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Free Trade in Services and EAEU Single Services Market: Current State and Opportunities²

The paper examines trade in services regimes of the Eurasian Economic Union. The main aim of this article is to reveal characteristics of existing trade in services regimes as well as to compare those regimes. It is described what kind of obligations on provision of national treatment and most favored nation treatment, on restraint from application of quantitative and investment restrictions are taken by the Eurasian Economic Union member states.

It is explained how the Eurasian Economic Union single services market is evolving. It is also stated that regulatory consistency is a necessary precondition for creation of certain single services markets on the territory of the Eurasian Economic Union. In addition, it is indicated whether there is regulatory consistency in the sectors within which single services markets will be launched in accordance with liberalization plans.

This article may be used by students of higher education institutions, entrepreneurs and other interested persons for the purposes of brief studying of existing trade in services regimes on the territory of the Eurasian Economic Union.

Key words: *trade in services; single services market; national treatment; most favored nation treatment; quantitative restrictions; investment restrictions; regulatory consistency; liberalization plan.*

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Introduction

The main aim of the Eurasian Economic Union is free movement of goods, services, capital, and labor. A number of reforms that have been implemented are in the process of achieving these goals while others are still to be implemented. There

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are lots of core principles that shall be adhered to in the process of achieving the union's main goals.

Regarding trade in services, it significantly differs from trade in goods within the EAEU. The EAEU member states have undertaken obligations to accord to services and service suppliers of other EAEU member states national treatment, most favored nation treatment and to abstain from applying quantitative and investment restrictions. In certain services sectors member states implement coordinated policies. Member states are also capable of establishing the single services market in chosen spheres. Nevertheless, services and investment are a field of sovereign national competence of each EAEU member state and are regulated by the national legislation.

The EAEU member states have agreed to establish the single services market in over sixty sectors. These services are listed in two documents of the EAEU Supreme Council. Most of these services are already supplied in the single services market regime, others will start being supplied in this regime after their transition periods expire. The latest transition periods will expire no later than on January 1, 2025.

The precondition for the functioning of the particular single services market is harmonized (unified) regulation. For this very purpose the EAEU member states will implement liberalization plans. These plans are approved for each particular services sector where the single market will launch after a transition period. The implementation of liberalization plans will lead to achieving required harmonization state in a regulatory field.

Agreements on trade in services

Member states agreed that in order to ensure freedom of trade in services, establishment and activity, and investment the terms of trade should be gradually liberalized. Furthermore, member states will not introduce any new discriminatory measures, except for those that were in force at the time of the conclusion of the EAEU Treaty. An exhaustive list of these measures was fixed by states and approved by the Supreme Eurasian Council.

When liberalizing, member states should be guided by a number of principles.

First, liberalization involves the optimization of domestic regulation. This contains step-by-step simplification, and elimination of excessive regulation, including permissive requirements. Thus, the best international practice or the most progressive models of member states should be taken into account.

Second, the principle of proportionality must be respected. This means that the level of harmonization of legislation and administrative cooperation should be obligatory and sufficient for the effective operation of the services market in specific sectors.

The third principle is mutual benefit. Liberalization should be based on an equitable distribution of benefits and obligations, taking into account the sensitivity of certain service sectors and activities for each member state.

The fourth principle is consistency. The adoption of any measures should take into account the obligation not to allow deterioration of the conditions that were in force at the time of the conclusion of the treaty. Apart from that the list of restrictions and exemptions reserved by member states should gradually decrease

And, finally, the last fifth principle is economic feasibility. When forming a services single market, priority should be given to liberalizing services that have the greatest impact on cost, competitiveness and the volume of goods produced and sold on the domestic market of the union.

So, the member states agreed not only to gradually liberalize the terms of trade, but also to provide a favorable regime for trade in services to the suppliers from EAEU member states. Let us consider the basic obligations in the field of regulation of trade in services, establishment, activity and investment accepted by the member states within the union (see Fig. 1).

Figure 1.

Free trade in services regime



Source: Compiled by the authors.

