The Eurasian Economic Union- Approaching the Economic Integration in the Post-Soviet Space by EU-Emulated Elements

L’Union économique eurasienne – approche de l’intégration économique dans l’espace post-soviétique par l’émulation de l’UE

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1. Introduction

The Eurasian Economic Union (EEU), formed between Russia, Belarus, Kazakhstan, Armenia and Kyrgyzstan, entered into force on January 1, 2015. The EEU stemmed from a series of initiatives - the Commonwealth of Independent States (CIS), the Central Asian Cooperation Organization (CACO), several CIS sub-regional projects, the Eurasian Economic Community (EurAsEC) and the Eurasian Customs Union (ECU) - which all aimed at achieving the economic integration of the post-Soviet space’s countries into regional projects. Taking stock of the inefficiencies and flaws of these organizations, the EEU seeks to establish a Customs Union, several common markets, along with the “agreed and coordinated” policies between its member states. Whereas the economic considerations played the main role in the creation of the post-Soviet regional projects - most of them driven by Russia -, the geopolitical factors should also be taken into consideration, especially in the formation of the EEU, which is the outcome of the “regionalist” stage in Russia’s foreign policy (Molchanov, 2015, p.53). The Foreign Policy concept of the Russia Federation has a specific chapter which settles the “regional priorities” of the country’s foreign policy. The creation of the EEU is seen as a matter of utmost importance for the Russian foreign policy: “Russia sees as a priority the task of establishing the Eurasian Economic Union aiming not only to make the best use of mutually beneficial economic ties in the CIS space but also to become a model of association open to other states, a
model that would determine the future of the Commonwealth states” (“Concept of the Foreign Policy of the Russian Federation”, 2013). At the same time, the EU’s exercise of “normative power in the post-Soviet space” had been a critical factor in determining Russia to “upgrade its approach to regional integration by prioritizing economic integration with a high degree of institutionalization and legalization” (Delcour and Wolczuk, 2013, p. 202). The institutionalization and legalization had been carried out mainly within the ECU’s and EEU’s institutional design by borrowed elements of the EU project. The diffusion of the EU project’s elements to the post-Soviet regional projects has not been studied extensively so far. Though, several opinions have emerged in this regard. Hence, Haukkala argues that “the whole institutional make-up of the proposed Eurasian Economic Union is built on the EU model” (Haukkala, 2013, p.169). Kazharski considers that the EEU is a case of “institutional isomorphism” with EU (Kazharski, 2012), whereas Dragneva and Wolczuk view the ECU as a project “borrowing design elements from the European Union” (Dragneva and Wolczuk, 2013, p. 206).

This article argues that, with the creation of the EurAsEC, it has been opened, in the post-Soviet space, the path of the regional economic projects emulated by the EU. The European integration’s emulation has been subsequently manifested with the creation of the ECU, and notably with that of the EEU. At the same time, the emulation of the EU project’s elements in the institutional design of the ECU and of the EEU enabled the development of integration frameworks highly different-notably in the case of the EEU-from those of the previous post-Soviet regional integration projects, which had showed significant institutional failings. However, is yet to be seen whether the emulation of the EU project’s elements in the institutional design of the EEU would be a factor which would enhance the economic integration within the EEU and trigger further changes in the post-Soviet space; that represents a matter of further investigation for the scholars.

2. The economic integration projects preceding the EEU

2.1 CIS-a “multitude of legal regimes”, CACO-hindered by lack of resources and rivalries

“Reintegration of the former Soviet republics started almost in parallel to the dissolution of the USSR itself” (Molchanov, 2015, p. 26). On December 8, 1991, the leaders of Belarus, Russia and Ukraine signed the “Declaration by the Heads of State of the Republic of Belarus, the Russian Soviet Federative Socialist Republic and Ukraine” and the “Agreement Establishing the Commonwealth of Independent States” (Voitovich, 1993, p.404). These documents declared that “USSR as a subject of international law and a geopolitical reality no longer existed” and stated that Commonwealth of Independent States (hereafter CIS) was open for membership not only to all ex-USSR’s members states, but to other states “sharing the purposes and principles of the founding agreement” (Ibid., 2012). Following a meeting of the five republics of the Central Asia which had expressed their willingness to join the CIS, on December 21, at the Alma-Ata summit, all the leaders of the former republics of the Soviet Union, with the exception of Georgia and of the three Baltic states, signed the “Alma-Ata Declaration” and the “Protocol to Commonwealth Pact”. According to the Declaration, the CIS is defined in negative specifications as “neither a state nor a super-state structure”,

