

On Similarities and Differences of the European Union and Eurasian Economic Union Legal Orders: Is There the ‘Eurasian Economic Union *Acquis*’?

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This contribution is devoted to the study of legal order of the Eurasian Economic Union (EAEU). It is done through the analysis of similarities and differences of the EAEU legal order with those of the EU. It is argued that the notion ‘EU *acquis*’ has been extended beyond the EU and has been exported to legal orders of other international organizations. It poses the question whether the notion ‘*acquis*’ can have the same meaning within the legal order of the EAEU. On the one hand, some institutional similarities between the EAEU and the EU as well as the dynamic nature of the EAEU legal order give us a ground to apply the notion ‘*acquis*’ with regard to the EAEU in order to describe the political and legal heritage of the integration projects within the post-Soviet area. On the other hand, considerable differences between the EU and the EAEU legal systems (different degrees of supranationality, weak role of the Court of the Eurasian Economic Union, and strictly normative understanding of the definition of the ‘Union Law’ in the EAEU Treaty) bring into question the relevance of the notion of the ‘EAEU *acquis*’. Analysis of the notion ‘EAEU *acquis*’ encourages a discussion about the necessity to revisit its narrow scope towards inclusion of fundamental concepts of common values, founding principles like rule of law and non-discrimination and direct effect.

1. Introduction

Year 2015 was marked by the birth of the new regional economic organization - the Eurasian Economic Union (EAEU). The EAEU did not appear from nowhere but was the fruit of the steady and consistent effort of the Russian Federation to reinvigorate the Eurasian integration on the remnants of the former Soviet Union. The process of Eurasian integration was based on several 'trial integration projects like the Eurasian Economic Community;¹ the Customs Union of Belarus, Kazakhstan and Russia;² Single Economic Area³ and the Belarus-Russia Union State.⁴ At the time of writing this paper the EAEU has been formalized and already lived through its first wave of enlargement: the founding EAEU Member States Russia, Belarus and Kazakhstan were joined by Armenia on 2 January 2015 and by Kyrgyzstan on 29 May 2015. The emergence of both direct geopolitical and economic competition and a possible trade and economic partner to the EU poses many questions of a legal nature. One of these questions is the issue of the similarity and difference of the EAEU and EU legal orders.

The aim of this paper is not to provide an in-depth study of various legal issues related to political, economic and legal integration within the post-Soviet area but to analyse similarities and differences between the EU and EAEU legal orders. In particular the objective of this paper is to scrutinise the scope of the 'EAEU acquis' and to compare it with the well-known notion of the 'EU acquis'. In doing so, the authors will endeavour to clarify the elements of the notion of 'EAEU acquis' and how it differs from or resembles the sister notion of the 'EU acquis'. In the final part of the paper the authors speculate on possible convergence between the 'EAEU acquis' and the 'EU acquis'.

2. Scope and elements of the 'EU acquis' and its export beyond the EU

The notion of 'EU acquis' became very popular even beyond the domain of EU law. The predecessor of the 'EU acquis' is the notion 'acquis communautaire' which reflected the evolution of EC law. From the outset, the 'acquis communautaire' has emphasised the dynamic, or *sui generis*, nature of the EC/EU legal order. In this respect, dynamism entails the never-ending evolution of the legal order under the pressure of various internal and external factors, such as the need for closer economic development inside the EU, and the enhancement of security and political stability along EU borders. The dynamism of the EU legal order is based on acquired common rules, practices and values.

The 'EU acquis' thus ensures the continuity of the EU legal order through the fact that it encompasses everything that has been achieved within the EU, even beyond legal practices. In general, the 'EU acquis' may be seen as the result of the application of various tools /

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¹ Member States were Russia, Belarus, Kazakhstan, Kyrgyzstan and Tajikistan. This entity was launched in 2000 and was eventually substituted by the EEU.

² Launched on 1 January 2010.

³ Launched on 1 January 2012.

