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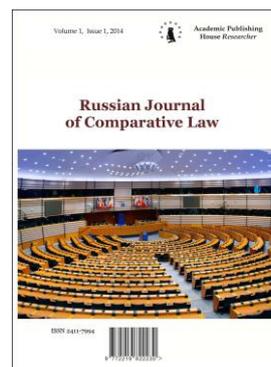
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Articles and Statements

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On the Eurasian Economic UnionPavel N. Biriukov ^{a, *}^aVoronezh State University, Russian Federation**Abstract**

The article deals with the questions of creating the Eurasian Economic Union (hereinafter – the EEU, the Union). The author overviews the history of formation of the EEU and studies legal foundations of Eurasian cooperation. The competence of the Union as an international organization is examined in detail. The author reveals the differences between the concepts of coordinated policy, coherent policy, and common policy of the Union. The main attention is devoted to the analysis of the institutions and legal system of the EEU.

Keywords: the Eurasian Economic Community, the Eurasian Economic Union, the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council, the Eurasian Economic Commission, the Court of the EEU.

1. Introduction

Russia developed deeper relationships with separate states of the former Soviet Union. On 29 March 1996 Russia, Belarus, Kazakhstan, and Kyrgyzstan signed the Treaty on Deepening integration in economic and humanitarian fields [1]. On 26 February 1999 the Agreement on the Customs Union and the Common Economic Area was signed [2]. The individual republics having come from the former Soviet Union became partners outside the CIS, practicing the so-called “enhanced cooperation”. On 10 October 2000 Belarus, Kazakhstan, Kyrgyzstan, Russia, and Tajikistan signed the Agreement on the Establishment of the Eurasian Economic Community [3]. A new international organization – the Eurasian Economic Community was set up. In 2006 the Treaty of 2000 had been amended. In October 2007 the leaders of Belarus, Kazakhstan, and Russia signed the Treaty establishing a single customs territory and formation of the Customs Union (hereinafter – the CU) [4]. The relevant international treaties and bodies were created by the CU. Since 1 July 2010 on the territory of Russia and Kazakhstan the Customs Code of the CU 2009 became applicable [5] and since 6 July 2010 this Code operates throughout the whole territory of the CU.

Since 1 January 2012 17 new international treaties came into force which meant the further operationalizing of the Common Economic Area (hereinafter – the CEA). Since February 2012 the

* Corresponding author

E-mail addresses: birukovpn@yandex.ru (P.N. Biriukov)

Eurasian Economic Commission (hereinafter – the EECn) started its work. On 18 November 2011 Belarus, Kazakhstan, and Russia signed a Declaration on Eurasian economic integration [6]. According to this document by year 2015 the creation of a new organization – the Eurasian Economic Union – was planned.

2. Materials and methods

The main sources of this study are the official documents of the EEU as well as the academic articles, and archive materials. The study uses the basic research methods: problem-chronological, historical and situational, systemic methods, and the method of comparative legal studies. The author's arguments are based on problem-chronological approach. The use of historical and situational method allows to reproduce the assessment approach to the problem of legal regulation of the EEU. Method of comparative law defines the difference in views on actual rules of activity of EEU's bodies. Multidisciplinary systematic approach allows using the techniques and knowledge from a variety of disciplines, i.e., international law, civil law, administrative law etc., in order to deal with the present research agenda.

3. Discussion

I. The Eurasian Economic Union: general observations

On 29 May 2014 the Presidents of Belarus, Kazakhstan, and Russia signed the Treaty on the Eurasian Economic Union [7] (hereinafter – the 2014 Treaty, the Treaty). This Treaty 2014 represents a legal basis for the establishment of the Eurasian Economic Union. As an international organization, the Union has the right to cooperate with other states and international integration organizations. It has the right, to conclude treaties on matters within its competence [11]. The procedures for international cooperation of the Union are established by the decision of the Supreme Eurasian Economic Council (hereinafter – the SEEC, the Supreme Council).

