

Harmonizing Halal in ASEAN: Analysis of Halal Food Guidelines under the ASEAN Way Approach

Eva Johan¹, Maria Jose Plana-Casado²

^{1,2}Wageningen University & Research, Netherlands

eva.johan@wur.nl; maria-jose.planacasado@wur.nl

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Abstract

The research examined how ASEAN is moving towards legislative harmonization in the key economic sector of halal foods. The research investigated how ASEAN has promoted economic integration by building regional consensus regarding controversial issues, such as the definition of halal food, and discuss the role of other international instruments in building regional consensus – the “ASEAN” way. Qualitative methodology was used by integrating a historical, doctrinal, and comparative approach. The first analysis was on the process leading to adopting ASEAN halal food guidelines, which constitute the most concrete output of regional efforts to bring domestic standards closer. The following procedures were to compare and contrast these instruments substantively to identify the areas where new consensus has been found and those where disagreements persist. Finally, the research examined the potential influence of the guidelines adopted by the Codex Alimentarius Commission, the Organization of Islamic Cooperation, and MABIMS in drafting ASEAN instruments. The research concludes that despite of lengthy and difficult road to gaining consensus through the ASEAN way mechanism, member states have successfully agreed on some elements of halal standards. However, the guidelines require member states’ legislation to achieve full harmonization in addition to ASEAN soft law. Moreover, international initiatives have impacted ASEAN’s halal standards in important ways. Some issues regarding harmonization remain, such as mutual recognition and labelling, and require further investigation.

Keywords: ASEAN, codex alimentarius, economic integration, halal, legal harmonization

Introduction

The Association of Southeast Asian Nations is an intergovernmental organization with a legal personality (ASEAN, 2008). The organization has a mission to, among others, create a “highly competitive and economically integrated” (ASEAN, 2008) “single market” (Pelkmans, 2016) of goods, services, and investment within the region. Since adopting its current Charter in 2008, the organization has taken many steps to advance toward this goal, including creating the ASEAN Economic Community (ASEAN, 2003). To this aim, Aminuddin and Purnomo (2017) emphasizes the importance of connectivity between economic actors as alternative to political diplomacy to strengthen the ASEAN’s work and to develop common understanding and collaboration in achieving regional single market.

However, the ASEAN single market is far from becoming a reality. One of the key reasons for this is ASEAN’s extremely limited decision-making powers: its current charter does not give ASEAN supranational legislative powers to adopt secondary legislation to harmonize domestic product standards. Rather, any “ASEAN decision” (regardless of its nature) must be adopted using consultation (first step) and consensus (second step) procedures (ASEAN, 2008).

The importance of consensus in the ASEAN way is such that, there has been “no single legal instrument signed without consensus, even in the economic pillar” (Fukunaga, 2021). Additionally, the Charter (or any other ASEAN legal instrument) does not include a “proper set of rules or a mechanism for [the] authoritative drafting, adoption, interpretation, and implementation” (Desierto & Cohen, 2020) of regional decisions. This approach to regional decision-making is known as the “ASEAN way,” which is said to originate “from the antilegal domestic decision-making culture of many ASEAN members” (Kahler, 2000). The ASEAN way refers to a model of regional integration that emphasizes informality and intensive consultation to identify common interests and lead to consensus in making collective decisions and prioritizes noninterference with its members’ internal affairs. According to Koesrianti (2016), the ASEAN way operates in a way that not to lose everyone’s face, and consent among members, and does not bother with the internal affair of each other. This reality accommodates the fact that ASEAN members consider harmonization politically tricky and heavy-handed (Severino, 2007; Yoshimatsu, 2006). Still, the ASEAN way is said to have consistently influenced regional developments, as it helped create a forum for the discussion of strategic issues for the region by relying on trust and familiarity among its members (Davidson, 2008; Leviter, 2010). This article tests whether such a claim can be extended to the regulation of halal foods.

Promoting legislative harmonization of halal food rules within the region has been repeatedly identified as a key goal of ASEAN (ASEAN, 2015). Bringing halal food legislation closer would facilitate regional cooperation and consequently move the region forward regarding economic integration. Indeed, the economic relevance of the halal food market within ASEAN is paramount: the ASEAN halal food market constitutes almost a fourth of the global halal market, which was valued at US\$ 4.7 trillion in 2021 and is projected to grow to US\$ 6 trillion by 2024 (SESRIC, 2021).

The definition of halal food has historically been controversial, and the lack of agreement at the international level has resulted in significant differences within countries' legislation governing halal food products. These differences are such that national standards have been considered non-tariff barriers to halal food trade among ASEAN partners and at the international level (Asian Trade Center, 2019; Johan & Schebesta, 2022; Yan et al., 2017) and an obstacle in the process of economic integration (ASEAN, 2009). At least four types of trade barriers have been identified: regulation around halal stunning and slaughtering rules, halal certification, halal labelling regime, and mutual recognition mechanisms (ASEAN, 2021).

These barriers have created tension among ASEAN member states. For instance, in 2013, the Thai government publicly complained about the fact that frozen chicken products could not be exported to Brunei Darussalam because of differences in the technical regulations set for those products (Teanravisitsagool, 2013). Similarly, industry actors have repeatedly raised the same issue; differences in members' national halal food certification rules are the main obstacles to marketing their products across the region (Asian Trade Center, 2019; Narjoko, 2015). The ASEAN halal guidelines have developed in order to harmonize halal standards in the region. The guidelines are an essential element in building an integrated market for halal food in ASEAN. In 2019, ASEAN achieved a consensus on halal food standards. The ASEAN halal guidelines are part of a larger plan of action, that aims for halal food cooperation by 2025.

This article investigates the harmonization of halal food by ASEAN, by first, looking at the initial regional regulatory initiatives regarding halal to recognize the ASEAN body in charge of halal decision-making. We then outline the decision-making process under the ASEAN way framework and identify what standards were agreed upon in the 2019 halal guidelines, including whether these comply with relevant international standards or global halal standard initiatives to accommodate the need for the global halal market.

Analytical Framework

The institutional framework governing halal food harmonization efforts in ASEAN is characterized by the fact that ASEAN bodies are composed of staff, which are representatives of its member states. This reality has led some scholars to consider ASEAN as "a regional tool to maximize sovereignty and national interests" (Vandoren, 2005). Furthermore, members' unwillingness to transfer sovereignty, even on a partial basis, to a supranational organization can be considered proof of ASEAN's low-level ambition (Vandoren, 2005). The ASEAN path towards greater integration relies strongly on member states' acceptance and implementation of its decisions.