⁴ Launched on 2 April 1997.

instruments / powers which the EU possesses both internally and externally. Commentators compared the dynamic nature of the EU legal order to a living organism.⁵

The 'EU acquis' has proved to be a particularly useful concept in the course of EU external action. The notion 'EU acquis' has gradually become one of the most significant tools underpinning the EU's tailor-made actions towards third countries, ranging from accession to partnership and cooperation initiatives. At the same time, the ambiguity of this notion has resulted in its gradual transformation into a universal category, which has no fixed content and scope, but which must be comprehended exclusively within the particular circumstances of EU external action towards third countries. For example, in the context of accession, the adoption of the 'EU acquis' by candidate countries has meant the implementation of the whole EU legal heritage. In the context of the EU policy of partnership and cooperation with third countries, the 'EU acquis' has a narrower scope, and embraces mainly sectoral EU legislation within priority areas of cooperation. Hitherto the 'EU acquis' has remained at the top of the EU agenda for external action. The ENP encourages neighbouring states to adhere to the EU 'common values' and to adopt the vast scope of the 'EU acquis' in order to achieve mutual access to markets of goods, services and capital.⁶

Gradually, the 'EU acquis' has stretched the boundaries of a mere legal concept, and has been used in other contexts, including the political, social, and historical. This view has been shared by many experts in European studies. Gialdino,⁷ Weatherill,⁸ Delcourt⁹ and Auzolai¹⁰ have emphasized the dynamic nature of the 'EU acquis' within its legal context. Krenzler and Everson¹¹ have argued for an even broader understanding of the 'EU acquis' as a legal framework, embracing real and potential rights within the EU system. Wiener¹² has gone further to advocate a theory of 'embedded acquis' which covers practices, policy objectives and informal ideas and values. The Dutch legal scholar Mortelmans¹³ has depicted the 'acquis communautaire' as 'a political or policy concept', and has clearly distinguished it from the basic tenets of EU law. In our view, hitherto, scholars have dealt with general issues related to the 'acquis communautaire' such as its scope and relations with other domains of social studies apart from the legal. Few studies have explicitly studied the acquis within specific EU

⁵ Loïc Auzolai, "The *Acquis* of the European Union and International Organisations", 11(2) *European Law Journal* (2005), 196-231, at 196. Roman Petrov, *Exporting the acquis communautaire through EU External Agreements* (NOMOS, Baden-Baden, 2011) at 21.

⁶ Communication from the Commission "Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours" (COM (2003) 104 final). Communication from the European Commission "European Neighbourhood Policy Strategy Paper" COM (2004) 373 final.

⁷ Curti Gialdino, "Some Reflections on the *acquis communautaire*", 32 *Common Market Law Review* (1995), 1089-1121.

⁸ Stephen Weatherill, "Safeguarding the *Acquis Communautaire*", in T. Heukels / N. Blokker/M. Brus (eds), *The European Union after Amsterdam*, (The Hague/London/Boston, Kluwer Law International 1998), 153-178, 161-162.

⁹ Christine Delcourt, "The *Acquis Communautaire*: Has the Concept Had Its Day?", 38 *Common Market Law Review* (2001), 829-870.

¹⁰ Loïc Auzolai, "The *Acquis* of the European Union and International Organisations", 11(2) *European Law Journal* (2005), 196-231.

¹¹ Horst Krenzler, Michelle Everson, *Preparing for the acquis communautaire. Report of the Working Group on the Eastward Enlargement of the European Union*, October 1998 (European University Institute, RSC Policy Paper № 98/6), available at <<http://www.eui.eu/Documents/RSCAS/Publications/WorkingPapers/9806p.pdf>>.

¹² Antje Wiener, "The Embedded *Acquis Communautaire*: Transmission Belt and Prism of New Governance", 3 *European Law Journal* (1998), 294-315.

¹³ Kamiel Mortelmans, "Community Law: More than a Functional Area of Law, Less than a Legal System", 1 *Legal Issues of European Integration* (1996), 23-48.

policies, *inter alia* within the EU external action.¹⁴ This contribution partly fills in this gap and offers an analysis of the phenomenon of exporting the EU *acquis* into legal orders of other international and regional organisations *inter alia* the EAEU.

Having outlined the scope and features of the notion ‘EU *acquis*’ we underlined its dynamic nature. However, it must be emphasized that the notion of ‘*acquis*’ has left the domain of the EU and has been imported by legal systems of other international organizations. For instance institutions, scholars and commentators already use the notions ‘WTO *acquis*’¹⁵ and ‘Council of Europe *acquis*’ if they want to emphasise the existence of certain legal heritage of a dynamic nature which was accumulated within legal orders of international organisations.¹⁶ Below we scrutinize the possibility of application of the notion of ‘*acquis*’ with regard of the EAEU. In particular, we focus on similarities and differences of this application with the ‘EU *acquis*’.

