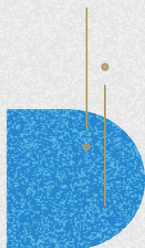


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EURASIAN ECONOMIC  
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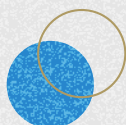


2020

EURASIAN  
ECONOMIC  
UNION



# FACTS AND FIGURES



COMPETITION POLICY  
AND PUBLIC PROCUREMENT  
POLICY



Eurasian Economic Union  
FACTS AND FIGURES

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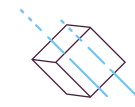
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## IMPROVING THE EAEU LAW ON COMPETITION



*At the meeting of the Supreme Eurasian Economic Council on October 1, 2019, new tools were approved — cautions and warnings*

In 2019, the Commission continued improving the EAEU law on competition and antitrust regulation.

At the meeting of the Supreme Eurasian Economic Council on October 1, 2019, the Protocol on Amending the EAEU Treaty was signed (currently in the process of ratification by the Member States) which, inter alia, implies implementation of **“soft regulation”** mechanisms, that is issuing of **warnings** by the **Commission** to economic entities, as well as individuals and non-profit organizations of the Member States who are not economic entities, demanding to stop their alleged violations of the general competition rules in cross-border markets, and **cautions** against actions that can lead to violation of the general competition rules in cross-border markets.

Moreover, the Protocol provides for the power assigned to the Commission to develop and approve Leniency Procedures in case of voluntary disclosure of concluding agreements prohibited by clauses 3–5, Article 76 of the Treaty on the EAEU, as well as participation in it; the Procedures on issuing cautions, and the Procedures for drafting an annual report on the competitive environment in cross-border markets and measures taken to prevent violations of the general competition rules.

In addition, the Commission invited the EAEU Member States to make conceptual changes to the Procedures for considering applications, the Procedures for conducting investigations, the Procedures for considering cases, and the Methods for calculation and procedure for imposition of penalties for violating general competition rules in transboundary markets, and drafted the relevant changes which are subject to consultations with the EAEU Member States’ experts to provide **precise regulation of the Commission’s proceedings** when considering applications (materials), conducting investigations and considering cases on violation of the general competition rules, including specifying the procedural timeline, criteria for documents (materials) to be treated as evidence, conditions for combining and separating cases, conditions for suspension of proceedings, etc.



In interaction with the EAEU Member States, efforts were undertaken to improve the Protocol on Amendments to the Agreement on the Procedure of Confidential Information Protection, and the Responsibility for its Disclosure when the Commission carries out its authority over the supervision of the common rules of competition, dated November 12, 2014, as part of the finalization of internal procedures in the EAEU Member States.

To conduct a comprehensive analysis of the law and law enforcement of the EAEU, as well as legislations of the Member States on prosecution for violating competition rules, as well as leniency rules, in 2018–2019 the **research was conducted on the subject — “Analysis of the legislation and law enforcement of the EAEU Member States and the Eurasian Economic Union on prosecution for violation of the antitrust regulation and leniency procedures, taking into account international experience.”** Based on the results, practical guidelines were developed to improve the EAEU law and antitrust regulation of the EAEU Member States regarding prosecution and leniency.

The Commission continuously monitors and analyzes legislation of the EAEU Member States for compliance with the international treaties constituting the EAEU law.

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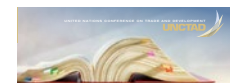
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## INTERNATIONAL COOPERATION

The Competition Branch actively works at various platforms of the international community, including those of such organizations as UNCTAD, OECD, ICN, etc., with leading world economies as members.

In July 2019, upon the results of the expert review of the EAEU competition law by the UNCTAD Competition and Consumer Policies Branch in 2018 (in terms of its compliance with the best practices), at the 18th session of the UNCTAD Intergovernmental Group of Experts (IGE) on competition law and policy, the Member of the Board



ASSESSMENT OF THE EURASIAN ECONOMIC UNION COMPETITION RULES AND REGULATIONS



*As a result of the consistent and meaningful work by the Competition Branch, the cooperation with the OECD Competition Committee was strengthened*



(Minister) in charge of Competition and Antitrust Regulation presented the findings of the review. The recommendations received in the framework of the review are taken into account when improving the EAEU law (the results of the review are posted to the websites of the UNCTAD and the Commission).