3
in which the cooperation will be “carried out in accordance with the principle of equality through coordinating institutions formed on a parity basis” (“Alma Ata Declaration”, 1991). In 1993 the CIS Charter was adopted, but Azerbaijan, Moldova, Turkmenistan and Ukraine refrained from signing it. Whereas Azerbaijan maintained its refusal of engaging in the ratification of CIS Charter, Moldova ratified it in 1994. Turkmenistan adopted “the formal position of associate member from 2005” and Ukraine “acted as a full member even though it never ratified the Charter” (Cooper, 2013, p. 16). Similar to Alma-Ata Declaration, also the Chart defines the CIS in negative terms; it states that Commonwealth “is not a state and does not hold supranational powers”, and it emphasizes that the “member states are independent and equal subjects of international law” (“Charter establishing the Commonwealth of Independent States”). Actually, CIS’s institutional development is represented by “a multitude of legal regimes among different categories of participating States, including (1) a confederation-like nucleus represented by the States striving for closer forms of cooperation, and (2) a looser structure of legal links with other participating States based on various types of membership, reservations to constituent instruments and selective participation in the Commonwealth’s legal acts” (Voitovich, 1993, p. 417).

The main aims of the CIS are stated in the provisions of the Charter’s Article 4 and Article 19. Under the Article 4, the aims are: coordination of foreign policy, “cooperation in the formation and development of a common economic space, common European and Eurasian markets, and customs policy”, “cooperation in the sphere of defense policy and the protection of external borders”. “The formation of a common economic space on the basis of market relations and free movement of goods, services, capital and labor” are stated by the Article 19. Although the CIS aimed at political integration through the aforementioned coordination in the spheres of foreign and defense policy, it mainly aimed to “preserve essential economic ties within the former Soviet space, while creating a platform for gradual opening of the predominantly uncompetitive economies of its members states to the global market” (Molchanov, 2015, p. 26).

Nonetheless, the CIS’s economic integration ambitions have been very high from the very beginning. Hence, in 1993, the CIS countries signed the Treaty on the Establishment of the Economic Union, which established a gradual process of economic integration. That should have started with the creation of a free trade association, followed by the establishment of a customs union, and by a common market in which goods, services, labour and capital would have moved freely and, finally, by the creation of a monetary union (Cooper, 2013, p. 16). Given the heterogeneous economic development of the member states, the Treaty did not set up any timeframe for the establishing of the aforementioned integration process (Ibid., 2013). At the same time, the aforementioned CIS’s “looser structure of legal links” “allowed each member state to determine for itself its level of engagement” and consequently “reduced member states’ continuous commitment to the organization” (Würminghaus, 2012, p.32). Further, the economic integration within CIS did not succeed to keep pace with its ambitions, as its starting point, the free trade agreement—though signed in 1994 by all countries, with the exception of Turkmenistan—was not ratified by Russia (Cooper, 2013, p. 17). As a result, the “trade relations between CIS members countries were regulated by a complex set of bilateral agreements, many of which were ineffective” (Ibid., 2013). In addition, the free trade agreements have not been shaped up within the CIS framework, but “through bilateral channels or regional arrangements” (Webber, 1996, p. 295). For instance,
between 1992-1994, Russia set up free trade arrangements with all the CIS member countries, with the exemption of Ukraine, “through a series of bilateral treaties and protocols” (Ibid., 1996).

7 The economic integration in the post-Soviet space continued with a regional project led by several Central Asian states. In 1994, Kazakhstan, Kyrgyzstan and Uzbekistan established the Central Asian Economic Union, aiming at creating a single economic space; the three countries also created an Inter-state Council, a permanent Executive Committee and the Central Asian Bank for Cooperation and Development. Tajikistan joined the organization in 1998, which was renamed, in 2002, the Central Asian Cooperation and the Central Asian Cooperation Organization (CACO). But these projects of regional integration led by the Central Asian countries had not been successful, due “in part to lack of complementary economic resources and rivalries between Uzbekistan and Kazakhstan for regional dominance” (Kubicek, 2009, p. 246).

8 With regard to CIS, even if it failed to achieve its aims of economic integration, it has succeeded to widen the scope of its activities because “it undertakes considerable activity of a practical character facilitating the economic, social, educational and cultural cooperation” between the members countries (Cooper, 2013, p.31). More, in October 2011, Armenia, Belarus, Moldova, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Ukraine signed the CIS’s Free Trade Agreement. Uzbekistan signed the agreement in 2012, whereas Azerbaijan and Turkmenistan decided not to join it.