Soft law instruments have been widely used in ASEAN legal framework to carry out what has been described as "ASEAN's soft law approach based on horizontal integration" (Hsieh & Mercurio, 2019). Guzman and Meyer remark that different definitions of soft law exist. According to the mainstream definition, "soft law consists of law-like promises or statements that fall short of hard law, is more widely used, but some writers define soft law

differently. Rather than focusing on the doctrinal question of whether a rule is binding on states, they focus on the extent to which the obligations imposed are clear or whether the various aspects of an agreement are otherwise likely to constrain state behavior" (Guzman & Meyer, 2010). Although soft law mechanisms are considered dynamic and are accepted especially in International Law (Schwarcz, 2020), in the case of ASEAN, they are often regarded as a key factor stalling its success (Mahaseth & Subramaniam, 2021). Proponents of the approach argue that it can be "gradually realized through the promotion of public awareness, social-economic development, and domestic legislation" (Xue, 2009) of member states. Later, such network effects can push the "adoption and compliance" of a soft law, which in turn can be "strategically exploited to stimulate legal harmonization" (Druzin, 2017).

ASEAN regional cooperation is based on fundamental principles that constitute "the ASEAN way". The latter might be seen as unclear because the approach enshrines informality rather than formal institutions, consensus rather than majority voting, and non-intervention rather than coercion. Despite its 'incompleteness', the ASEAN way has contributed to managing the risk of conflict in the region. However, more than this approach is needed, because the real challenge for economic integration is on the implementation of policies and agreements that have been made under the ASEAN way principle (Permatasari, 2020). The urgency to have a 'more rules-based system' in ASEAN arises particularly in economic cooperation to foster market integration. Economic activities in the region are subject to the international trade system, which is rules-based under the global legal framework. In this regard, ASEAN needs a regulatory harmonization system that can ensure legal certainty and guarantee legal rights. In regard to harmonizing regulations, ASEAN has developed some regulatory regimes, for instance, for medical device products (ASEAN, 2015b), and cosmetic products (ASEAN, 2003b). Such harmonized regulatory regimes are a first step to reducing technical trade barriers and standardizing regional product requirements. Regulatory harmonization akin to these three regimes could be an opportunity for achieving ASEAN halal food harmonization.

Methodology

This research employs a qualitative methodology to analyze harmonization initiatives of halal food in ASEAN and how the decision-making process for halal food under the ASEAN institutional framework is achieved. Content-based comparative analyses are used to analyze policy documents and authoritative texts related to halal standards. Alongside, doctrinal analysis is applied to legal documents. Data is collected from primary sources, the ASEAN halal guidelines, member states regulations and secondary sources.

This study is designed in three steps: First, we investigate a chronological overview of harmonization halal food initiatives in ASEAN by tracing document policy inside and outside ASEAN institutions. The result is to capture and update information on how far halal food harmonization has worked under the ASEAN institutions. Second, we look into the institutional framework on how the consensus regarding halal food is achieved, the bodies

involved, and how the ASEAN way mechanism has been implemented for halal food. It describes the process leading to the adoption of the 2019 ASEAN guidelines for halal food, which is a milestone for halal food regulation at the regional level. In the third step, we analyze and compare the adoption of the ASEAN 1999 and 2019 regional halal food guidelines to bring domestic standards closer to facilitating the intra-ASEAN trade of such goods. We analyze ASEAN guidelines in terms of substance, comparing the latest version of the document to its predecessor. In particular, we identify the areas in which a new consensus has been found and where consensus remains elusive, including discussing the role that similar instruments adopted in other international fora.

To understand the critical changes and consensus achieved under ASEAN institutional framework within member states, this study creates two datasets based on two comparative analyses. First, a comparative analysis of the 1999 and 2019 ASEAN halal guidelines. Second, a comparative analysis of some critical subjects in halal standards from four ASEAN member states: Indonesia, Malaysia, Brunei, and Singapore.

The current research design could be expanded and strengthened but for reasons of practical feasibility were excluded from the scope of the present research. Specifically, we believe that future research should consider supplementing our data with interview data. The Covid-19 pandemic limited our possibilities for doing so but interview with representatives of halal working groups. Another challenge, which is likely to persist, is the access to reliable data from the ASEAN website due to limited access and an outdated file depository.

Analysis

Historical Overview of Halal Food Harmonization Initiatives

The term halal indicates that a product is permissible (or allowed), as opposed to haram, which means forbidden (or not allowed), according to Islamic Law (Tieman & Hassan, 2015). Over the last few decades, private and public rules defining what constitutes halal foods have evolved. Within ASEAN, many governments have adopted domestic legislation regulating elements ranging from primary production to certifying foods marketed as halal (Abdallah et al., 2021).

The harmonization of the legal requirements governing the halal market has been on the agenda for at least 20 years but remains a challenge (SESRIC, 2021). Through the use of a historical perspective, we are eager to examine how the ASEAN way has been utilized to synchronize ASEAN member better states' legislation governing the halal food market and then, through the institutional framework, identify the role that member states and bodies of the regional organization have played in the adoption process.

The path leading to the adoption of the ASEAN 2019 guidelines (ASEAN, 2019) started more than two decades ago: ASEAN member states placed the harmonization of halal

standards on the international agenda as early as the late seventies (Table 1 for an illustrated summary of the key milestones of the process).

Table 1 ASEAN's Initiatives to Harmonize Halal Food Standards

Year	Level	Initiatives
1979	FAO-Codex Committee for Coordination Asia.	Proposed specific labelling with regard to Islamic religion requirements.
1993	FAO- Codex Committee for Food Labelling.	Agreed to study the petition made in 1979.
1995	ASEAN	Establishment of the ASEAN Ad-Hoc working group on halal food.
1997	<ul style="list-style-type: none"> • FAO-Codex Committee • ASEAN 	<ul style="list-style-type: none"> • Issued Codex Alimentarius Guideline for the use of the Term Halal. • Ad-hoc working group on halal food (WGHF) finalized the draft and recommended the ASEAN halal guideline.
1999	ASEAN	SOM-AMAF meeting adopted the first ASEAN halal guidelines.
2000	ASEAN	ASEAN established ASEAN working group on halal food (AWGHF).
2015	ASEAN	ASEAN adopted the AEC Blueprint 2025.
2017	ASEAN	AMAF Meeting adopted the PoA ASEAN Cooperation on halal food 1017-2020.
2019	ASEAN	AMAF Meeting adopted the new ASEAN Guidelines on halal food.
2020	ASEAN	AMAF Meeting adopted the PoA ASEAN Cooperation on halal food 2021-2025.

