

NIKOLAI  
KAVESHNIKOV

# 6 Developing the Institutional Structure of the Eurasian Economic Community

## Introduction

The effectiveness of the Eurasian Economic Community (EurAsEC) is largely determined by the effectiveness of its institutions, their ability to make decisions aggregating the interests of all member states and the ability to enforce those decisions. A strong institutional structure is particularly important during the transition from negative to positive integration, i.e., in the case of the Eurasian Economic Community, the creation of the EurAsEC Customs Union. This in turn means that many of the most crucial decisions are made in real mode (e.g., management of customs policy). In this paper we examine the formation and development of the institutional structure of the Eurasian Economic Community, the interaction between its bodies, decision making mechanisms and process of implementing of the decisions. We analyse the institutional structure of the Eurasian Economic Community in terms of its dependency on objective economic and political processes in the post-Soviet space, and in terms of its impact on the dynamics and direction of the integration process.

The institutional structure of the EurAsEC, and the basic operating parameters of the Customs Union (CU) and Common Economic Space (CES), were all based on the example of the European Union (EU). The leaders of the Community have pointed this out on several occasions. For example, the chairman of the Council of Federation Committee on the CIS Issues, V.A. Gustov (2008: 19) argues: “Without exaggeration we can say that recently developed regulatory and legal frameworks for regional integration [*meaning mostly the EurAsEC – N.K.*] in the world are largely a reflection of practice of the establishment and development of the EU”. Therefore, this study is built largely on the comparative analysis of EU institutions and the EurAsEC.

However, regional characteristics differ so greatly that even though the EurAsEC’s institutional structure is based on the EU experience a fundamentally different organisation is developing. At the outset it is important to mention two key observations. Firstly, a comparative analysis of the institutional structures of the Eurasian Economic Community and the EU does not equate “different” with “bad”. The various shortcomings of EurAsEC’s institutional structure will be discussed further. However, many differences are caused by objective factors and therefore cannot even be considered as shortcomings.

Integration processes in the former Soviet Union have certain specific characteristics, i.e., the low proportion of intraregional trade; the significant role of extra-regional actors (the EU, China, USA, and, in part, Turkey), whose economic and political influences contribute to the "breaking up" of the integration space; and the absence of significant historical experience of statehood for many countries emerged after the collapse of the USSR, which makes any attempt at limiting national sovereignty extremely problematic.

Secondly, the EurAsEC and the EU have disparate historical experience having been in existence for 10 years and 60 years respectively. Enhancing integration requires solutions that are possible only when there is a high level of mutual trust, which in turn develops only from the experience of cooperation, and any accumulation of experience results from a step-by-step approach over a long period of time. Any attempt to speed up the process is most likely to lead to failure. That is why existing comments on the institutional structure of the EurAsEC are not intended as criticism but as constructive approaches for further development.

### **The Bodies of the EurAsEC**

Before analysing the institutional structure of the EurAsEC, it is important to give a brief description of EurAsEC's principal bodies. Its governing bodies are the Interstate Council, the Integration Committee, the Interparliamentary Assembly and the Community Court. Subsidiary bodies include the Integration Committee Councils, the Commission of Permanent Representatives and the Secretariat.

The EurAsEC Interstate Council is the supreme governing body of the Eurasian Economic Community. The Council is composed of heads of state and heads of government.

The Interstate Council "considers questions of principle in Community activities affecting the common interests of member states, defines the strategy, directions and perspectives for developing integration and takes decisions aimed at implementing EurAsEC goals and objectives." (Treaty, 2000, article 5). This is the only body that can adopt decisions binding for member states. The Interstate Council approves decisions on a consensual basis. In general, this body resembles the European Council apart from the fact that the decisions of the European Council are de jure non-binding.

The EurAsEC Integration Committee is a standing body of the Eurasian Economic Community.

The Integration Committee is composed of the deputy heads of government of the Community states. The main role of the Integration Committee is to support the interaction of EurAsEC bodies, to prepare draft decisions and documents for the Interstate Council and to maintain control over their

implementation. The status and composition of the Integration Committee are similar to those of the Council of European Union (Council of Ministers). However, there is a significant difference: the Integration Committee examines and approves draft decisions, prepares proposals, reports and reviews, but it does not decide anything. All decisions are made by the EurAsEC Interstate Council. For that reason, less importance is attached to the Integration Committee's ability to adopt decisions with a two-thirds majority vote.

