**Figure 12. Over the next three years, is your government planning any regulatory reforms to improve the regulatory management system?**



Note: Title reflects question asked to the respondents. Respondents could choose yes to in direct or not in direct response to the pandemic, which is why the totality of responses is 15 (more than the 10 responses indicated). Data reflects the responses from the ten SEA nations who responded this survey via the GRPN main contact point, and does not include data from OECD countries.

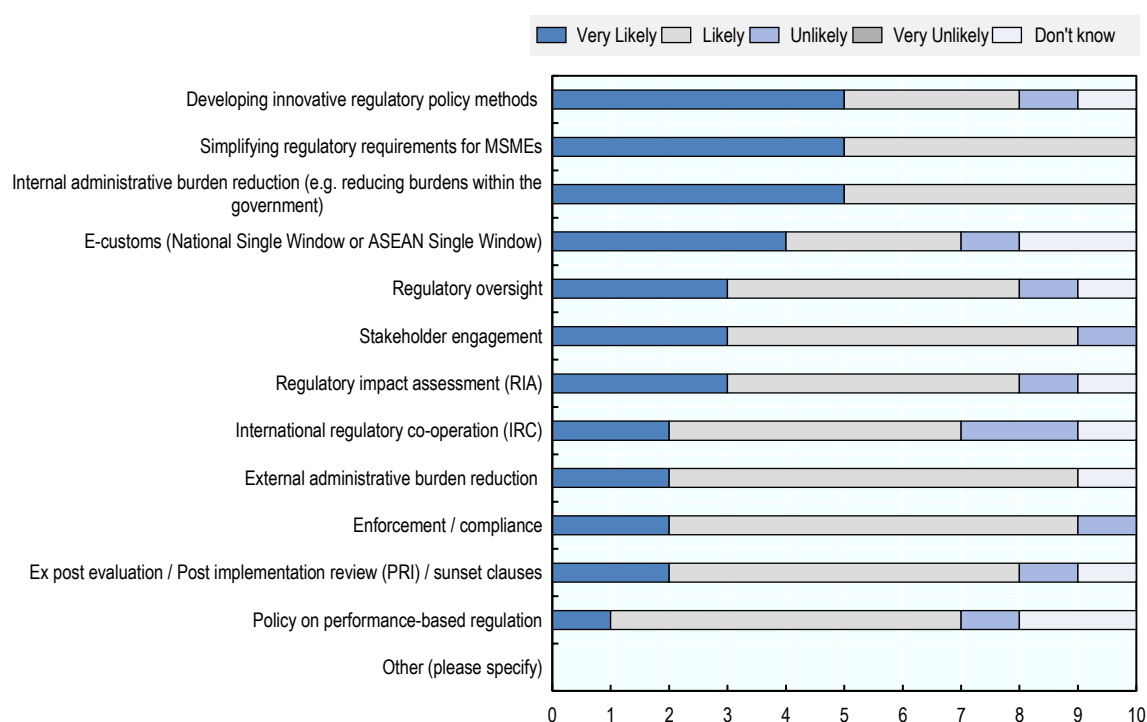
Source: Data from the 2020 Surveys on ASEAN Member States' Regulatory Responses to the COVID-19 Pandemic, implemented by the OECD Secretariat.

Figure 13 explores further what types of reforms countries are focused on. SEA countries seem to have a dual focus: on the one hand, incorporating innovative methods into regulatory policy making while, on the other, focusing on traditional regulatory reforms around administrative burden reduction and RIA. This may reflect the inertia of regulatory reforms pre-pandemic, which were focused on burden reduction and RIA in SEA countries, alongside the growing demand for governments to think towards the future, which was a pre-pandemic trend that accelerated with the crisis (as discussed above in regards to digitalisation). On the other hand, areas which were not prominently focused on during the pandemic such as regulatory oversight and e-customs (National Single Windows or the ASEAN single window) also recorded high numbers of responses with eight and seven respondents reporting plans for regulatory management reforms in these areas were either very likely or likely. However, this may also be a reflection of bias in the survey responses as this may reflect the reality of centre of government better regulation units, but evidence from sectoral applications such as trade note the usage of digital tools in place prior to the pandemic to facilitate trade (López González, 2019<sup>[86]</sup>).

There are also a high number of likely reforms in traditional areas of better regulation, such as enforcement and compliance, *ex post* evaluation, and stakeholder engagement, which again may reflect pre-pandemic inertia towards better regulation reforms that often come after administrative burden reduction and RIA, perhaps indicating why these are likely as opposed to very likely. There is slightly more scepticism around "newer" areas of regulatory reform, such as international regulatory co-operation and performance based regulation, which were more skewed towards likely or unlikely but not by a large amount. This may also reflect that governments are still considering how to adopt such reforms rather than an unwillingness to do so.