Source: Authors from FAO and ASEAN documents

Specifically, in 1979, Malaysia proposed to the members of the international Codex Alimentarius Commission (CAC), established under a joint food standards programme of the Food and Agriculture Organization (FAO) and the World Health Organization (WHO), the adoption of international guidelines regarding the labeling of halal meat products (FAO, 1979). However, it was not until 1993 that the Codex Alimentarius Commission moved forward with the Malayan initiative (FAO, 1993), which led to the agreement, in 1997, of the first Codex Alimentarius General Guidelines for the use of the Term Halal (FAO, 1997b). The Codex Guidelines provide a definition of the term "halal", identify lawful sources for the preparation of halal food and drink, and establish basic requirements for the lawful slaughtering of animals. The brevity of the document (in terms of the length of the document and its limited provisions) illustrates the difficulty of reaching an agreement about what constitutes halal food at the international level. The Codex rule of 1997 has not been replaced or amended by any other Codex initiative. The Codex Alimentarius Commission is explicitly recognized under the Sanitary- and Phytosanitary (SPS) Agreement of the World Trade

Organization (WTO), and compliance with international standards grants a presumption of legality under WTO law. Therefore, the Codex Alimentarius Commission has become one of the main normative references for halal food regulation in international economic law (WTO, 1994a; WTO, 1994b).

In 1995, building on the momentum generated by the activities at the Codex Alimentarius Commission, ASEAN started its own path to promote the regional harmonization of halal food requirements. It first created the ASEAN Ad Hoc Working Group on Halal Food Guidelines, whose mission was to negotiate the drafting of regional guidelines that would serve as a practical guide for the food industry and would provide basic criteria for the accreditation of halal food processing establishments (ASEAN, 1999; FAO, 1997b). The Ad Hoc Working Group finalized the drafting of the guidelines in 1997. It was no coincidence that this timeline aligned with the adoption of the Codex instrument: most of the participants of the ASEAN working group were, in fact, also members of the Codex committee drafting the international guidelines (FAO, 1997b).

Two years after the publication of the initial draft, the first ASEAN guidelines for halal foods were adopted. They are formally referred to as the ASEAN's "1999 General Guidelines on Preparation and Handling of Halal Food" (hereinafter referred to as the 1999 Guidelines) (ASEAN, 1999). The adoption of this instrument did not end ASEAN's efforts to bring its members' legislation on halal food closer. In fact, it led to the institutionalization of ASEAN members' cooperation in halal food matters, with the establishment of the ASEAN Working Group on Halal Food (AWGHF) in 2000.

This new working group had a broader mandate than its predecessor: in addition to working on bringing ASEAN member states' halal food laws closer by negotiating a second (more ambitious) version of the guidelines, it was to help create channels to exchange information and to promote regional capacity building regarding halal food regulation (ASEAN, 2005) and to launch the process to draft an ASEAN scheme for the accreditation of halal food establishments.

The next significant effort towards harmonization came in 2015, with the adoption of ASEAN's 2025 Blueprint, which identified "further enhanc[ing] cooperation in production and promotion of halal food and products" (ASEAN, 2015a) as one of the key targets for the regional organization for the next decade. In accordance with the Blueprint, ASEAN's 2017-2020 Plan of Action on ASEAN Cooperation on Halal Food (ASEAN, 2017) was adopted. The 2017 PoA included a "strategic thrust" to identify actions favoring regional standard-setting for halal foods. In addition, the 2017 POA did not limit its scope to legislative harmonisation issues. It also covered topics such as halal food production, food security, and food safety in a Halal context, and among other actions, delineated several programs designed to facilitate small producers and businesses of halal food to meet global standards (ASEAN, 2017). Yet again, it renovated the working group's mandate to update the 1999 ASEAN guidelines to negotiate the regional accreditation scheme for halal establishments already proposed in 2000. In addition, it proposed launching the negotiation of a similar instrument governing halal food certification. In fact, the 2017 PoA was ambitious to the point that, for the first time, it

indicated that mutual recognition agreements within ASEAN could be the way forward to facilitate the trade of halal foods. However, at the time of writing this article, only the efforts to update the 1999 guidelines have been successful—negotiations of accreditation and certification schemes have yet to be launched.

In 2019 – less than two years after the adoption of the first PoA in 2017, and two decades after the adoption of the 1999 ASEAN Guidelines – the revamped ASEAN General Guidelines on Halal Food were adopted (ASEAN, 2019). The 2019 guidelines constitute the most recent output of regional efforts to bring domestic standards closer. This version will likely remain in force for some time, as the 2020 PoA on halal cooperation has excluded guideline renegotiation from the working group’s mandate (ASEAN, 2020).

Institutional Framework of Halal Food

As our chronological overview illustrates, regional harmonization is being promoted using the “ASEAN way,” a diplomatic approach that uses informal discussions to facilitate consensus-based decisions, allowing member states to determine areas of agreement and isolate contentious topics (Leviter, 2010). Within this framework, both the regional organization and its members have a role to play: ASEAN bodies serve as forums for discussion, but the power to make the decisions remains in the hands of its member states. Specifically, we have identified that several ASEAN bodies are involved in the governance regional halal food policy (see Figure 2). Initial political leadership comes from the ASEAN Summit, which is ASEAN’s “supreme policy-making body,” comprised of the heads of state or government of ASEAN member states (ASEAN, 2008). This body sets the organization’s priorities for the halal food market in its ASEAN Economic Community Blueprints. The more recent Blueprint was adopted in 2015 and is known as the “2025 Blueprint.” This Blueprint indicates that strategic measures to promote deeper economic integration within the region should include the enhancement of regional cooperation regarding halal food and drink (ASEAN, 2015a).