As a result of the consistent and meaningful work by the Competition Branch, the cooperation with the OECD Competition Committee was strengthened. For instance, **the Member of the Board (Minister) in charge of Competition and Antitrust Regulation of the Commission took part in the annual OECD Global Forum on Competition in December 2019 in Paris, France, where presented the relevant experience of the Commission within the session devoted to Competition Provisions in Trade Agreements.**

In December 2019, the OECD approved conducting a peer review of the competition regulation and policy in the EAEU. The results can help to assess the state of the EAEU competition policy, law enforcement practice, effectiveness of the existing institutions for regulating competition, as well as to receive recommendations for their improvement from the experts. This peer review can become a significant step in developing cooperation between the EEC and the OECD.



Given that the Commission's international agenda includes, as one of its main cooperation focus, building open and trust-based relationships on economic agenda issues between the EAEU and the European Union, the Competition and Antitrust Regulation Branch of the Commission **commenced communication with representatives of the European Commission.** The representatives of the European Commission, in response to the letters sent by the Competition and Antitrust Regulation Branch, confirmed their interest in developing cooperation with the Commission.

One of the key global platforms in the sphere of competition is the International Competition Network (ICN). In May 2019, the Commission's delegation took part in the ICN annual conference which was held by the Colombian Competition Office in Cartagena, Colombia. The Commission's entry into the International Competition Network was also brought up.



Based on the working meetings, negotiations, and the visit to the Andean Community General Secretariat, the Competition Branch **agreed on the draft Program of Cooperation between the Commission and the Andean Community General Secretariat on competition policy and law enforcement.**

In 2019, communication with the Competition authorities of the BRICS member states became one of the international cooperation areas. During the VI BRICS International Competition Conference, the Member of the Board (Minister) in charge of Competition and Antitrust Regulation of the Commission presented the progress made and targets for the following years, as well as noted that despite the differences in rates and forms of economic transformations in the EAEU Member States and BRICS states, the main vectors of the competition policies were aligned, and the success of the BRICS states had been taken into account in the Competition and Antitrust Regulation Branch's efforts.

## COMPETITION ADVOCACY

Competition advocacy is one of the vital components in the activities of the Commission and authorized bodies of the EAEU Member States. To pursue the relevant tasks aimed at promoting fair competition, explaining methods of the current antitrust regulation, in 2019, various mechanisms for communication between the Commission and economic entities and authorities of the EAEU Member States were used based on the target audience.

Field meetings of the Public Consultation Office of the Commission's Competition and Antitrust Regulation Branch in all the EAEU Member States proved to be an important platform for communicating with business to advocate competition.

In 2019, **the Commission extended the number of meetings of the Public Consultation Office: representatives of over 650 companies of the EAEU Member States took part in 23 meetings** where competition and antitrust regulation issues were discussed (meetings of the Public Consultation Office were held in **23 cities** and five Member States).

*In 2019, communication with the competition authorities of the BRICS states became one of the international cooperation areas*



In 2019,  
**23**  
 meetings of  
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>>> **>650**  
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 participated

On June 19, 2019, in Moscow, at the venue of the Chamber of Commerce and Industry of the Russian Federation, the Commission held an international meeting — **Round Table on Competition**, which strived to inform foreign companies (associations) on the Commission’s powers, as well as the general competition principles and rules effective in the EAEU.

Besides representatives from foreign companies and third-party associations, **the heads of the authorized bodies of the EAEU Member States, the EAEU Court judges, representatives of the UNCTAD and the OECD, chambers of commerce and industry of other countries, as well as the EAEU business community, took part in the Round Table.**

In accordance with Annex No. 19 to the EAEU Treaty, topical issues of law enforcement practice, exchange of information and harmonization of legislation of the EAEU Member States are discussed by the heads of the authorized bodies of Member States and the Member of the Commission’s Board (Minister) in charge of Competition and Antitrust Regulation (meeting in the 5 + 1 format). In 2019, two meetings were held in Moscow (February 27, 2019) and Bishkek (September 25, 2019) gathering representatives of the EAEU Member States’ business community, the OECD, science, etc.

