

# Consumer Protection and Product Safety in ASEAN: A Development of ASEAN General Product Safety Directive

*(Perlindungan Pengguna dan Keselamatan Produk di ASEAN: Pembentukan Direktif Am Keselamatan Produk)*

SYED SAGOFF AL SAGOFF  
RAHMAH ISMAIL

## ABSTRACT

*ASEAN Economic Community Blueprint 2025: Forging Ahead Together was endorsed by ASEAN Leaders at the 22<sup>nd</sup> ASEAN Summit in Kuala Lumpur, Malaysia. The Blueprint provides a broad framework supported by ASEAN Economic Community Council (AECC), a body entrusted with the responsibility for the implementation and monitoring of strategic measures and sectoral work plan through periodical review of key performance index. The primary purpose this body is structured as such is to have an oversight of all sectors and to use its terms of reference to direct and ensure that the synchronisation of cross-sectoral work will not only be feasible but accelerated and delivered at a pace far greater than its predecessor. Taking into account sectors that are crucial to consumer protection and product safety under the respective working group such as ASEAN Consultative Committee on Standards and Quality (ACCSQ) and ASEAN Coordinating Committee on Consumer Protection (ACCCP), it is submitted that in order to enhance consumer protection in product safety, ACCSQ and ACCCP shall develop product safety mechanism in the form of a directive or policy to overcome unsafe products in ASEAN. The finding of the research shows that there is no directive and policy in ASEAN on product safety. Therefore, the objective this research is to identify the strategy of consumer protection in product safety, to do a comparative study with European Union regarding product safety mechanism, and to propose a product safety directive in ASEAN. This research will propose ASEAN General Product Safety Directive (AGPSD) and it is hoped that the proposed AGPSD will able to help ASEAN in monitoring unsafe products.*

*Keywords: ASEAN; ASEAN Economic Community Blueprint; European Union; product safety; General Product Safety Directive*

## ABSTRAK

*ASEAN Economic Community Blueprint 2025: Forging Ahead Together telah diperakui oleh Pemimpin-pemimpin ASEAN di ASEAN Summit ke 22 di Kuala Lumpur. Blueprint ini memperuntukkan rangka kerja yang luas yang disokong oleh ASEAN Economic Community Council (AECC), sebuah badan yang diamanahkan untuk bertanggungjawab bagi melaksanakan dan memantau langkah strategik dan pelan kerja sektoral melalui semakan berjangka indeks pelaksana utama. Tujuan utama badan ini distruktur sedemikian adalah untuk menyelia semua sektor dan untuk menggunakan terma rujukannya bagi mengarahkan dan memastikan penyelarasan kerja-kerja bersilang sektor bukan sahaja dapat dilaksanakan tetapi juga dipercepatkan dan disampaikan pada kadar yang lebih cepat daripada yang terdahulu. Mengambil kira sektor yang genting kepada perlindungan pengguna dan keselamatan produk berada di bawah kumpulan kerja seperti ASEAN Consultative Committee on Standards and Quality (ACCSQ) dan ASEAN Coordinating Committee on Consumer Protection (ACCCP), dihujahkan bahawa dalam usaha untuk mempertingkatkan perlindungan pengguna dalam keselamatan produk, ACCSQ dan ACCCP hendaklah membangunkan mekanisma keselamatan produk di ASEAN dalam bentuk direktif atau polisi untuk mengatasi produk yang tidak selamat di ASEAN. Dapatan kajian ini menunjukkan bahawa tidak terdapat direktif atau polisi di ASEAN berhubung dengan keselamatan produk. Justeru, objektif kajian ini adalah untuk mengenal pasti strategi perlindungan pengguna dalam keselamatan produk, untuk membuat kajian perbandingan dengan Kesatuan Eropah berhubung dengan mekanisma keselamatan produk, dan untuk mencadangkan direktif keselamatan produk di ASEAN. Kajian ini akan mencadangkan ASEAN General Product Safety Directive (AGPSD) dan adalah diharapkan AGPSD yang dicadangkan akan berupaya untuk membantu ASEAN dalam mengawalselia produk yang tidak selamat.*

*Kata kunci: ASEAN; ASEAN Economic Community Blueprint; keselamatan produk; General Product Safety Directive*

## INTRODUCTION

The ASEAN Blueprint 2016-2025, which was adopted at the 22<sup>nd</sup> ASEAN Summit, is in fact a progression towards the continuation of the ASEAN Economic Blueprint 2015.<sup>1</sup> It was meant at leveraging the initial foundation thus, synchronising the various pillars and sectors taking into account both current and future regional and global challenges through an integrated and highly cohesive climate that is resilient to economic uncertainty and volatilities. These mutually interrelated characteristics include (i) a highly integrated and cohesive economy; (ii) a competitive, innovative, and dynamic ASEAN; (iii) enhanced connectivity and sectoral cooperation; (iv) a resilient, inclusive, people-oriented, and people-centred ASEAN; and (v) a global ASEAN