ASEAN’s Economic Community Council (AEC) is in charge of leading and coordinating all ASEAN initiatives toward greater economic integration and reporting to the ASEAN Summit (ASEAN, 2008). The AEC is also comprised of representatives of ASEAN member states. Under the AEC, specific “Sectoral Ministerial Bodies” are in charge of designing and leading implementation activities. The Sectoral Ministerial Bodies implement the decisions adopted by the Summit within their respective field, and are in charge of strengthening cooperation within ASEAN members. They report to a specific Community Council (ASEAN, 2008). In the case of halal foods, the relevant ministerial body is the annual ASEAN Meeting of Ministers of Agriculture and Forestry (AMAF). The AMAF divides its activities into individual policy actions, which are spearheaded by the “Special Senior Officials Meeting of the ASEAN Ministers of Agriculture and Forestry” (SOM-AMAF), which is composed of senior officials of ASEAN member states. SOM-AMAF creates and monitors the activities of the halal food working group. It was this body, therefore, that greenlighted the draft of the

2019 Halal Guidelines and sent them for adoption by the AMAF (AFSN, 2003). Finally, it must be noted that national governments are also present at the working-group level via their own ASEAN-based “national focal point,” which is responsible for promoting coordination and communication about national-level implementation.

According to Pasierbiak, integration into the ASEAN common market is more complex than European integration due to the many divergences between member countries, across their economies, politics, religions, and languages. The ASEAN way is an accepted strategy practiced in negotiations between member states. The approach considers the domestic interest as essential than the ASEAN, slowing the ASEAN’s common market. The existing barriers show it (Pasierbiak, 2018). Therefore, any accomplishment achieved by ASEAN is a steppingstone to another step of the market integration goal. As such, consensus on halal food standards can lead to harmonizing regional halal policy.

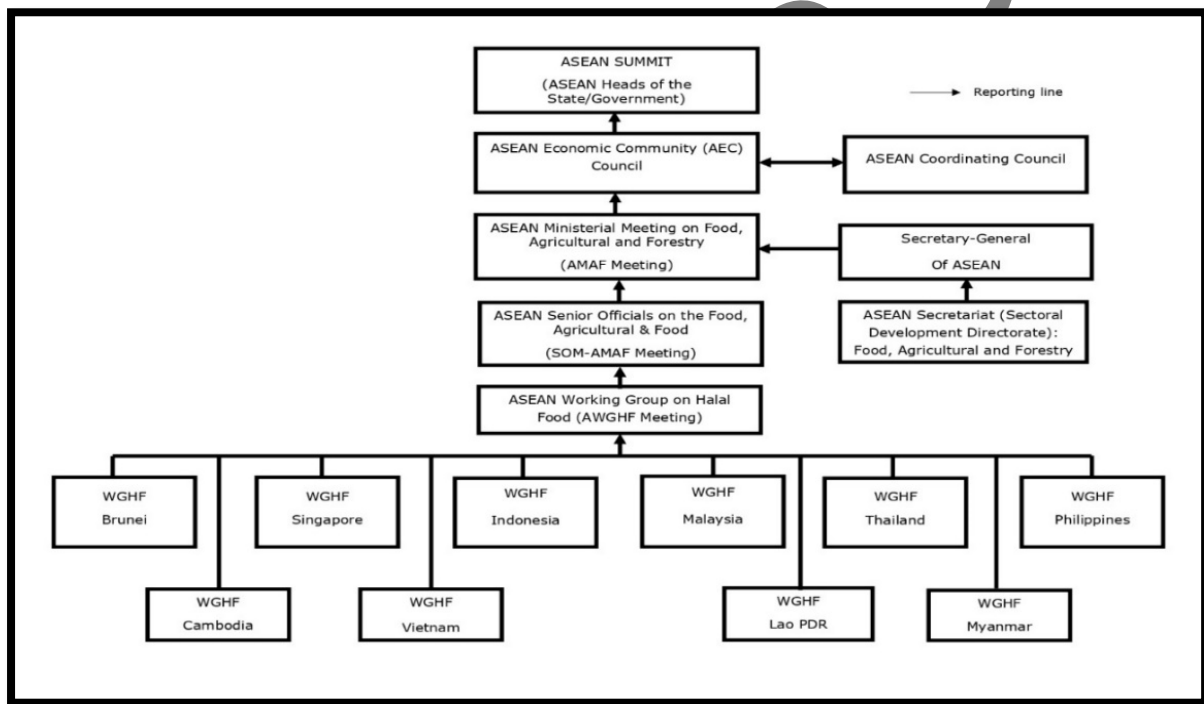


Figure 1 Institutional framework for halal food in ASEAN. Source: Author’s modification from ASEAN Secretariat

ASEAN’s New Consensus on Halal Food Guidelines

Material Scope

ASEAN’s 1999 and 2019 General Guidelines establish the basic requirements that food products should meet in order to be marketed as halal in intra-ASEAN trade. Although the wording of these ASEAN instruments causes them to resemble secondary legislation

(ASEAN, 1999), the Guidelines are not legal instruments generating legal rights and/or obligations for businesses, public authorities or third parties (Davinia, Aziz, & Dehousse, 2016). The 1999 Guidelines explicitly indicated that they were formally adopted to provide the food industry and Halal food accreditation bodies with guidance on what foods could be marketed as 'halal' for intra-ASEAN trade. By contrast, the 2019 version of the guidelines does not include such a specific statement, avoiding the identification of any specific addressee (public bodies, businesses, or third parties). The guidelines cannot force its member states to adopt (or revise) domestic legislation governing market requirements (ASEAN, 1999). Still, they do represent a high level of consensus in that specific matter and aim to nudge ASEAN member states into revising their domestic standards to reflect the consensus reached the regional level and crystalized in the guidelines, to in turn facilitate the development of the regional halal food market.

In light of the potential role of the guidelines as agents for legislative harmonization, the next sections of this paper explore the guidelines in substantive terms to identify the areas in which ASEAN members have been able to build new consensus regarding what characterizes halal foods and where consensus remains elusive.

The ASEAN Guidelines for Halal Food define key concepts and identify the characteristics that must be met by a food product to be lawfully labeled as "halal" within ASEAN. This focus on food labeling was made abundantly clear in the first version of the guidelines: the 1999 text explicitly indicated that it governed "the use of the term 'halal' by the country's Islamic Authority on the label of products" and even designed ASEAN's halal food logo to be used on the labels of such foods - an element that was dropped in the newest version of the guidelines (ASEAN, 1999).

