БАРЬЕРЫ, ИЗЪЯТИЯ И ОГРАНИЧЕНИЯ ЕВРАЗИЙСКОГО ЭКОНОМИЧЕСКОГО СОЮЗА
ДОКЛАД

BARRIERS, DEROGATIONS AND RESTRICTIONS IN THE EURASIAN ECONOMIC UNION
REPORT
BARRIERS, DEROGATIONS AND RESTRICTIONS IN THE EURASIAN ECONOMIC UNION REPORT
Dear friends!

We would like to submit to your attention a report on obstacles in the internal market of the Eurasian Economic Union (EEU), or a so-called “White paper”. The Eurasian Economic Commission has worked for preparation of this report together with the member states and the business community of the EEU. One of the main tasks of the Eurasian Economic Commission is to ensure functioning of the EEU internal market without barriers and with the minimum possible quantity of derogations and restrictions, since existence of such obstacles prevents from full implementation of one of the basic principles of integration provided for by the Union Treaty, namely, free movement of goods, services, capital and labor in the territories of the EEU member states.

The White paper includes the obstacles agreed upon by all of the member states, the quantity of which is now equal to 60, but this is more like a point of departure than the quantitative parameter of our work.

The White paper also describes two main mechanisms for removal of obstacles:

– elaboration of “road maps” for removal of derogations and restrictions, including the measures for elimination thereof and the timing;

– prompt removal of identified barriers by way of interaction with the Union member states.

An important achievement in the work for removal of barriers is information openness and transparency of activity of the EEC and the member states and also the advantages of a common market without barriers, derogations and restrictions, which may be assessed in practice by the business communities and nationals of the Union member states. We hope that the report we submit will help you to form an idea of the activity and the role of the EEC in the work for identification and removal of obstacles in the EEU internal market.

Karine Agasievna Minasyan,
a member of the Board (Minister) for Internal Markets, Informatization and Information and Communication Technologies of the Eurasian Economic Commission
This report Barriers, Derogations and Restrictions in the Eurasian Economic Union - “the White paper” of obstacles in the EEU – is the result of joint work of the Eurasian Economic Commission, the member states of the Eurasian Economic Union, and the business community.


The report reflects the results of work of the Eurasian Economic Commission for removal of obstacles to implementation of the “four freedoms” in the domestic market of the Eurasian Economic Union within the limits determined by the Treaty on the Eurasian Economic Union dated May 29, 2014, outlines methodological approaches to classification of obstacles in the internal market of the Eurasian Economic Union, gives specific examples of removal of obstacles, and describes the priority issues of further activity along these lines. The annex to the report contains the list, agreed upon with the EEU member states, of obstacles (barriers, derogations and restrictions) in the internal market of the Eurasian Economic Union. Joint work of the Eurasian Economic Commission and the EEU member states with respect to the obstacles not mentioned in the report will be continued and reflected in subsequent documents.

GDP: gross internal product;

“member states”: the states that are members of the Eurasian Economic Union and [arties to the Treaty on the Eurasian Economic Union dated May 29, 2014 (before January 01, 2015 – the states that were members of the Customs Union and the Common Economic Space)¹;


EU: European Union;

UCT of the Union: the unified customs tariff of the Eurasian Economic Union;

CES: common economic space;

“Commission”: the Eurasian Economic Commission;

TIR: international transport of goods by road;

VAT: value-added tax;

“Register of Obstacles”: electronic database of barriers, derogations and restrictions with respect to movement of goods, services, capital and labor;

“Union”: the Eurasian Economic Union;

“SPS measures”: sanitary, veterinary-and-sanitary and quarantine phytosanitary measures;

FEA: free economic area;

EEU FEACN: the Unified Foreign Economic Activity Commodity Nomenclature of the Eurasian Economic Union;

CU: the Customs Union.

¹ The Republic of Armenia became a full-fledged member of the Eurasian Economic Union on January 02, 2015. The Kyrgyz Republic became a full-fledged member of the Eurasian Economic Union on August 12, 2015.
Introduction

1. Eurasian economic integration started in 1994, when President of the Republic of Kazakhstan Nursultan Nazarbaev suggested in his speech at the Moscow State University named after M.V. Lomonosov that a union of states united by economic interrelationships should be formed in Eurasia.

Rapprochement of Eurasian states was consolidated by signing the Treaty on the Customs Union in 1995. On October 06, 2007, the Treaty on the Establishment of the Common Customs Territory and Formation of the Customs Union was signed and laid the basis for functioning from January 2010 of the Customs Union comprising the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation.

From July 2011, the CU operated in a full-fledged mode, with complete removal of customs control on internal borders and completion of formation of the common customs territory. That ensured free movement of goods in the common customs territory in the CU.

2. The next stage of economic integration in Eurasia was formation of the CES on the basis of 17 agreements that became effective on January 01, 2012.

For further development of integration processes and transition to a new stage of integration, namely, to the Eurasian Economic Union, Presidents of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation signed the Declaration on Eurasian Economic Integration dated November 18, 2011, providing for full realization of the CU and CES potential, improvement and further development of the legal framework, institutes and for ensuring effective functioning of a common market for goods, services, capital and labor.

3. For implementation of the above said intentions, the heads of the member states instructed2 the Commission to complete together with the member states by May 01, 2014 work on a draft Treaty and to consider the issue of complete removal of obstacles to free movement of goods, services, capital and labor as the line of further development of integration processes.

The heads of the member states decided at a meeting of the Supreme Eurasian Economic Council in May 2013 that the work for codification and preparation of a draft Treaty should be based on the necessity of the CES functioning, as a rule, without any derogations or restrictions3.

A preliminary list of obstacles in the internal market of the Union, prepared in pursuance of the above said decision, was one of the bases for negotiating at preparation of a draft Treaty. Further building up of the preliminary list was carried out with due account for the opinion agreed upon at the level of experts with respect to inclusion of an identified obstacle to the list if at least one member state asserted such view.

4. Due to absence of a conceptual framework of obstacles, approaches and systematization thereof in economic theory, the Analytical Report was prepared, containing the definitions of the terms “barriers”, “derogations” and “restrictions” with account for special features of Eurasian economic integration.

The purposes of the Analytical Report included, in particular, provision of information on the actual results of the Commission’s work for identifying and removal of barriers, derogations and restrictions and also presentation of the results of assessment of the quantitative aspect of impact of obstacles on mutual trade among the members states, as well as potential impact of removal of obstacles, and proposal of a conceptual approach to organization of the work to ensure the CES functioning, as a rule, without any derogations or restrictions from the time of entry of the Treaty into force.

Based on the results of consideration of the Analytical Report, the heads of governments of the member states adopted a resolution on the necessity of further work for identification and removal of barriers, derogations and restrictions4. In December 2015, the heads of the member states adopted a resolution on

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2 Resolution of the Supreme Eurasian Economic Council dated December 19, 2012 No. 21 On Implementation of Main Lines of Integration

3 Resolution of the Supreme Eurasian Economic Council dated May 29, 2013 No. 30 On the Lines of Further Development of Integration Processes

4 Instruction of the Eurasian Intergovernmental Council dated May 29, 2015 No. 1
establishment of a separate field of the Commission’s activity, namely, ensuring of the internal market functioning without barriers, derogations and restrictions.

5. The purpose of this report is demonstration of the Union’s potential and capabilities in the event of shifting from business costs under the conditions of existing barriers in the internal market to economic benefits of a single market without barriers, derogations and restrictions.

Urgent problems dealt with in the report are determining the priorities of the Commission’s work together with the member states for removal of obstacles, elaboration of the “road map” plans of arrangements for reducing the number of derogations and restrictions (hereinafter referred to as “Road Maps”), improvement of methodological approaches to classification of obstacles as barriers, derogations or restrictions, and work for inclusion thereof into the Register of Obstacles.

The report contains the following sections:

✔  the results of work for removal of obstacles in 2016;
✔  proposals on subsequent work of the Commission together with the member states for identification and removal of obstacles;
✔  statistical data and description of obstacles to the “four freedoms” by economy sectors for freedom of movement of goods, with designation of separate sectors for freedom of services, capital and labor;
✔  the priorities of the Commission’s work together with the member states for further removal of obstacles.

6. Proposals on subsequent work with obstacles are intended for joint implementation thereof by the Union’s bodies, member states and also expert and business community in the course of conducting the activity for ensuring the Union’s internal market functioning without barriers, derogations and restrictions.

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5 Resolution of the Supreme Eurasian Economic Council dated December 21, 2015 No. 37 On the List of Members and Allocation of Responsibilities Among the Members of the Board of the Eurasian Economic Commission. Following this Resolution, the Commission Council established on March 01, 2016 the Department of Domestic Markets Functioning.
6 октября 2007 года был подписан Договор о создании единой таможенной территории и формировании таможенного союза, который послужил основой функционирования с января 2010 года ТС с участием Республики Беларусь, Республики Казахстан и Российской Федерации.

On October 06, 2007, the Treaty on the Establishment of the Common Customs Territory and Formation of the Customs Union was signed.

Решением Высшего Евразийского экономического совета от 19 декабря 2012 г. № 21 «О реализации основных направлений интеграции» главы государств-членов поручили Комиссии совместно с государствами-членами рассмотреть вопрос о полной ликвидации препятствий на пути свободного движения товаров, услуг, капитала и рабочей силы в процессе работы над проектом Договора о Евразийском экономическом союзе.

Decision of the Supreme Eurasian Economic Council of December 19, 2012, the heads of the Member States instructed the Commission together with the member states to consider the total elimination of obstacles to the free movement of goods, services, capital and labor in the Process of work on the draft Treaty on the Eurasian Economic Union.

2012

2013

2015

Решением Высшего Евразийского экономического совета от 29 мая 2013 г. № 30 «О направлениях дальнейшего развития интеграционных процессов» главы государств-членов поручили Комиссии совместно с правительствами государств-членов в ходе работы по кодификации и подготовке проекта Договора о Евразийском экономическом союзе исходить из необходимости функционирования Единого экономического пространства, как правило, без изъятий и ограничений с 1 января 2015 года.

Decision of the Supreme Eurasian Economic Council of May 29, 2013 the heads of the Member States instructed the Commission together with the governments of the Member States to proceed from the need for functioning Single economic space, as a rule, without derogations and restrictions.

On May 29, 2014 in Astana the heads of the member states signed the Treaty on the Eurasian Economic Union

31 марта 2017 года официально опубликован Доклад «Барьеры, изъятия и ограничения Евразийского экономического союза» с согласованным перечнем барьеров, изъятий и ограничений Евразийского экономического союза.

On March 31, 2017, the report «Barriers, Derogations and Restrictions of the Eurasian Economic Union» was officially published with an agreed list of barriers, derogations and restrictions of the Eurasian Economic Union.

1. Подготовлен и представлен на заседании Совета Евразийской экономической комиссии Аналитический доклад Евразийской экономической комиссии «О ситуации по устранению препятствующих функционированию внутреннего рынка Евразийского экономического союза барьеров для взаимного доступа, а также изъятий и ограничений в отношении движения товаров, услуг, капитала и рабочей силы».