**Figure 13. How likely is the government within the next three years to pursue regulatory management reforms in the following areas?**



Note: Title reflects question asked to the respondents. Original question used the adverb “extremely” instead of “very,” which did not fit in the legend when generated so was changed for the purposes of this paper. Data reflects the responses from the ten SEA nations who responded this survey via the GRPN main contact point, and does not include data from OECD countries.

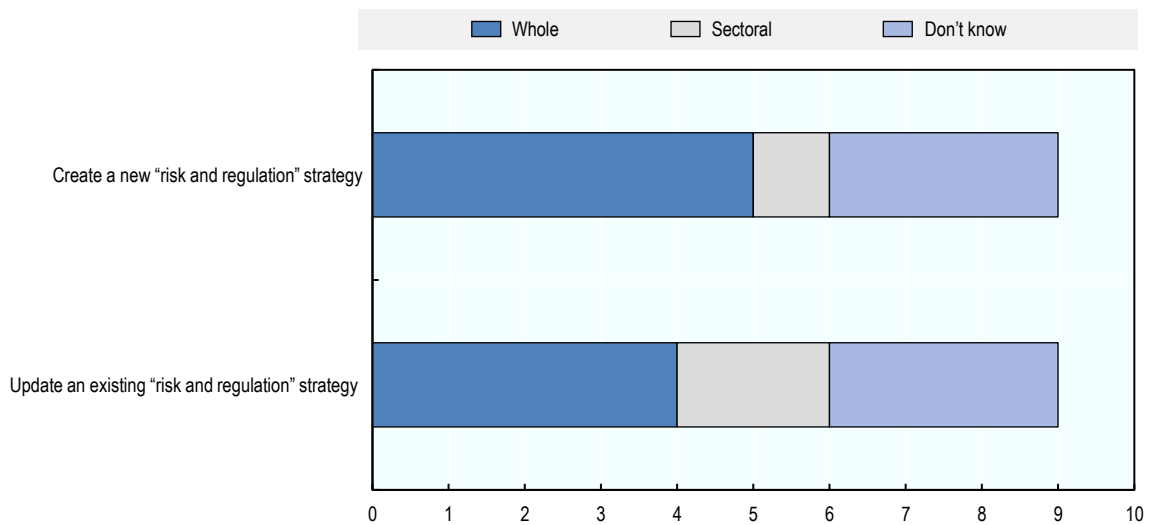
Source: Data from the 2020 Surveys on ASEAN Member States’ Regulatory Responses to the COVID-19 Pandemic, implemented by the OECD Secretariat.

Finally, the pandemic demonstrated the need for governments to improve preparedness for future crises. Risk-based regulation has gained popularity in the regulatory delivery community as a way to focus resources and efficiency of regulations based on identified risks, and COVID-19 is certainly encouraging governments to review the way they approach risk and regulation in the future (see Figure 14).

A slight majority of respondents indicated that their government was planning to create or update their whole-of-government and/or sectoral “risk and regulation” strategies. In the wake of the pandemic, in order for governments to prepare effectively for future crises and to ensure agile regulatory policy making mechanisms are in place, more focus on “risk and regulation” strategies is called for. In this vein, it is encouraging that the countries that are planning to update or create a “risk and regulation” strategy are mostly considering to do so under a whole-of-government approach that can emphasise breaking down silos and joined-up approaches, though care needs to be taken that such strategies are not too broad or non-implementable at the sector level – an issue discussed in the first section of these results. This also signals the need to co-ordinate with sectoral agencies when approaching the development of such policies, to ensure co-ordination and avoid duplication. The crisis has also opened doors for regulatory reform opportunities that previously did not exist, such as transitioning towards e-governance models and improving the regulatory environment in targeted sectors like investment and telecommunications to achieve economic growth.



**Figure 14. Based on the experiences of the COVID-19 pandemic, does your government plan to create or update any whole-of-government and/or sectoral “risk and regulation” strategies?**



Note: Title reflects question asked to the respondents. One respondent did not answer the question. Data reflects the responses from the ten SEA nations who responded this survey via the GRPN main contact point, and does not include data from OECD countries.

Source: Data from the 2020 Surveys on ASEAN Member States’ Regulatory Responses to the COVID-19 Pandemic, implemented by the OECD Secretariat.

## Note

<sup>1</sup> The number of responses is interesting given that as many as seven respondents provided answers, whereas the general question above included a maximum of four respondents. This may indicate that Figure 3 likely illustrates a bias commonly associated with survey research, whereby respondents over respond to options higher in the answer list and under respond to lower choices. Due to technical limitations, it was not possible to randomise questions or response lists.





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## Contact

Mike PFISTER (✉ [mike.pfister@oecd.org](mailto:mike.pfister@oecd.org))

James DRUMMOND (✉ [james.drummond@oecd.org](mailto:james.drummond@oecd.org))

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