The key difference between the two versions is that the 2019 Guidelines are much more detailed. This increased level of detail is clear when looking at the table of contents and length of both documents. The 1999 Guidelines (which had nine sections and two annexes) provided a definition of shariah law) and "halal" (ASEAN, 1999), a general description of what was to be considered "najs" (ASEAN, 1999) (unlawful, as opposed to halal, which means lawful), the main categories of sources for lawful food and drink (ASEAN, 1999), and the basic requirements for lawful slaughtering (ASEAN, 1999) and manufacturing of lawful products. By contrast, the 2019 guidelines (a document comprised of 12 sections and four annexes, and being almost double the length of the 1999 document) go into much further detail when it comes to providing working definitions for key concepts, detailing the basic requirements for the "receiving, preparation, processing, sorting, determination, packaging, labeling, marking, controlling, handling, transportation, distribution, storage, and service of halal" (ASEAN, 2019). For example, while the 1999 guidelines only defined the terms "shariah law," "halal," and "najs," the 2019 guidelines also provide working definitions for other concepts relevant to the categorization of certain animal sources of food as lawful or unlawful (touching upon, among others, the categorization of amphibious animals, aquatic animals, and genetically modified foods) as well as working definitions relevant to the use of the document itself (defining competent authority, food additives, food chains, food safety, etc). The summary of a comparative study on ASEAN halal guidelines 2019 and 1999 can be seen in Table 2.

Table 2 Comparative study on ASEAN Halal Guidelines

Provision	Comparison (2019 to 1999)
The 2019 Guidelines is an adoption and modification of the OIC/SMIIC 2011 Halal Food Guidelines.	
Scope (Art.1)	'who' and 'which stage.'
Definition (Art.3)	detailed on any terms, expand (e.g., Amphibious animals, safe food, food not containing human parts)
Stunning (Art.4.3.5, Annex B)	not recommend unless necessary, unclear, only allow electrical stunning
Machinery, Utensils, Production Lines (Art.7)*	very detailed
Identification and Traceability (Art.10)*	Clearer
Packaging and Labelling (Art.11)*	strict rules, certification COO
Legal Requirements (Art.12)*	comply with national regulation
Najs (Art.3.11, Annex A)	definition provision, precise explanation
Sources of Food and Drinks (Art.4.1-3)*	complete, complex explanation: source of food, drinks, and rules of slaughtering
The general requirement for Slaughtering (Art.4.3.1-6)	goes stricter and very specific in technical
Slaughtering procedure (Art.4.3.6, Annex C)	pre-, during, and post-
Product and Service (Art.5)*	halal status based on products
Product processing (Art.6)	relatively similar, added safety
Storage, Display, Service (Art.8)	likely the same, added transport aspect
Hygiene, Sanitation and Food Safety (Art.9, Annex D)	stricter, Annex method ritual cleansing

Source: Authors, with 2019 Halal Guidelines from ASEAN Secretariat

Note: (*): point that is not written in the 1999 Guidelines

Consensus Building Regarding the Halal Status of Certain Sources

The concept of "najs" literally means "unclean" and is key to identifying unlawful foods and food sources under Shariah law. In the 1999 guidelines, najs was defined in Article 4 of the document as follows:

According to Shariah Law, najs are:

- a. things that are themselves filthy and cannot be cleaned or cleansed such as pork, blood, and carrion;
- b. lawful foods that are contaminated by filth (*); and
- c. lawful food that come into contact with filth (*).

(*) The term filth is to be interpreted according to Shariah Law.

This definition (using the loose concept of “filth” as the key to identifying najis, with pork, blood, and carrion examples of potential filth sources) left room for varied interpretations regarding what was lawful or not. Just as loosely, the 1999 document provided a simple categorization of lawful sources of food and drink (merely breaking sources into animal, plant, and drinks) (ASEAN, 1999). This choice reflected several differences among ASEAN member states, as much as among Islamic schools of thought, regarding what constitutes lawful food sources. We can find these differences in the implementation of a halal standard. For example, Malaysia’s halal standard is mainly based on Shafie Madhab; meanwhile, Indonesia’s halal standard follows Shafie but also considers other madhabs of Hanafi, Maliki, and Hanbali (Azam, Moha, & Abdullah, 2021). This issue has historically been of paramount importance, to the point that the 1997 Codex Alimentarius’ guidelines on halal food to this day still include a brief foreword stating that the Codex Alimentarius Commission accepted “that there may be minor differences in opinion in the interpretation of lawful and unlawful animals and in the slaughter act, according to the different Islamic Schools of Thought;” and that, “as such, these general guidelines are subjected to the interpretation of the appropriate authorities of the importing countries” (FAO, 1997a).

In the 2019 guidelines, the definition of najis provides a much more precise explanation of the concept. In particular, this indicates that any food products coming from dogs and pigs and their descendants, any liquid or object discharged from the orifices of human beings or animals (such as urine, blood, vomitus, and excrement), halal foods that are contaminated or come into direct contact with things that are non-halal, animals that are not slaughtered according to Shariah Law, food and drink considered, containing or mixed with khamr are to be considered najis (ASEAN, 2019).

Another important consensus related to najis was the decision regarding ritual cleansing. The cleansing method has different rules in which the countries follow the school of thought. The 1999 Guidelines do not specify how ritual cleansing is practiced to clean najis. It happens because, in the Guidelines, the definition of unclean material is interpreted as filth, which member states can interpret differently depending on the madhab they follow. In the 2019 version, the unclean materials have agreed upon the terminology of najis, followed by a ritual cleansing method in accordance with Shariah law. ASEAN member states consent to adopt the Shafie madhab cleansing requirements (ASEAN, 2019). It is questionable to adopt it with Codex requirements. The religious method requires water mixed with soil to get purity of materials according to religious point of view. Therefore, the cleansing method needs to be done by people who know and understand the practice of halal ritual cleansing, so they will not be misled to exercise and contradict the Codex.

The ASEAN member states reached a consent in identification and traceability mechanism for halal food, which it does not arrange in the 1999 Guidelines. The 2019 Guidelines set the rules that halal food shall be easily identified and traced/tracked throughout the production process. The Guidelines require the producer to be responsible for providing “suitable means” to identify halal food’s status. The producer must control and record this “unique identification” of the halal product to guarantee the traceability of halalness (ASEAN, 2019).

In addition, the categorization of food and drink sources as lawful/unlawful is much more detailed, extending to the halal status of processed foods. In a nutshell, the ASEAN Guidelines in both 1999 and 2019 require that the product and its ingredients/components are prepared, processed, or manufactured using equipment and facilities “that are free from contamination with non-halal materials” and are at all times kept separate from non-halal products. They both indicate that, in order to be considered halal, a product must come from a lawful source (as described in the previous section) and comply with additional requirements described in the Guidelines themselves, among others, to the handling, processing, and manufacturing of the food product. While the 1999 Guidelines did not go into any additional detail, the 2019 version into further specifications for the more varied elements. For example, it indicates that oil or other materials in contact with machines and utensils shall be food grade and not made of non-halal materials, while the 1999 version did not include any specification for food contact materials at all.