The analytical report of the Eurasian Economic Commission «Situation on the removal of barriers to the functioning of the internal market of the Eurasian Economic Union» prepared and presented at the meeting of the Council of the Eurasian Economic Commission.
1.1. Brief Analysis of the Situation in the Union’s Internal Markets

7. In a relatively short period of time that has passed from the start of the CU functioning (January 01, 2010), large-scale work was performed for creation of favorable conditions for provision of the member states with access to the Union’s internal market. Practical effect was achieved in implementation of the “four freedoms” in the Union’s space and a large number of obstacles in the Union’s internal market have been already removed.

8. Completion of formation of common markets in all fields of the Union’s activity by 2025 will make it possible to implement the “four freedoms” in the Union and to optimize prices of goods and services for internal consumption.

In 2016, the heads of governments of the member states signed a set of common documents required for the beginning of functioning of the common market for medicinal preparations and medical products in accordance with Article 30 of the Treaty, meeting the standards of appropriate pharmaceutical practices and based on unified principles.

The launch of the common market for medicinal preparations will facilitate prompt removal of barriers and restrictions, including those in allied economy branches.

In 2015, the concept of formation of the common electric power market was approved, with the implementation period until the end of the 2nd quarter of 2019. In 2016, the concept of formation of common markets for oil and oil products and the concept for formation of the gas common market with the implementation period until the end of 2024 were approved.

From January 01, 2015, the common market for services has been functioning in 43 individual sectors in the Union and in 21 sector of services formation of the common market within the Union will be effected in the context of the relevant liberalization plans.

In 2016, Presidents of the Republic of Armenia, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation signed the Customs Code of the Union, which is the basic document for the purposes of customs regulation in the Union.

The levels of regulation in the Union will be re-allocated significantly with adoption of a new code of customs rules. The list of issues regulated at the supranational level will be extended several times.

The Treaty provides for implementation of coordinated (agreed-upon) transport policy for consistent stage-by-stage formation of the common transport space based on the principles of competition, transparency, safety, reliability, accessibility and environmental friendliness.

The heads of the member states adopted at a meeting of the Supreme Eurasian Economic Council in 2016 a strategic document in the field of transport – the Main Lines and Stages of Implementation of Coordinated (Agreed-Upon) Transport Policy, implementation of which will be carried out on the basis of the relevant plans of arrangements. It is planned that the general plan of arrangements will be prepared and submitted for consideration by the Eurasian Intergovernmental Council by December 31, 2017. As regards air transport, a separate plan will be prepared by July 01, 2017, with focus on expansion of air communications and increase in the number of airlines and flight frequency. Development of Road Maps has been also started to launch the Union’s common market for transport services.

It should be pointed out that the Commission Council adopted in 2016 on the initiative of the Republic of Belarus a document that is fundamental for subsequent work for removal of obstacles, namely, Direction of the Commission Council dated October 18, 2016 No. 29 On Progress in the Work for Identification and Removal of Barriers, Derogations and Restrictions in the Internal Market of the Eurasian Economic Union. Adoption of Resolution of the Supreme Eurasian Economic Council dated October 16, 2015 No. 30 On Approval of the List of Service Sectors (Subsectors) for Which Formation of the Common Services Market within the Eurasian Economic Union Will Be Effected in Accordance with Liberalization Plans (During the Transition Period)
this Direction became a new landmark in development of work for the Union’s internal market functioning without barriers, derogations and restrictions.

9. The largest contribution to building up the volume of trade among the member states remains to be made by the trade turnover between the Russian Federation and the Republic of Belarus and the Russian Federation and the Republic of Kazakhstan (Fig. 1). The share of the trade turnover between the above said pairs of countries in the total volume of the Union’s internal trade amounts to 57% and 33%, respectively.

Trade between the member states not involving the Russian Federation is insignificant. Accession of the Republic of Armenia and the Kyrgyz Republic to the Treaty in 2015 did not have any significant impact on the structure and volume of trade among the member states due to small capacity of these countries’ markets.

Trade between the Kyrgyz Republic and the Republic of Armenia accounts for the smallest portion of the intra-Union trade, with the second smallest share belonging to the pair of countries the Republic of Armenia and the Republic of Kazakhstan; the shares of these pairs in the Union’s total trade volume are equal to 0.001% and 0.01%, respectively.

In 2015, the largest contribution to the total volume of export in commodity trade among the member states was made by the Russian Federation, amounting to 63.3% of the Union’s total (35% if excluding mineral fuel, oil and oil refining products). The main contribution to the total volume of import in the Union’s internal trade was made by the Republic of Belarus, amounting to 38.8% (17.8% if excluding mineral fuel, oil and oil refining products).

In 2015, the share of mineral products in the commodity structure of the Union’s internal trade amounted to 33.4%; the share of machinery, equipment and transport vehicles to 16.4%; the share of food products and agricultural raw materials to 15.2%; the share of metals and metal products to 10.6%, and the share of chemical products to 10.5% (Fig. 2).

10. Despite remaining focus on raw materials in the Union’s internal trade, the Union’s macro economic policy is intended to create favorable conditions for support to cooperation projects with integration effect, diversification of economic development drivers in the mid-term and long-term outlook, and lowering sensitivity of the total worth of trade to fluctuations of energy resources prices.

11. In 2016, some parameters of the Union’s internal trade were better than the results of foreign trade with non-Union
countries. For the Union on the whole, the share of trade among the member states in the total trade volume grew whereas the share of trade with non-Union countries decreased. For example, the share of trade among the member states in the total volume of foreign trade of the member states grew from 13.6% to 14.2%. For the Republic of Armenia, this figure grew from 26.5% to 29.2%; for the Republic of Belarus from 49.5% to 52.2%; for the Republic of Kazakhstan from 21.3% to 21.9%, and for the Russian Federation from 8.2% to 8.7%. For the Kyrgyz Republic, the share of trade with the member states in the total foreign trade volume reduced from 43.5% to 35.9%.

12. In 2016, the largest share in the commodity structure of trade among the member states belonged to mineral products (27.1% of the total trade volume). Machinery, equipment and transport vehicles accounted for 17.5% of the total; food products and agricultural raw materials for 16.1%, and chemical products for 12.4%. Metals and metal products accounted for 11.3% of the total volume of trade among the member states, and textile products and footwear for 4.2% (Fig. 3).

13. Despite prevalence of raw materials in the Union’s internal trade turnover, growth may be seen of demand for products from member states with high added value.

14. Along with reduction in the share of trade in mineral products in the structure of the Union’s internal trade from 33.3% in 2015 to 27.1% in 2016, a trend may be seen towards diversification of the structure of trade among the member states and transformation of economic growth quality, namely, increase in the share of trade in manufactured goods in the Union’s internal trade and trade with non-Union countries.

15. In January to November 2016, growth was recorded in internal trade in raw skins, fur skins and products made thereof by 17.3%, in textile products and footwear by 17% and in chemical products by 2.2%. The volume of internal trade in wood and pulp and paper products actually remained at the level of the relevant period of the previous year, amounting to USD 973 million (0.6% of the total in 2015).

16. In 2016, export of textile, textile products and footwear from the Union to non-Union countries grew by 3.8% and export of manufactured goods and agricultural raw materials by 3.5%.

17. In 2016, the Commission continued together with the member states work for improvement of methodology, tools and mechanisms for removal of obstacles. To take into consideration all special features of obstacles existing in the Union’s internal markets, revision of the definitions of the terms “barriers”, “derogations” and “restrictions” was required. Work on the conceptual framework was continued with due account for formerly elaborated principles of impermissibility of barriers in the Union and necessity for reduction in the number of such permissible obstacles as derogations and restrictions. To enhance effectiveness of identification of obstacles and monitoring of observance of the Union’s rights, an information resource Functioning of Internal Markets of the Eurasian Economic Union (https://barriers.eaeunion.org) was elaborated and introduced.

18. Along with the above said results, the Commission continued updating of the Register of Obstacles in the Union’s internal market. In 2016, the Commission formed and put into effect in the context of the Union’s general integrated information system a unified electronic database of obstacles in the Union’s internal market, that is, the Register of Obstacles. Now, access to the Register of Obstacles is provided to organizational units of the Commission and work is on way for provision of the member states with access to this information resource. The Register of Obstacles systemizes all available information on the existing obstacles with respect to which work is being performed. Formation and maintenance of the Register of Obstacles makes it possible to update information on obstacles in the Union’s internal market and to use it for elaboration of plans of arrangements for removal of obstacles. An individual multi-digit classification code of an obstacle has been elaborated, making it possible to determine by the code structure for each obstacle the date of entry thereof into the Register, the kind (barrier, exception, restriction), status, and regulation area.
19. Work is on way for improvement of the conceptual framework used in work for identification and removal of obstacles in the Union's internal market. The Commission has prepared a draft methodology for classification of obstacles as barriers, derogations or restrictions. According to the definitions of the terms in the draft methodology, comprehensive revision of all obstacles included into the Register of obstacles, that is, barriers, derogations and restrictions, was carried out. As of November 30, 2016, the agreed-upon list of obstacles in the White Book (Annex to this report) contained 60 obstacles (17 derogations, 34 restrictions and 9 barriers) (Fig. 4).

20. In the course of work performed in 2016, a number of obstacles that were most important to member states was removed, including the following:

- a barrier related to non-recognition by the Russian Federation of equivalency of the system of checks (inspections) of veterinary control (supervision) objects of the Republic of Armenia;
- a barrier in the customs regulation field, related to previously existing restriction on application of the TIR procedure in the territory of the Russian Federation. Direction of the Eurasian Intergovernmental Council dated May 29, 2015 No. 12 was adopted, according to which the governments of the member states must ensure continuous application of the Customs Convention on the International Transport of Goods under Cover of TIR Carnets in the territory of the Union. In pursuance of this Direction, the RF Federal Customs Service issued an order determining 45 automobile border-crossing points for importation of goods to the Union’s customs territory under the TIR procedure;
- a barrier in the field of government procurement, related to access of goods from member states to government procurement in the Russian Federation for defense procurement needs. To remove the barrier, Resolution of the Commission Board dated April 12, 2016 No. 31 On Recognizing the Fact of Violation by the Russian Federation of Obligations Provided for by Article 22 of the Treaty on the Eurasian Economic Union Dated May 29, 2014 and the Necessity for Removal of the Identified Violation was adopted;
- a barrier in the field of labor migration, related to the problems of recognition in the Republic of Kazakhstan of documents on education of nationals of the member states regardless of the issuance date (the Ministry of Education and Science of the Republic of Kazakhstan stated some time earlier the view according to which education documents issued by other member states may be recognized without any additional procedures only if issued in the member states after the effective date of the Treaty).

21. The number of obstacles has reduced compared with 2015 and 2016 due to removal thereof and also due to improvement of methodological approach to classification of obstacles, removal from the Register of Obstacles of some derogations that fall outside the Union’s competence and combining some identical obstacles applied by several member states.

