

# **ASEAN people-to-people connectivity: the role of the mutual recognition regime**

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## **Abstract**

The concept of intra-regional connectivity is emerging as the rationale for the ASEAN regional project and will develop around three pillars: the physical infrastructure, the institutions and the people. Specifically, the facilitation of the free movement of highly skilled migrant workers at the regional level is identified in ASEAN documents as a primary mechanism to achieve people-to-people connectivity.

The paper aims to study the emerging regional mobility framework under ASEAN by focusing attention on the potential impact of mutual recognition arrangements (MRAs) on professional services as connecting instruments. The objective is to provide new insights into the building of ASEAN's regional process by taking the mutual recognition regime as a means to reconcile the traditional prerogatives of sovereignty and new common concerns in the context of cross-border human mobility and economic development. The review of the current evolution of ASEAN MRA architecture will focus on the challenges and promises of the intra-regional cooperation in developing the legal framework by fostering a rule-based organisation. To this end, the analysis will be complemented by an examination of Thailand's mutual recognition initiatives for professionals in the health services.

**Keywords:** mutual recognition; labour mobility; ASEAN.

## **Introduction<sup>1</sup>**

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Human mobility is recognised as a transboundary phenomenon that is increasingly challenging the traditional geography of law and escaping the ‘confines of an outdated legal system’.<sup>2</sup> Crawford reminds us that the ‘diversity of the world’ is not ‘just physical – a function of geography, climate and ecosystems – or cultural – arising from a plurality of peoples with their own histories, traditions and beliefs. It is evident also in the domain of law.’<sup>3</sup>

Issues of common interest are progressively inducing a dynamic development that re-frames the traditional boundaries of state regulatory powers and control. In particular, international cooperation on migration-related common interests is evolving at three specific levels: global, regional and bilateral.

The entry point in the current debate is to explore development at the regional level, as a meaningful approach to framing the exercise of sovereign prerogatives in the context of transboundary mobility.<sup>4</sup> It is becoming increasingly evident that migration is a ‘structural feature’ of regional integration and that the development of a regional framework can also affect the long-term consolidation of migration strategies at the national level.<sup>5</sup>

Diverse regional migration regimes, from agreements on the free movement of persons to limited mobility regimes for specific categories of people, have developed in different geographical contexts, such as the European Union (EU), the East African

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<sup>2</sup> Carl Landauer, ‘The Ever-Ending Geography of International Law: The Changing Nature of the International System and the Challenge to International Law: A Reply to Daniel Bethlehem’, *European Journal of International Law*, Volume 25, Issue 1, 1 February 2014, Pages 31–34, 34; ; Elisa Fornalé, ‘The role of regional legal orders in the making of a global migratory framework’, *Nijmegen Migration Law Working Papers Series* (2017), 3.

<sup>3</sup> James Crawford, ‘Universalism and regionalism from the perspective of the International Law Commission’, in *International Law on the Eve of the 21st Century: Views from the International Law Commission*, ed. UN International Law Commission (New York: United Nations, 1997), 99–121, 99-100.

<sup>4</sup> Thomas Gammeltoft-Hansen and Jens Vedsted-Hansen, *Human Rights and the Dark Side of Globalisation: Transnational Law Enforcement and Migration Control* (London: Routledge, Studies in Human Rights, 2017).

<sup>5</sup> Mauro Testaverde, Harry Moroz, Claire H. Hollweg and Achim Schmillen, *Migrating to Opportunity: Overcoming Barriers to Labour Mobility in Southeast Asia* (Washington, DC: World Bank Group/International Bank for Reconstruction and Development, 2017), 17.

Community (EAC)<sup>6</sup> and the Economic Community of West African States (ECOWAS). In particular, regional integration processes have been identified as normative laboratories to induce member states to adopt formal arrangements facilitated by their geographical proximity.<sup>7</sup>

This paper will explore how the Association of Southeast Asian Nations (ASEAN) regional framework may foster human mobility through the development of mutual recognition agreements (MRAs) as tools underpinning legal connectivity. As recently affirmed by the United Nations (UN) Secretary General ‘at regional ... level, States should continue building cooperation’, giving priority to ‘effective skill and qualification recognition and improved skills matching’.<sup>8</sup> MRAs have so far attracted little attention from academic scholars, but, as recently highlighted by Hamanaka and Jusoh, these instruments may provide insights into regional governance.<sup>9</sup>

According to the definition elaborated by Nicolaïdis and Shaffer, the mutual recognition regimes set ‘the conditions governing the recognition of the validity of foreign laws, regulations, standards, and certification procedures among states in order to assure host country regulatory officials and citizens that their application within their borders is compatible’.<sup>10</sup>

What is relevant in this model of governance is the direct impact that it can have on human mobility by increasing movement of highly skilled migrant workers. In fact, these instruments, with their ‘mutual component’, have the potential to promote a progressive reallocation of regulatory authority from the host country to the country of destination in recognition of the qualifications and skills of migrant workers.<sup>11</sup>

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<sup>6</sup> J.B. Cronjé, *Mutual Recognition of Professional Qualifications: The East African Community* (Stellenbosch: Tralac (Trade Law Centre for Southern Africa), 2015).

<sup>7</sup> Aoife McMahon, *The Role of the State in Migration Control: The Legitimacy Gap and Moves Toward a Regional Model* (Leiden: Brill Nijhoff, 2016), 78.

<sup>8</sup> UN General Assembly, Making migration work for all, report of the secretary general, 12 December 2017, A/72/643 (para. 61)

<sup>9</sup> Shintaro Hamanaka and Sufian Jusoh, ‘The emerging ASEAN approach to mutual recognition: a comparison with Europe, Trans-Tasman, and North America’, *IDE Discussion Paper* 618 (2016), 3; Viti Muntarhorn, *Unity in Connectivity? Evolving Human Rights Mechanisms in the ASEAN Region* (Leiden: Martinus Nijhoff, 2013).

<sup>10</sup> Kalypso Nicolaïdis and Gregory Shaffer. ‘Transnational mutual recognition regimes: governance without global governments’, *Law and Contemporary Problems* 68, 263 (2005): 264.

<sup>11</sup> Nicolaïdis and Shaffer, ‘Transnational mutual recognition regimes’.