In view of the above interrelated characteristics, the writers will dwell further to discuss the initiative that should be taken by the ASEAN Consultative Committee on Standards and Quality (ACCSQ) and ASEAN Coordinating Committee on Consumer Protection (ACCCP) in the attainment of a robust consumer protection initiatives that addresses general product safety standards and consumer law undertaken for the well-being of over 620 million consumers in ASEAN. In proposing ASEAN General Product Safety Directive (AGPSD), the writers will present a study on the framework undertaken by the European Union (EU) in enhancing consumer protection through General Product Safety Directive 2001 and other instruments that have been adopted in ensuring that a product that reaches the consumer is not only safe but indeed foreseeably safe. In this respect, the writers are applying comparative research method that was enunciated by Cruz<sup>2</sup> with a view to essentially sieve foreign laws (in this instance the EU General Product Safety Directive) that are relevant, in order to develop and/or legislate new laws that are more advanced and comprehensive in nature. Cruz opines as follows:

The laws of legal institutions of other states were perceived as superior or more advanced or sophisticated and should be deliberately imitated or adopted. It would seem that this imitation was not seen as an adoption of foreign law but as an adoption of a law that was better than one's own.

In fact other researcher such as Yntema is also of the opinion that comparative study will assist in the development and understanding of a particular branch of law. In similar note, Jhering is also of the opinion that comparative method provides researcher with various solutions to problems and opens up windows in accepting foreign laws that are relevant and superior in nature. Rudolph states as follows:

The reception of foreign legal institution is not a matter of nationality, but of usefulness and need. No one bother to fetch a thing from afar when he has one as good or better at home, but only a fool would refuse a quinine, just because it didn't grow in his back garden.

## ASEAN ECONOMIC COMMUNITY BLUEPRINT

The ASEAN Leaders at the Summit in Kuala Lumpur in December 1997 decided to transform ASEAN into a stable, prosperous and highly competitive region with equitable economic development and reduced poverty and socio-economic disparities. At the Bali Summit in October 2003, ASEAN Leaders declared that the ASEAN Economic Community

(AEC) shall be the goal of regional economic integration. Subsequently, the ASEAN Economic Ministers Meeting held in August 2006 in Kuala Lumpur, agreed to develop ‘a single and coherent blueprint for advancing the AEC by identifying the characteristics and element of the AEC by 2015.’<sup>3</sup> In the ASEAN Economic Blueprint (AEB), one of the elements of AEC is establishing ASEAN as a single market and production base. The ASEAN single market and production base shall comprise five core elements, *inter alia*, free flow of goods. In order to achieve free flow of goods, clause 16 of the AEB provides trade facilitation, such as, simple, harmonised trade and customs, processes, procedures and related information flows are expected to reduce transaction costs in ASEAN which will enhance export competitiveness and facilitate the integration of ASEAN into a single market for goods. One of the actions listed under trade facilitation is to develop and implement a comprehensive trade facilitation work programme which aims at simplifying, harmonised and standardising trade and customs, processes, procedures and related information flow.<sup>4</sup> It is submitted that a development of ASEAN General Product Safety Directive (AGPSD) is one of the trade facilitation programmes in order to facilitate free flow of goods in the ASEAN Region.

The ASEAN Economic Community Blueprint 2016-2025 has continuously endeavoured to deepen and accelerate trade facilitation measures through the convergence of various regimes in the context of assimilating and adopting global best practices. In this regard the Blueprint has identified the importance of public and private partnership (PPP)<sup>5</sup> engagement as a means to accelerate and expedite free movement of goods and trade facilitation measures within the region.

#### ASEAN COORDINATING COMMITTEE ON CONSUMER PROTECTION (ACCCP)

The ACCCP realised the need to beef-up consumer protection infrastructure since it is an integral part of an efficient and effective market place. Since, consumers must be able to make an informed decision, the need for an effective standard and safety laws becomes indispensable. With the advent new trading system as a result of globalisation and technological advancement, comprehensive national and regional consumer protection systems are incumbent via an effective consumer protection legislation and redress mechanism.

In the context of consumer protection, Strategic Measures<sup>6</sup> which have been identified by the ACCCP include among others the following:

- i. establish a common ASEAN consumer protection framework through higher levels of consumer protection legislation, improve enforcement and monitoring of consumer protection legislation, and make available redress mechanisms, including alternative dispute resolution mechanisms;
- ii. promote a higher level of consumer empowerment and knowledge by addressing consumer concerns as well as enhancing consumer knowledge and advocacy;
- iii. build higher consumer confidence and cross-border commercial transactions by strengthening product safety enforcement, stronger participation of consumer representatives, and promotion of sustainable consumption;
- iv. encourage consumer-related matters in ASEAN policies through impact assessment of consumer protection policies and development of knowledge-based policies; and
- v. promote consumer protection measures in products and services sectors such as finance, e-commerce, air transport, energy, and telecommunications.