The Integration Committee may establish subsidiary bodies in the form of councils and commissions, established either to represent a particular policy area or to perform a particular function. Currently there are 18 councils, e.g., the Social Policy Council, the Transport Policy Council, the Council of Heads of Customs Services, etc. In addition, there are four commissions with responsibility for specific aspects of trade policy, e.g., the Commission on Cooperation in the Sphere of Export Control. In general, these bodies are comparable to various configurations of the EU Council of Ministers. However, there is a significant difference in the level of competence and function performed. Sectoral councils are the key decision-making bodies in the EU, while in the EurAsEC they perform two basic functions: preparing draft decisions and implementing agreements between the member states. To say more accurately, the councils themselves do not implement decisions - this is the responsibility of their members, i.e., the heads of public authorities of member states. Thus, the implementation of EurAsEC laws into national legislation (since the law of the EurAsEC has no direct effect) takes place at national level and in the absence of any strict monitoring.

A key subsidiary body of the Community is the EurAsEC Commission of Permanent Representatives. Its role is "to support the ongoing work of the Community, coordinating and reconciling the member states' positions, [...] and supporting the interaction between the Community and the appropriate bodies, institutions and organisations of the Community member states" (Regulations, 2003, article 5). The Commission of Permanent Representatives takes decisions by a two-thirds majority. However, it is specifically stipulated that these decisions are binding only for the Secretariat of the Integration Committee. For the member states, the commissions and councils these decisions are only advisory in nature. The Commission is composed of Permanent Representatives of EurAsEC member states appointed by the heads of member states. The Commission of Permanent Representatives resembles COREPER, which supports the operations of the EU Council of Ministers.

The Integration Committee Secretariat organises the work of the Interstate Council and Integration Committee and provides it with information and technical support. The Secretariat is headed by the Secretary General who

is appointed by the EurAsEC Interstate Council for a three-year term of office. Secretariat officials are the highest-ranking administrators of the Community. However, although when on duty they "shall not seek or receive instructions from any party or authority external to the Community" and are responsible only to the Eurasian Economic Community (Regulations, 2001, article 37), their real independence is in doubt. The reason for such doubt is the national quota system for allocating senior posts in the Secretariat. But scepticism about the Secretariat's independence is also expressed because of its small staff. The Secretariat can not be compared with the European Commission: it lacks independence from the member states, has neither legislative nor executive powers and its task is limited to providing support for the Interstate Council and Integration Committee. The only body similar to this in the structure of EU institutions is the General Secretariat of EU Council of Ministers.

There are two further governing bodies whose status is secondary to those mentioned above: the InterParliamentary Assembly and the Community Court of Justice.

The Interparliamentary Assembly of the Eurasian Economic Community (EurAsEC IPA) is the Community's body of parliamentary cooperation. The objectives of the IPA are "to facilitate the formation of a coordinated EurAsEC legal policy; to coordinate the legislative activities of the national parliaments in order to achieve EurAsEC's goals and objectives; and to assist in creating organisational and legal conditions for bringing the national legal codes of Community member states into line with treaties concluded within the framework of EurAsEC" (Regulations, 2002, article 2-3). The IPA plenary session is held once a year, but there are several committees working on a permanent basis. A key feature of the IPA is that it does not participate in preparing Interstate Council decisions and EurAsEC international agreements.

The Community Court of Justice is charged with providing a uniform interpretation of EurAsEC law and settling disputes of an economic nature arising between the Parties on matters relating to implementation of the decisions by EurAsEC bodies and the provisions of treaties adopted within EurAsEC. Decision of the Court is adopted by two-thirds of the judges. Presently the CIS Economic Court of Justice executes the function of the Court of Justice of the Eurasian Economic Community.

### **Features of the EurAsEC's institutional structure**

Our theoretical analysis focuses on a few key features of the institutional structure of the EurAsEC.

1. "Integration processes [*in the EurAsEC* – **N.K.**] develop at various speeds and on different levels" said Russia's Deputy Prime Minister,

S.E. Naryshkin (2008, 15). It could even be said that the idea of differentiated integration in the CIS has reached its ultimate realisation.

There are several types of differentiation:

- opt-outs – when a country stipulates that it exempts itself from certain technical aspects of a policy or indeed exercises its right not to participate at all in a particular policy area (for example, Britain is not part of the Schengen zone);
- opt-ins – when a country, having exercised the right to not participate in some policy area, retains the right to participate in certain aspects of this policy (this would apply to the participation of Great Britain and Ireland in the development of the Area of Freedom, Security and Justice in the EU);
- the vanguard and rearguard model – when some countries of the integration organisation form a group to implement a large-scale project, and the rest of the countries are either unwilling or unable to participate in this. They reserve the right, however, to join the vanguard in the future (e.g., the euro zone in the European Union).