The analysis focuses in particular on how the adoption of MRAs may offer new ‘entry points’ for strengthening the ‘legal connectivity’ identified here as the concrete opportunity for individuals to derive a solid legal right to an assessment of foreign qualifications, which can facilitate their cross-border mobility. As highlighted in a recent Organisation for Economic Co-operation and Development (OECD) report on the recognition of foreign qualifications,<sup>12</sup> it will be increasingly relevant to establish the right to recognition of foreign qualifications as a universal right ‘in regulated and non-regulated professions’ to open up possibilities for cross-border employment to all migrants.<sup>13</sup>

The article attempts to look at contemporary expressions of mutual recognition regimes by focusing on the normative development of ASEAN. It introduces the evolution of ASEAN’s mutual recognition regime to explain the extent to which it facilitates the free movement of professional labour. It then highlights the innovative contribution of a regional approach towards overcoming potentially conflicting cross-border regulations; finally, the analysis zooms in on the initiatives currently being undertaken by Thailand.

Thailand was chosen mainly because in the past ten years the government has promoted medical tourism, becoming a ‘world-class medical hub’ and the ‘leading medical tourist destination in the region and the medical hub for Asia’, receiving more patients than any other ASEAN countries, including Singapore.<sup>14</sup> The increasing number of international patients is already generating skills shortages in the local workforce of national health services professionals and will require the import of foreign professionals. So the focus will be mainly on the domestic impact of mutual recognition arrangements on medical practitioners, on dental practitioners and on nursing services.

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<sup>12</sup> OECD, *Making Integration Work: Assessment and Recognition of Foreign Qualifications* (Paris: OECD, 2017), 7.

<sup>13</sup> OECD, *Making Integration Work*, 12.

<sup>14</sup> ASEAN Secretariat and World Bank Group, *ASEAN Services Integration Report: A Joint Report by the ASEAN Secretariat and the World Bank* (Jakarta/Washington, DC: ASEAN/World Bank, 2015), 104. According to UN ESCAP, ‘in 2005 an estimated number of 500,000 international patients were treated in India, 370,000 in Singapore, 400,000 in Malaysia and 1,250,000 in Thailand’ (UN ESCAP. *Medical Travel in Asia and the Pacific – Challenges and Opportunities* (Bangkok: UN ESCAP, 2009)).

With respect to the methodology, the article is based on desk research and fieldwork conducted in Bangkok, Thailand, to collect official agreements, reports and academic sources relating to the conclusion of ASEAN MRAs on professional services. The analysis is complemented by 11 background interviews conducted with representatives of international organisations, academia, a government official and highly skilled migrant workers.

The following section will briefly introduce the nature and evolution of the ASEAN regional project before linking it with the progressive emergence of the human mobility regime.

### **The ASEAN regional process and the development of legal connectivity**

ASEAN was created with the adoption of the Bangkok Declaration in 1967.<sup>15</sup> Since the origin of this regional process, ASEAN member states<sup>16</sup> have opted for regional cooperation in areas of common interest as a meaningful approach to bridging existing domestic systems rather than building a supranational form of integration.<sup>17</sup> Since its creation in 1967, the so-called ‘ASEAN Way’ has been the *modus operandi* of governance adopted to promote ‘informal, non-legalistic approaches’, with a strong propensity for adopting soft instruments and for dialogue and declarations (so-called ‘relations-based governance’).<sup>18</sup>

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<sup>15</sup>The declaration was adopted by Indonesia, Thailand, Malaysia, the Philippines, Singapore. Brunei Darussalam signed it in 1984, and Vietnam, the Lao People’s Democratic Republic (Lao PDR), Myanmar and Cambodia between 1995 and 1999; Fornalé, ‘The role of regional legal orders’, 8. Current ASEAN member states are: Indonesia, Thailand, Malaysia, the Philippines, Singapore, Brunei Darussalam, Cambodia, Vietnam, Lao PDR and Myanmar.

<sup>16</sup> Several instruments include provision on ‘Cooperation’. See for instance the Preamble of the ASEAN Bangkok Declaration 1976 and its Articles 1-2-5; the Preamble of the Declaration of ASEAN Concord 1976; the Treaty of Amity and Cooperation in South-East Asia 1976 (Preamble and Articles 1-2-3-4-6-7-8-9-12).

<sup>17</sup> Simon Chesterman, ‘Does ASEAN exist? The Association of Southeast Asian Nations as an international legal person’, *New York University Public Law and Legal Theory Working Paper* 83 (2008), 199–211; Vitiit Muntarbhorn, *The Challenge of Law: Legal Cooperation among ASEAN Countries* (Bangkok: Institute of Security and International Studies, 1987), 14.

<sup>18</sup> J. Paul Davidson, ‘The role of international law in the governance of international economic relations in ASEAN’, *Singapore Year Book of International Law and Contributors* 12 (2010): 213–224. Fornalé, ‘The role of regional legal orders’, 9.

With the Bali Concord II of 2003, the regional process has been organised around three pillars: the ASEAN Economic Community (AEC), the ASEAN Political–Security Community and the ASEAN Socio-Cultural Community.<sup>19</sup> For the establishment of each pillar a roadmap was designed in 2007 (a so-called blueprint) to guide full implementation of the ASEAN integration process in 2015.<sup>20</sup> To support the implementation of these three pillars the ASEAN adopted its Master Plan on ASEAN Connectivity (2010),<sup>21</sup> which was recently replaced by the Master Plan on ASEAN Connectivity 2025 (MPAC 2025).<sup>22</sup>

The rationale of the inter-connectivity as identified in the Plan has multiple dimensions:

Connectivity in ASEAN encompasses the physical (e.g., transport, ICT, and energy), institutional (e.g., trade, investment, and services liberalisation), and people-to-people linkages (e.g., education, culture, and tourism) that are the foundational supportive means to achieving the economic, political–security, and socio-cultural pillars of an integrated ASEAN Community.<sup>23</sup>

The regional regime has been completed by the negotiation of diverse legal rules, procedures and institutions with a variety of soft (e.g. joint declarations or plans of action) and hard instruments. In particular, the intra-regional cooperation in the economic and trade context has been regulated by an increasingly rules-based framework, as described later in the article.<sup>24</sup>

A key instrument in this process is the ASEAN Charter.<sup>25</sup> This binding instrument, adopted in 2007, emphasises the role of legal instruments and regional institutions as

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<sup>19</sup> See n. 9 above, Muntarbhorn, *Unity in Connectivity?* 114.

<sup>20</sup> ASEAN Secretariat, *ASEAN Economic Community Blueprint* (Jakarta: ASEAN Secretariat, 2008).

<sup>21</sup> See n. 9 above, Muntarbhorn, *Unity in Connectivity?* 193.