## ASEAN CONSULTATIVE COMMITTEE ON STANDARDS AND QUALITY (ACCSQ)

In a similar note, the ACCSQ has also developed Strategic Action Plan in relation to policies pertaining to Standards Technical Regulations and Conformity Assessment Procedures (STRACAP), in the context of attaining an integrated economy through collaboration with relevant ASEAN sectoral bodies. The primary purpose of STRACAP is to eliminate technical barriers to trade via harmonised standards and technical regulations. In this regard, the ACCSQ has adopted Six Strategic Thrusts which are as follows:

- i. enhance the standards and conformance infrastructure through development of policies and initiatives to meet the present and future needs of ASEAN;
- ii. achieve a highly integrated and cohesive ASEAN economy through a comprehensive and progressive reduction of technical barriers to trade related to STRACAP;
- iii. strengthen joint ASEAN approaches on issues related to STRACAP for effective representation and participation in international and Asia - Pacific bodies and associated recognition arrangements;
- iv. strengthen private sector participation in standards and conformity assessment to accelerate development and enhance availability of services to industry and businesses;
- v. enhance the effectiveness of ACCSQ, its Working Groups and its collaboration with other relevant ASEAN sectoral bodies; and
- vi. support the capacity building and human capital development of Member States for the implementation of ASEAN initiatives and policies related to STRACAP.<sup>7</sup>

In view of the above strategic measures, strategic thrusts and cross-sectoral work plan undertaken by the ACCCP and ACCSQ in promoting transparency, responsive regulatory regime and an active public private partnership engagement are needed to develop product safety framework.

## EUROPEAN UNION LEGAL FRAMEWORK ON PRODUCT SAFETY

Unlike ASEAN which lacks legal framework in its harmonisation efforts, the European Union (EU) has throughout the years managed to integrate what is called ‘common policies’ which is the backbone behind its successful multinational integration. Under its common legal policy, legislations which are enacted by the European Commission, have a binding effect on its member states.<sup>8</sup> Divided into five forms<sup>9</sup> (Regulations, Directives, Decisions, Recommendations and Opinions & Resolutions), some of these legislations are directly applicable while others provide the necessary framework and objectives for member states to enact its own national legislation taking into account the existing state of affairs in each member states while at the same time providing room for manoeuvring in order to reach a common tenor.

With the ability to synchronise the vital aspect of integration through its firm legal foundation, the EU has today managed to overcome many social, economic and political divergences through compliance with its laws. This is primarily synchronised through the passing of EU Regulations and Directives which are directly applicable on member states even without the need for member states to amend its domestic laws.

## General Product Safety Directive

In 1992 the European Union implemented General Product Safety Directive - 92/59/EEC (GPSD 1992) that adopted the concept of 'general product safety obligation' that was intended to provide a consistent and high level of safety throughout the EU. Due to lack of clarity in its provisions and enforcement measures, it received less impact among member states. It was not until recently in 2001 that the European Union implemented the General Product Safety Directive - 2001/95/EC (GPSD 2001) to replace the GPSD 1992 in order to provide a wider scope of application to counter defective products that is floating in the single market. Accordingly, the GPSD 2001 requires that all products that are marketed must be 'safe product' in order to have access to the European market.

Despite the many sectoral Directives which are used to ensure compliance, the birth of the so called 'catch all directive' - the GPSD 2001 was finally realised. Although the GPSD 2001 does not intend to oust other Directive, nevertheless it was much anticipated since the EU was aware that it was impossible to react to every product that exists or may be developed. In the same note, the European Commission too realised that they were unable to keep the pace with national standards and regulations that were moving at greater leaps than before they could finalised their earlier Directives ('Old Directives' as it was heavily drawn on technical details) which go against the essence and fundamental of article 100a. of the Treaty of Rome (establishment of a single market). In summary, the so called 'New Directive', particularly the GPSD 2001 was intended to fill the gaps (*lacunae*) left by other Directives. The end result is, the GPSD 2001 being applied to all consumer products<sup>10</sup> placed on the market in line with article 129a of the Treaty of Rome which addresses consumer protection as being of a paramount concern.

The GPSD 2001 which was enacted on the 3<sup>rd</sup> of December 2001 contains 24 Articles comprising of 7 Chapters and 4 Annexes aimed at reinforcing consumer protection in tandem with recent developments relating to product safety and precautionary principle in line with article 152 which relates with public health and article 153 which concerns consumer protection. The GPSD 2001 was intended to (a) improve and provide a secured internal market upon which a free movement of goods, services and capital is assured; (b) provide a general obligation and accountability on economic operators concerning product safety; (c) provide a horizontal community legislation on general product safety requirement; (d) removal of trade barrier and distortion of competition law; (e) provide a broad-based framework that is intended to fill in the *lacunae* that may exist pending revision of legislation or technical directives; and (f) to establish a general safety requirements for any product placed on the market or otherwise supplied or made available to consumers, intended for consumers, or likely to be used by consumers under reasonably foreseeable conditions even if it is not intended for them.

Article 1 of the GPSD 2001 stipulates that the Directive shall apply to all products that are placed on the market while article 3 provides that a producer shall be obliged to place only safe product on the market. In the same premises article 2 (b) defines a safe product as:

any product which under normal or reasonably foreseeable conditions of use including duration and, where applicable, putting into service, installation and maintenance requirements does not present any risk or minimum risks compatible with the product's use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons, taking into account the following points in particular:

- (i) the characteristics of the product, including its composition, packaging, instructions for assembly and, where applicable, for installation and maintenance;
- (ii) the effect on other product, where it is reasonably foreseeable that it will be used with other product;
- (iii) the presentation of the product, the labelling, any warnings and instruction or its use and disposal and any other indication or information regarding the product; and
- (iv) the categories of consumers at risk when using the product, in particular children and the elderly.