Road Maps for reduction in the number of derogations and restrictions are to become an important mechanism for removal of obstacles. It is expected that this document will make it possible to considerably reduce the number of derogations and restrictions, facilitating thereby to deepening of integration processes. In 2016 alone at least 30% of the decisions made by the Commission Council and the Commission Board was designed to remove obstacles and to ensure effective functioning of the Union’s internal market.
22. The number of obstacles applied by the member states is shown in the table below (Table 1).

<table>
<thead>
<tr>
<th>Member state</th>
<th>Barriers</th>
<th>Derogations</th>
<th>Restrictions</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Republic of Armenia</td>
<td>2</td>
<td>6</td>
<td>33</td>
<td>41</td>
</tr>
<tr>
<td>Republic of Belarus</td>
<td>3</td>
<td>7</td>
<td>33</td>
<td>43</td>
</tr>
<tr>
<td>Republic of Kazakhstan</td>
<td>3</td>
<td>8</td>
<td>33</td>
<td>44</td>
</tr>
<tr>
<td>Kyrgyz Republic</td>
<td>-</td>
<td>7</td>
<td>33</td>
<td>40</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>6</td>
<td>8</td>
<td>34</td>
<td>48</td>
</tr>
</tbody>
</table>

23. The terminology of barriers, derogations and restrictions, improved together with member states, forms the basis of methodology of classification of obstacles as barriers, derogations and restrictions and application of specific tools for removal of obstacles and reduction in the number thereof. The Commission has performed together with member states work for assessment of obstacles in the Union’s internal market from the viewpoint of completeness of description thereof in the definitions of the terms “barrier”, “exception” and “restriction”. Revised definitions of the above said terms will make it possible to enhance effectiveness of work for removal of barriers and reduction in the number of derogations and restrictions in the future (Table 2).

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition elaborated by the Commission together with member states</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barriers</td>
<td>obstacles to free movement of goods, services, capital and labor in the context of functioning of the Union’s Internal market, not consistent with the Union’s law</td>
</tr>
<tr>
<td>Derogations</td>
<td>exceptions (exclusions) from the general rules of the Union’s Internal market functioning, providing for non-application of some rules by a member state</td>
</tr>
<tr>
<td>Restrictions</td>
<td>obstacles to free movement of goods, services, capital and labor in the context of the Union’s Internal market functioning, having arisen as a result of absence of legal regulation of economic relations development of which is provided for by the Union’s law</td>
</tr>
</tbody>
</table>

24. The definitions of the terms imply that barriers are impermissible obstacles in the Union, since they are not consistent with the Union’s law. Restrictions and derogations are permissible obstacles. For example, measures taken by member states as a result of absence of legal regulation of economic relationships in the Union’s law (so-called “gaps” in the Union’s law are considered restrictions.

Derogations are understood as derogations (deviations) from the general rules of functioning of the Union’s internal market, providing for non-application of such rules by a member state. Derogations impede or may impede free movement of goods, services, capital and labor in the course of functioning of the Union’s internal market. By their nature, derogations delineate the boundaries of the integration agreed upon by the member states at the time of signing the Treaty. Complete removal of derogations is impossible but the number thereof should be reduced in the course of deepening integration, first of all, those existence of which gives rise to barriers to free movement of goods, services, capital and labor. Based on the updated definition, the issues falling within the exclusive (sovereign) competence of member states and the issues with respect to which express directions are contained in the Treaty, for example, those related to provision of services for performance of governmental authority functions, the issues of national defense and security and some other issues were excluded from the Register of Obstacles.

25. In 2016, the Commission performed together with the member states work for removal of identified barriers, with the use, in particular, of such tools as consultations and giving notices to member states of the necessity to comply with the Union’s law. One example of barriers for each member state is given below:

- The Republic of Armenia does not ensure publication of required information in the government procurement web portal of the Ministry of Finance of the Republic of Armenia (including publication in the Russian language).
  The barrier is in the process of removal. It was found in the course of monitoring and examination that some laws and regulations of the Republic of Armenia are not consistent with Article 88 of the Treaty. The Republic of Armenia is now performing the work for placement of information on government procurement in the volume determined by the Treaty.

- The Republic of Belarus applies a lowered VAT rate to realization of some products manufactured in its territory, whereas a lowered rate is not applied to similar products
The barrier is under consideration. Monitoring is carried out of observance by the Republic of Belarus of the provisions of Clause 2, Article 71 and Clause 5, Article 72 of the Treaty.

✓ The Republic of Kazakhstan retained in its border with the Kyrgyz Republic phytosanitary control despite Resolution of the Supreme Eurasian Economic Council dated May 08, 2015 No. 6 On Removal of Sanitary Quarantine, Veterinary and Sanitary and Quarantine Phytosanitary Control (Supervision) in the Border between the Kyrgyz Republic and the Republic of Kazakhstan.

The barrier is removed. The Commission has decided that retaining phytosanitary control would be inconsistent with sub-Clause 5, Clause 1, Article 25 of the Treaty and Resolution of the Supreme Eurasian Economic Council dated May 08, 2015 No. 6. The Commission Board adopted Resolution dated October 04, 2016 No. 114 On Performance by the Republic of Kazakhstan of Its Obligations Related to Formation of the Internal Market of the Eurasian Economic Union.

✓ The Kyrgyz Republic applied a requirement determining the necessity for completion of a slip evidencing the fact of passing through state control in the internal border between member states.

The barrier is removed. The Commission determined that the measures applied by the Kyrgyz Republic were in contravention of the provisions of Articles 25 and 26 of the Treaty. The Commission Board adopted Resolution dated September 27, 2016 No. 106 On Performance by the Kyrgyz Republic of Its Obligations Related to Formation of the Internal Market of the Eurasian Economic Union.

✓ The Russian Federation did not provide workers from member states who stay on a temporary basis in the territory of the Russian Federation with access to medical aid on equal basis with the nationals of the Russian Federation.


1.3. Effect of Removal of Obstacles

26. Removal of obstacles in trade among the member states is designated as one of main priorities on the agenda of the Union’s bodies at the stage of achievement of the Union’s goals. The heads of the member states unanimously recognized at the meeting of the Supreme Eurasian Economic Council on December 21, 2015 in Moscow and on May 31, 2016 in Astana that removal of obstacles to free movement of goods, services, capital and labor is a high-priority task.

27. The benefits gained by all participants in integration associations from removal of obstacles in trade among them are confirmed by prolonged international experience. For example, according to the study by the Directorate-General for Economic and Financial Affairs of the European Commission, carried out as early as 1988, the benefits from establishment of the internal market without barriers were assessed in the aggregate as 6 to 6.5% of the total GDP of the EU member states.

Assessment of the effect of removal of barriers within the Union for the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation, made by the Eurasian Bank for Development in 2015, is lower than that made by the European Commission for the EU countries, which may be explained by different level of integration of the member states and the EU countries at the time when the assessments were made. For example, internal border control existed in the EU in 1988, whereas various kinds of control, including customs control and transport control, were removed from the Union’s internal borders in 2011. In the mid-term outlook, the largest benefits from lowering non-tariff barriers are forecast for the Republic of Belarus: its real GDP may...
grow by 2.8% and its wealth by 7.3% on a cumulative basis. For the Republic of Kazakhstan, the growth of wealth may amount to 1.3% and the growth of real GDP to 0.7%. Forecast effect for the Russian Federation is less significant: wealth may grow by 0.5% on a cumulative basis and real GDP by 0.2%. This is due to a larger size of economy compared with the other member states and relatively lower significance for the Russian Federation of trade within the Union compared with trade with other countries of the world.

28. One of the most effective mechanisms of creation of favorable conditions for entrepreneurial activity and simplification of international trade is introduction of the “one window” mechanism. Application of marking systems, including introduction of marking with RFID tags, and tracking goods on the basis of digital service environment and digital solutions in the markets is intended to ensure transparency and openness of entrepreneurial activity and exclusion of “shadow” turnover of goods. When interacting with state authorities, business community members have to submit documents only once through a single channel for subsequent use by concerned state authorities and other organizations according to their respective competence in the course of control over trade activity. Now, the emphasis in the process of introduction of the “one window” mechanism in the Union is put on implementation thereof in trade with non-Union countries, but future application thereof to trade among the member states may be considered in the future as well, which will facilitate to reduction in the number of obstacles in the internal market.

29. In the modern world, where digital transformation of all fields of economy is on way, removal of obstacles to internal trade is facilitated by digital transformation of trade and algorithmic regulation thereof, understood as reduction in the number of intermediary links in economy, not creating any real value for the market, and raising the level of automation of economic links, that is, in other words, rejection of established standards and rules for the benefit of algorithms (automation of trade processes), where the rules adapt themselves to changes in the environment; that is, the rules and the algorithms themselves are adjusted depending on the results.

30. The experience of integration of foreign countries confirms that existence of obstacles, first of all barriers, in the Union’s internal market, has negative impact on the economies of the member states and requires not only removal of barriers but also prevention of their arising in the future.

Analysis of the factors that give rise to barriers shows that in many cases member states give priority to the interests of protection of their national markets in prejudice to the Union’s law.

The main tasks to be resolved in the short-term outlook include the following:

✓ continuance of the work for harmonization and unification of member states’ legislations and uniform application thereof in the fields determined by the Union’s law. Resolving this task will allow not only minimization of the number of existing obstacles but also prevention of occurrence of new ones;
✓ approval of the methodology of classification of obstacles as barriers, derogations and restrictions;
✓ approval of the procedure for formation and maintenance of the Register of Obstacles in electronic form;
✓ performance by the Commission together with the member states of work for discussion of barriers, derogations and restrictions for inclusion thereof into the agreed-upon list of obstacles;
✓ elaboration of Road Maps for removal of derogations and restrictions in the Union’s internal market, where removal is recognized appropriate by the member states as provided for by Direction of the Commission Board dated October 18, 2016 No. 29 On Progress in the Work for Identification and Removal of Barriers, Derogations and Restrictions in the Internal Market of the Eurasian Economic Union.
Freedom of movement of goods

2.1. Customs and Tariff Regulation and Non-Tariff Regulation

31. Non-application of tariff and non-tariff measures is one of the key issues of ensuring unrestricted mode of trade in goods among the member states.

No customs duties (or other duties, taxes and charges having the same effect), non-tariff regulation measures, special protective, anti-damping or compensatory measures are not applied in trade among the member states within the Union. The Union’s UCT and unified measures for regulation of foreign trade in goods with non-Union countries are in place. Therefore, derogations and restrictions in the fields of customs and tariff regulation and non-tariff regulation, including derogations from the Union’s UCT, affect first of all the external contour of the Union. At the same time, such derogations and restrictions have impact on the Union’s internal market as well and in some cases that impact may be significant.