<sup>22</sup> ASEAN Secretariat, *Master Plan on ASEAN Connectivity* (Jakarta: ASEAN Secretariat, 2010) adopted at the 17<sup>th</sup> ASEAN Summit on 28 October 2010 in Ha Noi, Viet Nam, 28 October 2010; ASEAN Secretariat. *Master Plan on ASEAN Connectivity* (Jakarta: ASEAN Secretariat, 2016).

<sup>23</sup> See n. 22 above, ASEAN Secretariat, *Master Plan on ASEAN Connectivity* (2016), 8.

<sup>24</sup> See n. 18 above, Davidson, ‘The role of international law’, 213.

<sup>25</sup> Simon Tay, ‘The ASEAN Charter: between national sovereignty and the region’s constitutional moment’, *Singapore Year of International Law and Contributors* 12 (2008): 151–70; Fornalé, ‘The role of regional legal orders’, 9.

prominent tools for implementing the integration project that will facilitate the move towards ‘rules-based governance’.<sup>26</sup> In Article 2, the overarching principles are listed:

- a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;
- b) shared commitment and collective responsibility in enhancing regional peace, security and prosperity ...
- e) non-interference in the internal affairs of ASEAN Member States;
- f) respect for the right of every Member State to lead its national existence free from external interferences, subversion and coercion.

Even if these principles confirm that ‘the regional architecture promoted by ASEAN is regionalism according to the “ASEAN Way”’,<sup>27</sup> ‘there is an emerging optimism, albeit cautious, that the adoption of the ASEAN Charter will facilitate the development of a regional order based on shared norms, agreed rules and sufficient institutionalisation’.<sup>28</sup>

### **The ASEAN regional ‘laboratory’ and the mobility regime**

According to the newly adopted MPAC 2025, ‘People Mobility’ has been identified among the five strategic areas of ASEAN connectivity. As emphasised, ‘restrictions on travel for ASEAN nationals within the region are largely a thing of the past’.<sup>29</sup>

This includes simplifying the mechanisms in place to apply for visas for tourists, to negotiate MRAs as a means to facilitate skilled mobility by recognising core competencies, and to enhance intra-regional cooperation to increase student mobility.

The promotion of the mobility of skilled labour was framed as one of the key priorities of the AEC, which was formally established on 31 December 2015.<sup>30</sup> Art. 33 of the AEC blueprint recalls that the aim is to ‘facilitate the issues of visas and employment passes for ASEAN professionals and skilled labour who are engaged in

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<sup>26</sup> Marise Cremona, David Kleimann, Joris Larik, Rena Lee and Pascal Vennesson, *ASEAN’s External Agreements, Law Practice and the Quest for Collective Action* (Cambridge: Cambridge University Press, 2015), 18–306; Davidson, ‘The role of international law’, 214; Fornalé, ‘The role of regional legal orders’, 9.

<sup>27</sup> See n. 26 above, Cremona et al., *ASEAN’s External Agreements*, 18.

<sup>28</sup> Fornalé, ‘The role of regional legal orders’, 9.

<sup>29</sup> ASEAN Secretariat, *Master Plan on ASEAN Connectivity* (2016), 10.

<sup>30</sup> Testaverde et al., *Migrating to Opportunity*, 117; Fornalé, 2019, 14.

cross border trade and investment related activities in accordance with the prevailing regulations of the receiving countries'.<sup>31</sup>

The legal cooperation of ASEAN member states on mobility of professionals and the recognition of their qualifications was addressed in the adoption of the ASEAN Framework Agreement on Services (AFAS),<sup>32</sup> a legally binding instrument that covers the temporary entry of professionals for the purpose of providing services.<sup>33</sup> Particularly interesting is the ASEAN Framework Agreement on the Integration of Priority Sectors, which required states to accelerate the 'liberalisation of trade in priority sectors' by finalising the MRAs by December 2008 and improving the liberalisation of the movement of natural persons, accordingly (known as Mode 4 under the General Agreement on Trade in Services – GATS).

From 2005, 'to facilitate the mobility and regional integration of qualified and certified professionals, several MRAs (Art. V AFAS) have been signed'.<sup>34</sup> They cover specific categories of migrant workers: engineers, architects, medical professionals, nurses, dentists, accountants and workers in the tourism industry.<sup>35</sup> The AEC Blueprint also highlights the need to strengthen international cooperation for addressing mobility for students and researchers but it was not addressed with the MRAs.<sup>36</sup> The ASEAN Concord II declaration adopted in 2003 emphasised the need to facilitate the 'movement of business persons, skilled labour and talents'.<sup>37</sup> In 2006,

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<sup>31</sup> See n. 20 above, ASEAN Secretariat, *ASEAN Economic Community Blueprint*.

<sup>32</sup> The AEC 2025 Blueprint seeks to replace 'an aging AFAS with the ASEAN Trade in Services Agreement' (ATISA), CIMB ASEAN Research Institute. 'AEC Blueprint 2025 Liberalization of the Trade in Services', *CARI* 1, 3 (2016), available at [www.cariasean.org/wp-content/uploads/2016/03/AEC-Trade-in-Services.pdf](http://www.cariasean.org/wp-content/uploads/2016/03/AEC-Trade-in-Services.pdf) (last visited September 2017).

<sup>33</sup> Flavia Jurje and Sandra Lavenex. 'ASEAN Economic Community: what model for labour mobility?' *NCCR Trade Working Paper* 2015/02 (2015).

<sup>34</sup> Fornalé, 'The role of regional legal orders', 14.

<sup>35</sup> Eight MRAs were adopted between 2005 and 2014. Art. V of AFAS:

Each member state may recognise the education or experience obtained, requirements met, or licenses or certifications granted in another member state, for the purpose of licensing or certification of service suppliers. Such recognition may be based upon an agreement or arrangement with the Member State concerned or may be accorded autonomously.

<sup>36</sup> In particular the ASEAN university network (AUN) is taking care of enhancing regional cooperation in this context by building information networks on the labour market and developing skills.