3. Scope and elements of the ‘Eurasian Economic Union *acquis*’ through the prism of the ‘EU *acquis*’

Scholars and commentators have already started using the notion ‘*acquis*’ in the context of Eurasian integration.¹⁷ By doing so they mainly refer to everything that has been acquired within the political, economic and legal integration in the post-Soviet area. The reason for this is the presumption that the EAEU has been built on already existing integration practises within the post-Soviet area. Consequently the EAEU’s institutions were not created from scratch, but were inherited from previous integration projects and, therefore, were just given additional competences and powers.

The EU founding treaties lay down the foundation of the ‘EU *acquis*’. Similar to the EU founding treaties, the EAEU Treaty is at the core of the EAEU legal order. As a product of three founding countries (Russia, Belarus and Kazakhstan), which not long time ago were part of the Russian Empire and the Soviet Union and, therefore, shared similar legal systems, the EAEU Treaty inherited the positivist legal tradition of the Roman continental and the Soviet socialist legal systems. Therefore, the EAEU Treaty does not experiment with notions like ‘EAEU *acquis*’, ‘founding principles’, ‘common values’, but envelopes all elements of the EAEU legal system into a single normative concept of ‘Union Law’.¹⁸ This notion is also embedded in the classical hierarchy of legal sources: 1) EAEU Treaty; 2) international agreements between the EAEU Member States and the EAEU; 3) international agreements with third countries; legally binding decisions and acts of the EAEU’s institutions. Unfortunately the EAEU Treaty and case law of the Court of the Eurasian Economic Union (EAEU Court) are silent on the founding principles of the ‘Union Law’ and omit direct references to the issue of its supremacy within the legal systems of the EAEU Member States.

¹⁴ *Supra* note 5.

¹⁵ For example, see Robert Wolfe “The WTO Single Undertaking as Negotiating Technique and Constitutive Metaphor”, 12(4) *Journal of International Economic Law* (2009), 835-858, at 1.

¹⁶ Parliamentary Assembly Adopted Texts: 2010 Ordinary Session, October 4-8, 2010.

¹⁷ Cordula Rastogi, Jean-Francois Arvis (eds.), *The Eurasian Connection: Supply-Chain Efficiency along the Modern Silk Route through Central Asia* (World Bank, 2014), 96. Aleksandra Jarosiewicz, Ewa Fischer, Tomasz Bakunowicz, “The Eurasian Economic Union - More Political, Less Economic”, *Centre for Eastern Studies Commentary* (№157, 20 January 2015), 4.

¹⁸ Article 6 of the EAEU Treaty. However, the Treaty on accession of the republic of Armenia to the EEU in its Art. 6 and the Treaty on accession the Republic of Kyrgyzstan to the EEU in its Art. 11 uses the notion “Eurasian Economic Union Law”.

Yet, the practice of references to ‘Union law’ by the EAEU institutions is scarce. Therefore the scope of the ‘Union law’ requires further interpretations on behalf of the EAEU institutions, in particular, by the EAEU Court. Drafters of the EAEU Treaty intentionally avoided any references to the supranationality and supremacy of ‘Union Law’ in the text of the EAEU Treaty and defined the EAEU as an ‘international organization of regional economic integration’. This narrowly structured definition indicates that the future evolution of the EAEU will be circumscribed by objectives of economic integration (customs union and internal market) and will not encroach upon areas of political, security, internal and foreign affairs as it happened in the EU. However, nothing precludes the EAEU institutions to claim some degree of supranationality and supremacy for the ‘Union law’ by considering the EAEU as an ‘international organization of regional economic integration’ where the EAEU Member States transferred some of their sovereign powers to the EAEU as it was done by the Court of Justice of the EU in the renowned cases *Van Gend en Loos* and *Costa v. Enel*.¹⁹