The process of concluding treaties with a third party is determined by an international agreement within the Union. The negotiations regarding such draft treaties are implemented on the basis of the SEEC decision after the completion of the relevant domestic procedures within the member states. The expression of consent of the Union to be bound by an international treaty with a third party, as well as the issues of termination, suspension, or withdrawal from such a treaty is also practiced on the basis of the decision by the SEEC after the completion of domestic procedures.

The membership in the Union is open to any state that shares its aims and principles and on the terms agreed between the member states. In order to stand as a candidate for the membership in the Union, the state should send an application to the Chairman of the SEEC. The decision on granting a status of a candidate for membership in the Union to the state is adopted by the Supreme Council. A Working Group consisting of representatives of the candidate state and the member is set up in order to examine if the candidate's national system is compatible with the principles and obligations arising from the law of the Union. The draft program of action for the entry in the Union, and a draft international treaty on accession is also elaborated by the Working Group. An Action Program should be approved by the Supreme Council. The Working Group regularly reports before the High Council on the program of action. The Supreme Council makes decision on signing a treaty on joining of the candidate state to the Union which is subject to ratification (Art. 108 of the Treaty).

On 1 January 2015 the treaty establishing of the Eurasian Economic Union came into force. The next day Armenia joined the EEU [8]. On 29 May 2015, in accordance with the Treaty of Accession to the EEU, Kyrgyzstan become the fifth member of the EEU [9]. Any state may request from the Chairman of the Supreme Council granting the status of an observer state within the Union.

II. Bodies of the Union

The following bodies represent the institutional basis of the Union:

- 1) the Supreme Eurasian Economic Council (Supreme Council, SEEC);
- 2) the Eurasian Intergovernmental Council (EIC);
- 3) the Eurasian Economic Commission (EEC); and
- 4) the Court of the Eurasian Economic Union (Court).

The Supreme Council composed of the heads of the member states is the supreme decision-making body of the Union. The meetings of the SEEC are held annually. The Council has the right to cancel or modify the decisions taken by the Intergovernmental Council or the Commission. The SEEC makes decisions and orders by the consensus. The Supreme Council shall:

- a) determine the strategy, direction, and prospects for the formation and development of the Union and make decisions aimed at achieving the goals of the Union;
- b) approve the composition of the College Board and assign responsibilities among the members of the College of the Commission;
- c) appoint the judges of the Union Court based on the submissions by member states;
- d) approve the budget of the Union, adopt the Regulation on the budget of the Union, and the report on the budget of the Union;
- e) determine the order of admission of new members to the Union and the termination of membership in the Union;
- f) decide on granting or revocation of an observer status or a candidate status for accession to the Union;
- g) make decisions in the negotiations with a third party on behalf of the Union, including the conclusion of international treaties with the Union, and conferring the right to negotiate, as well as expressing the consent of the Union to be bound by an international treaty with a third party, or termination, suspension, or output of an international treaty.

The Commission is a permanent governing body of the Union. It consists of the Council and the Board. The Commission issues decisions, orders, and recommendations. Decisions, directives, and recommendations of the Board of the Commission should be made by consensus. Decisions, directives, and recommendations of the College of the Commission should be made by a qualified majority or by consensus.

The Eurasian Intergovernmental Council consists of the Heads of Government of the member states. It convenes its meeting at least twice per year. The Intergovernmental Council shall:

- a) ensure the implementation and enforcement of the 2014 Treaty and international treaties within the Union, as well as the decisions of the Supreme Council;
- b) examine the proposals of the Board on the issues where the Council or the Commission have no consensus;
- c) consider the proposals by a member state relating to cancellation or changing the decisions by the Commission, or, if no agreement is reached, introduce such proposals to the Supreme Council;
- d) exercise other powers stipulated by the 2014 Treaty and international agreements within the Union. Intergovernmental Council may suspend, cancel, or modify the decisions of the Commission. Intergovernmental Council takes decisions and orders by the consensus.

The Court is a permanent judicial body of the Union. Composition, powers, procedure, functioning, and the formation of the Union Court are determined by the Court Statute (see Annex 2 to the 2014 Treaty).