<sup>37</sup> Testaverde et al., *Migrating to Opportunity*, 248.



the ASEAN Framework Agreement on Visa Exemption was adopted but it is not yet in force.<sup>38</sup>

The ASEAN Agreement on Movement of Natural Persons (MNP)<sup>39</sup> entered into force in 2016<sup>40</sup> and its Annex 1 contains full details of commitments for the temporary entry and temporary stay of natural persons agreed by member states.<sup>41</sup>

The ASEAN MNP makes an explicit reference to the ASEAN Comprehensive Investment Agreement, entered into force in 2012,<sup>42</sup> and its investment chapters. This

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<sup>38</sup> It has been ratified by: (1) Brunei Darussalam: 28 May 2014; (2) Cambodia: 8 October 2012; (3) Indonesia: 2 July 2009; (4) Lao PDR: 13 November 2007; (5) Myanmar: 28 November 2013; (6) Thailand: 2 June 2007; (7) Vietnam: 26 September 2006. It will enter into force when instruments of ratification or approval of all member countries have been deposited with the Secretary-General of ASEAN who shall promptly inform other member countries of such deposit. According to Art. 1,

Member Countries, where applicable, shall exempt citizens of any other Member Countries holding valid national passports from visa requirement for a period of stay of up to 14 (fourteen) days from the date of entry, provided that such stay shall not be used for purposes other than visit.

<sup>39</sup> Entered into force on 14 June 2016. Art. 13: Recognition:

1. A Member State, by agreement or arrangement with another Member State, may recognise the education or experience obtained, requirements met, licences or certifications granted in the other Member State for the purposes of the fulfilment, in whole or in part, of its standards or criteria for authorisation, licensing and certification of service suppliers of the other Member State and subject to the requirements of paragraph 3 of this Article. 2. Where a Member State recognises, by agreement or arrangement with a non-Member State or unilaterally whether in favour of another Member State or a non-Member State, the education or experience obtained, requirements met, licenses or certifications granted in the other Member State or non-Member State, the Member State shall afford adequate opportunity for any other Member State to demonstrate that education, experience, licences, or certifications obtained or requirements met in the territory of that Member State should be recognised. 3. A Member State shall not accord recognition in a manner which would constitute a means of discrimination against another Member State in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services. Where appropriate, recognition should be based on multilaterally agreed criteria. 4. Each Member State shall encourage competent bodies in its territory to enter into cooperation, agreement or arrangement, multilaterally or bilaterally, on recognition of professional: (a) qualification requirements; (b) qualification procedures; and (c) licensing, certification or registration requirements and procedures.

<sup>40</sup> Article 6(2): 'Upon entry into force of this Agreement, the Schedules of Commitments in Annex 1 shall supersede commitments made under the 1995 ASEAN Framework Agreement on Services in relation to mode 4' (Movement of Natural Persons).

<sup>41</sup> Yoshifumi Fukunaga, 'Assessing the progress of ASEAN MRAs on professional services', *ERIA Discussion Paper Series* ERIA-DP-2015-21 (2015), 23–24.

<sup>42</sup> Article 12(1):

This Agreement does not apply to measures adopted or maintained by each Member State to the extent that they are covered by the ASEAN Comprehensive Investment Agreement ('ACIA').

last agreement in fact includes specific provisions aimed to promote the mobility of professionals by facilitating the issuance of visas and of employment passes for ASEAN's skilled workforce.

After this short introduction, the following sub-sections are devoted to exploring the role that MRAs are playing as vehicles of this increasing mobile connectivity in relation to the freer flow of natural persons.

### **Mutual recognition agreements as connecting instruments**

The discussion on MRAs is not always present in the context of multi-level migration governance; the debate usually directs specific attention to bilateral agreements or regional integration frameworks without stressing their MRAs' instrumental role in freeing the movement of professionals.

As stated by Nicolaïdis and Shaffer, recognition 'represents a form of joint governance of extraterritoriality'.<sup>43</sup> Within the mutual recognition framework states and not outside actors become proactive to mutually combine country of origin and country of destination 'control' by institutionalising a cooperative recognition of their regulatory norms.

As a result, when applied to the recognition of education, skills, and professional qualifications, it means that individuals are no longer prisoners of their original polity ... While relying on the passport of home laws and regulations, citizens are also granted a new form of social contract that includes the – still limited – right to choose among those different polities.<sup>44</sup>

There are different definitions adopted in this context: we can refer to academic and professional recognition, and the recognition can take into consideration the amount of work experience acquired. An additional distinction is made between regulated and non-regulated professions. In the first case, foreign workers need to obtain an

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(2) Notwithstanding paragraph 1 of this Article, this Agreement shall apply, *mutatis mutandis*, to measures adopted or maintained under Article 22 of the ACIA (Entry, Temporary Stay and Work of Investors and Key Personnel) affecting the movement of natural persons of a Member State in the territory of any one of the other Member States.

<sup>43</sup> See n. 10 above, Nicolaïdis and Shaffer, 'Transnational Mutual Recognition Regimes', 268.

<sup>44</sup> Nicolaïdis and Shaffer, 'Transnational Mutual Recognition Regimes', 268.

assessment of their qualification; in the second case, they can apply to exercise their profession, even if foreign qualifications can appear to be an ‘informal barrier’ because employers may lack knowledge about their skills.<sup>45</sup>

As described by Nielson, the recognition is very often a ‘complex process’ and one that requires different stages in order to compare the domestic regulations, identify possible inconsistencies and eventually adopt compensatory measures.<sup>46</sup> Then, once the recognition process has been agreed, it requires monitoring and assessment mechanisms. Recognition involves the principle of equivalence<sup>47</sup> or at least some criteria as ‘acceptability’ or ‘compatibility’ of other countries’ regulatory systems.<sup>48</sup>

The practice of mutual recognition surfaced at a bilateral and multilateral level a long time ago.<sup>49</sup>

Mutual recognition agreements or arrangements are based on a high degree of regulatory cooperation between the country of origin and the country of destination<sup>50</sup> in the preliminary phase of identifying the domestic regulatory systems/approaches

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<sup>45</sup> See n. 12 above, OECD, *Making Integration Work*, 7.

<sup>46</sup> Julia Nielson, ‘Trade agreements and recognition’, in *Quality and Recognition of Higher Education: The Cross-border Challenge*, ed. OECD (Paris: OECD Publications, 2004), 155–203, 155.

<sup>47</sup> See the definition adopted by Nielson; see n. 46 above, Nielson, ‘Trade agreements and recognition’, 157:

[they are] understood to mean that, where the host country’s regulatory goal is addressed by home country regulation, the host country should accept the home country’s regulation as equivalent. Where aspects of the host country’s regulatory goals are not met ... the host country is permitted to set additional requirements for recognition (‘compensatory measures’).

See also Juan A. Marchetti and Petros C. Mavroidis. ‘I now recognize you (and only you) as equal: an anatomy of (mutual) recognition agreements in the GATS’, in *Regulating Trade in Services in the EU and the WTO: Trust, Distrust and Economic Integration*, ed. Ioannis Lianos and Okeoghene Odudu (Cambridge: Cambridge University Press, 2012), 425–44.