National treatment

The national treatment is a principle whereby each member state, with respect to all measures affecting trade in services, provides services, suppliers and recipients of services of another member state regime no less favorable than the regime provided under the same (similar) circumstances to their own same (similar) services, suppliers and recipients of services.

At the same time, in accordance with the EAEU Treaty, the member states received an alternative opportunity in fulfilling obligations under the national treatment to provide formally the same or formally different treatment to the services, suppliers and recipients of services of any other member state in relation to that granted to their own same (similar) services or suppliers or recipients of services. Formally, the same or formally different treatment is considered less favorable if it

changes the conditions of competition in favor of services, suppliers or recipients of services of this member state.

Meanwhile each member state may apply the restrictions and conditions set forth in the individual national lists¹ or in the list of horizontal restrictions.² This list of exemptions from the national treatment is exhaustive.

Most favored nation treatment

In accordance with the EAEU Treaty, member states are obliged to grant the most favored nation treatment. This means that services, suppliers and recipients of services of any other member state are provided with no less favorable treatment than the one provided to the same services, suppliers and recipients of services of third states under the same circumstances. Briefly, it means that suppliers / recipients of services from the EAEU member countries cannot be in worse conditions than suppliers / recipients of services from third countries.

However, each member state of the EAEU may apply individual exemptions specified in the national list or in the list of horizontal restrictions retained by member states for all sectors and activities. Also, the EAEU Treaty stipulates the norm obliging the member state to extend the same regime to its EAEU partners when concluding an international agreement on economic integration.

Quantitative and investment-related measures

According to the EAEU Treaty, member states are restricted in terms of introduction or application of measures concerning:

- the number of service suppliers (for example, in the form of a quota, an economic feasibility test);
- the number of legal entities, branches or representative offices, as well as individual entrepreneurs from a particular member state;
- transactions of any service supplier (established, acquired or controlled legal entity, branch, representative office or registered individual entrepreneur) in any quantitative form (for example, in the form of a quota, an economic feasibility test);

¹ *Individual national list of restrictions, exemptions, additional requirements and conditions within the Eurasian Economic Union approved by the Decision of the Supreme Eurasian Economic Council No. 112 dated December 23, 2014 (for the Republic of Belarus, Republic of Kazakhstan, Russian Federation); No. 32 dated October 16, 2015 (for the Kyrgyz Republic); No. 18 dated May 8, 2015 (for the Republic of Armenia).*

² *List of horizontal restrictions maintained by member states in respect of all sectors and activities as set in the Annex 2 to Protocol on trade in services, establishment, activity and investment.*

- form of establishment, including the specific type of legal entity;
- the acquired share in the capital of a legal entity or the degree of control over a legal entity;
- restrictions on the total number of individuals that can be employed in a particular service sector, or the number of individuals that a service supplier can hire.

As with exemptions from the national treatment and most favored nation treatment, member states stipulated national lists of retained exemptions from this requirement.

In order to exclude the introduction of additional burdensome requirements by member states, the EAEU Treaty prohibits the introduction of conditions such as compulsory export or import of goods and services, the share of local content in the procurement of goods and services, the forced transfer of know-how and technology.

It is noteworthy that the voluntary compliance with such requirements cannot serve as a «badge of merit» and become the basis for obtaining any preferences.

EAEU single services market

There is a common opinion that integration within the EAEU implies creation of the single market for all types of services.

However, this is not truth. The provisions of the EAEU Treaty stipulate that the single market within the union functions in the service sectors approved by the Supreme Council. At the same time, for certain service sectors the single market began its functioning simultaneously with the formation of the union, and in other sectors — in accordance with plans, which define the stages and terms of liberalization for each country.

The main features of the single services market within the union are as follows:

- most favored nation treatment, the national treatment and the absence of quantitative and investment restrictions (with the exception of those that were fixed by the parties in the annex to the Protocol on trade in services, establishment, activity and investment);
- supply of services without establishment in the form of a legal entity;
- recognition of the permit document received by the service supplier in the territory of its member state;
- recognition of the professional qualifications of the personnel of the service supplier.