In practice, CIS countries always have the right to choose whether or not to sign each of the international agreements within the CIS framework. Since there are no time limits for the ratification of these agreements, the CIS countries also have the right to ratify or not to ratify such agreements. As a result, by the year 2000, half of the former Soviet republics had ratified between 40-70% of the CIS agreements they had initially signed (Analytical Report, 2001: 75). These ratified agreements are often not enforced in any case, although this is not relevant to the notion of differentiation.

Political leaders were aware of the fact that the absence of a unified legal framework is a hindrance to any integration initiatives. From this perspective, the creation of EurAsEC was a great step forward – the legal framework of the Community exists in the form of the EurAsEC Treaty and other Community agreements determined by the decision of the Interstate Council. Article 9 of the EurAsEC Treaty states that the adoption of all these agreements is mandatory for any country acceding to the Community, i.e., it implies that this is obligatory for all member states. In this respect, the EurAsEC legal framework is completely analogous to the EU *acquis*<sup>1</sup>. Another extremely important factor that contributes to the unity of the legal framework of the Eurasian Economic Community is the fact that these treaties could not be signed with reservations. Thus, EurAsEC is committed to avoiding the phenomenon of disorderly differentiation, which former

---

<sup>1</sup> *Although the scope and status of the documents are in no way comparable.*

president of the European Commission Jacques Delors warned against in Europe, claiming that the European Union risked turning into "a giant department store, where everyone would pay only for what he takes from the shelf" (quoted by Shemyatenkov, 2000: 41)

The apparent complexity of implementing the basis of this integration project, i.e., the creation of the Customs Union and Common Economic Space, can be explained in the following way. Participation in the Customs Union involves a significant revision of the entire customs and tariff system, the formulation of a common trade policy and the establishment of new institutions. All these changes require a high degree of coordination and the adoption of decisions that are disadvantageous in the short term. Also, the creation of the Common Economic Space, conceived as the space of four freedoms, is impossible unless legislation in several areas is harmonised more extensively and unless there are efficient institutions to implement such legislation. There must also be sufficient mutual trust between the member states. In such circumstances, it is easy to understand why, during the creation of the EurAsEC Customs Union, member states began to gravitate towards the vanguard and the rearguard model of differentiation, which is already well established in the European Union.

Three EurAsEC countries make up the Customs Union: Russia, Kazakhstan and Belarus. All the key features of vanguard and rearguard integration apparent in the EU are reflected in the Customs Union:

- The unity of the institutional structure of the vanguard and all of EurAsEC<sup>2</sup>
- The objectives of the vanguard correspond to the basic direction of development and objectives of the whole of EurAsEC
- Creating a vanguard does not negatively impact the level of integration across the whole of EurAsEC
- Other countries may join the vanguard when they are ready to take on additional obligations

Using the vanguard and rearguard integration model brings obvious benefits, but it also has major disadvantages. In the case of EurAsEC, the greatest concern is the imbalance between the level of integration achieved across the Community and the potential (if it is reached) for deeper integration between the countries of the vanguard. In the European Union the built-in vanguard (Economic and Monetary Union) is based on a long and stable functioning EU-wide customs union and single internal market. The EurAsEC, in contrast,

---

<sup>2</sup> For example, the supreme body of the Customs Union is the Interstate Council, acting in the member states that participate in the Customs Union.

is still developing a free trade zone and the current regime is based on a number of bilateral agreements, which are not always followed strictly. In these circumstances, the establishment of the Customs Union and, in particular, the Common Economic Space, risks breaking the Community apart.

The second disadvantage is the fate of the rearguard (Kyrgyzstan and Tajikistan). They will have a very difficult task chasing the hopefully rapidly progressing vanguard. Given the significant differences in the level of economic development of the three leading and the two following countries, the temporal differentiation between the vanguard and rearguard may be transformed into a permanent centre-periphery structure. The question is whether the peripheral countries are reconciled to their status or would they begin to reorient themselves towards other non-regional players. However, the position of the rearguard will largely be determined by the degree of success of the Customs Union and its ability to attract the rearguard economies.

2. The process of integration in the EurAsEC does not correspond to the classical scheme of regional economic integration, i.e., free trade area (FTA) – customs union – common market – economic and monetary union. However, apart from the EU, few integration organisations could boast the agreement of theory and practice. In the North American Free Trade Agreement (NAFTA), the free trade zone is complemented by a major liberalisation of capital flows. In the Association of Southeast Asian Nations (ASEAN) the task of creating an FTA was only adopted in 1992, 25 years after the establishment of the organisation. It was achieved relatively recently, in 2002, and only then with significant exceptions, coinciding with the implementation of a number of measures on the liberalisation of services and capital flow. In 1970-1980, the ASEAN's activities were limited to sector cooperation only.