One of potential options of minimization of such impact is development of goods traceability mechanisms. Marking of goods is an example of such mechanism. In 2016, the Agreement on Implementation in 2015-2016 of the Pilot Project for Introduction of Product Marking with Control (Identification) Signs for Commodity Item 4303 EEC FEACN Clothing Items, Clothing Accessories and Other Articles Made of Natural Fur became effective. According to the Agreement, each fur article is marked with control identification signs (including so called RFID tags) and shall not be admitted to trade turnover in the absence of such signs, which makes it possible to exercise comprehensive control over fur articles from the time of manufacture or importation to the time of sale. The goods traceability mechanism may be used in organization of interaction of member states when an individual member state applies some special economic measures.

9 The expiry date of the Agreement was postponed from January 01, 2017 to December 31, 2018 in accordance with Protocol on Extension of the term of the Agreement on Implementation in 2015-2016 of the Pilot Project for Introduction of Marking of Goods with Control (Identification) Signs for the Commodity Item Clothing Items, Clothing Accessories and Other Articles Made of Natural Fur dated September 08, 2015 and signed in Moscow on November 23m 2016, which is applied on a temporary basis from January 01, 2017.
2.2.
Technical Regulation

32. The main purpose of technical regulation in the Union is ensuring protection of human life and (or) health, property, environment, life and (or) health of animals and plants, prevention of actions that mislead consumers, and ensuring energy effectiveness and resources saving.

On of the technical regulation principles determined by the Treaty is prevention of establishment of excessive barriers to entrepreneurial activity.

33. The agreed-upon list of obstacles in the field of technical regulation contains 9 obstacles, including 1 barrier, 3 derogations and 5 restrictions.

Obstacles in this field have significant impact on free movement of goods among the member states.

- At accession of the Republic of Armenia and the Kyrgyz Republic to the Treaty, derogations were provided for, related to the fact that the Union's technical regulations and the national legislations were effective simultaneously in the Republic of Armenia and the Kyrgyz Republic. According to the Treaty on accession of the above said states to the Union, establishing a transition period, simultaneous application of the Union's technical regulations and the national legislations is provided for in the territory thereof. Taking into account the conditions of accession of the Republic of Armenia and the Kyrgyz Republic to the Treaty, their final shifting to the unified requirements and removal of this exception will be only possible upon expiry of 5 and 4 years, respectively, from the effective date of the Treaty on accession, that is, from January 02, 2020 and August 12, 2019.

- Establishment of binding requirements on the products included into the Unified List of Products with respect to which binding requirements are established within the Union, in conformity with the legislations of the member states until entry into force of the Union's technical regulations. According to Clause, Article 53 of the Treaty, the rules of and the procedure for ensuring safety and circulation of the products requirements on which are not established by the Union's technical regulations are determined by an international treaty within the Union.

To remove this restriction, the Commission organized in September 2014 work for preparation of a draft Agreement on the Procedure for Circulation in the Eurasian Economic Union of the Products Requirements on Which Are Not Established by Technical Regulations of the Eurasian Economic Union, and on the Rules of Ensuring Safety of Such Products. A draft Agreement was submitted to the governments of the member states in September 2015. It is expected that this restriction may be removed with signing of the above said Agreement by the end of 2017.

- Absence of agreed-upon approaches to application of the member states' national (state) standards and interstate standards to which not all of the member states have acceded, included into the lists of international and regional (interstate) standards, or, in the absence thereof, national (state) standards, as a result of voluntary adoption of which compliance with the requirements of technical regulations is ensured, and the lists of international and regional (interstate) standards, or, in the absence thereof, national (state) standards that contain the rules and methods of examination (testing) and measurements, including the rules of selection of specimens, that are necessary for application of and compliance with the requirements of the Union’s technical regulations and for assessment of compliance of the technical regulation objects.
To ensure coordination of elaboration of international standards for inclusion thereof into the lists of standards, the Commission approves the Programs, agreed upon with the member states, for elaboration of interstate standards (making amendments thereto, revision thereof).

Up to now, the CU Commission and the Commission Board have approved 32 Programs that provide for elaboration of 2,075 interstate standards, of which about 500 standards have been already adopted and put into effect (planned for putting into effect) by the member states, which is not sufficient for implementation of technical regulation in the territory of the Union and impedes effective implementation of provisions of the Treaty and the Union’s technical regulations in the territory of the Union.

On October 18, 2016, the Commission Board reached consensus on a new version of the Procedure for Elaboration of the Lists of Standards Required for Compliance with the Requirements of the Union’s Technical Regulations. The Procedure determines that only the interstate standards to which all of the member states have acceded may be included into the lists.

One of the most widespread factors giving rise to barriers in the technical regulation field is non-implementation by the member states of arrangements for bringing national laws and regulations to compliance with the Union’s technical regulations, including non-implementation of arrangements for invalidation of laws and regulations that are not consistent with the Union’s technical regulations.

2.3. Regulation in the Field of Sanitary, Veterinary and Sanitary and Quarantine Phytosanitary Measures

34. One of the most widespread factors giving rise to barriers in the technical regulation field is non-implementation by the member states of arrangements for bringing national laws and regulations to compliance with the Union’s technical regulations, including non-implementation of arrangements for invalidation of laws and regulations that are not consistent with the Union’s technical regulations.

35. In accordance with the Treaty and for the purposes of ensuring sanitary and epidemiological safety of the population and veterinary and sanitary and quarantine phytosanitary safety within the Union, agreed-upon policy is implemented in the field of application of sanitary, veterinary and sanitary, and quarantine phytosanitary measures by way of joint elaboration, adoption and implementation by the member states of international treaties and acts issued by the Commission in the field of application of SPS measures.

36. Now, 6 restrictions are included into the agreed-upon list of obstacles in the field of sanitary, veterinary and sanitary and quarantine phytosanitary measures.

These restrictions are effective in all of the member states.

✓ The restrictions that are related to absence of unified regulatory requirements and procedures in the field of application of quarantine phytosanitary measures include absence of unified rules and standards for ensuring plant quarantines.

As regards this restriction, relevant draft documents were approved at a meeting of the Commission Board on September 27, 2016. It is expected that the restriction will be completely removed by July 01, 2017, which will result in a unified approach of the member states’ competent bodies when exercising their powers.

37. A restriction exists in the field of SPS measures that is related to absence of unified rules and methodology of laboratory
testing for the purposes of veterinary control (supervision).

According to Clause 13 of the Protocol on Application of Sanitary, Veterinary and Sanitary and Quarantine Phytosanitary Measures (Annex No. 12 to the Treaty), the rules and the methodology of laboratory testing for the purposes of veterinary control (supervision) shall be established by the Commission.

To remove this obstacle, the Commission has prepared a relevant draft document, completion of consideration of which by the Commission bodies is planned for 2017.

2.4. Customs Regulation

38. Unified customs regulation is effected and free movement of goods between the member states’ territories takes place in the Union.

Customs regulation in the Union is legal regulation of the relationships that involve movement of goods across the Union’s customs border, carriage thereof over the Union’s customs territory under customs control, temporary storage, customs declaration, release and use in accordance with the customs procedures, exercising customs control, and payment of customs charges.

The agreed-upon list of obstacles in the customs regulation field contains 4 obstacles, including 2 barriers and 2 derogations. The identified derogations are the following:

✓ inconsistencies in provisions of the Union’s transport legislation and customs legislation in the part of prohibition from using temporarily imported transport vehicles intended for international transportation for carriage of goods, passengers and (or) luggage in internal carriages within the Union’s customs territory;
✓ impossibility of placement under the customs procedure of a free economic area of the Union’s goods located in the territory of the Kaliningrad FEA or the Magadan FEA of the Russian Federation, or imported to the territory of the above said FEAs.

39. One of the barriers in the customs field related to the national legislation of the Russian Federation, namely, existence of customs declaration of the goods classified in the 27th commodity group of the EEU FEACN (except for gas, oil and oil products) that are exported from the Russian Federation to other member states.

40. Adoption and putting into effect of the Union’s Customs Code will be an important event that will transform customs regulation in the Union. The Customs Code of the Union will serve as the legal basis for effective improvement of customs regulation, will ensure the balance of interests of business and state on reasonable and fair principles, and will facilitate both to development of trade with non-Union countries and internal trade and deepening of integration processes in the customs regulation field. New approaches and technologies in the customs regulation field will make it possible to simplify and expedite performance of customs formalities. The Union’s Customs Code provides for wide application of information technologies in customs legal relationships, abandonment of hard-copy paperwork and replacement thereof with electronic document management, and many other matters.

The Customs Code of the Union is an integrated codified treaty that comprises the provisions of 16 valid international treaties and 6 draft international treaties that govern customs relationships. Due to reduction in and localization of the national segment of customs regulation, which is only retained in the issues not requiring unification (technical, technological or allied with other law branches), and expansion of the Commission’s regulatory powers (in fact, two times), the Customs Code of the Union establishes a higher level of integration and is designed for ensuring unified customs regulation in the Union.

41. At the same time, improvement of the regulatory framework alone will not be sufficient to ensure removal of the existing obstacles in the customs field. Work for analysis and improvement of the law application practice will be carried out, as before, on a regular basis by way of updating the Register of Obstacles, assessment of impact of obstacles on the member states’ economies and taking measures for prevention of repeated occurrence of already removed obstacles.
2.5. State (Municipal) Procurements and Other Procurements

42. State (municipal) procurements (hereinafter referred to as “procurements”) are one of the key fields that have impact on trade among the member states in the context of functioning of the Union’s internal market.

43. According to Article 88 of the Treaty, the goals and principles of regulation in the field of procurements are determined by the member states as ensuring unrestricted access of potential suppliers from member states to participation in procurements held in electronic format, by way of mutual recognition of an electronic digital signature made in conformity with the legislation of a member state by another member state, and application of a member state’s internal regime in the field of procurements to other member states.

The provisions of the Treaty provide for some special features of application of a member state’s internal regime in the field of procurement, according to which a member state has the right to introduce in exceptional cases derogations from the internal regime for a period not exceeding 2 years on a unilateral basis and in accordance with the procedure determined by its internal legislation on procurements.

The competent authority of a member state shall notify the Commission and the other member states in advance of adoption of an act that establishes such exception. The Commission Council regulates the procedure for consideration by the Commission of notices from member states of adoption of acts on establishment by member states of derogations from their internal regimes in the field of procurements, applications from member states on the issues of cancellation of such acts, and adoption by the Commission of resolutions on the necessity of cancellation of the same.

44. An issue that remains to be resolved in the Union is that of ensuring unrestricted access of suppliers from member states to participation in procurements held in electronic format, by way of mutual recognition of an electronic digital signature made in conformity with the legislation of a member state by another member state. This fact is a barrier to establishment of the internal regime in practice.

45. The Commission carries out on a regular basis work for identification and removal of obstacles in the field of procurements.

46. Now, the agreed-upon list of obstacles in the field of procurements contains 5 obstacles, including 3 barriers, 1 exception and 1 restriction. Among them are, in particular, the following obstacles:

- derogations in the procurement regulation field, related to transition provisions for application of the Treaty by the Kyrgyz Republic, effective until August 22, 2017;
- impossibility of using bank guarantees issued by resident banks of a member state as security of an application for participation in state procurements or security of performance of a contract (agreement) related to state procurements carried out by customers from another member state.
- a barrier related to non-availability of information in the Russian language when carrying out state procurements in the Republic of Armenia (by way of using electronic portals).