With regards to post market product monitoring and surveillance, producers are required under article 5 to carry out voluntary sampling of marketed products, investigating and if necessary, keeping a register of complains and keeping distributors informed of such monitoring including product withdrawal and recall. Likewise, article 5(2) requires manufacturer and distributors to be in compliance with the principle of due diligence. In promoting and guaranteeing effective market surveillance, articles 9 and 10 provide for platform for information exchange through the development of Rapid Alert System (RAPEX), a community wide surveillance system on dangerous goods.

### Standardization and Certification Policy in European Union

Since 1985,<sup>11</sup> technical standardisations are achieved through a mutual recognition policy throughout the European Union. Being fully aware of the divergence of national laws among member states, the European Union adopted and confined its legislative harmonisation to the essential safety requirements as opposed to technical standards, which could be far reaching, in order to facilitate free movements of goods and promote intra EU trade.<sup>12</sup>

Nevertheless, in its endeavour to achieve a common technical standardisation policy, the European Committee for Standardisation<sup>13</sup> (CEN), the European Committee for Electrotechnical Standardisation<sup>14</sup> (CENELEC) and the European Telecommunications Standards Institute<sup>15</sup> (ETSI) are commissioned to ensure amicable agreement are reached among the parties concerned such as producers, consumers and users. Thus, products, which comply with the “essential requirements”, are reciprocally deemed to conform to the Directives.

Similarly, in order to ensure reciprocal recognition of standards, a product must be certified and recognised as meeting such standards by their relevant national bodies. The European Organisation for Testing and Certification (EOTC) lay down the guidelines for mutual recognition of tests and certificates. Thus, ‘CE’<sup>16</sup> marking symbolises conformity and evaluation efforts aimed at ensuring legally place product in the market, which is easily identifiable, by the consumers.

### CE Marks

*Conformite Europee* (CE) or synonymously referred as ‘Passport to Europe’ is a mark of compliance to standards set within the European Community. This certification mark gives the community a sense of assurance that their health, safety and environmental requirements have been given a paramount consideration when such product leaves the manufacturing plant and put into circulation. To date there are many Directives concerning standards which involve a wide array of products ranging from toys to heavy machinery. The purpose of which is designed to strengthen general confidence and proper functioning of the internal market (European Commission’s Explanatory Note of 1989).

Although the CE mark is a mandatory marking, there are two other similar marking which is synonymously used associated with it. The ‘e’ mark which is used on motor vehicle and its components and another ‘e’ mark which is used as a sign of estimation on food labels.<sup>17</sup> These marks once used primarily for the internal market has now found its place in products coming from many countries, among others include the US, Japan, Canada, Israel, New Zealand and Australia through Agreements on Mutual Recognition of Conformity Assessment. The reliability of the mark over the years has also managed to influence at one time non-European Economic Area (EEA) member country like Turkey to adopt it as a representation of conformity.

### CE Marking and Its Process

Since there are many products in the market, one cannot expect an extensive list of products that require CE marking. With the GPSD 2001, there are certain requirements that a manufacturer needs to fulfil before a particular product can be CE marked and gained access to the European Community. Thus, it is the responsibility of the manufacturer to determine which product can be self-certified and which needs to be tested by laboratory affiliated with the European Notified Body. Once this has been complied with, the manufacturer needs to affix the CE mark on their product together with a statutory Declaration of Conformity and technical file before goods can be shipped into the European Union.

Directive that can be self-certified among others includes; Safety of Machinery Directive; Electromagnetic Compatibility (EMC) Directive; Low Voltage Directive; Class I Products of the Medical Device Directive; Radio Telecommunications Terminal Equipment (R&TTE) Directive. Directive that cannot be self-certified and requires laboratory testing includes; Simple Pressure Vessels Directive; Appliances Burning Gaseous Fuels Directive; Pressure Equipment Directive; Equipment and Protective Systems in Potentially Explosive Atmospheres Directive.

Under the GPSD 2001, manufacturers are required to keep a detailed technical file with information relating to conformity of the harmonised standards. This technical file is divided into two parts, in which the first part requires information relating to manufacturer such as address and product identification; description; operating instructions; plan of the product (blue-print) and list of harmonised standards adopted, while a more detailed second part requires matters relating to test report; quality manual; processes and standards applied.

### NEW LEGISLATIVE FRAMEWORK (NLF)

The New Legislative Framework<sup>18</sup> (EC) 765/2008 came into force on 1<sup>st</sup> January 2010, consolidating Regulation (EC) No. 765/2008 and (EC) 768/2008 relating to accreditation, surveillance and framework on marketing of products. It was implemented to enhance, strengthened, simplify and to bring about an effective implementation mechanism in order to create consistency both in law and economic operators. Similarly, its effective implementation is intended at reducing administrative burden while at the same time streamlining regulations. The process of streamlining will be initiated at national level where member states are required to make administrative and regulatory changes. Member states are required to reduce the number of accreditation body to only one at national level and ensure consistency in the field of market surveillance and imports control. Coordination between Committee on General Product Safety Directive and Senior Officials Group with over

35years experience in the field of standardization is coordinated to achieve a better framework on standardization policies, conformity assessment and market surveillance. Member states are required to act in the presence of non-conforming or dangerous products as well coordinating with customs authorities including the means to conduct inspections and initiate market surveillance programs.