This means that, in addition to the regime provided by free trade in services between the EAEU member states, service suppliers within the single market can enjoy even more opportunities. A comparison of the treatment provided in the

EAEU states within the framework of trade in services and the single services market is presented in Table 1.

Table 1
Comparison of EAEU trade in services regimes

	Free trade in services in EAEU	Single services market in EAEU
Most favored nation treatment	+	+
National treatment	+	+
No quantitative and investment restrictions	+	+
No additional establishment	-	+
Recognition of permit document	-	+
Recognition of professional qualifications of personnel	-	+

Source: Compiled by the authors.

In fact, this means that service suppliers from member states have lots of opportunities to benefit entirely from the conditions of single market. The service supplier who is a resident of the EAEU is granted the national treatment and the most favored nation treatment and does not have to comply with additional restrictive measures, including quantitative and investment measures. This service supplier does not need a re-establishment of his legal entity on the territory of a member state, and he is not obliged to obtain a new permission, as the permission received in his country is sufficient. Apart from that, due to mutual recognition of the qualifications of the personnel of the service supplier, there is no need to confirm a higher education diploma.

So, in which services sectors the suppliers of member states are able to take the full advantage of the single market?

As already mentioned, the service sectors covered with the single market conditions are defined by the decisions of the Supreme Eurasian Economic Council, in particular, decisions No. 110 and No. 30.¹ These decisions, respectively, determine

¹ *Decision of the Supreme Eurasian Economic Council No. 110 dated December 23, 2014 «On approval of the list of sectors (subsectors) of services in which the single services market is functioning within the Eurasian Economic Union» and Decision of the Supreme Eurasian Economic Council No. 30 dated October 16, 2015 «On approval of the list of sectors (subsectors) of services, in which the single services market within the Eurasian Economic Union will be established in accordance with the liberalization plans (after the transition period)».*

the sectors in which the single market begins to function simultaneously with the creation of the union, and the sectors in which the single market will be created after the transition period.

Notably, in both decisions the United Nations Central Products Classification (UN CPC) is used to designate a particular service sector/subsector.¹ Such an approach to listing the liberalized service sectors allows to harmonize national systems and determine which sectors and subsectors of services will be subject to the single services market within the EAEU. Given that, as discussed above, the single services market regime has significant advantages for service suppliers, a clear definition of the scope of the single services market is crucial.

Let's take a closer look at the list of sectors included in these decisions and start with Decision No. 110.

This Decision contains a list of 43 sectors/subsectors of services.

Among the larger service sectors included in this Decision are various types of construction services, pre-construction services, finishing work, engineering services, and urban planning. At the same time, all the services listed are not related to construction sites classified as particularly dangerous and technically complex, as well as to objects of cultural heritage (historical and cultural monuments).

There are also a number of sectors related to agriculture, forestry, and hunting.

It is noteworthy that by this decision such strategically important sectors of services as wholesale and retail trade were transferred to the single market regime. However, each party agreed on the types of wholesale and retail trade excluded from the functioning of the single market.

Until 2016, wholesale and retail trade in weapons, military equipment and explosive materials, precious metals, alcohol and tobacco products, sturgeon fish and caviar, and some other goods were excluded from the single market regime. These exemptions were fixed by all EAEU member states.² After this period, only the trade in nuclear and radioactive substances and devices used for state meteorological supervision is withdrawn from the single market.