In the EurAsEC there is a de facto free trade area, but with numerous exemptions and common practices that, in principle, are not consistent with the rules of the FTA, such as quotas and export duties. The basis of the free trade regime is the legal framework inherited from the 1990's and based on bilateral agreements between member states of the Community. In this regard, there is a need legally to consolidate existing relationships in this region in a multilateral format.

There have been numerous attempts to create a customs union within the CIS, some of these between the five member states of the Community. The latest attempt now under way involves Russia, Kazakhstan and Belarus. It should be remembered that from 2000 until quite recently the coordination of national customs tariffs in these countries was about 60%, which is quite high. At the summit held on June 9, 2009, the heads

of governments of the Community managed to agree on full coordination of customs tariffs.

Although the five member states of the EurAsEC have not fully liberalised the movement of goods, they have already signed a number of agreements on the liberalisation (streamlining) of the movement of capital, services and labour, which are in line with the creation of a common market. For example, regarding the movement of labour, we may mention the Agreement on reciprocal visa-free travel of November 30, 2000, and the Agreement regarding the system for mutual recognition and equivalence of academic degrees of September 27, 2005.

The insurance industry has demonstrated particular progress in the service sector: the Agreement on cooperation in the insurance industry of April 27, 2003 and the Agreement on exchange of information between insurance oversight and insurance regulation bodies of September 30, 2004 were successfully implemented. There are also several agreements relating to the regulation of foreign exchange and securities markets (the Agreement on the exchange of information between the competent authorities regulating the securities markets dated December 23, 2003, the Agreement on cooperation in the securities market dated June 18, 2004 and the Agreement on cooperation in organisation of the integrated foreign exchange market dated January 25, 2006).

Moreover, there are trends in cooperation on the freedom of movement of goods that sometimes go beyond the classic understanding of an FTA or CU. Harmonisation of technical regulations is an important step in developing a common market and the Eurasian Economic Community reached agreement on the harmonisation of technical regulations in 2005. Thus, it would be very difficult using classical theory to determine at what stage of economic integration the Community has arrived. The disparities between theory and practice are well illustrated by the opinion of Russian economists: in the EurAsEC "the regulatory environment remains super-liberal compared to other integration processes (as in the case of trade) or uncertain (as in the case of migration or movement of capital)" (Osipov, Pukhov, 2007: 7).

Neither are certain sectoral cooperation activities consistent with the classical model, especially with regard to energy, transport and the use of water resources. Among recent developments that should be mentioned are the establishment of the EurAsEC Centre for High Technology and the EurAsEC "Innovative Biotechnologies" Interstate Target Programme. Sectoral cooperation is also occurring in non-economic spheres, which is unusual for organisations with a low degree of integration: measures are being implemented to protect borders, and there is cooperation in judicial sector including the criminal law.

Finally, in recent years the countries of the Community are actively developing several cooperation projects: the construction of the Sangtuda-1 hydropower plant in Tajikistan and the Kambarata-2 hydropower plant in Kyrgyzstan; the development of Zarechnoye uranium deposit in Kazakhstan; and the construction of an aluminium complex in Kyrgyzstan. Typically, these projects are aimed either at increasing exports, or creating unified production chains in the EurAsEC countries. An important prerequisite for the realisation of such projects was the establishment of the Eurasian Development Bank in 2006, with capital of \$1.5 billion.

While sectoral cooperation and realisation of particular projects can only be welcomed, the stability of the integration process, including the sectoral cooperation itself is, in our view dependent upon progress in the field of general economic integration, primarily the creation of a functioning customs union. Uzbekistan left the EurAsEC relatively painlessly. Indeed, the only negative consequence of this country's actions was its exclusion from multilateral cooperation on water resources management. However, it would be much harder for Uzbekistan to have left a highly effective Customs Union.

It is gratifying that in 2006-2007 the three countries of the Community agreed upon a concept for the Customs Union that meets the most stringent criteria. It requires a common customs territory and common customs duties; it does not allow, as a rule, any tariff and non-tariff regulatory restrictions upon mutual trade; its governance allows for the functioning and development of the Customs Union; it has a common customs regime. It is now time for the practical implementation of the Customs Union.

3. A key feature of the institutional structure of the EurAsEC is its vertical organisation, which implies the approval of decisions on the basis of consensus among the heads of states exceptionally.