In response to the NLF and coordination among member states, product safety professionals and stake holders representing industries, consumer organizations, standard makers and testing laboratories, the European Directorate General for Health and Consumers initiates programs such as International Product Safety Week (IPSW) that provides a forum for empowering consumers through discussions and papers intended to streamline procedures in tandem with the mandate under the NLF.

In a paper presented by Antonella Correra<sup>19</sup> at the IPSW on 1<sup>st</sup> December 2010 that addresses problems relating to procedures for mandating standards under the GPSD 2001. It was highlighted that procedures relating to new standards and publication of standards are long and cumbersome while on the other hand lagging in technological development on non-harmonized standards often resulted in emerging risks. Accordingly, 80% of market surveillance authorities are of a similar view that the speed of mandating standards under the GPSD 2001 is not satisfactory while 70% of market surveillance authorities and 62% of economic operators are of the view that high cost are often associated in the absence of referenced standards. In the same paper, it was concluded with consensus and support among stake holders regarding mandating standards under the GPSD 2001 which are illustrated as follows:

- (a) that safety requirements should become **mandatory**<sup>20</sup> and directly applicable
  - 90% of market surveillance authorities agreed
  - 71% of economic operators agreed
  - 73% of other stakeholders agreed
- (b) that the existing EN standards and international standards (ISO) should provide for a **“presumption of conformity”** under GPSD upon certain conditions
  - 80% of market surveillance authorities agreed
  - 70% of economic operators agreed
  - 55% of other stakeholders agreed

It could be concluded at this juncture that the new NLF has managed to coordinate its objective through consultations and streamline procedures and regulatory framework with relevant authorities and has managed to enticed stakeholders to make substantial contribution through its market surveillance program which could be measured in terms of contribution made at workshop and seminar conducted throughout the EU.

#### PROPOSED BLUEPRINT OF ASEAN GENERAL PRODUCT SAFETY DIRETIVE

Based on the EU GPSD 2001, the writers are of the opinion that the proposed ASEAN General Product Safety Directive (AGPSD) under the purview of the ACCCP will have to take into account and address the following issues. In its scope it should include the following substance such as;

- (a) principle of general health and safety requirements;<sup>21</sup>



- (b) mandatory standards for all goods (all goods have to be tested – ‘regulated goods’<sup>22</sup> will be in compliance with technical regulations while ‘unregulated goods’<sup>23</sup> will have to be in compliance with a minimum ISO/IEC standards);
- (c) dilute technical regulations and focus towards general liability to safety<sup>24</sup> (since this is the current trend in the EU in overcoming the shortfall in time and keeping in pace with thousands of new products being developed yearly);
- (d) all products that circulate within the ASEAN region must be marked with (Conformity ASEAN Mark) (CA) and to do away with national marking that maybe confusing to consumers;
- (e) to apply the regulations in essence rather than form (focus on standards rather than law enforcement);
- (f) to inculcate professional diligence<sup>25</sup> since it provides for self-regulations (since this is a two way method to reduce the workload of enforcement agencies);
- (g) to develop a ‘central database’ to ensure possibility of tracing and product recall. This includes a consumer friendly database that is easily accessible to consumers to ensure everyone can play a part in policing sub-standard goods; and
- (h) enacting the principle that safety does not end with a reasonably safe product but a foreseeably safe product<sup>26</sup> will extend the ambit and width of accountability among manufacturer in ensuring that they comply with a higher threshold of product safety in line with the UN Guidelines on Consumer Protection 1985<sup>27</sup> which indirectly extends both pre and post market self-regulations.<sup>28</sup>

#### ASEAN General Product Safety Guidelines

Similarly, the writers are also of the opinion that the ACCSQ will have to play a deeper supporting role in ensuring that the development of ASEAN General Product Safety Guidelines (AGPSG), either on a standalone basis or back to back with ACCCP will provide the necessary elements in fulfilment of the general obligations under proposed AGPSD. In this respect the range of safety standards can be extended beyond the initial identified 8 priority sectors to encompass all products circulated in the market, thus making it a state of the art regime that is befitting of ASEAN Vision 2016-2025.

The writers are of the opinion that ACCSQ should at this point of time adopt the concept of mandatory standard for all products that requires some products to be classed as regulated products be governed by technical directives/regulations while unregulated products of voluntary nature have to comply with the AGPSG for non-harmonized standards with the followings:

- (a) a minimum ISO/IEC standards or any other standards including in-house standards and outlining manufacturer or importer general obligation of safety standards;
- (b) presumption of compliance, (according to appropriate scope of safety test);

- (c) presumption good regulatory practice;
- (d) presumption of due diligence;
- (e) presumption of compliance of essential requirements of safety standards;
- (f) compliance to code of good practice;
- (g) state of the art safety standards which the consumer may reasonably be expected to anticipate;
- (h) test reports / product information file;
- (i) precautionary principles including those of vulnerable categories of consumers
- (j) declaration of conformity; and
- (k) CA marking scheme.