The 2019 Guidelines illustrate the additional consensus of ASEAN member states on the status of certain food sources. Several pages of the 2019 version of the guidelines are dedicated to exploring the sources of lawful food and drink. They indicate that the source of halal food of animal origin is divided into halal and non-halal animals. It then describes which animals are considered non-halal, including the exception of aquatic animal substances derived from non-halal animals. Additionally, it indicates that all types of blood and its products are non-halal, including any liquid and objects discharged from the orifices of human beings and animals, such as urine, excrement, vomit, and pus. Regarding the lawful sources of drinks, it dictates that all kinds of water and non-alcoholic beverages are halal (ASEAN, 2019).

Most importantly, the 2019 Guidelines reveal that some consensus was built regarding the halal status of genetically modified foods (GMF). Whereas the 1999 Guidelines did not mention genetical modification, the 2019 version provides a working definition of what constitutes a GMF (ASEAN, 2019) and clarifies that GMF is considered halal when made using “genetic materials” (animals or plants) that are themselves considered halal based on the rules set in Article 4 about the sources of halal food and drinks (ASEAN, 2019). This new provision reflects that, by the time of adopting the new ASEAN guidelines, some members had similar views on GMF. Indeed, the national halal standards of Malaysia, Brunei Darussalam, Indonesia, and Singapore provide virtually the same definition for GMF (Deuraseh & Brunei Darussalam, 2020; Department of Standards Malaysia, 2009; MUI, 2013).

The differences between the two versions of the ASEAN guidelines also show how consensus was built regarding the rules on slaughtering and stunning animals to be used to prepare halal foods. In the 1999 version, the agreement was limited: in brief, manual slaughtering was set as a general rule, provided a relatively detailed description of the process for mechanical slaughtering for poultry (using mechanical knives), and included basic rules for electrical and mechanical stunning. The 2019 sections on the rules of slaughtering and stunning are far more detailed, even including the description of stunning mechanisms, slaughtering premises conditions, and certification of the slaughterer. For example, regarding lawful animal stunning, the 1999 Guidelines ruled that equipment used for stunning was to be “under the control of a Muslim supervisor or trained Muslim slaughterman or halal

Certification Authority.” For electrical stunning, “the strength of current used to be controlled by the certification authority” (ASEAN, 2019). The 2019 version goes into detail to the point that it also includes explicit parameters for electrical stunning for different types of animals by detailing the ampere that should be used and the duration (ASEAN, 2019).

Areas Where Lack of Consensus Remains

A comparison between both versions of the Guidelines is also useful for identifying areas of regulation of halal foods that remain contentious among ASEAN member states.

One of the controversial issues is the regulation of the use of alcohol in “halal” products which is said to originate “from the antilegal domestic decision-making culture of many ASEAN members” (Kahler, 2000). It frames a model for regional integration that emphasizes informality and intensive consultation to identify common interests and lead to consensus in making collect ducts. Indeed, ASEAN members follow different fatwa (Ruzulan et al., 2020) on “*khamr*,” (Pauzi et al., 2019), a concept referring to substances able to intoxicate the mind (Deuraseh, 2003), such as most alcoholic products. Most members allow “(non-*khamr*) ethanol/alcohol in food and beverages” (Mansur et al., 2022) within certain limits, with the notable exception of Brunei Darussalam (Deuraseh, 2003). The general rule is that alcohol is allowed in food and beverages if it is present naturally or produced unintentionally, as long as the final presentation of alcohol in the food or drinks is not intoxicating and remains below 1% of alcoholic volume, and as long as the sources for its creation are themselves halal. Still, some differences in alcohol regulation exist among ASEAN countries. For example, in Singapore (MUIS, 2020) and Malaysia (JAKIM, 2011) alcohol can be used in flavor and color additives at less than 0.5% volume as a stabilizer if it is not derived from the winemaking process. In Indonesia, alcohol can be used at less than 1% per volume in food and beverages (MUI, 2020). The lack of consensus has made it so that ASEAN Guidelines do not include an identification of the percentage of the alcoholic volume that is intoxicating. In fact, the guidelines avoid defining the concept of *khamr* altogether. This is not a minor issue, as products that contain *khamr* ingredients are automatically considered unlawful. Still, by indicating that products considered *khamr* are unlawful instead of saying that any product containing alcohol is unlawful, the ASEAN guidelines do not automatically classify alcohol as *najs*.

One might still consider it unclear whether there is an emergent consensus regarding stunning. The 1999 guidelines permit two methods of stunning, electrical and mechanical. The 2019 version only set rules and parameters for electrical stunning. The 2019 version does not recommend animal stunning unless necessary (ASEAN, 2019), and indicates that electrical stunning should be an option only for large animals under specific procedures and mechanisms by considering animal’s type and weight (ASEAN, 2019). The 2019 version does not clearly state whether mechanical stunning is forbidden or simply unrecommended under these guidelines. However, none of the provisions related to stunning prohibits mechanical stunning. Mechanical practice is considered riskier in terms of fulfilling halal requirements.

Improper mechanical stunning can cause the animal not to recover fully or risk death, which means it breaks Shariah rules. Halal slaughtering requires animals to remain alive at the slaughtering moment rather than carrion (*najs*/unlawful) (Riaz et al., 2021). Annex B of the 2019 guidelines indicates that the guidelines implement a ‘reversible stunning’ approach that claims to promote harmlessness to animals, which the guidelines accordingly consider compatible with the Islamic ethic (Chao, 2022)). There is uncertainty and as consequence, a lack of consensus, about whether the 2019 guidelines restrict mechanical stunning or allow it for specific techniques used.