1 *The UN Central Product Classification (CPC) is a complete product classification covering goods and services. The UN CPC allows to create a basis for international comparison and facilitates the harmonization of various types of statistical data related to goods and services.*

2 *At the time of signing Decision of Supreme Eurasian Economic Council No. 110 dated December 23, 2014, the EAEU consisted of three states — the Republic of Belarus, the Republic of Kazakhstan, the Russian Federation. The respective exemptions for the member states that joined the union later were fixed by Decision of the Supreme Eurasian Economic Council No. 17 dated May 8, 2015 (for the Republic of Armenia) and Decision of the Supreme Eurasian Economic Council No. 31 dated October 16, 2015 (for the Kyrgyz Republic).*

The largest number of exemptions was fixed by the Republic of Kazakhstan: the beginning of the functioning of the single market in various sectors of construction and engineering services was postponed until 2025. Kazakhstan has certain services excluded from the functioning of the single services market without specifying the terms of the expiry of the exemption. Those are cargo handling, warehouses, as well as services related to the preparation of transport documentation, inspection and weighing of goods and other similar services.

A similar exemption was also established for some kinds of services related to agriculture, namely, phytosanitary measures against especially dangerous pests and elimination of outbreaks of quarantine objects.

The second list of service sectors, in which the single market regime will operate, but within a transition period, is Decision No. 30.

This Decision defines 21 sectors (subsectors) of services in which formation of the single market of services will be carried out in accordance with liberalization plans.

The key measure envisaged by the liberalization plan for each service sector is the achievement of regulatory consistency in this area among the member states of the union. Regulatory consistency is the equivalence, similarity of regulatory requirements and procedures in a particular type of activity. Regulatory consistency implies the presentation of equivalent qualification requirements to the subjects of a certain type of activity. However, the use of identical regulatory tools (license, certificate, admission, etc.) does not guarantee, nor is mandatory for the existence of regulatory consistency in a particular type of activity.

An analysis of the norms of the national legislation of the EAEU member states allows us to determine in which sectors the regulatory consistency is present, and in order to achieve it, harmonization of the legislation is necessary.

It should be noted that harmonization does not mean absolutely identical regulation. Consequently, in sectors where the achievement of regulatory consistency is required, there is no need to amend the legislation of the member states identically. It is sufficient to achieve the most similar regulation (including qualification requirements), the absence of conceptual contradictions and the unified regulatory objectives.

At the end of 2016, the Supreme Eurasian Economic Council approved the liberalization plans.¹ They determine the timing of the launch of the single market in specific service sectors, as well as the phased work should be carried out to provide it. The Table 2² provides the terms of launch of the single market for services, defined in Decision No. 30.

1 *Decisions of the Supreme Eurasian Economic Council No. 22 and No. 23 dated December 26, 2016.*

2 *Table 2 contains the titles of service sectors (subsectors) and their CPC codes.*

Table 2
Terms of single services market launch

		Launch of single services market
1	Common construction works on the erection of objects of civil construction (from CPC 54210, 54220, 54230, 54241, 54242, 54251, 54252, 54260, 54310, 54320, 54330, 54342, and 54800)	2021 (for Kazakhstan — no later than January 1, 2025)
2	Engineering services on highly hazardous and technically complex objects of capital construction and preservation of objects of cultural heritage (from CPC 8335 and 8339)	2021 (for Kazakhstan — no later than January 1, 2025)
3	Complex engineering services related to certain objects (from CPC 83312)	2021 (for Kazakhstan — no later than January 1, 2025)
4	City-planning services related to highly hazardous and technically complex objects of capital construction and preservation of objects cultural heritage (from CPC 8322)	2021 (for Kazakhstan — no later than January 1, 2025)
5	Leasing or Rental Services Concerning Vessels without Operator (from CPC 73240)	2019
6	Advertisement services (from CPC 83610, 83620, 83631, and 83690)	No later than 2020
7	Financial Audit services (from CPC 82211 and 82212)	2022
8	Real estate services involving own or leased property (from CPC 72111, 72112, 72121, 72122, 72130, and 72212)	2020
9	Property Appraisal Services (from CPC 72240 and 85990)	No later than January 1, 2021
10	Travel Agency and Tour Operator, Tour Agent services (from CPC 67811 and 67812)	2019
11	Technical Testing and Analysis services (from CPC 83561–83564 and 83569)	–
12	Research and development in geology, geophysics and other spheres (from CPC 83510)	2019 (for Kazakhstan — no later than January 1, 2025, for Kyrgyz Republic — no later than January 1, 2020)
13	Mineral surveying services (underground) (from CPC 83520)	2019 (for Kazakhstan — no later than January 1, 2025)
14	Mineral surveying services (ground) (from CPC 83530)	2019 (for Kazakhstan — no later than January 1, 2025)
15	Cartography services (from CPC 83540)	2019 (for Kazakhstan — no later than January 1, 2025)
16	Weather Forecasting and Meteorology services (from CPC 83550)	2019 (for Kazakhstan — no later than January 1, 2025)
17	Motion Picture or Video Tape Production and Distribution services (from CPC 96121 and 96141)	2019
18	Motion Picture Demonstration services (from CPC 96152)	2019
19	Accounting Review and Bookkeeping services (from CPC 82213, 82219, and 82220)	2021