The Court resolves disputes arising in connection with the implementation of the 2014 Treaty, international treaties within the Union and/or decisions of the bodies of the Union:

- 1) upon a request of a member state:
 - on compliance with an international treaty within the Union or its certain provisions with the Treaty;
 - on observance of the Treaty, international treaties within the Union and/or decisions of the bodies of the Union, as well as certain provisions of these international treaties and/or decisions by another member state;
 - on compliance with a decision of the Commission or its certain provisions with the Treaty, international treaties within the Union and/or decisions of the bodies of the Union;
 - on challenging actions (omissions) of the Commission;
- 2) upon a request of an economic entity:
 - on compliance with a decision of the Commission or its certain provisions directly affecting the rights and legitimate interests of the economic entity in the sphere of business and other economic activities with the Treaty and/or international treaties within the Union if such a decision

or its certain provisions is in violation of any rights and legitimate interests of the economic entity envisaged by the Treaty and/or international treaties within the Union;

on challenging actions (omissions) of the Commission directly affecting the rights and legitimate interests of the economic entity in the sphere of business and other economic activities, if such actions (omissions) are in violation of any rights and legitimate interests of the economic entity envisaged by the Treaty and/or international treaties within the Union.

For the purpose of this Statute, an economic entity shall refer to a legal person registered under the legislation of a Member State or a third state or a natural person registered as an individual entrepreneur in accordance with the legislation of a Member State or a third state. The Member States may direct to the Court any other disputes, the resolution of which by the Court is expressly provided for by the Treaty, international treaties within the Union, international treaties of the Union with a third party or other international treaties between the Member States.

III. The competence of the EEU

The Union ensures the freedom of movement of goods, services, capital and labor, a coordinated, coherent and common policy in the fields of economy, certain contracts and contracts within the Union [12].

The Member States carry out coordinated or agreed policy within the scope and limits determined under this Treaty and international treaties within the Union. In other spheres of the economy, the Member States seek to implement coordinated or agreed policy in accordance with the basic principles and objectives of the Union.

"Common policy" is implemented by the Member States in certain spheres as specified in the Treaty and envisaging the application of unified legal regulations by the Member States, including on the basis of decisions issued by Bodies of the Union within their powers.

"Coordinated policy" implies the cooperation between the Member States on the basis of common approaches approved within Bodies of the Union and required to achieve the objectives of the Union.

"Agreed policy" is implemented by the Member States in various areas suggesting the harmonisation of legal regulations, including on the basis of decisions of the Bodies of the Union, to the extent required to achieve the objectives of the Union.

The creation of the Union means that:

- a) a single internal market for goods and services is operates;
- b) the Customs Union of Belarus, Kazakhstan, and Russia operates;
- c) the Common Customs Tariff (hereinafter, the CCT) and other common measures regulating trade in goods with third parties are applied. The CCT is a set of the rates of customs duties applicable to goods imported (exported) into the customs territory of the Union from third countries and classified, in accordance with the Single Commodity inventory of foreign economic activities of the Eurasian Economic Union;
- g) a unified customs regulations are carried out;
- d) free movement of goods between the territories of the member states without customs declaration and state control (transport, sanitary, veterinary and sanitary, phytosanitary quarantine) is ensured.

Paid import duties (a compulsory payment that is levied by the customs authorities of member states in connection with the importing goods into the customs territory of the Union) and other charges should be equivalent enrollments and distributed between the budgets of member states, in accordance with the Annex 5 to the 2014 Treaty. The conditions for the creation and functioning of free (special) economic zones and free warehouses are determined by international treaties within the Union.

The Union shall adopt measures to ensure the functioning of the internal market. Domestic market ensures the free movement of goods, persons, services, and capital. Import and export customs duties or equivalent duties, taxes and fees, non-tariff measures, special protective, antidumping and countervailing measures, are not applied within the framework of the internal market in mutual trade of the state.

In the Union a unified customs regulation is carried out, in accordance with the Customs Code of the Eurasian Economic Union [10], international treaties, acts constituting the right of the Union, and the provisions of the 2014 Treaty.

Foreign policy is implemented by the Union autonomously or jointly with the member states in the areas in which the organs of the Union shall make decisions, mandatory for member states, international agreements with third-party participation in international organizations or independent application of the measures and mechanisms of foreign trade policy. The Union is responsible for the fulfillment of obligations under international treaties concluded between him and realizes its rights under these contracts.