The Republic of Armenia takes measures for translation into the Russian language of the windows of the ARMEPS electronic procurement system and the manual for users of economic operators; in particular, a contract for procurement of the relevant services has been signed.

47. According to the data on mutual participation of the member states in procurements in 2015:

Eurasian Economic Commission of Notices to the Member States of the Eurasian Economic Union of Adoption of Acts on Establishment by Member States of Exceptions from Domestic Regime in the Field of State (Municipal) Procurements, Applications from Member States for Cancellation of Such Acts and Adoption by the Commission of Resolutions on the Necessity for Cancellation Thereof

10 Resolution of the Commission Council dated November 23, 2015 No. 69 On Approval of the Procedure for Consideration by the Commission of Notices to the Member States of the Eurasian Economic Union of Adoption of Acts on Establishment by Member States of Exceptions from Domestic Regime in the Field of State (Municipal) Procurements, Applications from Member States for Cancellation of Such Acts and Adoption by the Commission of Resolutions on the Necessity for Cancellation Thereof

11 No information is available on participation of member
- in procurements by the Republic of Belarus, the number of potential suppliers (contractors, service providers) from the Republic of Belarus who submitted their applications (offers) was equal to 189,685, of which 30,866 were determined as winner suppliers (contractors, service providers); 7 potential suppliers (contractors, service providers) participated from the Republic of Kazakhstan and none of them was determined as the winner supplier (contractor, service provider); 1,101 potential supplier participated from the Russian Federation, of which 171 was determined as the winner. No information is available on participation of suppliers (contractors, service providers from the Republic of Armenia and the Kyrgyz Republic in procurements;

- in procurements by the Republic of Kazakhstan, the number of potential suppliers (contractors, service providers) from the Republic of Kazakhstan who submitted their applications (offers) was equal to 5,375,281, of which 1,863,674 were determined as winner suppliers (contractors, service providers); 51 potential suppliers (contractors, service providers) participated from the Republic of Belarus, of which 13 suppliers (contractors, service providers) were determined as winners; 65 potential suppliers (contractors, service providers) participated from the Kyrgyz Republic, of which 65 were determined as winners; 674 potential suppliers (contractors, service providers) participated from the Russian Federation, of which 400 were determined as winners. No suppliers (contractors, service providers) from the Republic of Armenia took part in procurements that were carried out in the Republic of Kazakhstan;

- in procurements by the Kyrgyz Republic, the number of potential suppliers (contractors, service providers) from the Kyrgyz Republic who submitted their applications (offers) was equal to 200,587, of which 121,765 were determined as winner suppliers (contractors, service providers); 29 potential suppliers (contractors, service providers) participated from the Republic of Belarus, of which 28 suppliers (contractors, service providers) were determined as winners; 180 potential suppliers (contractors, service providers) participated from the Republic of Kazakhstan, of which 59 were determined as winners; 910 potential suppliers (contractors, service providers) participated from the Russian Federation, of which 548 were determined as winners. No suppliers (contractors, service providers) from the Republic of Armenia took part in procurements that were carried out in the Kyrgyz Republic;

Thus, participation of the member states in mutual procurements is not balanced.

According to the Treaty provisions, the member states ensure informational openness and transparency of procurements in the Union. This is one of the tasks to be resolved by the Commission. Now, information is published in national web portals in the context of implementation of a common process provided for by Clause 63 of the List of Common Processes in the Union, approved by Resolution of the Commission Board dated April 14, 2015 No. 29. The EU experience may be of interest in this context. As an example of accessibility and transparency of the procurement field, the TED (Tenders Electronic Daily)\textsuperscript{12} database may be mentioned, in which one can view, search and classify notices of procurements by countries, regions, business sectors, kinds of products and services and other criteria.

\section*{2.6. Taxation}

Taxation is one of the fields that have especially significant impact on internal market functioning and cross-border trade. Differences in the structure of member states’ economies, special features of development of their legal systems and conducting business give rise to fact-based differences in taxation and tax

administration, some of which may be considered restrictions.

To prevent the situation where impact of such differences gives rise to unequal taxation conditions for goods from member states, the Treaty establishes the following general principle: taxation of goods from other member states in the territory of a member state must be no less favorable than taxation applied by such member state under similar circumstances to similar goods originating from its territory. Violation of this principle is considered a barrier.

In the Russian Federation, charging VAT on importation of ferrous scrap and waste metal from member states is found by the court\(^\text{13}\) ill-founded and inconsistent with the VAT application principles, since realization of similar products in the territory of the Russian Federation is not subject to VAT.

50. As regards trade in goods among the member states, the Treaty provides for mandatory application of a zero VAT rate and (or) exemption from payment of excise taxes on exportation, with granting the VAT deduction right to an exporter, a unified mechanism of goods export confirmation, which replaces customs declaration, and a unified procedure for charging indirect taxes (VAT and excise taxes), providing for payment of VAT to the budget of the importer’s country at importation of goods by legal entities and entrepreneurs.

51. For legal entities, exemption from VAT payment is also provided for with respect to movement of goods (without transfer of ownership) between member states within one legal entity. This has considerably simplified the activity of organizations that conduct production and (or) trade activity in more than one member state.

52. Individuals who import products for personal use are released from the duty to pay VAT at importation. Establishment of this provision in the Treaty was necessary for removal of an obstacle in the form of repeated imposition of VAT on products acquired by individuals in a member state at importation of such products to another member state.

Double taxation arose at importation of cars by individuals. First, VAT was paid in the seller’s country (the Russian Federation) and then in the buyer’s country (the Republic of Kazakhstan), which considerably impeded relocation of their property by nationals of member states. The same procedure for taxation of cars was applied in the Republic of Armenia for a short time after its accession to the treaty. Now, both these barriers are removed.

53. The VAT rate applied at importation of goods from member states must be equal to the tax rate established for internal-made goods. Indirect taxes are not charged at importation of goods from member states if similar goods are exempted from taxation in the event of importation thereof from non-Union countries.

For example, some tax authorities in the Russian Federation demanded application of a higher VAT rate to children’s juices imported from the Republic of Kazakhstan. This barrier was only removed after prolonged administrative proceedings and disputes, which did not facilitate to simplification of trade among member states.

54. Electronic information exchange is maintained among member states’ tax authorities, which makes it possible to considerably reduce the taxpayers’ costs for documentation of operations and the tax authorities’ costs for tax administration. The Treaty provides for the possibility of submission by taxpayers of the documents required for payment of indirect taxes and confirmation of export in electronic form in accordance with the procedures determined by member states’ laws and regulations. If a taxpayer does not have a hard copy statement of importation of goods and payment of indirect taxes, the possibility of application of a zero VAT rate and (or) exemption from payment of excise taxes is provided for on the ground of database information obtained by tax authorities of the member state in which the taxpayer is registered by way of information exchange,

55. The Treaty provides for harmonization (convergence) of excise tax rates with respect to the most sensitive excise products (alcohol and tobacco). Harmonization of excise tax rates is necessary because differences in excise tax rates are one of the causes of growth of cross-border movement by individuals of excise products in volumes exceeding those required for personal use.

56. The agreed-upon list of obstacles in the taxation field contains 3 obstacles, including 2 barriers and 1 restriction.

\(\text{13} \) Ruling of the RF Supreme Court dated August 03, 2015 No. № 306-KГ15-8119 in the case No. A57-15371/2014.
some products in the Republic of Belarus. For a number of products, a lowered VAT rate equal to 10 percent is only applied in the Republic of Belarus if such goods are manufactured in the territory of the Republic of Belarus, whereas importation and realization of the same goods from other member states is subject to VAT at a standard rate equal to 20 percent.

In the Republic of Kazakhstan, the rent tax is imposed on coal export, and such tax has the features of an export duty\(^\text{14}\). Excise tax rates for the most sensitive excise products are not harmonized.

57. For effective functioning of the Union’s internal market, further improvement is important of those Treaty provisions that govern the issues related to the procedure of charging VAT in trade among member states, with the purpose to reduce the labor and time costs as well as other costs related to VAT payments, confirmation of the right to application of a zero VAT rate and application of deductions (tax refund). The number of applications from economic entities to the Commission on such issues is much larger than that of applications with complaints about barriers.

58. The member states and the Commission pay special attention to increasing the rate of industrial development, enhancement of competitive ability of their industrial and agro-industrial complexes and removal of obstacles in these fields. Agreed-upon industrial and agro-industrial policies implemented by the member states within the Union with coordination by the Commission are intended to perform these tasks.

59. There are 4 derogations in the field of industrial policy and 3 restrictions in the field of agro-industrial policy that are applied by all member states.

Obstacles in the field of industrial policy:

- Three derogations related to implementation of measures with respect to investment agreements made in accordance with internal regulations of member states and Resolution of the CU Commission dated November 27, 2009 No. 130 On Unified Customs and Tariff regulation in the Customs Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation.

According to the Treaty, such derogations are applied with account for the conditions of application of the concept of “industrial assembly of motor vehicles” in the territory of member states, approved by the Supreme Eurasian Economic Council.

Such conditions are approved by Resolution of the Supreme Eurasian Economic Council dated May 29, 2014 No. 72 On the Conditions of Application of the Concept of “Industrial Assembly of Motor Vehicles” in the Territory of the CU and CES Member States.

- An example of retained exception in a contract is

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\(^{14}\) Resolution of the Commission Board dated December 08, 2015 No. 163 On Performance of Obligations with Respect to Functioning of the Domestic Market in Trade in Goods Among the member States of the Eurasian Economic Union.
mentioning of “local contents” in subsoil use contracts between the Government of the Republic of Kazakhstan and a subsoil use, made before January 01, 2015.

Due to accession of the Republic of Kazakhstan to the WTO, the transition period with respect to the requirements on “local contents” in subsoil use contracts was reduced and it is planned that this exception will become fully ineffective from January 01, 2021.

Obstacles in the field of agro-industrial policy:

✓ A restriction related to non-availability of a unified methodology of calculation of the permitted level of measures for support to agriculture that have distorting impact on trade. To remove this restriction, the methodology of calculation of the permitted level of measures for state support to agriculture that have distorting impact on trade in agricultural products among member states was adopted at the Commission Council meeting on October 18, 2016 and is not at the stage of signing. The restriction will be recognized removed upon entry into force of the relevant resolution of the Council.

✓ Non-availability of unified requirements with respect to the conditions of importation to, exportation from and movement over the Union’s territory of breeding products, methodologies of determining the breeding value of breeding animals, and the forms of breeding certificates (passports). It is planned that this restriction will be removed after adoption of the Agreement on Measures for Unification of Selection and Breeding Work with Agricultural Animals in the Union, elaboration of which is provided for by Clause 7 of the Plan of Arrangements for Implementation of the Concept of Agreed-Upon (Coordinated) Agro-Industrial Policy by the CU and CES Member States, approved by Resolution of the Supreme Eurasian Economic Council dated November 29, 2014 No. 94, and the documents for implementation of the above said Agreement.