2.2 The CIS sub-regional projects led by Russia

9 In parallel with the regional projects of the Central Asian countries, Russia took the realm in forming and further leading several CIS sub-regional projects. In 1996, Russia, Belarus and Kazakhstan signed the treaty for the creation of a Customs Union. Kyrgyzstan and Tajikistan joined this organization in 1996, respectively in 1997. Also, in 1996, Russia and Belarus signed an agreement to form the Community of Sovereign Republics. The treaty envisaged the creation of a common single currency for the two countries by the end of 1997, as well as “a common budget, a common customs system, and common taxation and investment laws” (Danilovich, 2006, p.60). A year later, Russia and Belarus signed the Union Treaty, and in 1999 formalized a far more reaching agreement, named “Treaty on the Creation of a Union State of Russia and Belarus”. The treaty enabled the creation of a common presidency, a common constitution, common army and common citizenship. Nevertheless, mainly due to the political frictions between the presidents of the two states-Vladimir Putin and Alexander Lukashenko-the project of the abovementioned Union was watered down.

10 As it was aforementioned, Russia, Belarus, Kazakhstan and Tajikistan initiated the establishment of a customs union, but “that remained little more than a declaration of intent, with limited action to develop a real, functioning union” (Cooper, 2013, p. 18). Further, the Kyrgyzstan’s accession into the World Trade Organization and the financial crisis occurred in Russia in 1998 showed the failings of the existing CIS-sub regional projects driven by Russia and the necessity to establish other organization aiming at economic integration.

11 Therefore, in 1999, Russia, Belarus, Kazakhstan and Tajikistan signed the Treaty on the Customs Union and the Single Economic Space. The following year, “the grouping was transformed into a fully-fledged international organization, the Eurasian Economic
The treaty establishing the Eurasian Economic Community (EurAsEC) became effective in 2001. EurAsEC set up an institutional framework inspired from the EU acquis and opened the path of a series of EU-emulated projects of economic integration in the post-Soviet area. In 2003, Russia’s integration initiatives involved Ukraine in the creation of the Single Economic Space (SES), which included also Belarus and Kazakhstan. Though the SES Treaty was ratified by all the signing countries, the SES process faced a strong domestic opposition in Ukraine. After the 2004 Orange Revolution, Kiev’s manifested reluctance with regard to the pooling of sovereignty grew up; therefore, Ukraine advocated for the creation of a free trade area, opposing the project of a single economic space. Therefore, by the end of 2005, the SES project including the four countries was halted.

At the same time, in 2005, Russia succeeded in merging the organization of the Central Asia’s republics, CACO, with the EurAsEC, which “inherited several CACO’s portfolios as ecology, the hydropower-water supply nexus, health care and the burial of mining sites” (Molchanov, 2015, p.40). Consequently, by 2006, the EurAsEC consisted of five full members: Belarus, Kazakhstan, Kyrgyzstan, and Russia, Tajikistan and Uzbekistan and three observer members: Armenia, Moldova and Ukraine (Molchanov, 2015, p.41).

The goal of establishment of a customs union between EurAsEC countries was upheld, but not all its members appeared committed to establish it. Therefore, in 2006, at an informal summit meeting of EurAsEC, Russia, Kazakhstan and Belarus decided to set up their integration by creating the Eurasian Customs Union (ECU), followed, a year later, by the signing of a treaty. The three countries set up the Commission of the Customs Union and on January 1, 2010, it was launched a common external tariff, followed in July 2010 by the Customs Union Code. Though in June 2009 Vladimir Putin announced that the new Customs Union would join the WTO as a single entity, it soon became clear that this decision would “inevitably delay Russia’s accession” to the WTO (Cooper, 2013, p.23). Hence, the position shifted to the pursuit of separate negotiations for WTO’s accession (Ibid., 2013). In July 2011, the internal physical border controls were eliminated. Though the SES project had failed by Ukraine’s withdrawal, it will be driven forward mainly by political will and on November 18, 2011, the leaders of the three countries forming the Customs Union signed the Declaration on Eurasian Economic Integration. The document proclaimed the parties’ willingness to complete by January 1st 2015 the codification of international agreements comprising the legal basis of the Customs Union and SES and the creation of the Eurasian Economic Union. On January, 1, 2015, the SES became operational and on February 2, 2012, the Eurasian Economic Commission (EEC) replaced the Customs Union Commission as the permanent supranational regulatory body of the Customs Union and SES.
3. Borrowed EU projects’ elements in ECU’s and EEU’s institutional design and EEU’s scope and policies

3.1 ECU-an institutionalized legal regime with binding effects, enhanced by transferred competences and a supranational bureaucracy

The creation of the ECU shows the goal of pursuing enhanced economic integration through a high degree of coordination and harmonization of economic policies. As Dragneva and Wolczuk indicate (Dragneva and Wolczuk, 2013, p. 205-206), this goal has been strengthened by “the creation of a highly institutionalized and binding legal regime”, whose regulations become part of the domestic legal regime, which extends “delegation of key domestic-policy making powers to a common institution, the Eurasian Economic Commission (EEC)” and strengthens the cooperation between the parties “through the directly binding effect to the EEC’s decisions as well as improved dispute resolution through the Court”. More, the EEC “represents a more radical step towards the formation of a developed supranational bureaucracy entrusted with extensive functions” (Dragneva, 2013, p.53). Further, the way in which the members of the Collegium—one of the two structures of the EEC – were supposed to perform their duties was also in “EU-style”: they should have acted in an independent manner, without being allowed to receive or request directions from the members states (Dragneva, 2013, p.54).