20	Research and Development in Humanities and Implementation of Its Results (from CPC 81210, 81220, 81230, 81240, and 81290)	2020
21	Research and Development in Natural Sciences and Pilot Works (from CPC 81110, 81120, 81130, 81140, 81150, and 81190)	2020

Source: Compiled by the authors.

We have conducted the analysis of national regulation of services listed in Decision No. 30. The analysis has revealed that there is a regulatory consistency in 8 out of 21 sectors.

Construction and Engineering Services

We have grouped the first four services sectors listed in Decision No. 30 — common construction works on the erection of objects of civil construction (as listed); engineering services on highly hazardous and technically complex objects of capital construction and preservation of objects cultural heritage (as listed); complex engineering services related to certain objects (as listed); city-planning services related to highly hazardous and technically complex objects of capital construction and preservation of objects of cultural heritage — and produced one common conclusion as these sectors are closely related to each other and are regulated by the same legislative acts to a large extent. Decision No. 30 does not specify which engineering services are considered as complex. So, for the purpose of the analysis we have opted for the following ones: author supervision, technical supervision, construction project management, technical inspection of sustainability of buildings and structures.

The analysis has shown the absence of overall regulatory consistency, although some regulatory aspects are similar in the EAEU member states. For example, the EAEU member states have regulatory consistency in classification of construction objects (although the most detailed classifications are those of Kazakhstan and Russia); the absence of requirement to establish a juridical person in the state of activity.

The aspects where there is no regulatory consistency include:

- Classification of the rate of hazard of construction objects;
- Qualification requirements;
- Design experience requirements;
- Material and technical resources, control equipment;
- Requirement of quality management standards.

Leasing or Rental Services Concerning Vessels without Operator

There is no regulatory control of the leasing or rental of vessels market in the EAEU member states. Therefore, it is deemed that there is regulatory consistency in this market.

Advertisement Services

The analysis of regulation of advertisement services has proved that there is regulatory consistency in this sector of economy. The regulatory framework of all EAEU member states is characterized by relatively loose trade regime in advertisement services.

Financial Audit Services

Decision No. 30 covers only certain services in the financial audit field (as listed in the decision). The analysis has shown that there is no regulatory consistency in this field. Three EAEU member states regulate the market by means of licensing, the other two member states employ other regulatory instruments.

Real estate services involving own or leased property

There is no regulatory control of the leasing or rental of vessels market in the EAEU member states. Therefore, it is deemed that there is regulatory consistency in this market.

Property Appraisal Services

There is no regulatory consistency in the property appraisal sector. Since January 2018, Kazakhstan has been employing the self-regulatory organization model. The same regulatory mechanism is employed in Russia. Membership in such organizations is compulsory for every person providing property appraisal services. Other EAEU member states have chosen the compulsory competence assessment model.

Travel Agency and Tour Operator, Tour Agent Services

There is no regulatory consistency in this sector of economy. For example, Kazakhstani businesses doing business in this market shall obtain licenses, send notifications to a state regulator. In addition, in Kazakhstan and Russia membership in professional associations is compulsory. There are other regulatory differences as well.

Technical Testing and Analysis Services

There is regulatory consistency in services on technical testing and analysis mainly due to the fact that all member states use relevant international standards.