The institutional structure of the European Union was originally created with the idea of maintaining a balance between the intergovernmental body (the Council of the European Union) and supranational body (the European Commission). The European Parliament was a later addition to these key institutions and its competence has continuously expanded since the late 1980's. This structure has allowed the institutions to harmonise common (European) and private (national) interests. Moreover, the ability of the European Commission and European Parliament to influence the decision-making process has contributed to balance the interests of different EU countries, easing in particular the dispute settlement between large and small countries, or net donor countries and net recipients. In the EurAsEC there is a clear "vertical power structure": Integration Committee Councils – Commission of Permanent Representatives – Integration Committee – Interstate Council. Historical concern among the former Soviet republics over the question of sovereignty precludes the creation of supranational

bodies. The weakness of the parliamentary institutions in each of the Community's countries predisposed to a more facultative role for the Interparliamentary Assembly. In such circumstances, the vertical institutional structure of the EurAsEC was an inevitable outcome. This is not a drawback in itself, but combined with the fact that all binding decisions are made by the Interstate Council, this tends to decrease the efficiency of the legislative process. Moreover, this situation limits opportunities for business lobbyists and other interested parties, which is a disadvantage because lobbyists can often act as a feedback mechanism and provide essential expertise.

At a first glance, it may appear that EurAsEC bodies actively follow qualified majority rule, but detailed analysis shows the opposite. Although member states acknowledge the need to move to majority voting in theory, they are not ready for it in practice. Decisions taken by the Commission of Permanent Representatives are approved by a majority of two-thirds of the votes. However "if there is a dissenting opinion of any of the permanent representatives [...] the question shall be referred to the Integration Committee of the EurAsEC" (Regulations, 2003, article 10). Integration Committee decisions are adopted by a majority of two-thirds of the votes, however the question is referred to the Interstate Council for consideration if "four Contracting Parties have voted in favour of a decision but the decision has not obtained a two-thirds majority" (Treaty, 2000, Article 13), that is, if Russia voted against it. However, the Commission of Permanent Representatives and the Integration Committee prepare only draft decisions and agreements for the Interstate Council to approve, and if they adopt any decisions on their own, the latter are only procedural in nature. The only EurAsEC authority that has the power to make binding decisions is the Interstate Council, which acts only by consensus. Practice shows that even at the level of the Commission of Permanent Representatives voting takes place extremely rarely, and the Integration Committee resolves issues exclusively by consensus<sup>3</sup>.

When structured in such a way the decision-making process has several shortcomings.

- The constant search for consensus basically makes any decision very difficult to adopt;
- As practice shows, issues already agreed at lower levels (in working groups, the Commission of the Permanent Representatives or sectoral councils) are often "unpacked" and discussed again at the Integration Committee and the Interstate Council<sup>4</sup>;

---

<sup>3</sup> Interview with a senior official of the Secretariat of the EurAsEC Integration Committee.

<sup>4</sup> Interview with a senior official of the Secretariat of the EurAsEC Integration Committee.

- Even when there is no dissent, the decision-making process has to go through every body from the working group to the Interstate Council which, in accordance with the regulations, takes one and a half years (Shurubovich, 2006: 184) - a very long time;
- The institutional structure of the Eurasian Economic Community has created a gap between the two channels of decision-making: the Integration Committee Secretariat, the Commission of Permanent Representatives and the Integration Committee on the one hand, and EurAsEC subsidiary bodies (sectoral councils and commissions) on the other. There are serious doubts regarding the ability of the Commission of Permanent Representatives to coordinate the work of subsidiary bodies, and the Integration Committee meets too infrequently to perform this function effectively. This makes it difficult to combine individual decisions and to form a compromise packages.

One favourable development was the establishment of a Customs Union Commission (CUC) by the EurAsEC Customs Union. This body is empowered to make decisions by a majority of two-thirds of the votes and, where there is disagreement, is not required to refer the decision to the Interstate Council. The votes are distributed between the three countries as follows: Russian Federation – 57%; Belarus – 21.5%; Kazakhstan – 21.5%.

The relatively broad mandate of the CUC is to “act as a standing regulatory body of the Customs Union” and “within the limits of its competence ensure the implementation of international treaties constituting the contractual and legal framework of the customs union” (Treaty, 2007, articles 1, 6). The EurAsEC Interstate Council (Customs Union supreme body) approved a limited list of “sensitive issues” on which the CUC should decide unanimously. This is an important step forward because it means no individual country has the power to block a decision on issues not included in the abovementioned list<sup>5</sup>. Time will tell how extensive the CUC competences will be, and how often majority vote will be used in practice.

4. Another significant disadvantage of the institutional structure of the Eurasian Economic Community is the absence of any authority that would serve to protect the common interests of the Community. In the European Union such authorities are the European Parliament and the European Commission, however, in the EurAsEC neither the Interparliamentary Assembly nor the Customs Union Commission can claim to represent the common interest.