<table>
<thead>
<tr>
<th></th>
<th>Interstate Council</th>
<th>Integration Committee</th>
<th>Inter-Parliamentary Assembly</th>
<th>Court of EurAsEC</th>
</tr>
</thead>
<tbody>
<tr>
<td>EurAsEC (2000)</td>
<td>Supreme body, composed by heads of states and heads of governments</td>
<td>Standing body, composed by deputy heads of governments</td>
<td>Body of parliamentary cooperation, composed by delegations of parliament of member states</td>
<td></td>
</tr>
<tr>
<td>ECU (2007-2011)</td>
<td>Supreme body, composed by heads of states</td>
<td>Deputy heads or members of the governments</td>
<td>Same as EurAsEC</td>
<td>Revu Statute adopted in 2010</td>
</tr>
<tr>
<td>ECU and SES (2012-2015)</td>
<td>Former of ECU, only renamed</td>
<td>Council and Collegium</td>
<td>Same as EurAsEC</td>
<td></td>
</tr>
<tr>
<td>EEU (2015)</td>
<td>Supreme body, composed by heads of states</td>
<td>Standing body, composed by heads of governments</td>
<td>Permanent supranational regulatory body, composed by members appointed by Council and the Board of the Commission</td>
<td>Court of EEU</td>
</tr>
</tbody>
</table>

Source: Dragneva (2013, p.39) and own compilation

According to its founding Treaty, set up in 2011, the EEC is “the single permanently functioning regulatory body of the Customs Union and the Single Economic Space” (Dragneva, 2013, p.50). As Blockmans, Kostanyan and Vorobiov indicate (Blockmans,
Kostanyan and Vorobiov, 2012, p.13-14), the EEC was endowed with legislative and executive powers. The legislative powers regard the rights to generate proposals for economic integration within ECU and SES, to adopt technical regulations directly applicable to the member states and to issue decisions (legal acts binding on the member states) and recommendations (legal acts non-binding on the member states). Although it has the right to create secondary legislation, the EEC’s legislative role is limited by the scope of the Interstate Council’s decisions, as defined by the ECU’s legal regime (Ibid., p.14). The EEC’s executive powers fall in the area of monitoring the legislation’s implementation and the violations of ECU’s law (Blockmans et al., p. 13).

17 The EEC’s structure is made up by the Council and the Board. The Board, consisting of the deputy heads of each state, is responsible for the main decisions of the common customs policy and the key decisions “in relation to the main areas of cooperation and harmonization within the SES” (Dragneva, 2013, p.53). The Board, designed as an “executive organ” of the EEC, is composed by the members nominated by the members states, three for each state; it was “seen as a professional body independent of the members states” (Dragneva, 2013, p.54). Yet, the vote weigh within the EEC reflects a limited supranational delegation. Hence, the vote in the Council is taken by unanimity, whereas the vote in the Board may be taken either by unanimity, either by two-thirds majority, though the latter procedure applies only to a limited range of issues.

18 The key-binding effects of ECU’s institutionalized regime spill from the Interstate Council’s decisions, the EEC’s decisions, the EEC’s powers to oversee the application of the ECU’s law and the decisions of the Court of EurAsEC (hereafter the Court). The EEC’s powers to oversee the application of the ECU’s law and the decisions of the Court are borrowed from the EU acquis. Thus, if a member state breaches the provisions of ECU Treaty or a decision of EEC, the Board, with two-thirds vote, may notify the member state on the elimination of the breach. In case the member state fails to comply, the matter is transferred to the Council, which, in the situation of the persistent breach from the member state, can refer the case to the Court (Blockmans et al., p.16). The Court’s decisions are binding on parties.

19 In sum, the ECU, borrowing elements from the EU integration project, attempts to establish an institutionalized legal regime with binding effects, enhanced by a dispute resolution mechanism, transferred competences and a supranational bureaucracy.

20 “These features suggest a similarity with the European integration model which is heavy on legalization and institutionalization, with rigid decision-making processes and functional spillover into new areas of integration (…) While borrowing design elements from the European Union (EU) is not unheard of, the ECU has demonstrated an unusual willingness to adopt legalized forms of structuring cooperation” (Dragneva and Wolczuk, 2013, p.206).