Collaboration with the mass media is a powerful tool for competition advocacy. Social media are used to this extent as well. Thus, **to get feedback from business, the EAEU Business Navigator informational portal was created on Facebook.** In addition, the White Paper “Competition in Cross-Border Markets” is published on the Commission’s website, which contains basic information on the EAEU competition law, necessary for business to protect their competition rights in cross-border markets.

Moreover, in 2019, the Commission published a learning book — “Competition Law in the Eurasian Economic Union”.

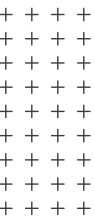
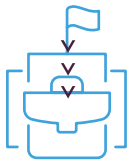
## PUBLIC (MUNICIPAL) PROCUREMENT

### The Progress of the Discussion Improving the Procedure for Setting Exemptions from the National Treatment Regime in the Field of Public (Municipal) Procurement of the Member States

Clause 34 of the action plan (roadmap) on eliminating exceptions and restrictions in the EAEU internal market for 2018–2019, approved by the Instruction of the Eurasian Intergovernmental Council No. 17 dated October 25, 2017 (hereinafter, respectively, roadmap, EAEU, Intergovernmental Council) provides for the discussion on improving the procedure for setting exemptions from the national treatment regime in the field of public (municipal) procurement of the Member States (hereinafter, exemption from the national treatment regime).

In order to comply with clause 34 of the roadmap, **a mechanism was developed to identify repeated exemptions from the national treatment regime, and the relevant amendments to section XXII of the EAEU Treaty and the Procedure for Consideration of the Notices from the EAEU Member States by the Eurasian Economic Commission** were elaborated on approving regulations for setting exemptions from the national treatment regime in the field of public (municipal) procurement by the Member States, inquiries from the Member States to cancel such regulations, as well as approving decisions on canceling such regulations by the Commission, approved by Decision No. 69 of the Commission Council dated November 23, 2015 (hereinafter, Procedure No. 69).

The mechanism for setting repeated exemptions from the national treatment regime, including draft amendments to Procedure No. 69, was developed. It is based on the principle that in case of an objection by one or several Member States to setting repeated exemption the Commission’s Board by consensus shall approve the decision on impossibility of setting the repeated exemption from the national treatment regime. Such an approach was defined by Instruction No. 35 of the Commission’s Council dated August 8, 2019.





At the same time, the Republic of Belarus considers that the Board of the Commission should decide by consensus on the possibility of repeated exemptions from the national treatment regime if there are objections by one or more Member States to setting the repeated exemption.

Due to disagreements among the Member States on the mechanism for setting repeated exemptions from the national treatment regime, the Commission's Council instructed to continue working on this issue (Instruction No. 37 dated December 19, 2019).

### The Progress of Discussion the Mechanism for Recognition of Bank Guarantees Issued by Banks of the Member States for Public Procurement Purposes



Clause 35 of the action plan (roadmap) on eliminating exemptions and restrictions in the EAEU internal market for 2018–2019, approved by the Instruction of the Eurasian Intergovernmental Council No. 17 dated October 25, 2017, provides for the need of the discussion the mechanism for recognition of bank guarantees issued by banks of the Member States for public procurement purposes due in Q1 2018.



*Reference: To solve the current situation on the mutual recognition of bank guarantees in 2019, the Branch arranged 15 industry meetings and 2 working group meetings at the high level on the issues of public (municipal) procurement in the EAEU Member States.*

On August 8, 2019, the Council of the Commission gave Instruction No. 22, within which it was agreed to demand from the Government of the Russian Federation to take the initiative on amending the legislation of the Russian Federation allowing recognition of bank guarantees when performing public (municipal) procurement issued by the Eurasian Development Bank (hereinafter, EDB) and the Interstate Bank (hereinafter, ISB), **after receiving the credit rating issued by Russian rating agencies by these financial institutions.**

In addition, the Eurasian Economic Commission together with the authorized bodies and central (national) banks of the EAEU Member States were instructed to **complete the draft Agreement on Mutual Recognition of Bank Guarantees When Performing Public (Municipal) Procurement** (hereinafter, the draft Agreement) due to July 1, 2020.