The weakness of the IPA is determined by political situation in member states as well as by the extremely limited competence of this body. The

---

<sup>5</sup> *The management of the Customs Union would be impossible without such a mechanism.*

EurAsEC IPA is composed of deputies delegated by the parliaments of EurAsEC member states. Given that the legislative authority of the member states is de facto dependent on the executive powers, the ability of the IPA to play an independent role is open to question. As for the competence of the IPA, it is not involved in the EurAsEC decision-making process (there is no mechanism for mandatory consultation). Currently, the role of the IPA is limited to developing model codes and laws and drafting proposals for the fundamentals of legislation of the member states.

The Customs Union Commission is theoretically a supranational body, but it is still not able to function as a representative of the common interests of the Community. The supranational authority must meet several criteria:

- it should have its own competence, conferred on it by member states;
- it must not make decisions by consensus;
- decisions must be binding, including for any state that objected to the decision;
- decisions should enter into force without any action at national level (e.g., ratification or approval in some form).

Our analysis of existing documents suggests that the CUC meets these criteria. However, its structure does not allow it to be considered as a representative of the common interests of the Community. Members of the European Commission act as individuals, independent of national governments, and do not request instructions from their governments. Members of the CUC are there because they hold an official post – deputy prime minister or minister – in a member state government and therefore they must defend the national interests of “their own” state. There is moderate optimism for the future evolution of this body based on the treaty provision that “the number of the Parties’ representatives in the Commission and their status may be altered upon completion of the customs union establishment.” (Treaty, 2007, article 4) It remains to be seen how the Eurasian Economic Community Customs Union will balance the two fundamental requirements for its institutional structure, i.e., transfer of powers in trade policy to the supranational level, without which the CU cannot function; and ensuring that the institutions can harmonise the vital interests of individual member states and prevent decisions being sabotaged at the national level.

5. The way in which the Eurasian Economic Community’s decisions have been implemented leaves a great deal to be desired, which raises the question of how to establish effective mechanisms for enforcing decisions and monitoring their execution. This problem is undoubtedly a preoccupation of certain higher officials of the Community and its

member states. The chairman of the Interparliamentary Assembly, M. Ubaidulloev, (2008: 8) on behalf of the IPA, emphasized the need to “develop proposals and norms of the treaty establishing the Eurasian Economic Community as it relates to exercising control over fulfilment of the Community’s decisions on national and international levels, as well as defining the criteria of the parties’ economic responsibility if they fail to fulfil its obligations.”

Today there are two ways in which decisions can be adopted in the Eurasian Economic Community: by the decision proper of the Interstate Council and by international agreement signed at the meetings of the Interstate Council. There is practically no difference between these methods in terms of the order of their implementation: international agreements must be ratified by all member countries in accordance with national procedures; decisions of the Interstate Council shall be implemented by the member states “by adoption of the necessary national regulatory instruments, in accordance with national legislation.” (Treaty, 2000, article 14) Another evidence that these two types of documents have much in common is the fact that decisions of the Interstate Council are not signed by the Chairman but by all members of the Interstate Council<sup>6</sup>. The execution of decisions is entrusted to the heads of the member states’ executive authorities. Thus, the implementation of Community decisions into national law takes place at the national level (since the EurAsEC law has no direct effect) and in the absence of any strict monitoring.

For the five member countries, this problem is mitigated by the fact that the majority of Interstate Council decisions are concepts, strategies or agreements containing mainly “soft law” provisions and therefore these decisions cannot conflict with national legislation. They tend to establish rights and obligations only for the participating countries, but not for individuals or legal entities. However, the CU has created a significant body of legislation that should be applied by national courts and executive bodies. The activities of national executive authorities should be subject to external monitoring, otherwise the legislation of the Eurasian Economic Community risks becoming a bare right.

Such external monitoring may be either judicial or political, but ideally these two forms of monitoring would be combined, mutually reinforcing each other.

Since 2003 the CIS Economic Court of Justice has performed the functions of the EurAsEC Community Court of Justice. However three factors limit the role of the Community Court.

---

<sup>6</sup> *Chairman of the Interstate Council signs only the organisational and protocol papers.*

Firstly, it has a relatively narrow jurisdiction in rem. The Court can examine Eurasian Economic Community treaties only if the latter contain a special clause. At the end of 2010 the court could adjudicate disputes in 57 of the Eurasian Economic Community agreements, forty of which relate to the CU, and its decisions are binding only for the three countries of the Community.

Secondly, the Court has limited jurisdiction in personam: the Community Court is not empowered to examine claims made by individuals. It should be noted that the power of the EU Court of Justice to consider claims from private persons was one of the most important "engines" of integration in the EU. Appropriately with the establishment of the CU, the Community Court Statute was amended in 2010. In particular, the court received the power to consider the complains of economic entities of Customs Union member-states about the infringement of CU law (Statute, Article 14).