Research and development in geology, geophysics and other spheres, mineral surveying services, mapping services

There is regulatory consistency in research in various services sectors, although there are certain differences.

The mapping demonstrates no regulatory consistency. In Russia and the Kyrgyz Republic one shall obtain a license in order to perform mapping activities. In Kazakhstan notification suffices. There is no regulatory control in other EAEU member states.

Regulation of mineral surveying services is inconsistent across EAEU member states as well.

Weather Forecasting and Meteorology Services

There is no regulatory consistency in weather forecasting and meteorology services. In Kazakhstan and Kyrgyz Republic meteorology is a state monopoly sector. In Russia this is a licensed activity. Other EAEU member states employ different regulatory mechanisms.

Motion Picture or Video Tape Production and Distribution Services

There is regulatory consistency in this sector across all EAEU member states. Entities willing to demonstrate motion pictures submit a set of documents and obtain a demonstration permit for each particular motion picture. There are no other regulatory procedures that businesses need to go through in this market.

Accounting Review and Bookkeeping Services

There is no regulatory consistency in accounting review and bookkeeping services. Kazakhstan is the only EAEU member state that has adopted the International Financial Reporting Standards, and it did so in 2006. There are other regulatory differences as well.

Research and Development in Humanities and Implementation of its Results, Research and Development in Natural Sciences and Pilot Works

There is regulatory consistency in the research and development field. Definitions are similar in all EAEU member states.

Conclusion

As it is demonstrated in the paper, the EAEU has quite ambitious plans on creating the single services market. The most important yet difficult part of it is making it work in reality, providing the services suppliers with freedom of trade without barriers or obstacles.

Agreements concluded by member states and commitments they have to fulfill in creating the single services market meet the practice of close economic integrations, such as the European Union. The services suppliers within the single services market are provided with full freedom of trade, which includes no discrimination, no requirements to re-establish, obtain permissions or recognition of qualifications.

In this case we should note that Eurasian Economic Union is a fairly «young» union. The path to the perfectly operating single services market not only lies through changing the regulation, but also the thinking of people and increasing their competitiveness.

As for now, the single services market operates, among others, in several large services sectors, such as wholesale and retail, certain kinds of construction and

engineering services, agricultural services and others. Member states have determined the list of services sectors that would be liberalized and will switch to the single market within seven years. Apart from that, in several strategic spheres, such as transport and financial services the member states are planning to create the coherent policy, that will in the end transform to the single market.

Comprehensive and representative assessment of the impact of the single services market on mutual trade could be performed after all transition periods expire and the services suppliers from member states have adapted to new trade conditions.

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Либерализация торговли услугами и единый рынок услуг ЕАЭС: текущее состояние и возможности²

В данной статье рассмотрены режимы торговли услугами на территории Евразийского экономического союза. Основной целью статьи является обозначение признаков существующих режимов торговли услугами, а также их сравнение между собой. Разъясняется, какие обязательства по предоставлению национального режима, режима наибольшего благоприятствования, по неприменению количественных и инвестиционных ограничений приняли на себя государства-члены Евразийского экономического союза.

В статье также дается разъяснение, в каком направлении развивается единый рынок услуг Евразийского экономического союза. Указывается, что наличие содержательной эквивалентности в регулировании является обязательной предпосылкой для создания единых рынков тех или иных услуг на территории Евразийского экономического союза. Помимо этого, приводится информация о том, в каких секторах услуг, в которых единые рынки начнут функционировать в соответствии с планами либерализации, содержательная эквивалентность в регулировании присутствует, а в каких она отсутствует.

Данная статья может быть использована студентами высших учебных заведений, предпринимателями и иными заинтересованными лицами для краткого ознакомления с существующими режимами торговли услугами на территории Евразийского экономического союза.

Ключевые слова: торговля услугами; единый рынок услуг; национальный режим; режим наибольшего благоприятствования; количественные ограничения; инвестиционные ограничения; содержательная эквивалентность в регулировании; план либерализации.

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