*Reference: On September 30, 2019, EDB was assigned a credit rating "A-" with a stable outlook on the international rating scale at the level of the sovereign rating of the Russian Federation, as well as a national scale rating "AAA (RU)" with the stable outlook by the ACRA Russian credit rating agency.*

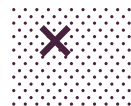
The Commission drafted the Agreement, but there are still conceptual differences among the Member States' representatives on the use of ratings as a requirement for banks' formation of registries, as well as liability of banks for non-compliance, late and/or improper compliance with bank guarantees obligations, as well as determining the procedure for the dispute consideration.

Taking into account the above, the development of the mechanism for recognition of bank guarantees issued by banks of the Member States for public procurement will continue in 2020.

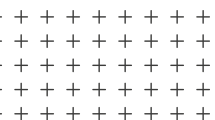
### Mutual Recognition of an Electronic Digital Signature for Participating in Public (Municipal) Procurement of the EAEU Member States

Mutual recognition of the EDS is ensured between the Republic of Belarus and the Russian Federation. At the same time, controversial issues arising due to amending Russian legislation on procurement for the implementation of the Action Plan on Mutual Recognition of EDS Made in Compliance with the Legislations of the Republic of Belarus and the Russian Federation, were settled.

According to the Ministry of Finance of the Russian Federation, in 2019, new operators of electronic trading platforms were identified, with which the Ministry of Finance of the Russian Federation and the Federal Antimonopoly Service concluded new agreements on the operation of an



*Mutual recognition of the EDS is ensured between the Republic of Belarus and the Russian Federation only*





electronic trading platform for auctions in electronic format (hereinafter, the Agreement). At the same time, the requirements for accreditation of certifying centers at such electronic trading platforms, as well as provisions for ensuring the liability of certifying centers have not been defined yet. In accordance with the new Agreement, the certifying centers of the EAEU Member States will have to conclude an agreement with each federal trading platform.

Work continues on the implementation of the Action Plan on Mutual Recognition of EDS between the Republic of Belarus, the Republic of Kazakhstan, and the Russian Federation, approved by Decision No. 302 of the Commission's Board dated December 17, 2013.



Instruction No. 78 of the Commission's Board dated April 23, 2019, approved the Action Plan to assess the possibilities of information systems at electronic trading platforms of the Republic of Armenia and the Russian Federation.

On November 20, 2019, at the meeting held by the Department for Competition and Public Procurement Policy of the Commission, gathering representatives of the Commission and the actionees, the representatives of the Republic of Armenia declared that the testing of EDS of the Russian Federation at the electronic trading platform of the Republic of Armenia had been successful, and the representatives of the Russian Federation reported on receiving test keys from the Republic of Armenia to carry out the testing.

In early 2020, a joint document is expected on the results of testing regarding the possibility of ensuring mutual recognition of EDS of the Republic of Armenia at electronic trading platforms of the Russian Federation and EDS of the Russian Federation at electronic trading platforms of the Republic of Armenia.

Work is carried out on mutual recognition of EDS made in the Kyrgyz Republic. The Ministry of Finance of the Kyrgyz Republic has been developing a draft Action Plan to ensure mutual recognition of EDS, made in accordance with the legislation of the Kyrgyz Republic, by other EAEU Member States.

## NOTES

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*Reference:* On December 4, 2019, a letter No. 20-1-2/14835 (Commission's ref. No. 21224 dated December 10, 2019) was received from the Ministry of Finance of the Kyrgyz Republic addressed to the Commission that, in accordance with the Law of the Kyrgyz Republic "On Public Procurement", a competition for the procurement of software development services for the implementation of EDS at the web portal for the public procurement by one-step method (two-batch method) was announced, by virtue whereof the **introduction of EDS is scheduled for the completion in Q1 2020.**

## NOTES

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