<sup>48</sup> See n. 10 above, Nicolaïdis and Shaffer, ‘Transnational mutual recognition regimes’, 268.

<sup>49</sup> Beviglia Zampetti, ‘Market access through mutual recognition: the promise and limits of GATS Art. VII’, in *GATS 2000: New Directions in Services Trade Liberalization*, ed. Pierre Sauvé and Robert M. Stern (Washington, DC: Harvard University/Brookings Institution Press, 2010), 285.

<sup>50</sup> Nicolaïdis in particular refers to the concept of ‘regulatory cooperation’ to support the process by ensuring the ‘on-going and systematic exchange of information, mutual monitoring and cooperative enforcement’; Kalypso Nicolaïdis and Joel P. Trachtman, ‘From policed regulation to managed recognition in GATS’, in *GATS 2000: New Directions in Services Trade Liberalization*, ed. Pierre Sauvé and Robert M. Stern (Washington, DC: Harvard University/Brookings Institution Press, 2010), 266–7.

and in the enforcement phase.<sup>51</sup> In practice, we can distinguish ‘automatic mutual recognition’ (‘reflecting full reallocation of authority from the host to the home country jurisdiction’) where the country of destination unconditionally accepts the qualification issued by the country of origin,<sup>52</sup> from ‘managed mutual recognition’, which allows for some degree of discretion by the country of destination. In this case the qualifications of professionals will need to be recognised by the local authorities once individuals have entered the country.<sup>53</sup> For the first approach, an interesting example is the Trans-Tasman Mutual Recognition Arrangement of New Zealand and Australia (TTMRA) that establishes an automatic recognition for professionals registered in Australia or New Zealand.

The second approach can require less automaticity in market access and needs additional compensation measures to address potential gaps or existing differences among regulatory mechanisms developed by the parties to the MRA. The compensation approach facilitates the building of bridges between domestic regulation and ensures guarantees on qualifications.<sup>54</sup>

A range of trade agreements address the recognition of professional qualifications.<sup>55</sup> As described by Zampetti, the ‘awareness of the usefulness of mutual recognition as a trade-facilitating and liberalising tool seems to be growing’.<sup>56</sup>

At the global level, the adoption of MRAs has been identified as more and more relevant for strengthening the effectiveness of the commitments undertaken by countries under GATS<sup>57</sup> Mode 4 on the cross-border mobility of natural persons

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<sup>51</sup> Dovelyn Rannveig Mendoza, Demetrios G. Papademetriou, Maria Vincenza Desiderio, Brian Salant, Kate Hooper and Taylor Elwood, *Reinventing Mutual Recognition Arrangements: Lessons from International Experience and Insights for the ASEAN Region* (Manila: Asian Development Bank, 2017), 3–64.

<sup>52</sup> See n. 50 above, Nicolaïdis and Trachtman, ‘From policed regulation’, 266–7.

<sup>53</sup> Nicolaïdis and Trachtman, ‘From policed regulation’, 267.

<sup>54</sup> See n. 10 above, Nicolaïdis and Shaffer, ‘Transnational mutual recognition regimes’, 268.

<sup>55</sup> See n. 51 above, Mendoza et al., *Reinventing Mutual Recognition Arrangements*, 3. Under Art. VII, 19 member states have communicated 60 notifications covering 205 agreements.

<sup>56</sup> See n. 49 above, Zampetti, ‘2000 market access through mutual recognition’, 293. See n. 46 above, Nielson, ‘Trade agreements and recognition’, 156.

<sup>57</sup> The GATS is a multilateral ‘framework for making commitments to open specific service sectors to foreign suppliers’.

providing services,<sup>58</sup> even if a binding requirement on standards is not included.<sup>59</sup> According to the GATS, Art. VII (Recognition), WTO member states can recognise ‘with regard to education or experience obtained, requirements met, or licences or certificates granted’ without discrimination among World Trade Organisation members.<sup>60</sup> Art. VII(2) requires states parties of a recognition agreement to notify the WTO Secretariat to ‘afford adequate opportunities for other interested Members to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it’.<sup>61</sup>

In most of the cases, as for bilateral or regional trade agreements (RTAs), states parties may refer to the need to negotiate a further agreement instead of including binding provisions.<sup>62</sup> Some scholars argue that their implementation can benefit from the adoption of a free trade agreement because this can increase the adoption of concrete measures by establishing monitoring mechanisms.<sup>63</sup> In particular, ‘government can provide a broader institutional framework to underpin negotiations and give them legal forces’.<sup>64</sup>

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<sup>58</sup> Mode 4 is one of the four modes of supply regulated within the GATS. It refers to the temporary movement of persons as service suppliers.

<sup>59</sup> See n. 49 above, Zampetti, ‘2000 market access through mutual recognition’. See also n. 47 above, Marchetti and Mavroidis, ‘I now recognize you (and only you) as equal’, 421.

<sup>60</sup> Simonetta Zarrilli, ‘Moving professionals beyond national borders: mutual recognition agreements and the GATS’, UNCTAD/DITC/TNCD (2005): 13. See n. 46 above, Nielson, ‘Trade agreements and recognition’, 155–203, 167. The recognition can also happen in an autonomous way if the state notifies such accords, as in the case of Singapore.

<sup>61</sup> See n. 47 above, Marchetti and Mavroidis, ‘I now recognize you (and only you) as equal’, 421.

<sup>62</sup> See Article 1403 (Licensing and Certification) of the United States–Canada Free Trade Agreement, which states that: ‘The Parties shall encourage the mutual recognition of licensing and certification requirements for the provision of covered services by nationals of the other Party.’ In this case the US National Council of Architectural Registration Boards and the Committee of Canadian Architectural Council agreed on the Inter-recognition Agreement in 1994. Also the Closer Economic Relations between Australia and New Zealand recognises at Art. 9 that ‘each Member State is also required to encourage the recognition of the qualifications obtained in the other Member State for the purpose of licensing and certification requirements for the provision of the services’ (Art. 9.2).

<sup>63</sup> Reference is made to the Comprehensive Economic and Trade Agreement (CETA) concluded between the EU and Canada; Madeleine Sumption, Demetrios G. Papademetriou and Sarah Flamm, *Skilled Immigration in the Global Economy, Prospects for International Cooperation on Recognition of Foreign Qualifications* (Washington, DC: Migration Policy Institute, 2013), 13.

<sup>64</sup> See n. 10 above, Nicolaïdis and Shaffer, ‘Transnational mutual recognition regimes’, 268.