With respect to foreign trade in the Union the MFN is applied in the understanding of the General Agreement on Tariffs and Trade 1994 (GATT 1994) in the cases and conditions where the use of MFN stipulated by international treaties of the Union or the Member States with a third party.

The free trade regime in goods (within the meaning of GATT 1994) can be installed in a trade with a third party, on the basis of an international treaty of the Union with it subject to the provisions of Art. 102 of the Treaty. There are tariff preferences in the Union with respect of goods originating in developing countries and/ or the least developed countries. Tariff preferences, i.e., exemptions from import duties or reduce import duties on goods originating from countries forming together with the Union of a free trade zone, or reductions of import duties on goods originating from developing countries that are users a unified system of tariff preferences Union and (or) the least developed countries - users a unified system of tariff preferences Union.

On the territory of the Union the common rules of determination of the origin of goods imported into the customs territory of the Union shall be applied.

If the possibility of retaliatory measures is provided, in accordance with an international treaty of the Union with a third party and/or the member-states with third parties, the decision to impose such measures in the customs territory of the Union is adopted by the Commission. The Commission also decides on increasing import duties, introducing quantitative restrictions, temporary suspension of preferences or acceptance within the competence of the Commission of other measures affecting the results of foreign trade with the State.

In the area of customs and tariff regulation, the Commission carries out the main powers. It should:

- maintain a single commodity inventory of foreign economic activity and EEU`s Common Customs Tariff;
- set import duties; determine the cases and conditions of tariff preferences; define the procedure of applying tariff preferences;
- determine the conditions and procedures for applying a uniform system of tariff preferences of the Union, including claims of a developing country, i.e., a single user system of tariff preferences of the Union; least developed countries, i.e., users of a unified system of tariff preferences of the Union;
- draft a list of products originating from developing countries or least developed countries in respect of which the importation into the customs territory of the Union of tariff preferences;
- establish tariff quotas when a tariff quota volume distributes between member states, specify the method and procedure of the tariff quota volume distribution among participants of foreign trade activities, and if necessary distribute volumes of tariff quotas between third countries or shall act so that member states would define the method and procedure for allocating tariff quotas among participants of foreign trade activities, and if necessary, allocate tariff quota volume between third countries.

The principles of information exchange within the Union, as well as functioning of an integrated information system are defined in Annex 3 to the 2014 Treaty.

The Union technical regulations have direct effect on the territory of the Union. Order of implementation of the technical regulations of the Union and transitional provisions are determined by the technical rules of the Union and/or an act of the Commission.

Health, animal health, and quarantine phytosanitary measures applied within the Union are based on international and regional standards and guidelines. The agreed policy is implemented via joint implementation of international treaties and acts of the Commission by member states.

States of the Union pursue a coordinated policy aimed: a) to protect the rights of consumers, in accordance with the 2014 Treaty and the legislation in accordance with Annex 13 to the Treaty; b) monetary policy; etc.

The legal framework for trade in services, facilities, activities, and investments in the member states is determined by the Annex 16 to the 2014 Treaty.

To ensure the effectiveness of cooperation, including the exchange of information, the competent authorities of the Member-States conclude agreements.

Administrative cooperation in the framework of the Union includes: a) an operational exchange of information between the competent authorities of the member states and developing the services sector in relation to specific market participants; b) establishment mechanisms for preventing violations by the service and goods providers of legitimate rights and interests of consumers, *bona fide* market actors, as well as public (state) interests.

The competent authorities of member states may ask the competent authorities of other member states information in the framework of the concluded agreements, including:

a) on the identities of entities in those other member states that have supplied services on the territory of the first member state, and, in particular, the confirmation that such a person is established in their territories;

b) the permits issued by the competent authorities, and the types of activity for which permits have been issued;

c) on administrative measures, penal sanctions, or decisions on the recognition of insolvency of persons who have been accepted by the authorities in respect of the person and which directly affect his competence or professional reputation.

The Commission promotes the development and participates in the process of maintaining information systems of the Union on these issues.