✓ A restriction related to non-availability of unified requirements with respect to relocation of seeds of agricultural plants within the Union as well as mutual recognizing by the member states of the documents certifying the grade and the sowing properties of seeds of agricultural plants. This restriction will be removed after adoption of an international treaty in the field of circulation of seeds of agricultural plants, elaboration of which is provided for by Clause 8 of Resolution of the Supreme Eurasian Economic Council dated November 21m 2014 No. 94 On the Plan of Measures for Implementation of the Concept of Agreed-Upon (Coordinated) Agro-Industrial Policy of the CU and CES member States and the documents for implementation thereof.

60. Based on the results of joint activity of the Commission and the member states, a number of necessary measures has been elaborated and largely implemented for removal of the main portion of obstacles, which gives rise to the conditions for deepening of industrial cooperation among the member states and development of industrial complexes. The Commission’s further work for removal of obstacles and creation of free environment in the field of industry will be performed on a systemic basis as was the case before.

61. At the same time, the Commission takes into account in the course of work for removal of obstacles in these fields that some obstacles in tax, competition, trade policy and in other fields are allied with industrial and agro-industrial policy areas and may also have impact on development of these lines.
2.8. Energy Policy

62. Energy resources markets account for about 30% of the total turnover in the Union and, accordingly, are significant in trade among the member states. The issues of energy resources supply are among the most important factors influencing development of national economies both for the exporting and for the importing countries.

Sensitivity of most economy branches to energy resources supplies and to movement of energy resources prices as well as significant impact of the energy industry and allied industries on the member states' budget revenues has caused existence of a large number of derogations and restrictions in this field.

63. The Union's law determines the general principles, goals, objectives and timing of formation of common markets for energy resources. The launch of the Union's common electric power market is planned by July 01, 2019 and the launch of the Union's common markets for gas, oil and oil products by January 01, 2025.

For the purposes of optimization of interstate supplies, the member states agree upon bilateral indicative (forecast) balances of gas, oil and oil products and elaboration of the Union's indicative (forecast) balances of gas, oil and oil products was started in October 2016.

64. Some obstacles were identified in the Union’s energy field together with the member states, limiting development of trade in energy resources among the member states. Most significant of such obstacles are related to restrictions imposed by bilateral agreements on supplies of gas, oil and oil products among the member states.

At the same time, the parties have agree that bilateral agreements between member states with respect to supplies of gas, oil and oil products, determining the exportation customs duties (other duties, taxes and charges having the equivalent effect) and the procedure for payment of the same shall remain effective until formation of the Union's common markets for gas, oil and oil products.

65. The agreed-upon list of obstacles in the energy field contains 13 obstacles, including 2 derogations and 11 restrictions.

Main obstacles in the energy field are related to restrictions and derogations in principal oil, gas and electric power markets, dependence of the conditions of formation of free markets on access to the infrastructure, which is a natural monopoly to a considerable extent, and dependence of member states’ budgets on the energy industry, which causes state regulation of energy resources markets.

66. To ensure unrestricted access of economic entities from the member states to each other’s markets, special attention is to be paid to ensuring access to the services of natural monopoly entities in the field of energy resources transportation.

Creation of conditions for free (unrestricted) relocation of energy resources in the member states’ territories is a key factor of full-fledged functioning of common energy resources markets and requires adoption of uniform documents, including unified rules of access to transportation systems and rules of trade in energy resources.

67. Another important condition of functioning of common energy resources markets is ensuring unrestricted supply of electric power, gas, oil and oil products at market prices and acquired at organized trading grounds (exchanges).

68. It is expected that obstacles identified in the energy field will be removed in the course of implementation of the arrangements provided for by the program of formation of the Union’s common electric power market, the program of formation of the Union's common gas market, and the program of formation of the Union’s common oil and oil products market, elaboration of which is provided for by the Treaty.
Freedom of movement of services and capital

3.1. Regulation in the Field of Trade in Services and Movement of Capital

69. From January 01, 2015, the possibility is provided for in the Union with respect to all sectors of services and all activities (except for those excluded from application of Section XV of the Treaty Trade in Services, Establishment, Activity and Performance of Investments on the ground of Article 65 of the Treaty) of provision and receiving of services on the terms of preferential regimes (provided for by Clauses 8, 10, 15-17, 19, 20, 21, 24, 27, 30, 32, 35-37, 49-50, 57-64, 66, 70, 75, 77-81 of Annex No. 16 to the Treaty), of which only some sectors and activities are subject to derogations listed in Schedule No. 2 to Annex No. 16 to the Treaty and in Resolution of the Supreme Eurasian Economic Council dated December 31, 2014 No. 112.

70. A special procedure is provided for by the Treaty for a number of sectors of services and activities, namely, for activity in the field of financial markets and transport services, activity in the field of energy and natural monopolies in connection with special features of regulation thereof.

71. The treaty provides for fair and equal treatment of mutual investments. The member states have assumed obligations not to impede transfers of monetary funds and effecting payments related to investments and not to impede the use of income gained as a result of performance of investments.

72. Establishment of the rules intended to resolve the issues of provision of services without additional establishment of a representative office or a subsidiary and without obtaining additional authorizations, as well as the issues of recognizing qualification of service providers’ employees ensures functioning in the Union\(^\text{15}\) of the common market for services of 43 individual sectors\(^\text{16}\). In addition to 43 sectors of services where the rules of the common market for services have been effective from January 01, 2015, formation of the Union’s common market will be effected with 21 more service sectors under the relevant liberalization plans\(^\text{17}\). However, work remains to be performed

\(^{15}\) Resolution of the Supreme Eurasian Economic Council dated December 23, 2014 No. 110 On Approval of the List of Sectors (Subsectors) of Services in Which the Common Services Market is Functioning Within the Eurasian Economic Union

\(^{16}\) For Kazakhstan: from January 01, 2015 in 23 sectors, from January 01, 2016 in 29 sectors and in 37 sectors until 2025

\(^{17}\) Resolution of the Supreme Eurasian Economic Council dated October 16, 2015 No. 30 On Approval of the List of Service Sectors (Subsectors) for Which Formation of the Common Services Market
for identification of barriers in such sectors in the course of monitoring the internal legislations of the member states for compliance thereof with the Treaty, in particular, with involvement of the member states’ business communities. For example, there are reports in mass media that construction companies from some member states have difficulties with access to the Russian market due to application of the mechanism of self-regulating organizations.

Based on the results of the work performed in 2016, 1 exception added to the agreed-upon list of obstacles, related to non-application of the rules of the common market for services in the field of construction in the Republic of Kazakhstan until 2025.

3.2. Regulation in the Field of Trade in Services and Movement of Capital in Financial Markets

73. One of the highest priorities of integration-related interaction of the member states is formation of the common financial market without barriers, derogations and restrictions. Resolving this task will make it possible to ensure efficient allocation of capital, diversification and minimization of financial and currency risks, and enhance competition in the financial services market. Under the conditions of economic difficulties and restrictions on access to external financing sources, formation of the common market for financial services will have positive impact on economic growth of the member states.

74. Acting in the context of establishment of the common financial market, the member states will deepen stage by stage their economic integration, effect harmonization of their internal legislations in the field of finance and in the field of currency legal relationships, and enhance cooperation in the above said fields. In addition, it is planned for the purposes of formation of the Union’s common financial market to develop the infrastructure and institutional basis of financial markets, administrative cooperation of the member states and the common financial market. According to the Treaty, upon completion of harmonization of the legislations on financial markets, the member states will establish by 2025 a supranational body for regulation of the financial market in the city of Almaty, the Republic of Kazakhstan.

75. The lines of and the procedure for harmonization of the member states’ legislations on financial markets are determined by Protocol on Financial Services (Annex No. 17 to the treaty) and will be set forth in more detail in the Agreement on Harmonization of Legislations of the Member States of the
Eurasian Economic Union on the Financial Market. According to a draft Agreement, the member states will elaborate the harmonization plan with statement of the stages and the timing of preparation of proposals on harmonization.

76. The lines of harmonization of the member states’ legislations on currency legal relationships are determined by Protocol on the Measures for Conducting Coordinated Currency Policy (Annex No. 15 to the Treaty) and will be set forth in more detail in the Agreement on Coordinated Approaches to Regulation of Currency Legal Relationships and Taking Liberalization Measures. In particular, the member states will determine in the above said Agreement the list of currency operations performed by member states’ residents with respect to which currency restrictions will not be applied, and the possibility will be ensured for member states’ residents to open without any restrictions accounts (deposits) in foreign and national currencies with authorized organizations of other member states and performance of operations on such accounts in accordance with the procedure established by the legislation of the relevant member state. In addition, the lines of harmonization of the rules of liability for violations of the currency legislation will be determined with adoption of the above said Agreement.

77. The treaty provides for implementation by the member states of coordinated currency policy and coordinated regulation of financial markets. At the same time, some cases have been recorded from the start of formation of the Union where a fall in the exchange rate of a member state’s currency had significant impact on trade among the member states. Deepening of interaction in the field of currency and financial cooperation will facilitate enhancement of stability of the member states' financial systems, development of settlements between member states in their national currencies, growth of transparency and predictability of national currency markets, prevention from currency damping and, generally, stable development of the member states' economies.

78. To develop administrative cooperation between member states, to ensure inter-country exchange of information, including confidential information, in the financial market, to deepen integration processes in the field of financial markets, and to protect the rights of financial market participants, the Agreement on Exchange of Information, Including Confidential Information in the Field of Finance for the Purposes of Creation of the Conditions for Free Movement of Capital in Financial Markets dated December 23, 2014 entered into force in October 2016.

79. An important matter is monitoring of application of the established derogations and restrictions in this field. Exercising by the member states of the right to application of regulation measures that differ from the common market rules may give rise to barriers to functioning of the Union. To prevent occurrence of such barriers, the Commission performs work for monitoring of the member states’ legislations in the field of finance. In addition, the member states\(^{18}\) submit to the Commission two times a year information on a stage-by-stage reduction in the number of derogations and restrictions included into the national lists in Schedules No. 1 and No. 2 to Protocol on Financial Services (Annex No. 17 to the Treaty), and information on significant changes in the legislation in the field of finance, intended to change the conditions of activity of the participants therein, and on changes in the legislation that are planned for the next following half-year. Based on the provided information on changes in the legislation, a report is prepared and submitted for consideration to the members of the Advisory Committee for Financial Markets.

80. To implement coordinated currency policy and to converge the legislations that govern currency legal relationships, and to take liberalization measures, the member states are to ensure gradual removal of currency restrictions in the course of performance of currency operations and at opening and maintenance of accounts with banks located in the territory of member states. To implement the above said agreements within the Working Group on Currency Regulation and Currency Control in the territory of the Union, established at the Advisory Committee for Financial Markets, analysis of the member states’ legislations is carried out for identification of currency restrictions at performance of currency operations or at opening and maintenance of a bank account. In the course of formation of the common market, a larger freedom of movement of financial services and capital will be ensured on a stage-by-stage basis in the Union. Along with opening the national markets for companies from the member states, member states may additionally record individual derogations and restrictions in the field of finance.