In accordance with the EAEU Treaty, decisions of the Eurasian Economic Commission can be directly applicable in legal orders of the EAEU Member States.²⁰ Nevertheless unlike the European Commission, the EAEU institutions do not possess specific powers to ensure effective enforcement of ‘Union Law’ in the legal orders of the EAEU Member States. For example, the Eurasian Economic Commission is not authorized to file a case against the EAEU Member States for non-application of the ‘Union Law’ due to lack of competence in the EAEU Treaty. Instead the EAEU Treaty shifts the consideration of the issue of supremacy of ‘Union Law’ to the EAEU Member States level.²¹ It is because the power of constitutional review and compatibility of the ‘Union Law’ remains in the hands of constitutional courts of the EAEU Member States.²² In other words these courts play a key role in ensuring the effectiveness of the ‘Union Law’ within their respective jurisdictions. Theoretically, the EAEU Court may formulate and apply the principles of ‘supremacy’ and ‘direct effect’ of provisions of the EAEU Treaty in its own judgments in the course of its interpretation.²³ However, this is unlikely to happen for several reasons. First, it must be noted that the constitutions of the EAEU Member States do not envisage any possibility of supremacy of ‘Union Law’ in their national legal orders. As any other international agreement the EAEU Treaty and other sources of the EAEU primary law constitute an inherent part of their national legal systems²⁴ and prevail over conflicting national legislation but not over national constitutions.²⁵ It is argued elsewhere that judiciaries in the EAEU

¹⁹ Case 26/62 *van Gend en Loos v. Nederlandse Administratie der Belastingen* [1963] ECR I, Case 6/64 *Costa v. Enel* [1964] ECR 585.

²⁰ par. 13 of the Annex 1 to the EEU Treaty.

²¹ Previously, the Regulation (Rules of Procedure) of the Eurasian Economic Community Court set in its provisions the principle of primacy. A new Regulation of the EEU Court doesn’t assign similar provisions.

²² Alexei Ispolinov, "First Judgments of the Court of the Eurasian Economic Community: Reviewing Private Rights in a New Regional Agreement", 40(3) *Legal Issues of Economic Integration* (2013), 225–246.

²³ Some provisions of the EAEU Treaty can potentially have direct effect in the legal orders of the EAEU Member States. For instance the EAEU Treaty grants rights to nationals of the EAEU Member States (there is no EAEU ‘Eurasian’ citizenship yet) to protect their rights under the ‘Union Law’ in their national courts in the area of consumer protection (Art. 60(2) of the EEU Treaty).

²⁴ Gennady Danilenko, “Implementation of International Law in CIS States: Theory and Practice”, 10 *European Journal of International Law* (1999), 51-69.

²⁵ Article 15 (4) of the Constitution of Russia provides: “Universally recognized principles and norms of international law as well as international agreements of the Russian Federation should be an integral part of its legal system. If an international agreement of the Russian Federation establishes rules, which differ from those stipulated by law, then the rules of the international agreement shall be applied.” Article 4 of the Constitution of

Member States are still reluctant to ensure effective application of sources of international law in their decisions.²⁶

Consequently, constitutional courts of the EAEU Member States may block the recognition of supremacy, direct applicability and direct effect of the ‘Union Law’ within legal orders of the EAEU Member States if they challenge their national sovereignty. It has already happened in the *Avangard-Agro-Orel* case where in line with the *Solange I* and *Solange II* reasoning,²⁷ the Russian Constitutional Court refused to recognize the supremacy of international agreements and commitments if they contradict the established standards of protection of human rights and the constitutional foundations of the Russian Federation. The *Avangard-Agro-Orel* judgment concerned the direct applicability of a decision of the Eurasian Economic Commission and a judgment of the Court of the Eurasian Economic Community in the Russian legal order. The Russian Constitutional Court emphasized that, due to its competence to check the conformity of EAEU acts with the Constitution of the Russian Federation, it found the decision of the Eurasian Economic Commission and the judgment of the Court of the Eurasian Economic Community (predecessor to the EAEU Court till 2014) as being in breach of the established standards of protection of human rights and constitutional foundations in the Russian Federation.²⁸

Second, due to the recent political and security crisis in Ukraine, none of the EAEU Member States (including the Russian Federation) would be willing to accept a further expansion of supranationality of the EAEU legal order at the cost of their own sovereignty.²⁹

Third, the EAEU Treaty does not envisage a preliminary ruling procedure and therefore the national courts of the EAEU Member States do not have the right to ask the EAEU Court to interpret the EAEU Treaty. The case law of the EAEU Court is not regarded by the EAEU Treaty as a source of the ‘Union Law’ and it is not binding on the EAEU Member States. Therefore it follows that the ‘Union Law’ is unlikely to be transformed into a ‘new legal order of international law for the benefit of which the states have limited their sovereign rights’.³⁰

Fourth, the EAEU Treaty does not look like a ‘Constitution’ of the EAEU but represents a codification of previous integration projects within the post-Soviet area. It is a classical international agreement which establishes ‘the international organization of regional

Kazakhstan 1995, Article 6 of the Constitution of Armenia 1995 and Article 6 of the Constitution of Kyrgyzstan have similar wording. Article 8 of the Belarusian Constitution does not directly declare priority of international treaties of Belarus in domestic legal order.