## ASEAN mutual recognition arrangements

As mentioned above, within ASEAN a mutual recognition regime formally started in 2005.<sup>65</sup> In 2003, the ASEAN Coordinating Committee on Services created an Ad-Hoc Expert Group on Mutual Recognition to develop MRAs.<sup>66</sup> There is not an extensive literature on the legal character of these arrangements<sup>67</sup> and this deserves additional study. This article suggests that these agreements, concluded among all ASEAN governmental agencies, have been adopted with the intention to create legal relations between them.<sup>68</sup> This implies that the logic of the mutual recognition regime is to be articulated around different types of provisions: some drive individual member states by establishing concrete obligations of result (for instance, adopting and developing mechanisms to ensure coordination) while others include legally binding obligations (recognition).

For specific professions (accountancy, architecture and engineering) the mutual recognition process requires that an individual who is registered and certified in his/her country of origin should apply for regional registration as an 'ASEAN' professional, thus becoming eligible to apply in the country of registration as a registered professional (for instance, a registered foreign architect or registered foreign professional engineer).<sup>69</sup> The regional process can be facilitated by the

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<sup>65</sup> Dovelyn Rannveig Mendoza and Guntur Sugiyarto, *The Long Road Ahead: Status Report on the Implementation of the ASEAN Mutual Recognition Arrangements on Professional Services* (Manila: Asian Development Bank, 2017), 56; Roger Y. Chao, 'Mobility, mutual recognition and ASEAN community building: the road to sustainable ASEAN integration', *Journal of International and Comparative Education* 6, 2 (2017): 105–21, 108.

<sup>66</sup> The following mutual recognition arrangements have been adopted: MRA on engineering services (2005); MRA on nursing services (2006); MRA on architectural services (2007); framework arrangement for the mutual recognition of surveying qualifications (2007); MRA on accountancy services (2009 and 2014); MRA on medical practitioners (2009); framework arrangement for the mutual recognition of dental practitioners (2009); MRA on tourism professionals (2010). These instruments are concerned not only with 'regulated' professionals (e.g. doctors) but also with 'unregulated' professionals (e.g. tourism professionals). See n. 41 above, Fukunaga, 'Assessing the progress of ASEAN MRAs', 23–24.

<sup>67</sup> See n. 26 above, Cremona et al., *ASEAN's External Agreements*; Robert Beckman, Leonardo Bernard, Phan Hao Duy, Tan Hsien-Li and Yusran Ranyta, *Promoting Compliance: The Role of Dispute Settlement and Monitoring Mechanisms in ASEAN Instruments* (Cambridge: Cambridge University Press, 2016), 306.

<sup>68</sup> See the tests of legal character of international agreements described by James E. S. Fawcett, 'The legal character of international agreements', *British Yearbook of International Law* 30, 13 (1953): 385.

<sup>69</sup> Dovelyn Rannveig Mendoza, Maria Vincenza Desiderio, Guntur Sugiyarto and Brian Salant, *Open Windows, Closed Doors, Mutual Recognition Arrangements on Professional Services in the ASEAN Region* (Manila: Asian Development Bank, 2016), 50.

creation of a regional body and a secretariat, as in the case of accountancy, architecture, engineering and tourism.<sup>70</sup> For other professions – dental, medical services and nursing – the ASEAN professional registry has not been created, but the existence of the ASEAN Joint Coordinating Committee together with a national regulatory body has been included in the MRAs.<sup>71</sup>

The current implementation of MRAs is facilitating significant regulatory reviews and the adoption of domestic laws consistent with the regional framework.<sup>72</sup> According to the report issued by the Asian Development Bank, 29 laws have been enacted by member states, and the majority are completely new regulations.<sup>73</sup>

Hamanaka and Jusoh describe the ASEAN approach as a unique model of mutual recognition. They classify it as ‘hub and spoke architecture’ by ‘attempting to establish a quasi-supranational ASEAN-level mechanism’ and to ‘respect members’ national sovereignty, and its national authorities’. In particular, ASEAN member states have refrained from creating ASEAN institutions that can ‘have the ultimate power to approve or disapprove the supply of services by ASEAN qualification holders’.<sup>74</sup>

On the other hand, the recent Asian Development Bank report mentioned above challenged this architecture by highlighting that it more resembles ‘double recognition’ than ‘mutual recognition’. For some specific services it will imply the need to go through the qualification process ‘first at the ASEAN level and then again with the destination-country regulatory authority’.<sup>75</sup> In particular, in the negotiation phase the member states have included in the arrangements the possibility ‘to impose any other requirement or assessment for registration where applicable’ and to reserve

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<sup>70</sup> The ASEAN Architecture Council (AAC), the ASEAN Chartered Professional Engineer Coordinating Committee (ACPECC) and the ASEAN Chartered Professional Accountants Register (ACPAR); the ASEAN Tourism Professional Registration System (ATPRS).

<sup>71</sup> At the regional level, the ASEAN Joint Coordinating Committee on Nursing (AJCCN), the ASEAN Joint Coordinating Committee on Medical Practitioners (HSSWG), the ASEAN Joint Coordinating Committee on Dental Practitioners (AJCCD); and at national level, a nursing regulatory authority (NRA), a professional dental regulatory authority (PDRA), a professional medical regulatory authority (PMRA); Mendoza and Sugiyarto, *The Long Road Ahead*, 7–8.

<sup>72</sup> See n. 41 above, Fukunaga, ‘Assessing the progress of ASEAN MRAs’, 8–9.

<sup>73</sup> See n. 9 above, Hamanaka and Jusoh, ‘The emerging ASEAN approach to mutual recognition’, 3.

<sup>74</sup> Hamanaka and Jusoh, ‘The emerging ASEAN approach to mutual recognition’, 3.

<sup>75</sup> See n. 65 above, Mendoza and Sugiyarto, *The Long Road Ahead*, 15.

‘the right to add requirements that request domestic rules’, with the perverse effect of externalising constraining factors instead of promoting labour mobility.<sup>76</sup>

This tendency on the part of ASEAN member states may risk diluting the effective implementation of regional arrangements and opening the door to a ‘particularist approach’ that refrains from transferring regulatory authority in favour of national prerogatives.<sup>77</sup>

Despite this critique, a potential positive impact at the domestic level emerges from this architecture. The negotiation of MRAs at the regional level offers the concrete opportunity to adapt the national domestic framework by establishing new legal venues for the assessment of foreign qualifications.<sup>78</sup> This perspective should be the starting point for grounding both legal and policy conditions for challenging the status quo and commencing a progressive introduction of the right to recognition in terms of local regulations. This facilitates the initiation of a dynamic dialogue between the local and the regional levels.