### Standards and Testing Agencies in ASEAN

Product standards are the most critical limb or core value which goes to the root in ensuring consumers are afforded with a safe product in the market since these products are either used or consumed by almost 600 million<sup>29</sup> consumers regionally on a daily basis. Although we have to agree that not all countries within the region developed at the same pace equally and has the necessary technical resources or state of the art scientific knowledge, nevertheless most of the ASEAN member states have the required infrastructure that is to a certain extent reliable in its form. Some ASEAN member states have put inclination into the importance of standards as early as 1954<sup>30</sup> in the case of Indonesia while the rest appreciate its importance in the 1960s.

With the removal of trade barrier and free flow of goods, ASEAN will need to adopt a proper mechanics that will ensure that the benefits of trade expansion will not overshadow the detrimental effect of the state consumer vulnerability of being exposed to defective and sub-standards products in the midst of trade facilitation and economic sustainability faced by challenges posed by international powerhouse.

Although some member states of ASEAN are considered well-equipped to face the challenges, nevertheless the remaining member states are still developing and can be in an unfortunate position of being used as a dumping ground for defective goods since these countries may lack the technical expertise to appreciate the danger of products that flows into their market and to consumers alike. The lucrative prices minus the safety have to a great extent undeniably enticed importers to seek such product in the prospect of receiving higher profit margin.

This is the result of two-tier standards which differs in form - of which goods with a higher standards will be exported to countries with stringent standards and requirements while a lower standards are being exported to countries without proper general safety requirements. This has brought about the concept of dumping ground abuse for sub-standard goods in which some countries applies mandatory standard for same goods while other applies voluntary standards. In the same instance product that is being recalled in one country may not be recalled in others due to discovery and lower threshold of liability which seems almost non-existence. It is not fair, sufficient or reasonable to expect consumers to be able to

appreciate the danger of goods when such standards can only be appreciated by technical standards and competent assessment bodies.

Although the ASEAN Consultative Committee for Standards and Quality (ACCSQ) was established way back in 1992 nevertheless the formation is considered slow in its progress since to date ASEAN has yet to establish technical directive/regulations with a legal punch. Although sectoral recognition for Electrical and Electronic Equipment (EEE) with the concept of ‘tested once tested everywhere’ was adopted through ASEAN Mutual Recognition Arrangements (MRA) nevertheless the EEE mark that was adopted to signify conformity standards based on harmonizing 59 international standards, 71 safety aspects and 10 EMC standards<sup>31</sup> through ISO/IEC guidelines seems to vanish and is not being exclusively used in the market. This may be due to the *voluntary nature of compliance* that was associated with the MRA.

Although ASEAN may be quick to identify certain sectors as being important nevertheless ASEAN seems rather quick to fall into the same trap as the European Union such as being bogged down with technical regulations that through experience has hamper its concept of proper functioning of a single market.

First and foremost, ASEAN should realise that the European Union has adopted a concept of common policies<sup>32</sup> through legal framework which is the backbone of its successful multinational integration that is lacking in the ASEAN framework. ASEAN should at this juncture look back and focus on lessons to be learned from the EU experience. ASEAN should at this point of time adopt the concept of essential safety requirements as opposed to technical standards which could be far-fetched in reality due to the concept of single market, trade facilitation, proper functioning of internal market and the pace at which new products are being developed and introduce yearly which goes against the very mechanism of removing Technical Barriers to Trade (TBT).

In fact with the removal of trade barrier and scientific advancement there is no room for two-tier (mandatory and voluntary) safety standard assessment. Though this may seem a move away from the initial EU practice but the need to have all product tested is advent when the GPSD 2001 was later enacted that applies silently to all goods.

Standards and testing agencies in ASEAN which works collectively under the umbrella of ACCSQ should take a positive and proactive step in circumventing the issues which arises from liberalization of trade and free flow of goods. In fact ACCSQ should be more cautious in protecting the interest of consumers within the region.

ASEAN standards and testing agencies in fact have the entire required infrastructure that is crucial in the implementation of standardisation processes. In fact all member states one way or another has affiliation with Accredited Laboratories on matters relating to calibration, testing, quality management system, environmental management system, including medical testing and good laboratory practice. In fact some member states are actively involved to the position of technical committee, technical council and technical management board at international level. In fact the vast experience and wealth gained over the years through its involvement in standardisation processes should in many ways be an asset in the development and proper functioning of safety standards under the umbrella of ACCSQ.