The issue in which the lack of consensus is clearest is that of the potential adoption of a regional halal labeling scheme (and its corresponding certification and accreditation scheme agreed upon at the regional level). The promotion of common halal labeling was the main objective of the 1999 Guidelines, which specifically indicated that they were “to serve as a basic requirement for accreditation of food processing establishments for intra-ASEAN trade in halal food” (ASEAN, 1999) and to guide the countries’ Islamic Authority on the use of the term “halal” on the label of products for intra-ASEAN trade (ASEAN, 1999). Accordingly, the 1999 Guidelines included the design of a regional “ASEAN Halal logo” to be used in the label of the foods (or the premises of food establishments) (ASEAN, 1999), the certification of which was to be carried out by third-party certification bodies accredited for such task based on an accreditation scheme established at the member state level but based on a regional standard. It was within the mandate of the halal food working group to draft regional guidelines designing these certification and accreditation rules (FAO, 2004). The common ASEAN halal logo was never implemented, and there is no mention of this in the 2019 version of the guidelines. So far, it has been reported that the working group has failed to find room for consensus in this regard (International Trade Centre, 2015).

Legal implementation and enforcement of the guidelines in national law is essential. The 1999 version did not consider how to place the ASEAN halal guidelines in the domestic legal system. Experience has shown that ASEAN member states proved reluctant to adopt and implement the 1999 ASEAN halal guidelines. However, the 2019 Guidelines guarantees that the application of the Guidelines will not conflict with domestic halal regulations by emphasizing that halal products shall also comply with relevant requirements or rules at the national level (ASEAN, 2019). Therefore, this provision can only force ASEAN members to reach a consensus to adopt and implement the 2019 Guidelines as a reference for domestic halal guidelines if members are willing to do so. Predictably, referencing the ASEAN halal guideline will therefore be more advantageous for ASEAN member states with less developed halal standards than for members with established halal standards and frameworks.

International Influences on the ASEAN Halal Food Guidelines

The Drafting

The regulatory choices in the ASEAN Guidelines cannot be fully understood without examining the role that international instruments developed outside of ASEAN have played in forging a new consensus about what constitutes halal food at the regional level and whether an effective implementation of the basic requirements set in the 2019 Guidelines is possible. Therefore, we next examine how similar initiatives adopted in other international fora have influenced the drafting of the ASEAN guidelines and identify international instruments that are normative references for the correct implementation of the ASEAN guidelines.

There are a multitude of halal standards used in international trade (Abdallah et al., 2021). Therefore, ASEAN did not start from scratch when drafting its guidelines: the two versions of the Guidelines are based on existing guidelines negotiated in different international fora, with modifications.

The first ASEAN guidelines were “based on and in line with” the Unofficial Meetings of Religious Ministers in Brunei Darussalam, Indonesia, Malaysia, and Singapore (MABIMS-IDB, 2017). Guidelines for Preparation of Food and Drink for Muslims and the Codex General Guidelines for Use of the Term “Halal” (ASEAN, 1999). The role of Codex Standards is unsurprising, as the 1999 version of the Guidelines was drafted in parallel to the drafting of the 1997 Codex Standard on halal foods by a group of participants that had (mostly) also been part of the working group drafting the Codex Standard (FAO, 1997b). MABIMS’ influence in ASEAN regulation was also predictable, given that MABIMS guidelines or reports are often used to reference halal harmonization in ASEAN (ASEAN, 1999; MABIMS-IDB, 2017).

The Codex Alimentarius standard on halal is limited to issues of the term halal. This leaves out halalness throughout the entire food chain and excludes some halal requirements under Sharia law, for instance, regarding *zabihah*/slaughtering, stunning, traceability, and packaging materials. A relatively strong consensus is that a uniform global halal standard will be nearly impossible to achieve. In the context of the Codex Alimentarius, Egypt made efforts to push for harmonized guidance on halal products; to date, this initiative is stranded (FAO, 2019). Therefore, regional harmonization of a halal standard that references international Islamic organizations might be an alternative in this respect.

The updated Guidelines of 2019 identify a different source for the drafting of the revised basic requirements for halal food: they are a modified adoption of the (OIC/SMIIC) 1:2001 standard of the Organization of Islamic Cooperation/Standards and Metrology Institute for Islamic Countries (SMIIC, 2017). In fact, the 2019 ASEAN guidelines can be considered a regional adaptation of the OIC standard, where definitions and rules are amended, improved, or further explained to obtain a more detailed rule that matches ASEAN member states’ positions. For example, the ASEAN version replaces all mentions of “Islamic rules” in the SMIIC rule with “Shariah Law” and replaces references to the “adult Muslim” with “a practicing Muslim who is mentally sound (*aqil*) and of age (*baligh*)”. It also makes several modifications concerning the substantive elements of the rules: for instance, it amends specific slaughtering requirements and provides a more detailed identification of lawful sources for halal food and drink (ASEAN, 2019).

The fact that both guidelines build on consensus already reached in international fora for Muslim countries reflects the fact that such organizations (where membership is based on shared religious belief instead of geography) create opportunities for ASEAN members to discuss controversial issues by providing a different forum that is isolated from controversies that may arise in regional discussions.

Work such as the SMIIC is a valuable way of defining halal standards that are demonstrably backed by a large part of the Islamic Community. SMIIC standard develops toward existing standards by considering all schools of thought (Azam et al., 2021).

The Application: International Law as Normative Reference

The 1999 ASEAN guidelines explicitly state that they are to be “used together with” national and international instruments governing the food market (ASEAN, 1999). This generic statement is reaffirmed in a more concrete manner further in the document, which provides that all foods shall be prepared, processed, packaged, transported, and stored in such a manner that they comply with the hygiene and sanitary requirements of each Member Country and Codex General Principles on Food Hygiene and other relevant Codex Standards (ASEAN, 1999). This statement might suggest that the instruments adopted by the Codex Alimentarius Commission were to be considered normative references for the ASEAN guidelines. In practice, controversy arose in the region regarding whether Codex rules were to be considered to complement ASEAN requirements, as the 1999 Guidelines did not identify Codex rules individually (by name or number), but simply indicated that foods should comply with ‘relevant’ Codex Standards (ASEAN, 1999).

As a soft law instrument, the halal food guidelines are not enforceable by ASEAN. Rather they confirmed its members’ consensus on certain issues. As such, the guidelines should apply together with the individual legislation and existing national halal requirements. The products produced in ASEAN should comply with domestic and regional harmonization standards.

The adoption of Codex rules is significant. In the words of the FAO, “[a]lthough Codex rules lack legal force, it has been an integral part of international trade framework to prevent and assist trade dispute” (FAO, 2016). Codex is used as a reference by the WTO court to determine standards for specific foods. Codex can “scientifically justify norms” (FAO, 2016) of technical assessment in the SPS and TBT Agreement.