### **Mutual recognition regime in the health sector in Thailand**

The analysis now turns to a brief account of Thailand’s initiatives on mutual recognition, with a focus on the medical professions.

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<sup>76</sup> These additional requirements can for instance include the need to pass national licensing exams, or a ‘local language requirement’, or earning a degree from accredited institutions.

<sup>77</sup> See for instance the following provision of the ASEAN Mutual Recognition Arrangement on Medical Practitioners, Art. V: Right to Regulate:

This MRA shall not reduce, eliminate or modify the rights, power and authority of each ASEAN Member State, its PMRA and other relevant authorities to regulate and control medical practitioners and the practice of medicine. ASEAN Member States, however, should undertake to exercise their regulatory power reasonably and in good faith for this purpose without creating any unnecessary barriers to the practice of medicine.

<sup>78</sup> See Art. III of the ASEAN Mutual Recognition Arrangement on Medical Practitioners:

Recognition of a Foreign Medical Practitioner: A Foreign Medical Practitioner may apply for registration in the Host Country to be recognized as qualified to practice medicine in the Host Country in accordance with its domestic regulations and subject to the following conditions ...

The ASEAN Mutual Recognition Arrangement on Medical Practitioners with its provision n. 3.2 establishes: ‘A foreign medical practitioner who satisfies the above conditions *shall be recognised* as qualified to practice medicine in the Host Country’ (emphasis added by the author).



Thailand is one of the three major receiving countries of intra-ASEAN migrants;<sup>79</sup> together, Singapore, Malaysia and Thailand receive 82 per cent of all such migrants.<sup>80</sup> According to the World Bank Group, ‘the number of ASEAN migrants in ASEAN destinations was largest in Thailand in 2015 at more than 3.7 million’.<sup>81</sup> Even if the majority of intra-regional mobility involves unskilled migrants, Thailand is gaining a prominent role as an actor in the regional and global trading system as a result of its rapid economic development ‘as well as advances in information technology and transportation systems’ with an increased cross-border mobility of professional workers.<sup>82</sup>

More specifically, Thailand in recent years ‘has been one of the frontrunners with respect to patient insourcing in Southeast Asia’.<sup>83</sup> Since the 2000s the Thai government has developed an increasing interest in market opening in the context of medical tourism and in being proactive in attracting and treating international patients.<sup>84</sup> This was one reaction to the 1997 Asian economic crisis, which notably affected the numbers of patients treated in private hospitals, thus putting the continued existence of these hospitals at risk.<sup>85</sup> As a consequence, the country started to adopt measures to increase ‘tourism-related activities’ (traditional massage). This resulted in the development of a vision to also attract international medical tourism for elective medical procedures (plastic surgery or assisted reproductive procedures) and this tendency to move from a tourism destination to a medical tourism destination is supported by several ministries (e.g. public health, labour, education).<sup>86</sup> The growth of foreign patients is already generating shortages of personnel, in particular in public

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<sup>79</sup> Followed by Malaysia and Singapore; see Testaverde et al., *Migrating to Opportunity*, 1–2; see Sujinda Chemsripong, ‘Skilled labor mobility in the ASEAN Economic Community (AEC): experience from Thailand labor market’, *Journal of Economics and Political Economy* 3, 4 (2016): 769.

<sup>80</sup> Sujinda, ‘Skilled labor mobility’.

<sup>81</sup> Testaverde et al., *Migrating to Opportunity*, 42.

<sup>82</sup> Supakankunti Siripen and Chantal Herberholz, ‘Transforming the ASEAN Economic Community (AEC) into a global services hub: enhancing the competitiveness of the health services sectors in Thailand’, in *Developing ASEAN Economic Community (AEC) into a Global Services Hub*, ed. Tereso S. Tullao and Hong Him Lim. (Jakarta: Economic Research Institute for ASEAN and East Asia, 2012), 147.

<sup>83</sup> See n. 14 above, ASEAN Secretariat and World Bank, *ASEAN Services Integration Report*, 5.

<sup>84</sup> See n. 82, Siripen and Herberholz, ‘Transforming the ASEAN Economic Community’.

<sup>85</sup> Siripen and Herberholz, ‘Transforming the ASEAN Economic Community’.

<sup>86</sup> According to the report published by the ASEAN Secretariat and the World Bank, ‘medical tourists’ constitute 420,000 (around 30 per cent of international patients). See n. 14 above, ASEAN Secretariat and World Bank, *ASEAN Services Integration Report*, 104.

hospitals, and one way to alleviate this trend will be to increase the demand for the temporary movement of health care professionals across national borders.

In parallel, the health sector also attracted considerable attention at the regional level under AFAS.<sup>87</sup> In fact, the health sector is one of the priorities identified by the ASEAN Framework Agreement on the Integration of Priority Sectors under AFAS, and a Healthcare Services Sectoral Working Group was subsequently set up. In 2006, an MRA was signed on nursing services, and in 2009 one on medical practitioners and dental practitioners. The health sector follows a ‘two-step process’ for its implementation: first, the professional has to acquire a ‘licence’ in the country of origin and, second, if all MRA requirements are met (e.g. length of professional experience), the foreign professional can apply for full recognition and registration in the host country.

Even if the implementation of MRAs could really benefit the Thai domestic market, developments are slow and the framework is quite complex. The unilateral development and implementation reflects some crucial challenges: prevailing differences in the legal schemes adopted at the domestic level by ASEAN member states, in particular in their education systems, and persisting ‘hesitation of the established constituents (e.g. professional associations)’.<sup>88</sup> Very few studies have been conducted to evaluate the initiatives on mutual recognition in the health services, and little attention has been given to methods of examination or language requirements.

In relation to the current situation in Thailand, some preliminary insights can be provided by the content of domestic regulations and the results of a comparative survey conducted by Kittrakulrat et al. in 2014.<sup>89</sup>

Language is a significant element to be considered in promoting the flow of health professionals. It plays a crucial role in the medical licensing examination as it can

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<sup>87</sup> It is important to highlight that at the domestic level AFAS negotiations are ‘led by the Ministry of Trade, even though the implications for migration policies require the involvement of the Ministry of Labour to ensure the development of an appropriate legal framework for the processing of visa and work permit applications’. This is ensured through effective institutional cooperation; Fornalé, ‘The role of regional legal orders’, 19.

<sup>88</sup> Author’s interview conducted with academia stakeholders.