²⁶ Serhey Marochkin, 2 “International Law in the Courts of the Russian Federation: Practice of Application”, *Chinese Journal of International Law* (2007), at 333. Roman Petrov, Paul Kalinichenko, “The Europeanization of Third Country Judiciaries through the Application of the EU Acquis: The Cases of Russia and Ukraine”, 60 *International and Comparative Law Quarterly* (2011), 337-339.

²⁷ Cases *Solange I* (BVerfGE 37, 271 ff.) and *Solange II* (BVerfGE 73, 339 ff.).

²⁸ Judgment of the Constitutional Court of the Russian Federation “*Avangard-Agro-Orel Ltd*” on 3 March 2015 No 417-O, available at <<http://doc.ksrf.ru/decision/KSRFDecision190708.pdf>>.

²⁹ “Nazarbayev i Lukashenko ostudili evraziiskiy pyl Putina” (“Nazarbayev and Lukashenko cooled down the Putin’s Eurasian aspirations”, (24 December 2013), available at <<http://ru.reuters.com/article/topNews/idRUMSE9BN02M20131224?pageNumber=2&virtualBrandChannel=0&sp=true>>. Dzhinmukhamed Calikulov, “V Kazakhstane ozadacheni slovami Putina o russkom mire” (“Kazakhstan is perplexed by words of Putin about *russkii mir*”), (2 September 2014), available at <http://www.bbc.com/russian/international/2014/09/140901_kazakhstan_putin>.

³⁰ Case 26/62 *van Gend en Loos v. Nederlandse Asministratie der Berlastingen* [1963] ECR 1.

economic integration' with all limitations inherent in an international regional integration project of an economic nature. As a consequence, the EAEU Treaty promotes the EAEU as a pure economic union that is not based on internationally recognized democratic principles like rule of law, separation of powers and non-discrimination.

4. Is there an 'EAEU acquis' and if so, how does it differ from the 'EU acquis'?

As it follows from the arguments above, the EAEU is not a 'symmetrical reflection' of the EU. However, there is a presumption that the EAEU legal order was inspired by the 'EU acquis' and, eventually, may lay the foundation of an 'EAEU acquis'. This process has been described by some scholars as 'back door approximation'.³¹ In a nutshell, this concept means that the EAEU refers to the 'EU acquis' as a point of reference for its own legislative approximation reforms and judicial decisions.³² It does so for two reasons. First, it does so in order to acquire best legal practices in areas which are not yet well-legislated either on the EAEU level or the Member States levels. Second, by doing so, the EAEU institutions enhance the EAEU's credibility as a part of the European Legal space.³³

On the one hand, there are several similarities between the EAEU and the EU which encourage the process of 'back door approximation' in the EAEU. The first similarity is that the EAEU pursues the objective to align its legislation with 'best international and European practices'.³⁴ Indeed the EAEU's founders claimed that the EAEU as an integration project is more advanced and more dynamic than the EU since the former takes into account 'strong and weak features' of the latter.³⁵ The second similarity is that the EAEU's institutional structure is inspired by the EU's institutions.³⁶ The top of the EAEU's institutional pyramid is occupied by the Supreme Eurasian Economic Council which resembles the European Council since it serves as an umbrella for meetings of the EAEU's heads of state and takes the most important decisions. The Eurasian Intergovernmental Economic Council mirrors the EU Council. The Eurasian Economic Commission's structure and competence replicates the

³¹ Maksim Karliuk, "Legislative Approximation and Application of EU Law in Belarus", in Peter Van Elswege, Roman Petrov (eds.), *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union. Towards a Common Regulatory Space?* (Routledge, 2014), 228-45.

³² For example, in the judgment "*Avangard-Agro-Orel*" the Constitutional Court of the Russian Federation explicitly recognized the principle of legal certainty as a founding constitutional principle of the Russian legal system. At the same time the Constitutional Court of the Russian Federation defined the principle of legal certainty similar to the case law of the Court of the EU though carefully avoiding any references to the latter.