\(^{18}\) Sub-Clause 3, Clause 5 of the Minutes of a meeting of the Advisory Committee for Financial Markets at the Board of the Eurasian Economic Commission dated April 03, 2015 No. 1-TC/ККФ.
It seems therefore that highly important is the work performed for monitoring of legislation in the field of finance and currency legislation of the member states with the purpose to prevent occurrence of new barriers.

81. Thus, the following is planned in the course of implementation of the member states’ arrangements on formation of the Union’s common financial market and development of key lines thereof:

- legal framework harmonization;
- provision to financial market participants of access to each other’s financial markets (in particular, by way of mutual recognition of licenses in the financial market and conducting activity for provision of financial services throughout the Union’s territory without establishment of an additional legal entity), including establishment of the infrastructure that will ensure and simplify receiving and provision of financial services;
- application of the internal regime subject to the restrictions determined by the Treaty, and most favored nation treatment, with subsequent reduction of the number of derogations and restrictions on a stage-by-stage basis;
- establishment of a system of protection of rights of consumers of financial services in the Union;
- encouraging growth of competition in financial markets;
- establishment of a supranational body for financial market regulation;
- creation of predictable and favorable conditions for establishment and conducting of activity in the member states’ financial markets;
- free movement of capital within the Union (removal of existing restrictions);
- growth of investment attractiveness of the member states with subsequent growth of revenues of businesses and increase in deductions to relevant budgets;
- lowering of administrative barriers and costs.

3.3. Regulation in the Field of Transport

82. Transport is an integral part of the overall trade process, a tool for relocation of goods and provision of services, with some special features of industry regulation. Promotion of integration with respect to each transport sector (motor, water, air and railway transport) is based on the arrangements formalized by the Treaty and by acts issued by the Union’s bodies.

83. Now, the agreed-upon list of obstacles in the field of transport contains 4 restrictions and 3 derogations applied by all member states, of which the following should be mentioned:

- Absence of unrestricted access for vessels under the flag of a member state to navigation on inland water ways of other member states.

This restriction may be removed by way of adoption of the Agreement on Navigation, which will form the institutional basis granting to vessels of a member state the right of access to inland water ways of other member states on more favorable conditions compared with those existing now. Later, upon entry of the Agreement into force, harmonization of the member states’ legislations will be required in the part of requirements on navigation on inland water ways and ensuring safety of such navigation.

84. As was pointed out above, the agreed-upon list of obstacles in the field of transport contains 4 restrictions, including those related to moor transport and civil aviation.

In the process of elaboration are issues related to differences in dimension and weight measurements of motor vehicles and differences in member states’ approaches to state regulation of air transport services.

85. The volume of existing derogations and restrictions will be reduced considerably due to implementation by the member states of arrangements for stage-by-stage liberalization of transport services in the context of formation of the common market for transport services. It is highly important to determine
in the course of formation of such common market for what period derogations and restrictions are to be retained, for example, in the field of water transport or air transport.

86. By now, the Treaty has removed obstacles in automobile communication between the member states and the authorization system at carriage of goods by automobile transport was cancelled. According to the Program of Stage-by-Stage Liberalization of Automobile Carriage of Goods by Carriers Registered in the Territory of a Member State of the Eurasian Economic Union Between Points Located in the Territory of Another Member of the Eurasian Economic Union for the Period from 2016 to 2025, approved by Resolution of the Supreme Eurasian Economic Council dated May 08, 2016 No. 13, legal basis has been laid for stage-by-stage cancellation of prohibition from cabotage automobile carriage; in addition, conditions will be created in the Union by 2025 for enhancement of effectiveness of use of motor vehicles at international transportation of goods and for development of competition in the motor transport services market.

87. Removal of obstacles, especially barriers, that limit free movement of transport, and development of the common market for transport services will have favorable impact on the activity of the Union on the whole. As stated above, it is planned to ensure achievement of the set goals by way of implementation of the Program of Stage-by-Stage Liberalization of Automobile Carriage of Goods by Carriers Registered in the Territory of a Member State of the Eurasian Economic Union Between Points Located in the Territory of Another Member of the Eurasian Economic Union for the Period from 2016 to 2025 and the Principal Lines and Stages of Implementation of Coordinated (Agreed-Upon) Transport Policy, and also by way of adoption of the Agreement on Navigation.

88. Taking into account that the process of provision of transport services depends not only on industry regulation but also on regulation in other fields (customs regulation, financial markets, migration policy, tariff and non-tariff regulation), elaboration of measures for removal of barriers, derogations and restrictions must be of integrated nature.
89. Ensuring unrestricted movement of labor in the Union is considered as a priority task of Eurasian integration because success in resolving this task determines the level of perception of the results of Eurasian integration by member states' nationals and their confidence in integration processes.

Absence of administrative barriers in internal borders between member states not only has favorable impact on changes in economic activity of the population but is also of social significance as member states’ nationals are in a position to actually assess and directly feel the advantages brought by integration processes.

90. Formation of the common labor market and proper social and pension support to working nationals of the member states is possible on condition of observance by the member states of mutually non-discriminatory approach to their working nationals. The agreed-upon list of obstacles contains 1 restriction applied by all member states.

✓ Non-availability of equal conditions of provision of pension guarantees to nationals of member states in the territory of other member states. This obstacle will be removed upon conclusion of a separate international treaty on pension support to working nationals of the member states.

According to Part 3, Clause 3, Article 98 of the Treaty, pension support to working nationals of member states is governed by the legislation of the state of permanent residence and also in by a separate international treaty between the member states.

A draft Agreement on Pension Support to Migrant Workers from the Member States has been completed by the Commission with account for the results of intra-state agreements and is now being prepared for submission to the member states for implementation of intra-state procedures required for signing it.

91. No unified approaches are yet available in the Union to the issue of implementation of administrative procedures in internal borders between member states. Performance of such work is one of the priority lines of the Commission’s work in 2017.
Priority lines of the Commission’s work for removal of obstacles

1. Monitoring
   • Improvement of the system of information interaction with concerned parties, including the member states and the business community of the Union
   • Regular monitoring of member states’ national legislation for identification of barriers and restrictions

2. Analysis
   • Elaboration of required analytical tools for improvement of decision making quality in work for removal of existing barriers, derogations and restrictions
   • Analysis of certain segments of markets for products and services for identification of new barriers and restrictions

3. Removal of barriers
   • Holding consultations and improvement of the procedure for extrajudicial settlement of trade and economic differences between member states for the purposes of removal of barriers
   • Notification to member states of the necessity for performance of obligations in the Union

4. Reduction in the number of derogations and restrictions
   • Determining the deadlines for removal of exceptions and restrictions with due account for comments and proposals from the member states
   • Approval of the Road Maps with concrete deadlines for removal of derogations and restrictions, with subsequent implementation of the Road Maps
92. At this stage, the Commission’s work for identification and removal of obstacles may be divided into four lines as follows: monitoring, analytical work, removal of barriers and reduction in the number of derogations and restrictions.

93. The Commission elaborates the Union’s acts describing the methodology of classification of obstacles as barriers, derogations and restrictions and the procedure for formation and maintenance of the Register of Obstacles. Creation of the methodology of and the procedure for formation and maintenance of the register of Obstacles is an important stage of the work, making it possible to enhance effectiveness of interaction for removal of obstacles to the “four freedoms” both of the member states with the Commission and the organizational units of the Commission with each other.

94. Elaboration of the monitoring mechanism will make it possible to improve the quality of the work for identification of barriers and restrictions with the purpose of removal the same. Information must be delivered to the Commission on a regular basis on existing barriers and restrictions so that to determine the priorities and to systematize the work for removal of the same.

95. To enhance effectiveness of the performed work, an information resource Functioning of Internal Markets of the Eurasian Economic Union (https://barriers.eaeunion.org) was launched in October 2016, making it possible to bring to the notice of a wide audience information on the work performed to ensure the Union’s functioning without barriers, derogations and restrictions.

96. Preparation of the Commission’s recommendations for enhancement of effectiveness if removal of obstacles is a necessary condition of development of work on obstacles. The Commission Board has issued a recommendation to engage legal entities and individuals for interaction with the Commission for identification of barriers, derogations and restrictions by way of submission of applications through the above said information resource.

97. Continuous monitoring is based not only on the information provided by the concerned parties but also on analysis of the member states’ regulations and draft regulations published in open sources, which makes it possible not only to remove existing barriers but also to prevent occurrence thereof.

98. An important line of the work for prevention of occurrence of new barriers is monitoring of the derogations made and the restrictions permitted by the member states. The risks of occurrence of new barriers are especially high where restrictions are applied by member states.

According to sub-Clause 4, Clause 43 of the regulation on the Eurasian Economic Commission, the Commission is competent to carry out monitoring and to exercise control of implementation of international treaties comprising the Union's law and the Commission’s resolutions, and to notify member states if any facts of non-compliance therewith are found. According to sub-Clause 4, Clause 24 of the regulation on the Eurasian Economic Commission, the Commission Council considers the results of monitoring and control of implementation of international treaties comprising the Union’s law.

If barriers are identified in the Union’s internal market, the Commission is guided by the principle of not only entering a barrier into the Register of Obstacles but also taking effective measures for removal thereof, including organization of submission of the issue for consideration to the Commission Board or, where necessary, to the Commission Council.

99. To process the entire body of information on obstacles to the Unions’ internal market functioning, obtained by way of monitoring, the Commission performs work for elaboration and introduction of new analytical tools.

100. Work is performed for elaboration of the market analysis methodology for the purposes of identification and removal of barriers. Subsequently, such methodology will be used in performance of research works for analysis of the most significant markets for products and services so that to identify barriers and restrictions with subsequent removal thereof.

It is supposed that market analysis will include such procedures as test (controlled) purchases (field studies), specialized polls and examination of specific cases among entrepreneurs, including questionnaire surveys and interviewing.
101. Use by the member states of capabilities of the Commission as an independent body whose effective mediation may facilitate extrajudicial settlement of any problems and differences between the member states is an important condition of enhancement of effectiveness of the work for removal of obstacles to the Union’s internal market functioning.

Work is performed for legal regulation of the mechanism of consideration by the Commission of applications from member states on the issues of settlement of trade and economic disputes and differences related to functioning of the Union’s internal market.

legal regulation of this process will make it possible to optimize the procedure for and the timing of consideration of the above said applications and to adapt best international practices of extrajudicial settlement of inter-state disputes to the conditions of the Union, which will facilitate enhancement of effectiveness of common work for removal of barriers and reduction in the number of derogations and restrictions in the Union’s internal market functioning.

102. Barriers identified in the course of monitoring are to be removed by the Commission together with the member states. As long as barriers are violations of the Union’s law, they are to be removed immediately upon occurrence. The Commission resolves this task, in particular, through the mechanism of extrajudicial settlement of disputes, which includes holding consultations and giving notices to member states of the necessity to comply with the Union’s law.