21 Regardless its aim of strengthen the integration through the abovementioned legalization and institutionalization, the ECU was not set up as an international organization, but as a “treaty-based regime within” the EurAsEC, which was set up as a “fully-fledged international organization (…) with separate legal personality and the ability to sign international agreements “(Dragneva, 2013, p.37). However, the ECU takes over the agreements concluded within the EurAsEC and develops its organizational structure within the framework of EurAsEc “on the basis of amendments” to the Treaty of the EurAsEc (Dragneva, 2013, p.38).
3.2 EEU-upgrading the ECU acquis into an international legal regime with further borrowed elements from the EU project

Before outlining the institutional design of EEU, I will proceed to a brief presentation of the context in which that was set up. A principal rationale of the EEU’s nascent is the competition between Russia and the EU in the post-Soviet space (Adomeit, 2012; Cadier, 2014). With the launching of the European Neighbourhood Policy (ENP) in 2004 and “the accession of the Central and European Countries the same year, the EU had gained a new Eastern border with the post-Soviet space” (Cadier, 2014, p.61). After the Eastern enlargement, establishment of ENP and Ukraine’s Orange Revolution, “Moscow has decided to treat the EU’s presence in the region largely in a classical zero-sum manner” (Haukkala, 2013, p. 173). That might be explained by the fact that “the Russian elites frame international relations in general in terms of fierce competition and consequent spheres of interests and influence” (Ibid., 2013). Hence, the EEU can be seen not only as Russia’s attempt to counter the EU’s influence in its spheres of influence, but to merely delineate and secure these spheres from others competitors’ emergence notably China’s. Since the beginning of the 1990s, Beijing has been emerging as a player in Central Asia, continuously consolidating its economic engagement with the countries of the region, especially in the energy sphere9. But EEU is more than Moscow’s attempt to delimitate its spheres of influence: it represents Russia’s challenge to EU’s “transformative power”, that Moscow “has sought to emulate it” (Cadier, 2014, p.62). As Haukkala sees ECU as “a serious attack against the EU normative hegemony”, its upgraded version, the EEU, can be seen in the same perspective.

Unlike the ECU, the EEU is established as a fully-fledged international regional organization, as the founding Treaty states in Article 1, al. 2: “The Union shall be an international organisation of regional economic integration and shall have international legal personality”.

The EEU Treaty sets up a far broader legal regime than that of ECU’s. Hence, the EEU jurisdiction is defined not only “within the scope and limits determined” under the Treaty (Article 5, al.1) but also in relation with the “coordinated or agreed policies” of the member states(Article 5, al.2) . The coordinated or agreed policies must be either “within the scope and limits” determined under the Treaty and international treaties within the Union (Article 5, al.2) or “in accordance with the basic principles and objectives of the Union” (Article 5, al.3). The law of the EEU is clearly defined by the Article 6 of the Treaty and it is represented by the EEU Treaty, the international treaties within the EEU, the international treaties of the EEU with a third party, the decisions and dispositions of the Supreme Eurasian Economic Council (hereafter Supreme Council), the Eurasian Intergovernmental Council (hereafter Intergovernmental Council) and the Eurasian Economic Commission (hereafter Commission). In case of conflict between the decisions of the bodies of the EEU, the Supreme Council’s decisions prevail on the decisions of the Intergovernmental Council and the Commission’s, whereas the Intergovernmental Council’s decisions prevail on the decisions of the Commission.
The adoption of decisions by consensus within the EEU’s Supreme Council might be primarily explained by the necessity to accommodate the political sensibilities of member-states, notably Kazakhstan. Thus, since 2011, the Kazakhstan’s president had expressed the position that the EEU should not interfere with the countries’ sovereignty; he also had stated that the integration process should be based on the countries’ free will and equal rights. In the same vein—and following the stance of sovereignty’s preservation and equal rights treatment—Nursultan Nazarbayev declared, before the signing of the EEU’s Treaty, that the document “enshrines the principles of sovereign equality, territorial integrity and respect for the particularities of the political apparatus of the union members”; “the important point is that the principle of consensus in decision-making is implemented at all levels,” he added. By securing a consensus vote, the member states also secured several important elements: equal position within the highest level of decision-making process, further room for maneuver to negotiate weighty issues and even the capacity to oppose them.

The binding effects of the legal regime emerge from the decisions issued by the Supreme Council, the Intergovernmental Council, the Commission and the decisions of the Court of the Eurasian Economic Union (hereafter the Court).

The supranational delegation is reflected, as in the case of ECU, by the creation of the Commission as “supranational bureaucracy”. Nevertheless, its powers are bound by the Intergovernmental Council’s powers. The Commission is the “permanent governing body” of the EEU and it consists of the Council and the Board (Art.16, al.1). The Council carries out the Commission’s general regulations and management whereas the Board is the Commission’s executive body, composed by the members states’ representatives.