Finally, it is not entirely clear what the legal implications of the decisions of the Community Court of Justice are. On the one hand, court decisions are final and without right of appeal. However, they are binding only for the parties to the dispute. Theoretically, therefore, the state that did not participate in the dispute may continue practices deemed to be illegal. Moreover, there is no clear mechanism for the enforcement of court decisions because they are not incorporated into the national legislation of the member states. Theoretically, in case of default on a court decision, any party to the dispute may apply to the Interstate Council. But this would seem wholly unrealistic if "an economic entity" was the plaintiff. Another weakness of the court is its lack of communication with the national courts, since national courts are not obliged to consider decisions of the Community Court of Justice. Although the highest judicial bodies in member states are entitled to apply to the court with queries on the interpretation of Eurasian Economic Community legislation, they are not obliged to do so. Thus, the national courts are tempted deliberately to ignore the laws of the Community.

This is strikingly different from the legal procedures of the EU Court of Justice: if the national law is deemed to be inconsistent with EU law it is automatically stopped to be implemented by the national courts and authorities. The role of the Community Court of Justice is illustrated well by the fact that during the ten years that the Eurasian Economic Community has existed, the Community Court considered only one case!

In any case, judicial monitoring is time consuming and very expensive financially, and it should therefore be used only in extreme cases. Political monitoring is a much more efficient tool for day-to-day operations. Theoretically, political monitoring may take the form of either regular reports of the executive authorities of member states to EurAsEC bodies or the compilation of complaints filed with relevant national authorities by economic entities. The latter method would be used where a firm in country A, operating in country

B, encounters a violation of EurAsEC legislation by country B authorities and complains to the authorities of its native country A. The authorities in country A register the complaints and file them for the relevant bodies of the Community. The CUC and its subsidiary bodies, it is hoped, through regular discussion, would effectively resolve the problem of the failure to implement decisions. In this context, the sensitive issue of potential non-compliance could be discussed without undue politicisation. This method of political monitoring might be especially efficient because in practice the ministers and heads of other national authorities play a key role in the enforcement of decisions: "what is important is the will of national ministers."<sup>7</sup>

Given the limited power of the Community Court and the degree of ambiguity regarding the legal status of its decisions, the political mechanism of mutual control in the course of subsidiary bodies, is, in fact, the only option. All the same, it should be said that political monitoring requires a high level of mutual trust.

### Conclusions

Based on our analysis we have been able to formulate a number of recommendations for improving the institutional structure of the EurAsEC and for the development of integration processes at large. Recommendations are based not necessarily on what is desirable, but on what is possible given existing economic relations between the Community's member states, their current level of integration, and their internal political and economic situations.

1. Active cooperation in specific sectors should continue, especially in those sectors where there are interested partners (energy, transport). It is important to give preferential treatment to industrial cooperation, technology transfer and investment cooperation. Measures to reduce competition at the markets of third countries, including coordinating pricing and delivery volumes (e.g., in the fuel and energy complex, metallurgy, chemical industry), should have a major impact<sup>8</sup>.
2. Alongside the implementation of sectoral programmes and certain projects, financial solidarity must be strengthened, for example, by requiring a minimum contribution even from member states of the Eurasian Economic Community that have no direct interest in certain projects. In future, it would be useful to increase the budget and to fund projects out of the common budget. Otherwise, the implementation

---

<sup>7</sup> Interview with a senior official of the Secretariat of the EurAsEC Integration Committee.

<sup>8</sup> We should follow the example not only of the EU but of other integration organisations. For example, within the ASEAN there is an association of coffee producers.

of measures will regularly be compromised by the need to conduct complex negotiations each time about the contributions required from member states.

3. It should be clearly understood that the future of the EurAsEC depends on the efficacy of the Customs Union between the three member countries and movement toward the Common Economic Space (CES). Nevertheless the desire to hasten the development of the CES should not lead to "loss of quality".
4. The work of the Customs Union should not be confined to issues of foreign trade. All countries benefit from establishing the Common Economic Space, but these benefits are unevenly distributed. The countries with the most competitive economies obtain the greatest positive impact. The interests of less competitive countries should be supported through "compensatory" regional or industrial policies. Such policies should be implemented at the supranational level (for example, by giving appropriate powers to the CUC) and financed by the common budget. The presence of a "compensatory" policy may give the rearguard countries an additional incentive to join the Customs Union.
5. The CUC should operate initially according to two principles: strict adherence to the practice of adopting decisions by majority in those areas where it is stipulated, and taking into consideration the interests of the countries opposing the adoption of certain decisions on the basis of their national interests. As a rule, the adoption of the decision should be by majority, otherwise it would be impossible to operate the CU. However, this should not "intimidate" participating countries, otherwise they may attempt to sabotage the common decisions.
6. It would be desirable to transform the CUC into a body that can uphold the common interests of the Community, which is possible only by changing the fundamental principle of its forming. This is an extremely difficult step, but the possibility of such a transformation is provided for in the signed Treaty on the CUC.
7. Within the structure of the EurAsEC it would be beneficial to consider the possibility of transferring the right to make certain decisions from the highest level (the Interstate Council) to the Integration Committee and the subsidiary bodies. This will significantly reduce the time it takes to make decisions (by allowing decision-making by qualified majority), which in turn will make member states more inclined to compromise.
8. It makes sense to involve the Interparliamentary Assembly in the preparatory process of decision-making of the Interstate Council. Currently, the best possible way for the IPA to participate is through a system of regular mandatory consultations. It would be helpful to