The standardisation process that is currently being employed at domestic level should be collaborated in order to assimilate the best practices in the interest of ASEAN. Although ASEAN Consultative Committee on Standards and Quality have managed to identify 8 sectors that requires attention and setting up of sub-committee, nevertheless these committee seems rather slow in its technical dossier. Although initially the EEE mark was adopted for electrical and electronic equipment sectors nevertheless ASEAN may have realised that sectoral marking seems impractical due to many sectors that were subsequently identified. From this angle one could conclusively derived to a conclusion that ASEAN has failed to look at issues on a bigger scope which subsequently led to a sudden death of the EEE mark. In fact in August 2007 the draft proposal for harmonisation process addressed the issue of conformity mark but as it is, ASEAN is slow in its execution that leads to the postponement of the common conformity mark.

ASEAN should always work as a single entity in ensuring that its standards is accepted within the region and the international community since standard and compliance system is a vehicle that will drive the consumers within the region into a more secure territory. Should the standard mechanism be well employed non-compliance will be a thing of the past and the need for a complex legal framework (courts, tribunals and redress mechanism) can be diluted to the point of just the enactment of AGPSD and APSG that is well observed by corporations is in its entirety and concurrently enforced and incorporated as a part of national domestic law.

## CONCLUSION

The ASEAN Blueprint 2016-2025, have paved the way for an in-depth collaboration among various sectors. The ACCSQ and ACCCP will have to get down to the drawing board, critically re-examine and chart the correlations between the two sectors and the way forward in complementing their activities towards a more coherent, consistent and reliable consumer protection scheme.

The writers are of the opinion that it is only through consumer protection instruments will ASEAN be able to help member states which lacks the consumer protection infrastructure. This concurrently will save a huge amount of time while in the same premises introduce a new regime which reflects the current ASEAN consumer protection law and policy collectively rather than each member states enacting the same tenor but with different ambit and width of application which eventually will affect and have its toll and drawbacks on future synchronisation efforts between Member States if the proposal takes-off.

The writers are of the opinion that the AGPSD will be able to close the gap swiftly and pull member states that are left behind in consumer protection policy to be in par instantaneously. The application of a 'blanket directive', which is AGPSD, is in fact a swift mode to a quick and proper functioning of its mechanics especially so where member states are coming from different background and structure. It is in fact the means and a practical approach to do away with differences that exist and work on similarities which are in tandem with the synchronizing effect of a single community.

The presumption of encroaching into domestic laws should not be regarded as an obstacle since ASEAN non-interference policy has no connotation or correlations to its economic sustainability sectors but should only be upheld on issues of territorial disputes and politics. This is in fact the underlying factor why the e-ASEAN Framework is a success in its

implementation swiftly with member states implementing its digital signature framework which is more complex than the issue in hand because unlike e-commerce which is new, safety standards has been in existence within ASEAN member states for a long period of time.

Finally we have to agree that the jurisprudence behind consumer protection across the globe or be it among ASEAN member states is similar, that is to protect consumers. If these principles are the same, then strengthening it further should not be viewed as surrendering or encroaching into a state's sovereignty but should be viewed as a uniform effort towards strengthening its framework in the face of global uncertainties and challenges.

#### NOTES

<sup>1</sup> ASEAN Economic Community Blueprint 2016-2025, ASEAN Secretariat, Jakarta, 2015.

<sup>2</sup> P.D. Cruz, *Comparative Law in a Changing World*, Cavendish Publishing Limited, London, 1999, p 11.

<sup>3</sup> ASEAN Economic Community Blueprint, ASEAN Secretariat, Jakarta, 2008, p 5.

<sup>4</sup> ASEAN Economic Community Blueprint, p 8.

<sup>5</sup> ASEAN Economic Community Blueprint 2016-2025, p 5.

<sup>6</sup> ASEAN Economic Community Blueprint 2016-2025, p 13.

<sup>7</sup> ASEAN Standards and Conformance Strategic Plan 2016 -2025: Forging ahead together: Ensuring quality & building confidence, 2015, ASEAN Secretariat, Jakarta, p 5.

<sup>8</sup> Section 2(1) European Communities Act 1972, the principle of direct effect is expressly stated as 'All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced, allowed and followed accordingly; and the expression enforceable Community right and similar expressions shall be read as referring to one to which this subsection applies.'

<sup>9</sup> Regulations (binding), Directives (binding), Decisions (binding on addressee), Recommendations (non-binding) and Opinions & Resolutions (non-binding).

<sup>10</sup> General Product Safety Regulations 2005 (UK) Guidance Notes for Businesses, Consumers and Enforcement Authorities – Guidance Notes. August 2005 DTI. London. Para 1.2, 2.1 and 2.2 at page 5 and 6

<sup>11</sup> Council Directive 85/374/EEC of 25 July 1985, European Commission.

<sup>12</sup> N. Mousis, *Access to European Union: Law, Economics, Policies*, 21th Edn, Intersentia, Cambridge, 2015, p 15.

<sup>13</sup> CEN deals with standards relating to goods and services.

<sup>14</sup> CENELEC deals with standards relating to electrical engineering such as electricity, electromotive and electro-magnetism.

<sup>15</sup> ETSI deals with standards relating to telecommunications equipment, network and operators including broadcasting, intelligence transport and medical electronic.

<sup>16</sup> *Conformite Europee* otherwise known as Conformity Europe.

<sup>17</sup> [http://en.wikipedia.org/wiki/CE mark](http://en.wikipedia.org/wiki/CE_mark) (18 August 2011).