Table 2. The decisions of the EEU’s bodies

<table>
<thead>
<tr>
<th>Supreme Council</th>
<th>Decisions and Dispositions</th>
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<table>
<thead>
<tr>
<th>Intergovernmental Council</th>
<th>Decisions and Dispositions</th>
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<tr>
<td></td>
<td>adopted by consensus</td>
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<table>
<thead>
<tr>
<th>Commission</th>
<th>Decisions, Dispositions and Recommendations adopted by both the Council and the Board of the EC</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- the Council of the EC adopts the legal acts by consensus</td>
</tr>
<tr>
<td></td>
<td>- the Board of EC adopts legal acts either by qualified majority or consensus; when the Board decides on &quot;sensitive issues&quot;, the decisions are taken either by consensus or two-thirds qualified majority</td>
</tr>
<tr>
<td></td>
<td>- the decisions have direct regulatory and binding effect on member states and form the EEU’s law</td>
</tr>
<tr>
<td></td>
<td>- the dispositions are organizational and administrative</td>
</tr>
<tr>
<td></td>
<td>- the recommendations are non-binding</td>
</tr>
</tbody>
</table>

Source: The Treaty of the EEU

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“based on principle of equal representation of the member states” (Annex 1 of the Treaty, article 31). Though, the supranational delegation is limited by three main elements: the composition of the Council (formed by the deputy heads of governments, one per each state member), the Council’s powers (whose scope overpasses the powers of the Board) and the procedure of the nomination of the Board’s members (the Supreme Council is the body which determines the number of the Board’s members, their responsibilities and the termination of their powers). There are several important elements characteristic to a supranational bureaucracy, such as: the compulsory condition of professional experience for the Board’s members (at least seven years in the area related to their official duty, including one year in a senior management position at a public authority); the definition of the activity of the Board’s members as independent of all authorities of the member states; the restriction for the Board’s members to engage in other paid activities except for teaching, research and creative activities; and a series of provisions (restrictions and ethic regulations) regulating the way in which the Board’s members exercise their powers

The Commission exercises its powers in a wider range of areas than the former Commission of ECU. These areas are: customs tariff and non-tariff regulation; customs regulations; technical regulations; sanitary, veterinary-sanitary and phytosanitary quarantine measures; transfer and distribution of import customs duties; establishment of trade regimes for third parties; statistics of foreign and mutual trade; macroeconomic policy; competition policy; industrial and agricultural subsidies; energy policy; natural monopolies; state and/or municipal procurement; mutual trade in services and investments; transport and transportation; monetary policy; intellectual property; labour migration; financial markets (banking, insurance, the currency market, the securities market). On matters which fall under its competences, the Commission can sign international treaties, though only if the Supreme Council vests it.

As it was aforementioned, the Board is the executive body of the Commission and it is endowed with a wide range of executive powers, such as: the adoption of decisions, dispositions and recommendations; the implementation of the legal acts issued by the Supreme Council and the Intergovernmental Council and of the decisions adopted by the Council of the Commission; the implementation of the international treaties forming the EEU law and of the decisions of the Commission; the representation of the Commission’s interests in courts, including the Court of the Union and more. The Board has also legislative powers, though limited in scope as it is enabled to develop its own proposals and to compile proposals of the member states in the areas of integration within the EEU.

Another EU-emulated influence over EEU is represented by the setting up of two categories of policies: “agreed” and “coordinated”. The “coordinated” policies are defined as policies “implying 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”; the “agreed” policies are “policies implemented by the Member States in various areas suggesting the harmonization 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” (Article 2). The agreed policies are conducted in the “sphere of application of sanitary, veterinary-sanitary and phytosanitary quarantine measures” (Article 56, al.2); consumer protection (Art. 31, al.1), macroeconomic area (Art.62, al.1); monetary area (Art.64, al.1); regulation of financial markets (Art.70, al.1); antitrust area- but only in relation with actions of economic entities of the third countries affecting the competition
in commodity markets of the member states (Art. 74, al.4); agricultural area (Art.94, al.1). The coordinated policies cover the following areas: taxation (Art.71, al.1); energy (Art. 79, al.1); transport (Art. 86, al.1), intellectual property (Art. 89), industrial cooperation (art.92), the rules for granting subsidies for industrial goods (Art.93, al.1); labor migration (Art. 96, al.1). The introduction of the “agreed” and “coordinated” policies, along with the top-down decision-making system, is a clear indication that, unlike the EU project, the EEU’s member states have yet not conceded to pool their sovereignty.