coordinate legislative plans for the IPA with the prospective activities of the EurAsEC.

9. Enactment of the Customs Code in 2010 has revealed a lack of effective communication between the bodies of the EurAsEC and the business community. The potential of the existing Eurasian Business Council had not yet been fully realised. Information flow should be two-way: EurAsEC bodies might demonstrate greater transparency, thus providing a stable and predictable regulatory environment, and could increasingly rely on the expertise and advice of the business community in drafting decisions.
10. To increase the effectiveness of the institutional structure of the EurAsEC it is essential to improve coordination between the sectoral councils. There are two possible solutions, which could be implemented simultaneously. The first solution is to hold joint meetings of two or three councils on issues of related competencies. Secondly, similar sectoral councils could be merged on a permanent basis. Interaction between sectoral councils will not only enhance the consistency between the decisions taken and the overall objectives of the Community, but would also create an opportunity for legislative proposals to be bundled so that effective compromises can be considered.
11. The more numerous the EurAsEC legislative acts would be, especially that of the Customs Union, the more the quality of implementation of decisions at the national level may become the "achilles heel" of the EurAsEC. In this regard, it makes sense to consider increasing the role of the Court of Justice of the Community by enhancing its links with the national courts. However, this is a long-term problem which can only be solved with the judicial reform at national level.
12. EurAsEC decisions should be streamlined and their legal force and role in national law of member states should be clarified. It is also desirable to formalise the existing mechanism for political monitoring of the execution of EurAsEC decisions at national level. The best solution for this would be to give the CU Commission and sectoral councils oversight powers.

### References

- Analytical report (2001) Results of the CIS for 10 years and challenges for the future. *Diplomatic Journal*. № 12: 74-81.
- Gustov V. (2008) Towards a Customs Union of the Eurasian Economic Community. *Eurasian integration: economics, law, politics*. № 3: 19-23.
- Naryshkin S. (2008) The EurAsEC towards deepening integration. *Eurasian integration: economics, law, politics*. № 3: 15-18.

Osipova O., Pukhov S. (2007) The experience of international integration and development scenarios for the EurAsEC. *Economic Review the EurAsEC +*. № 3: 7-12.

Regulation (2001) on the Integration Committee of Eurasian Economic Community. Approved by the decision of the Interstate Council of Eurasian Economic Community on May 31, 2001 № 6 (as amended on June 23, 2006).

Regulation (2002) on the Interparliamentary Assembly of the Eurasian Economic Community. Approved by the decision of the Interstate Council of Eurasian Economic Community on May 13, 2002 № 52 (as amended on June 23, 2006).

Regulation (2003) on the Commission of Permanent Representatives of the Eurasian Economic Community of February 27, 2003. Approved by the decision of the Integration Committee of the EurAsEC on February 27, 2003.

Shemyatenkov V. (2000) *Maastricht and Amsterdam treaties and their relevance to European integration. The European Union on the eve of the twenty-first century: the choice of development strategy*. Ed. Borko Yu, Butorina O. Moscow: Editorial URSS: 26-41.

Shurubovich A. (2006) Development of integration interaction within the Eurasian Economic Community. *Russia and the modern world*. № 3: 174-191.

Statute (2003) of the Court of the Eurasian Economic Community. Approved by the decision of the Interstate Council of Eurasian Economic Community on April 27, 2003. № 122 (as amended on July 5, 2010).

Treaty (2000) Establishing the Eurasian Economic Community. October 10.

Treaty (2007) on the Customs Union Commission. October 6.

Ubaidulloev M. (2008) On main directions of activity of the Interparliamentary Assembly of the Eurasian Economic Community and its development prospects. Report at the meeting of the EurAsEC IPA. October 31, 2007. Eurasian integration: economics, law, politics. № 3: 6-9.