<sup>18</sup> European Commission, State of the implementation of the New Legislative Framework (NLF), Directorate-General for Enterprise and Industry, Brussels, 14 September 2010.

<sup>19</sup> A. Corra, Procedure for mandating standards under the GPSD, *International Product Safety Week*, European Directorate General for Health and Consumers, Brussels, 2010.

<sup>20</sup> Syed Sagoff Alsagoff, 'Marking Asean Produce: Towards a common "Conformite Asean" Certification Mark' (2008) 12 *Jurnal Undang-undang dan Masyarakat* 237.

<sup>21</sup> Article 129a Treaty of Rome.

<sup>22</sup> 'Regulated goods' refer to mandatory standard imposed by legislation on a particular goods to conform to standards under a technical directive.

<sup>23</sup> 'Unregulated goods' refer to a voluntary standard in which there is no obligation to comply.

<sup>24</sup> General Product Safety Regulations 2005 (UK) - Guidelines for Businesses, Consumers and Enforcement Authorities. Guidance Notes Aug 2005, Para 1.2 – The purpose of the General Product Safety Directive is to

---

ensure that all products intended for or likely to be used by consumers under normal or reasonably foreseeable conditions are safe: N. Mousis, *Access to European Union: Law, Economics*, p 10.

<sup>25</sup> Section 3(3)(a) Consumer Protection from Unfair Trading Regulations 2008 (UK) – ‘professional diligence’ means standard of special skill and care which a trader may reasonably be expected to exercise towards consumers which commensurate with either (a) honest market practice in the traders field of activity , or (b) the general principle of good faith in the traders field of activity.

<sup>26</sup> *Balding v Lew Ways Ltd* (1995) Tr LR 344; (1995) 159 J.P. 541.

<sup>27</sup> Clause 11 UN Guidelines on Consumer Protection 1985 – Government should adopt or encourage....ensure that products are safe for either intended or normally foreseeable use, [www.ask2knetwork.org/guidelines/physical-safety/](http://www.ask2knetwork.org/guidelines/physical-safety/) (2 October 2017).

<sup>28</sup> Para 6.1 General Product Safety Regulations 2005 (UK) “...to undertake relevant activities (where appropriate) to help ensure that a product remains safe throughout its reasonably foreseeable period of use” and Para 6.17 “...a distributor is also required within limits of his activity to participate in monitoring the safety of products that he supply and pass on information on the product risks”.

<sup>29</sup> [www.aseanstats.org/publication/population-density/](http://www.aseanstats.org/publication/population-density/) (29 September 2017).

<sup>30</sup> Yayasan Dana Normalisasi Indonesia (YDNI) - Member of International Electrotechnical Commission (IEC)

<sup>31</sup> ASEAN Standards and Quality, *Standards and Conformance - Essential for Business Success and ASEAN Efforts*, ASEAN Secretariat, Jakarta, [www.asean.org](http://www.asean.org) (15 September 2017).

<sup>32</sup> Common Policies of adhering to European Commission (Orders, Directives, Regulations, Decisions, Recommendations and Opinions & Resolutions).

## REFERENCES

ASEAN Economic Community Blueprint. 2008. Jakarta: ASEAN Secretariat.

ASEAN Economic Community Blueprint 2016-2025. 2015. Jakarta: ASEAN Secretariat.

ASEAN Standards and Conformance Strategic Plan 2016-2025: Forging ahead together: Ensuring quality & building confidence. 2015. Jakarta: ASEAN Secretariat.

ASEAN Standards and Quality. *Standards and Conformance - Essential for Business Success and ASEAN Efforts*. Jakarta: ASEAN Secretariat. [www.asean.org](http://www.asean.org) (15 September 2017).

Correra, A. 2010. Procedure for mandating standards under the GPSD, *International Product Safety Week*. Brussels: European Directorate General for Health and Consumers.

Cruz, P.D. 1999. *Comparative Law in a Changing World*. London: Cavendish Publishing Limited.

European Commission. 14 September 2010. State of the implementation of the New Legislative Framework (NLF). Brussels: Directorate-General for Enterprise and Industry.

Mousis, N. 2015. *Access to European Union: Law, Economics, Policies*. 21th Edn. Cambridge: Intersentia.

Syed Sagoff Alsagoff, ‘Marking Asean Produce: Towards a common "Conformite Asean" Certification Mark’ (2008) 12 *Jurnal Undang-undang dan Masyarakat* 237.

UN Guidelines on Consumer Protection 1985. [www.ask2knetwork.org/guidelines/physical-safety/](http://www.ask2knetwork.org/guidelines/physical-safety/) (2 October 2017).

Dr. Syed Sagoff Alsagoff

Former Senior Officer

ASEAN Secretariat

Jakarta

Indonesia

Email: [alsegaff@hotmail.com](mailto:alsegaff@hotmail.com)

---

Associate Professor Dr Rahmah Ismail  
Faculty of Law  
Universiti Kebangsaan Malaysia  
43600 UKM Bangi  
Selangor  
Malaysia  
Email: [irahmah@ukm.edu.my](mailto:irahmah@ukm.edu.my)