³³ More on this see, Christopher Harding, "The Identity of European Law: Mapping Out the European Legal Space." 6(2) *European Law Journal* (2000), 128-147. Adam Lazowski, "Enhanced multilateralism and enhanced bilateralism: Integration without membership in the European Union", 45(5) *Common Market Law Review* (2008), 1433-1458. Andrea Ott, "The EU-Turkey Association and Other EU Parallel Legal Orders and the European Legal Space", 42(1) *Legal Issues of Economic Integration* (2015), 5-29.

³⁴ Vladimir Putin, "Novyi integratsionny proekt dlia Evrazii – budushee, kotoroe rozhdaetsia segodnia" ("New intergration project for Eurasia – future what is being born today"), *Izvestia* (3 October 2011), available at <<http://izvestia.ru/news/502761>>. See also "Evraziiskaya integratsiya – eto vklad v formirovanii novoy global'noy ekonomiki" (Eurasian integration is a contribution into new global economy"), Interview with Tatiana Valovaya, Minister of the Eurasian Economic Commission, *ITAR-TASS*, 5.6.2013, available at <<http://www.itar-tass.com/c49/698208.html>>; Nicu Popescu, "Eurasian Union: The Real, the Imaginary and the Likely", *Challiot Paper* № 132 (September 2014).

³⁵ *Ibid.*

³⁶ Alexei Ispolinov, "First Judgments of the Court of the Eurasian Economic Community: Reviewing Private Rights in a New Regional Agreement", 40(3) *Legal Issues of Economic Integration* (2013), 225-46. Zhenis Kembayev, "Eurasian Economic Community (EurAsEC), in *Max Planck Encyclopedia of Public International Law* (2013), available at <<http://opil.ouplaw.com/home/EPIL>>.

European Commission. The EAEU Court is called to play the role similar to the role of the Court of Justice of the EU. The third similarity is the dynamic nature of the EAEU legal system. It is widely accepted that the ‘EU acquis’ is a highly dynamic concept that embraces the entire evolution of the EU since its foundation. In a similar vein the ‘EAEU acquis’ can also be considered a dynamic concept because of the evolutionary character of the EAEU legal order. For example, at the moment of writing this paper, the EAEU’s institutions have issued several hundred documents of hard and soft law, and this body is likely to grow due to the projected law harmonisation programme within the EAEU.³⁷ The fourth similarity between the EAEU and the EU is supranationality. The Eurasian Economic Commission possesses competence to adopt legally binding decisions which are directly applicable in the legal systems of the EAEU Member States.³⁸ Direct applicability of decisions of the Eurasian Economic Commission resembles but not equals the direct applicability of EU regulations. However, potentially, the EAEU institutions may claim direct applicability of an EAEU decision unless the judiciaries in the EAEU Member States object to it on constitutional grounds. The fifth similarity is that the EAEU institutions follow the EU practice of applying the ‘EU acquis’ within the internal and external dimensions.³⁹ For example, within the internal dimension the EAEU Member States refer to the ‘EAEU acquis’ in the course of the process of approximation of national laws.⁴⁰ Within the external dimension the EAEU institutions use the notion EAEU ‘accession acquis’ when they deal with third countries which want to join the EAEU.⁴¹

On the other hand, the process of ‘back door approximation’ is discouraged by significant legal and institutional differences between the EAEU and the EU. The first difference is that the decision-making process in the EAEU takes place at the highest level and can be easily blocked at national level. Binding decisions of the Supreme Eurasian Economic Council, Eurasian Intergovernmental Economic Council and the Eurasian Economic Commission can be issued only unanimously. Even if they are adopted at the EAEU institutional level, national constitutional judiciaries can always hinder their implementation into the legal orders of the EAEU Member States. In contrast to the EU institutional structure, only the Eurasian Commission possesses the competence to issue supranational legal acts.⁴² However even these legal acts can be blocked by constitutional judiciaries in the EAEU Member States if they consider supranational legal acts of the Eurasian Commission in contradiction to foundations of national constitutional systems.⁴³

The second difference is that the ‘EAEU acquis’ does not cover ‘common values’ and human rights which are key elements of the ‘EU acquis’. The Lisbon Treaty formalised the EU Charter of Fundamental Rights and envisaged the accession of the EU to the ECHR.⁴⁴

³⁷ By May 2015 the Supreme Eurasian Economic Council issued 113 decisions, Eurasian Intergovernmental Economic Council adopted 920 legal documents, the Eurasian Economic Commission issued 310 decisions, the Court of the Eurasian Economic Union adopted 3 judgments.