<sup>89</sup> Jathurong Kittrakulrat, Witthawin Jongjatuporn, Ravipol Jurjai, Nicha Jarupanich and Krit Pongpirul, ‘The ASEAN Economic Community and medical qualification’, *Global Health Action* 7 (2014), doi: 10.3402/gha.v7.24535.

have an impact on ‘the quality of care’ in daily communication with patients and their relatives.<sup>90</sup> According to the Thai national regulations adopted for medical,<sup>91</sup> dental<sup>92</sup> and nurse practitioners,<sup>93</sup> all foreigner professionals have to obtain a licence from an approved national body such as the Thai Medical Council<sup>94</sup> and to pass an examination in the Thai language.<sup>95</sup> This represents a significant entry barrier that can limit access to the labour market.

There is a growing need to properly identify the different systems in place on medical qualifications. In fact, even if there was a professional medical regulatory authority in place in the country of origin to confer the professional medical qualification, until now it has not really been possible to ‘compare’ medical qualification systems. Thailand adopts the USA’s three-step approach ‘to check pre-clinical approach, clinical knowledge, and clinical skills’, but in the majority of other countries a one-step approach is adopted.<sup>96</sup> This lack of information may generate widespread concern that foreign professionals may be less qualified than domestic professionals to deliver the same services. This emerging fear of losing regulatory sovereignty is closely connected with the view, as recalled by Zarrilli, that the state has the responsibility ‘to determine the quality of professional services that it is willing to enforce within its territory’.<sup>97</sup>

In addition, the adoption of these regional regulations as MRAs has not had a direct impact on domestic regulatory regimes involved, both migratory and labour.<sup>98</sup> This can be explained by the fact that the progressive liberalisation of highly skilled migrants is not unanimously perceived as a positive factor, and a formal legal

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<sup>90</sup> Kittrakulrat et al., ‘The ASEAN Economic Community and medical qualification’, 3.

<sup>91</sup> Medical Profession Act B.E. 2525 (1982).

<sup>92</sup> Dental Profession Act B.E. 2537 (1994).

<sup>93</sup> Medical Profession Licence Act B.E. 2542 (1999).

<sup>94</sup> Thai Medical Council, Dental Council, Nursing Council or Pharmaceutical Council.

<sup>95</sup> Among ASEAN countries only Vietnam and Indonesia don’t use English at any stage. The Thai Council is conducting a very useful initiative to compare national medical education systems in ASEAN. See n. 69 above, Mendoza et al., *Open Windows, Closed Doors*.

<sup>96</sup> See n. 86 above, Kittrakulrat et al., ‘The ASEAN Economic Community and medical qualification’, 3.

<sup>97</sup> See n. 60 above, Zarrilli, ‘Moving professionals’, 11.

<sup>98</sup> Tilleke & Gibbins, *Thailand Legal Basis*, May 2017, available at [www.tilleke.com/sites/default/files/Thailand\\_Legal\\_Basics\\_0.pdf](http://www.tilleke.com/sites/default/files/Thailand_Legal_Basics_0.pdf) (last visited September 2017).

framework is not always perceived as desirable.<sup>99</sup> The Work of Aliens Act 2551 (Part 2, Sections 9 and 12) does not include any provisions on MRAs.

Maybe this can be explained by the fact that the existing migratory regime can also accommodate highly skilled migrants. The entry and stay of skilled migrant workers is regulated through different legal instruments. The Thai Immigration Act (1979) identifies two kinds of visas (tourist and non-immigrant). The second allows a worker to obtain a permit to work or stay in the country (Section 34, IA 1979) and has to be obtained from the Thai Embassy or Royal Thai Consulate prior to entry in the country. It is interesting to note that the visa for obtaining a work permit is called a 'non-immigrant' visa to highlight the temporary nature of the stay of all migrant workers. In addition, the employee has to obtain a work permit, and for skilled labour there are two options available: the work permit programme or the board of investment scheme. The first option is also available for temporary highly skilled migrant workers, where a labour market test is in place (for instance, the employer has to provide a letter with the reasons for not employing a Thai citizen) and admission requires a job offer. Specific requirements, such as qualification or language skills, can apply for selected professionals.

## **Conclusion**

The emerging concept of 'people-to-people connectivity' in the ASEAN regional project has provided the opportunity to develop a different reading of the role of mutual recognition regimes and their implications for intra-regional mobility regimes.

First the examination of the evolution of mutual recognition agreements (MRAs) has provided a lens for exploring the unique nature of the ASEAN regional project. The analysis revealed how ASEAN intra-regional connectivity still adheres in some way to the so-called 'ASEAN Way' *modus operandi* by accommodating sovereign prerogatives of member states without establishing a supranational form of regional integration with the automatic transfer of regulatory authority at the regional level. At the same time, the ASEAN approach has been augmented by offering member states the opportunity to adopt specific regional legal instruments, such as MRAs. In this context, the ASEAN is progressing in the development of a rules-based framework

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<sup>99</sup> An informal framework can facilitate labour mobility more than an increasing formalised one, where new legal constraints will de facto affect human mobility; author's interview conducted with academia stakeholders.

with the potential to gradually synchronise domestic legal norms, enhance mutual cooperation and generate trust. In fact, a closer examination of the regional framework reveals that this development is ongoing and that it will continue by increasing opportunities to recognise professional qualifications and to facilitate cross-border labour mobility.

Even though the scope of MRAs is quite narrow and progress on their implementation has been limited, this is a small but positive step towards the future consolidation of a legal right to an assessment of foreign qualifications of migrant workers in the region, which will promote legal connectivity. This constructive perspective identifies regionalism as the ‘glue’ that can link different normative levels together to facilitate their interaction.

The Thai experience complements this overview by revealing some key challenges and constraints that affect full access to the recognition process at domestic level and by stressing the relevance of complementarity with the regional regime. In particular, this implementation is affected by a double element: a structural deficit linked to the complexity of domestic education and training systems; and a regulatory deficit influenced by professionals’ fear of losing control over standards and by the need to mitigate the effects of a potential expansion of cross-border competition. At the same time, the analysis reveals the absence at the domestic level of a direct link with migratory regulations, and this constitutes a serious impediment to market access.

The domestic regulatory framework plays a significant role in realising the benefits of ASEAN MRAs and regulatory revisions are crucial to ensure their effective implementation by entering into a direct dialogue with migratory measures. This short overview reveals that much work remains to be done to tackle regulatory barriers affecting human mobility and to ‘clothe ASEAN’ in a legal framework that will allow it to achieve genuine people-to-people connectivity.

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