According to the EEU Treaty, the Union aims at going beyond the Customs Union of the four freedoms (goods, services, capital and labor) as it intends the establishment of several common markets of: medicines (to enter into force by January 1, 2016); medical devices (to enter into force by January 1, 2016); electric power (to enter into force by July 1, 2019); gas (to enter into force by January 1, 2025); oil and petroleum products (to enter into force by January 2025); transportation services (date of entry into force not specified); common financial market (date of entry into force not specified); common market of services (date of entry into force not specified). Within these markets, the common rules of competition shall be ensured; unlike the EU’s regulations, these rules accept the existence of two elements inexistent in the EU acquis: the “dominant position of an economic entity” (Annex 19, art.3) and the “natural monopoly entities”. The latter are clearly defined and represent: transportation of gas and oil via pipelines; transmission and distribution of electricity; railway transportations, storage service and transportation of marketable gas; services of air transportation; services of transport terminals and airports; public telecommunications services and public postal services (Annex 20). Besides the abovementioned common markets, the EEU aims at creating a common economic space and achieving convertibility of the currencies of the member states. In this regard, the EEU Treaty introduces economic indicators similar of the Maastricht convergence criteria: the annual deficit of the consolidated budget of the “state-controlled” sector must not exceed 3 percent of the GDP, the debt of the “state-controlled sector” must be less than 50 percent of the GDP, the annual inflation rate cannot exceed “the inflation rate in the Member State with the lowest value by not more than 5% ”. (Art.63).

Therefore, by taking over the ECU acquis and many further borrowed elements of the EU project, the EEU attempts to establish an institutionalized legal regime with binding effects, enhanced by dispute resolution mechanism, transferred competences and a supranational bureaucracy. The EU emulation is wider in the EEU’s institutional design than in the ECU’s, as it has inspired the introduction of the restrictions and ethic regulations of the Board’s members, the creation of “agreed” and “coordinated” policies, the further establishment of the common markets and of a common economic space, ruled by economic convergence criteria.

4. Conclusions

The process of regional economic integration in the post-Soviet space initiated immediately almost in the same time with the dissolution of the USSR and it started with the CIS, which was set up as a “multitude of legal regimes”. Despite its economic integration ambitions, the CIS did not succeed in achieving its aims, a principal cause being the failings of its institutional design. Further, the attempts of Central Asian republics to set up regional economic projects have been hindered by the lack of...
economic resources and inter-state rivalries. Nor the subsequent CIS-sub regional projects led by Russia by 2000 have been more successful in achieving economic integration, due to either their weak institutional design or the political dissensions between the member states’ leaders.

The creation of a new project driven by Russia, the EurAsEC, whose institutional framework was inspired by the European integration project, opened the path for a series of regional project in the post Soviet-space which will be further emulated by the EU project. At the same time, the establishment of the EurAsEC indicates Russia’s willingness to approach the regional economic integration within highly institutionalized and legalized frameworks.

Therefore, through the borrowing of elements of the EU project, both the ECU and the EEU have attempted to establish institutionalized legal regimes with binding effects, enhanced by dispute resolution mechanisms, transferred competences and a supranational bureaucracy. Furthermore, the EU emulation influences many other aspects of the EEU’s institutional design, such as the introduction of the restrictions and ethic regulations of the Board’s members, the creation of the “agreed” and “coordinated” policies, the further establishment of the common markets and of a common economic space ruled by economic convergence criteria. Would the EU emulation trigger more enhanced economic integration within the EEU? Would it determine further changes in the post-Soviet space economic integration? These issues remain to be further researched.

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NOTES

1. Georgia joined the CIS in December 1993. In 2006, seeking the NATO membership, Georgia withdrew from the CIS Council of Defense Ministers. Further, in August 2008, as a consequence of Russia’s support to the breakaway Georgian regions of Abkhazia and South Ossetia, and of the Russian-Georgian military confrontations, Georgia withdrew unilaterally from the organization. The withdrawal was completed in 2009.

2. The post-Soviet countries set up two organizations of regional cooperation in the military sphere: the Collective Security Treaty Organization (CSTO), established by Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia and Tajikistan in 2000 and GUAM, created by Azerbaijan, Georgia, Moldova and Ukraine in 1996. Uzbekistan became GUAM’s fifth member in 1999, when the organization became GUUAM, but it withdrew in 2012. Given the scope of this study, I will not further analyze CSTO and GUAM.


4. As it will be further showed in Note 7, the judicial body remains the Court of EurAsEC, but in 2010 its Statute was modified to better accommodate the new institutional developments.

5. The Interstate Council of the EurAsEC adopts binding decisions on member states, which must directly implement them; resolutions binding to the result to be achieved and non-binding recommendations (Dragneva, 2013, p.48).

6. The Interstate Council of EC is the EurAsEC Council in a reduced format, consisting of Russia, Belarus and Kazakhstan and it was set up by amendment to the Treaty of EurAsEC (Dragneva, 2013, p. 38).

7. The Commission of the Customs Union, the permanent regulatory body, was established in 2007 by a separate Treaty between Russia, Kazakhstan and Belarus; its decisions are made binding on the ECU’s member states and become automatically part of the national law (Dragneva, 2013, p.50). The main part of the vote distribution was acquired by Russia, with 47 votes, whereas Belarus and Kazakhstan held 21.5 votes each.