³⁸ Article 13 of Annex I to the EEU Treaty.

³⁹ Roman Petrov, *Exporting the *acquis communautaire* through EU External Agreements* (Nomos: Baden-Baden, 2011) p. 313.

⁴⁰ See <<http://www.eurasiancommission.org/en/nae/news/Pages/22-10-2015-2.aspx>>.

⁴¹ See <<http://www.ritmeurasia.org/news--2014-11-11--armenija-nakanune-ratifikacii-dogovora-o-chlenstve-v-eaes-15421>>.

⁴² Articles 13 of Annex I to the EEU Treaty.

⁴³ For example, see the decision of the Constitutional Court of the Russian Federation “*Avangard-Agro-Orel Ltd*” of 3 March 2015 No 417-O.

⁴⁴ Article 6(1) (2) TEU.

Furthermore, the Lisbon Treaty elevates the status of international law in the EU legal order by stating that the EU in its external relations ensures ‘the strict observance and the development of international law, including respect for the principles of the United Nations Charter’.⁴⁵ Also the Lisbon Treaty emphasised the fundamental character of the European common values for the EU legal order. For example, the EU Charter of Fundamental Rights sets out that the ‘Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity’.⁴⁶ Article 2 TEU unequivocally states that

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

Interestingly, the Lisbon Treaty does not specify whether the EU common values are universal or strictly European. The Preamble to the TEU states that ‘*drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values* [emphasis added] of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law’. In our view this statement endorses universal values as values of European origin and therefore indirectly acknowledges the right of the EU to interpret the scope of these values.⁴⁷ EU common values may be regarded as belonging to the EU ‘fundamental acquis’ in so far as its elements are specified and correspond to the objectives of the EU.

Contrary to the Lisbon Treaty, the EAEU Treaty does not contain any ‘value dimension’. Article 3 of the EAEU Treaty (on fundamental principles of the EAEU) states that the guiding principles of the EAEU are: ‘respect for the universally recognised principles of international law *including the principles of sovereign equality of the Member States and their territorial integrity*,⁴⁸ *respect for specific features of the political structures of the Member States* [emphasis added]’.⁴⁹ The preamble of the EAEU Treaty is quite vague on the issue of ‘Eurasian common values’. It states that ‘guided by the principle of sovereign equality of states, the need for unconditional respect for the rule of constitutional rights and freedoms of man and national [citizen – R.P.], seeking to strengthen the solidarity and cooperation between their peoples *while respecting their history, culture and traditions* [emphasis added]’.⁵⁰ It follows that the ‘Eurasian common values’ focus mainly on the principles of sovereign equality of the Member States, territorial integrity and respect for particularities of national political systems, national history, culture and traditions. Possibly

⁴⁵ Article 3(5) TEU.

⁴⁶ Charter of Fundamental Rights of the EU (O.J. 2000, C 364/1).

⁴⁷ Paivi Leino, Roman Petrov, “Between ‘Common Values’ and Competing Universals: The Promotion of the EU’s Common Values through the European Neighbourhood Policy”, 15(5) *European Law Journal* (2009), 654-671.

⁴⁸ Reference to the principle of territorial integrity appeared in the text of the EEU Treaty during the ongoing Ukrainian crisis and in the aftermath of the annexation of Crimea by the Russian Federation. For more detail see Christian Marxsen, “The Crimean Crisis-An International Law Perspective”, 74(2) *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2014), 367-391). Reference to this principle may be seen as an explicit reminder to the EEU Member States and other countries of the post-Soviet area to consider the membership in the EEU as best guarantee of their territorial integrity and sovereignty within their post-Soviet borders.

⁴⁹ English text of the EAEU Treaty is available at <<http://www.eaeunion.org/?lang=en#info>>.

⁵⁰ *Ibid.*

under ‘commonly recognised principles of international law’ the drafters of the EAEU Treaty meant the UN Charter and international *Jus Cogens*. It can be argued that the EAEU Treaty offers other dimensions of common values to be shared by all EAEU Member States than those that are proclaimed by the EU. ‘Common Eurasian values’ are of an economic nature and do not go beyond the trade-oriented objectives of the EAEU Treaty. Article 1 of the EAEU Treaty circumscribes the freedoms of free movement of goods, services, capitals and labour as paramount objectives of the EAEU. Furthermore, the EAEU Treaty imports the notions of the ‘common (single) market’ (Article 2 EAEU Treaty) and ‘internal market’ (Article 28 EAEU Treaty) which are inherent in the ‘EU acquis’.