Member states within the Union coordinate regulation of financial markets. In order to create the conditions of the shared financial market for the free movement of capital states of the Union shall apply:

a) the exchange of information, including confidential information between the competent authorities of the member states on the management and development of banking, insurance, and activities on the securities market, as well as control and supervision, in accordance with an international agreement within the framework of the Union;

b) agreed actions to discuss problems in the financial markets, and to develop proposals to address them;

c) performing authorized mutual consultation on regulation of banking, insurance, and activities on the securities market.

Goods which are imported from the territory of one member state to the territory of another member state are subject to indirect taxes. States in mutual trade levy taxes, fees and other payments, based on the principle of equal treatment.

Currently, the Union is developing cooperation with the third countries. In 2015, the Agreement on a free trade zone was signed with Vietnam. Similar agreements are elaborated with Egypt, Iran, Mongolia, Thailand, and Serbia.

IV. EEU Law: transitional provisions

The Union's law consists of:

a) the 2014 Treaty;

b) international treaties within the framework of the Union;

c) treaties of the Union with a third party;

d) documents of the Union (including documents of the EEU), the SEEC decisions and orders, document of the Intergovernmental Council of the Eurasian and the Eurasian Economic Commission (EECn), adopted within the framework of their powers. Decisions of the Union's institutions shall be enforceable in member states in a manner, prescribed by national law.

International treaties of the Union with a third party must not contradict the basic objectives, principles, and rules of functioning of the Union. In case of conflict between international agreements in the framework of the Union the 2014 Treaty takes precedence.

Decisions, i.e., the acts by the bodies of the Union containing provisions of regulatory developments, and Orders, i.e., the act by the Union which is of organizational and administrative nature, of the Union should not contravene the 2014 Treaty and international agreements in the framework of the Union. In case of a conflict between the decisions of the Union:

a) the decision of the Supreme Eurasian Economic Council take precedence over the decisions of the Intergovernmental Council of the Eurasian and the Eurasian Economic Commission;

b) the decision of the Intergovernmental Council of the Eurasian take precedence over the decisions of the Eurasian Economic Commission.

As a rule, the 2014 Treaty enters into force since the date when the Depositary receives the last written notification from the member states. The 2014 Treaty includes transitional provisions. International treaties of the member states, concluded in the framework of the Customs Union and the Common Economic Space come into force on the date of entry into force of the Treaty and are included in the Union law as contracts within the Union and shall apply to the extent, not contrary to the 2014 Treaty.

Since its entry into force, the 2014 Treaty provides for:

a) the functions and powers of the SEEC at the level of heads of states and the governments, acting in accordance with the Treaty on the Eurasian Economic Commission of 18 November 2011 and according to the decisions of the Supreme Council and the Intergovernmental Council, acting in accordance with the 2014 Treaty;

b) the functions EEC, established, in accordance with the Treaty on the Eurasian Economic Commission of 18 November 2011 and carrying out its activities, in accordance with the 2014 Treaty;

c) the responsibilities of the members of the Board of the Commission appointed before the entry into force of this Treaty which shall continue serving until the expiration of the term for which they are assigned.

4. Results

As an international organization aimed at regional integration, the Union has own jurisdiction within the limits established by the 2014 Treaty and other agreements concluded within the framework of the Union. The EEU ensures free movement of goods and services, capital, and labor. Member states of the Union implement coordinated, coherent and common policy in the economy.

The 2014 Treaty does not leave opportunities open for the conclusion of international treaties which are not fully consistent with the objectives and principles of this Treaty. Bilateral international treaties between the member states envisaging deeper integration as compared to the provisions of this Treaty or international treaties within the Union or stipulating any additional benefits for their natural and/or juridical persons shall be applied in the relations between the contracting states and may be concluded if they do not affect their rights and obligations and rights and obligations of other member states under this Treaty and international treaties within the Union.

5. Conclusion

Thus, the Eurasian Economic Union operates based on the principles of transparency reflected in the sources of the WTO. All members of the Union have equal rights and opportunities to participate in decision-making. The consolidation of economies obviously envisages closer political cooperation between the member states. The ultimate goal of such co-operation is a full-fledged Eurasian Union.

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