8. The new Statute of the Court, adopted in 2010, extends its competences to the decisions of the ECU’s bodies and the disputes between the Commission and the member states on matters arising from the implementation of the ECU’s regulations and allows the commercial stakeholders to appeal to the Court. It also defines the Court’s decisions as binding. (Dragneva, 2013, p.57).

9. China sealed various important energy deals with the Central Asia’s countries. For instance, the Chinese companies undertook large acquisitions in the Kazakhstan’s oil and gas sectors, and a gas pipeline running from Atasu (Kazakhstan) to Alashankou (China) became operational in 2006. In 2014, China was the main destination for Kazakhstan’s exports, mainly oil and mineral fuels. Further, China and Turkmenistan signed a deal in 2007, operational since 2009, under which the latter sells annually 30 billion cubic meters of gas until 2039.

10. The list of “sensitive issues” is, according to the Article 18, al.2 of the EEU treaty, established by the Supreme Council.

12. The Court consists of two judges from each member state, who are appointed by the Supreme Council on the proposal of the member states. The term of office of a judge is nine years.

13. The Intergovernmental Council has the right to “consider, on the proposal of the Council of the Commission, any issues for which no consensus was reached during decision-making in the Council of the Commission” (Art.16, al.2); to “issue instructions to the Commission” (Art. 16, al.3); to consider “any issues relating to the cancellation or amendment of a decision issued by the Commission” (Art16, al.7); to “decide on suspension of decisions of the Council or the Board of the Commission” (Art.16, al. 8).

14. In this regard, it is worth mentioning that some of these provisions have certain similarities with the provisions of the EU’s Staff Regulation.

ABSTRACTS

The process of regional economic integration in the post-Soviet space was initiated almost in the same time with the dissolution of URSS. It started with the establishment of the Commonwealth of Independent States (CIS), followed by regional initiatives-which were led by the Central Asian republics-, and the CIS sub-regional projects, driven by Russia. However, before the creation of the Eurasian Economic Community (EurAsEC), these projects of economic integration showed significant failings of their institutional design. The creation of the EurAsEC indicates Russia’s new approach of regional economic integration in the post-Soviet space. That approach will be further carried out through a high degree of institutionalization and legalization and by an EU-emulated institutional design. The EU emulation has been subsequently manifested in the creation of the Eurasian Customs Union (ECU), and notably in that of the Eurasian Economic Union (EEU). Both organizations establish institutionalized legal regimes with binding effects, enhanced by dispute resolution mechanisms, transferred competences and a supranational bureaucracy. Further, the EU emulation is wider in the EEU’s institutional design than in the ECU’s, as it has inspired not only the introduction of restrictions and ethic rules regulating the activity of the EEU’s supranational bureaucracy, but also the creation of “agreed” and “coordinated” policies, and the further establishment of the common markets and of a common economic space, ruled by economic convergence criteria.

Le processus d’intégration économique régionale dans l’espace post-soviétique a été initié presque dans le même temps avec la dissolution de l’URSS. Il a commencé avec la création de la Communauté des États indépendants (CEI), suivie par des initiatives régionales menées par les républiques d’Asie centrale et les projets sous-régionaux de la CEI entraînés par la Russie. Toutefois, avant la création de la Communauté économique eurasiatique (CCEA), ces projets d’intégration économique ont montré des lacunes importantes concernant la conception structurelle. La création de la CEEA indique la nouvelle approche de la Russie sur l’intégration économique régionale dans l’espace post-soviétique, qui sera désormais effectuée par un haut degré d’institutionnalisation et de légalisation et par l’émulation du projet européen dans l’architecture institutionnelle des nouvelles institutions. Par la suite, l’émulation de l’UE s’est manifestée dans la création de l’Union douanière eurasiatique (UDA), et notamment dans la création de l’Union économique eurasiatique (UEEA). Ces organisations établissent des régimes juridiques institutionnalisés avec des effets contraints, renforcés par des mécanismes de
règlement des différends, par le transfert des compétences et la création d'une bureaucratie supranationale. D'avantage, l'émulation de l'UE se manifeste plus largement dans la conception institutionnelle de l'UEEA que dans celle de l'UDA, car elle a inspiré non seulement l'introduction des restrictions et des règles d'éthique régissant l'activité de la bureaucratie supranationale, mais également la création des politiques «convenus» et «coordonnées», et la future mise en place des marchés communs et d'un espace économique commun.

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AUTHOR

MADALINA SISU VICARI

PhD candidate and researcher at Center for International Relations Studies (CEFIR) of University of Liège madalina.sisu@doct.ulg.ac.be