The third difference is that the EAEU institutional structure is weaker than that of the EU. There is no institution that represents peoples of the EAEU similar to the European Parliament. The absence of the latter seriously limits the legitimacy of the EAEU and puts forward concerns about democracy deficits in the EAEU. Furthermore, due to a last minute political compromise the EAEU Court was deprived of powers inherent in the EU Court of Justice (no preliminary ruling; complicated direct private appeals procedure; limited effect of the judgments of the EAEU Court). As a result, the EAEU Court resembles not a constitutional but an administrative court which just checks the compatibility of the ‘Union Law’ and national laws of the EAEU Member States with the EAEU Treaty. The task of protecting human rights of nationals of the EAEU Member States plays no role in the activities of the EAEU Court. Commentators note that the absence of a Human Rights Charter on the level of the EAEU will eventually lead to questioning the compatibility of legal acts of the EAEU’s institutions with internationally recognised standards of protection of human rights. Consequently, nationals of EAEU Member States may seek judicial protection against legal acts of the EAEU’s institutions in the European Court of Human Rights in Strasbourg.⁵¹ Among the EAEU’s Member States only Russia and Armenia are parties to the European Convention of Human Rights. Therefore complaints by Russian or Armenian citizens may question the judicial protection of human rights under the EAEU Treaty in line with ECHR standards.⁵²

5. Concluding remarks

In our introduction we indicated that the emergence of the EAEU as a direct geopolitical and economic competitor to the EU raises many questions of a legal nature. One of these questions is the issue of similarities and differences of the EAEU legal order with that of the EU. However, we also noted that the application of the notion ‘EU acquis’ has been extended beyond the EU and has been exported to legal orders of other international organizations like the WTO and the Council of Europe. We raised the question whether the notion ‘acquis’ can have the same meaning within the legal order of the EAEU. The answer is not straightforward. On the one hand, some institutional similarities between the EAEU and the EU as well as the dynamic nature of the EAEU legal order give us a ground to apply the notion ‘acquis’ with regard to the EAEU in order to describe the political and legal heritage

⁵¹ *Supra* note 22, at 234.

⁵² In the *ONP* case (judgment of the Chamber of Appeal of 21 February 2013) the Court of the Eurasian Economic Community referred to the case law of the European Court on Human Rights in case *Credit and Industrial Bank v. Czech Republic* (judgment of the European Court of Human Rights of 21 October 2003). It is the first direct evidence of the Europeanisation of the Eurasian Economic Community Court practice. See Paul Kalinichenko, “Legislative Approximation and Application of EU Law in Russia” in Peter Van Elsuwege, Roman Petrov (eds.) *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union. Towards a Common Regulatory Space?* (Routledge, 2014), 246-260.

of the integration projects within the post-Soviet area. On the other hand, considerable differences between the EU and the EAEU legal systems (different degrees of supranationality, weak role of the Court of the Eurasian Economic Union, and strictly normative understanding of the definition of the 'Union Law' in the EAEU Treaty) bring into question the relevance of the notion of the 'EAEU acquis'.

Looking at the pattern of application of the notion 'acquis' more widely there should be no objections against application of this notion within the legal orders of international organisations other than the EU. The notion 'acquis' represents a useful tool for depicting the whole span of political and legal achievements of an international organization. It would seem logical therefore to apply the notion 'acquis' to the EAEU as a newly emerging regional integration project with far-reaching objectives. For practical and academic purposes, it can even be suggested that the notion 'acquis' with reference to the EAEU would cover not only 'Union Law' but also the objectives of the EAEU, soft law and principles developed by the EAEU Court. It might be argued that the application of the notion 'EAEU acquis' may be perceived with a high degree of reservation due to its similarity with the supranational 'EU acquis'. However, the notion 'EAEU acquis' may encourage a constructive discussion about the necessity to revisit the narrow scope of the 'Union Law' (as it is already applied in the EAEU) in the direction of inclusion of fundamental concepts of common values, founding principles like rule of law and non-discrimination and direct effect. In this case the use of the notion 'EAEU acquis' will inevitably contribute to a better perception of the EAEU integration project internationally and will contribute to setting up long-lasting political and legal relations between the EU and the EAEU.