In order to clarify the situation, the 2019 version of the ASEAN Guidelines includes a specific section on applicable other legal norms, which states the following:

The following referenced documents are indispensable for the application of this guideline.

The latest edition of the referenced document (including any amendments) applies.

- CXS 1-1985, General standard for the labeling of prepacked foods;
- CXC 1-1969, General Principles of Food Hygiene; and

- CXC 58-2005, Code of hygienic practice for meat.

Additionally, the 2019 Guidelines explicitly identify that Codex rules are to be applied together with the ASEAN Guidelines regarding three different issues: First, regarding the safety assessment of GMF, the updated guidelines indicate that “the assessment of safety of the GMO should be done in accordance with relevant CODEX guidelines or equivalence” (ASEAN, 2019). In specific, the reference is pointing to Codex Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants (CXG 45-2003), Codex Guideline for the Conduct of Food Safety Assessment of Foods Produced Using Recombinant-DNA Microorganisms (CXG 46-2003), and Codex Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Animals (CXG 68-2008) (ASEAN, 2019), the Guidelines hold that halal food shall comply with the hygiene and sanitary requirements of “Codex CAC/RCP 1 and other relevant Codex Code of Practices”. The references include but are not limited to the General Principles of Food Hygiene (CXC 1-1969) and Code of Hygienic Practice for Meat (CXC 58-2006), as mentioned above. Third, the 2019 Guidelines indicate that CAC/RCP 1 is also relevant to determining “the principles and specifies basic requirements for the design and implementation of a food traceability system for halal food” (ASEAN, 2019). The 2019 Guidelines adopted three international standards to ensure product design and traceability during the halal production process. They are General Standard for the Labelling of Prepacked Food (CXS 1-1985), the Standard for Requirements for any organization in the food chain of Food Safety management systems (ISO 22000), and General principles and basic requirements for system design and implementation for Traceability in the feed and food chain (ISO 2205) (ASEAN, 2019). The 1999 Guidelines did not provide a specific reference to the Codex rules on traceability.

In regards to hygiene and sanitary requirements, for example, the animal slaughter must comply with standard CXC 58-2005, and the condition of the slaughtering premises must satisfy minimum requirements of international standard CXC 1-1969. In addition, packaging, labeling, and transportation must comply with relevant codex standards, including General Guidelines on Claims (CXG 1-1979) and CXS 1-1985. For example, labeling information must be on the container for pre-packaged or accompanying halal food documents for non-retail containers (ASEAN, 2019) at the distribution and transportation stage. In contrast, the 1999 Guidelines did not cover packaging materials and design standards.

By listing relevant Codex standards, ASEAN clarifies that those details that are not included in the regional guidelines are to be considered regulated in accordance with Codex law. This is a choice that not only nudges member states into making sure that their domestic standards are aligned with Codex but also conveys to the international community that the ASEAN regional requirements meet international standards.

Conclusions

This paper examines how ASEAN has been working towards an economically integrated halal food market, “the ASEAN Way.” The process described in this paper illustrates how ASEAN’s decision-making works in matters of timeline, parties involved, and the nature of the output. We find that the ASEAN way decision-making is characterized by (i) a lengthy and intensive consultation process carried out at the regional level but controlled by member states, (ii) which results in the adoption (by consensus) of soft-law instruments defining regional requirements for halal foods, (iii) without an enforcement mechanism.

The analysis also shows that initiatives at the international level, which are negotiated outside of ASEAN, have been key to achieving ASEAN milestones: ASEAN did not commit resources to work on their Guidelines until the Codex Alimentarius Commission launched the negotiation of its Codex rule for halal foods. The two versions of the ASEAN guidelines are based on and complemented by Codex rules and similar documents negotiated and adopted in other international fora (specifically, MABIMS and the OIC).

We conclude that the evolution of the ASEAN guidelines shows how the ASEAN Way can facilitate consensus-building regarding controversial areas of halal food regulation. However, this progress partially depends on international developments in other fora close to ASEAN.

Substantively, the most relevant developments between the two versions of the Guidelines include the advances made regarding the categorization of different sources of food and drink, the technical requirements applying to the lawful stunning and slaughter of animals, and the clarifications regarding the presence of *khamr* in food and drink. The later examples also show that regional guidelines build on similarities in interpretation of Islamic Law, even in areas where full agreement is not yet possible.

Additionally, a key success of the negotiation process is clarifying the role that international instruments (particularly Codex standards) play in implementing the Guidelines. The clarification of the role of Codex law is not a minor accomplishment, as the use of Codex references as international trade standards is key to penetrating the global halal food market; hence, the Guidelines are a vehicle for ASEAN-made halal products to enter the global halal food market.

Notwithstanding these successes, our analysis shows that fundamental differences regarding halal food regulation remain, particularly regarding the design of a regional halal labeling and a certification and accreditation scheme. In this context, the current ASEAN PoA for halal foods recommends exploring the potential of bilateral mutual recognition agreements as a hard-law tool to facilitate regional trade. Considering this, it may be argued that ASEAN may have hit the end of the road regarding promoting legislative harmonization in the halal food market using soft-law tools. This is an important avenue for future research.

Conceptually, harmonizing halal standards promotes greater unity and cooperation among ASEAN member states. It helps establish a common understanding and approach

towards halal certification, which in turn can facilitate trade and investment within the region. Practically, harmonizing halal standards can also have significant economic benefits. With the halal market growing rapidly worldwide, ASEAN members adopting harmonized halal standards can tap into this lucrative market more effectively. Additionally, harmonized halal standards can help to reduce costs and enhance efficiency for businesses operating in the region.

Studying harmonizing halal in the ASEAN framework under ASEAN Way is a worthwhile endeavour with conceptually and practically significant benefits. It is an important step towards greater unity and cooperation in the ASEAN region and can help to unlock new economic opportunities for member states.

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ABOUT THE AUTHORS

Eva JOHAN is PhD Candidate at the Law Group of Wageningen University in the Netherlands and a lecturer at the Law Faculty of Universitas Sultan Ageng Tirtayasa (Untirta), Banten, Indonesia. Her research interest includes International Law, International Economic Law, WTO Law, and ASEAN Law.

María José PLANA-CASADO is an assistant professor of Law at the Law Group of Wageningen University in the Netherlands and a board member of the Bioethics & Law Observatory of the University of Barcelona. Her main research interest is in comparative food law, the regulation of digital technologies, and sustainable public procurement.

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