103. When certain barriers are considered, difficulties arise due to absence of required powers with the Union’s bodies (the Commission and the Court) as regards ensuring compliance of the member states with the Union’s law. It would be reasonable to introduce appropriate legal tools at the level of the Union’s law to resolve this problem.

Although the Commission is competent to notify the member states of the necessity to execute prescriptions of the Union’s law, effectiveness of the work for removal of barriers in the Union’s internal market is not sufficient. Some resolutions of the Commission Board intended to remove barriers in the Union’s internal market are not implemented by member states.

In particular, Resolution of the Commission Board dated December 08, 2015 No. 163 On Performance of the Obligations Related to Functioning of the Internal Market in Trade of Goods Among the Member States of the Eurasian Economic Union has not been implemented properly yet.

As was stated above, a number of proposals is being prepared now for improvement of the Treaty and legal regulation of the process of consideration of applications from member states for settlement of disputes related to functioning of the Union’s internal market.

104. Unlike barriers, derogations and restrictions are by their nature results of “underintegration” within the Union, or formalized rules of the Union’s law, or “gaps” in the Union’s law, except for the gaps that were not filled in due time and therefore have turned into barriers. Such special features of derogations and restrictions determine the necessity for removal thereof with the help of Road Maps, as provided for by Direction of the Commission Council dated October 18, 2016 No. 29 On Progress in the Work for Identification and Removal of Barriers, Derogations and Restrictions in the Internal Market of the Eurasian Economic Union.

105. The Commission establishes together with the member states the deadlines for removal of derogations and restrictions included into the Register of Obstacles. It is planned that such deadlines will be considered by profile advisory committees established at the Commission Board, according to their respective competence, and Road Maps will be formed on the basis of such deadlines, with statement of the members of the Commission (Ministers) responsible for removal of obstacles.

Implementation of Road maps must be ensured by way of improvement of the Union’s law through elaboration and conclusion of international treaties within the Union, adoption of the Union’s acts, and making amendments to the Treaty. The work for improvement of the Union’s law with the purpose to remove derogations and restrictions will be performed by the members of the Commission Board (Ministers) in accordance with allocation of their responsibilities. The Commission Board plans annual updating of the Road Maps and submission of an annual report on the results of implementation thereof in the reporting period at a meeting of the Commission Council.

106. Implementation of proposals on removal of barriers and reduction in the number of derogations and restrictions in the Union’s internal market will make it possible to qualitatively expand the existing practice of monitoring, to identify and remove new barriers that have not been discussed by the Commission until recently.
Conclusion

107. The main purpose of the work for identification and removal of barriers and reduction in the number of derogations and restrictions is ensuring effective functioning of the Union’s internal market.

108. Key principles of the performed work are its systemic nature and transparency. According to the first principle, optimization of the conceptual framework was carried out in 2016, the register of Obstacles is formed and maintained, and preparation of draft Road Maps for removal of derogations and restrictions is planned.

- Clarification of definitions of the terms has made it possible to make a clearer difference between permitted and prohibited obstacles in the Union and to enhance thereby effectiveness of removal of the same. Prohibited obstacles are barriers that are not consistent with the law of the Union. Permitted obstacles are derogations and restrictions, that is, obstacles that determine the fields regulated by internal law of member states rather than the law of the Union. In fact, those are the areas of “underintegration” within the Union. Such derogations are not necessarily negative by nature; they are special features that are determined by the Union’s law and must be taken into account at interpretation of the fundamental principle: “ensuring freedom of movement of goods, services, capital and labor, implementation of coordinated, agreed-upon or unified policy at functioning of the Eurasian Economic Union”. At the same time, some of such derogations have adverse impact on freedom of movement of goods, services, capital and labor, whereas some other may give rise to barriers. It is expected that further Eurasian integration will result in reduction in the number of derogations.

- Establishment at the early stage of electronic database of identified obstacles and the work performed for maintenance of the Register of Obstacles in electronic form have already had favorable impact on the quality and the rate of accumulation of information on obstacles. This body of information will be later used for carrying out a deeper analysis of the status of integration processes in the Union, including assessment of impact of obstacles on member states’ economies. The Register of Obstacles and the set of analysis tools created on the basis of information contained therein will be used by the member states and by the Commission for improvement of the Union’s law and for decision making in relation with Eurasian integration. At the same time, the Commission will continue its work together with the member states on the issues not reflected in the Register of Obstacles, with due account for the elaborated methodology of classification of obstacles as barriers, derogations and restrictions.

- Implementation of the Road Maps for removal of derogations and restrictions will make it possible to considerably reduce the number of derogations and restrictions.

109. According to the principles of transparency and openness, work is performed for building up relationships of trust with the business communities of the member states in the round table format. Interaction with business communities makes it possible to take measures for prevention of occurrence of obstacles.

110. To take into account the positions of all the parties concerned, the Advisory Committee on Functioning of Internal Markets has been established to consider basic systemic issues related to the performed work for identification and removal of obstacles.

111. One of the lines of further work is identification of barriers in the field of trade in services, which has not yet been examined sufficiently for existence of obstacles. Problems with statistical reports in trade in services among the member states, insufficiently high level of interest of national companies in cross-border trade in services, and non-availability of required information from member states impede detailed analysis of this field. A topical task is examination of those sectors of trade in services where the common market rules are effective and those that have significant weight in member states’ economies, such as the construction services market.

112. Implementation in full of the Road Maps for removal of derogations and restrictions and continuance of the work for identification and removal of barriers on a regular basis will contribute to achievement of the goal of ensuring the Union’s internal market functioning without obstacles. In addition, this will make it possible to implement one of the basic principles of functioning of the Union’s internal market, namely, absence of barriers to mutual access to the internal market and minimal number of derogations and restrictions, and will also facilitate to raising the level of cooperation and competitive ability of member states’ national economies.
## Annex 1

### Agreed-Upon List of Obstacles

#### Barriers

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Requirement of customs declaration of the goods classified in the 27th commodity group of the EEU Customs tariff nomenclature (except gas, oil and oil products) exported from the Russian Federation to other member states</td>
</tr>
<tr>
<td>2</td>
<td>Non-implementation by member states of arrangements for bringing national legal acts into line with the Union’s technical regulations, in particular, non-implementation of arrangements for recognition of repealed legal acts that are inconsistent with the Union’s technical regulations</td>
</tr>
<tr>
<td>3</td>
<td>Non-application of national treatment regime in imposition of value added tax with respect to a number of goods in the Republic of Belarus. For a number of products, a lowered VAT rate equal to 10 percent is applied if only such goods are manufactured in the territory of the Republic of Belarus, whereas imports of the same goods from other member states is taxed on VAT at a standard rate equal to 20 percent</td>
</tr>
<tr>
<td>4</td>
<td>Non-compliance of the Russian Federation legal acts accepted by customs authorities regulating customs legal relations in terms of classification of certain kinds of goods with decisions on classification of the same kinds of goods adopted by the Commission in accordance with Article 52 of the CU Customs Code (an electric truck with a control lever) (clause 155 of the Russian FCS Disposition as of August 15, 2014 No. 233-p On Classification of certain Products under the EEU Customs tariff nomenclature)</td>
</tr>
<tr>
<td>5</td>
<td>Restrictions on access faced by potential suppliers to participation in procurements held in electronic format in the territory of the Union due to absence of mutual recognition of electronic digital signature (EDS)</td>
</tr>
<tr>
<td>6</td>
<td>Absence of information in Russian language at performance of government procurements in the Republic of Armenia (through electronic portals)</td>
</tr>
<tr>
<td>7</td>
<td>Provision of more favorable conditions in the media for placement of advertisements of wine and sparkling wine (champagne) manufactured in the Russian Federation from grapes grown in the territory of the Russian Federation compared with the conditions for similar products from other member states</td>
</tr>
<tr>
<td>8</td>
<td>Obstacles to access to the market of government procurements of the Russian Federation for suppliers of software from other member states, having arisen as a result of adoption of Resolution of the Government of the Russian Federation dated November 16, 2015 No. 1236</td>
</tr>
<tr>
<td>9</td>
<td>Application by the Republic of Kazakhstan of the rent tax on exportation of coal from its territory to the territories of other member states</td>
</tr>
</tbody>
</table>
## Restrictions

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
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<tbody>
<tr>
<td>10</td>
<td>Non-settlement of the issue of charging export customs duties at exportation of products originating from a member state and subject to export customs duties in such member state from the territory of another member state</td>
</tr>
<tr>
<td>11</td>
<td>Lack of harmonization of excise tax rates for most sensitive excise products</td>
</tr>
<tr>
<td>12</td>
<td>Unequal conditions of pension guarantees for member states’ nationals in the territory of other member states</td>
</tr>
<tr>
<td>13</td>
<td>Requirement by customs authorities of the Russian Federation for marking the imported goods with a unified mark of circulation of products in the Union’s market until release of the goods in accordance with the customs procedure for release for Internal use</td>
</tr>
<tr>
<td>14</td>
<td>Non-availability of a unified methodology for calculation of the permitted level of measures for support to agriculture that have distorting impact on trade, provided for by the second paragraph of Clause 8 of Protocol on measures for State Support to Agriculture</td>
</tr>
<tr>
<td>15</td>
<td>Non-availability of unified requirements with respect to relocation within the Union of seeds of agricultural plants and mutual recognition by member states of documents certifying grade and sowing properties of seeds of agricultural plants</td>
</tr>
<tr>
<td>16</td>
<td>Non-availability of unified requirements with respect to the conditions of importation to, exportation from and transportation over the Union’s territory of breeding products, methodologies for assessment of the breeding value of breeding animals and forms of breeding certificates (passports)</td>
</tr>
<tr>
<td>17</td>
<td>Non-availability of unified principles of and approaches to harmonization of member states’ legislations in the field of state control (supervision) over observance of the requirements of the Union’s technical regulations, including agreed-upon mechanisms of interaction between state control (supervision) authorities of the member states in the event of detecting products not meeting the requirements of the Union’s technical regulations</td>
</tr>
<tr>
<td>18</td>
<td>Non-availability of principles of and approaches to harmonization of member states’ legislations in the part of establishing responsibility for violation of binding requirements on products, rules of and procedures for mandatory assessment of compliance</td>
</tr>
<tr>
<td>19</td>
<td>Non-availability of agreed-upon approaches to application of member states’ Internal (national) standards and inter-state standards to which not all of the member states have acceded, included into the lists of international and regional (interstate) standards, or, in the absence thereof, national (state) standards, as a result of voluntary adoption of which compliance with the requirements of technical regulations is ensured, and the lists of international and regional (interstate) standards, or, in the absence thereof, national (state) standards that contain the rules and methods of examination (testing) and measurements, including the rules of selection of specimens, that are necessary for application of and compliance with the requirements of the Union’s technical regulations and for assessment of compliance of the technical regulation objects</td>
</tr>
<tr>
<td>20</td>
<td>Establishment of binding requirements on products included into the Unified List of Products with respect to which binding requirements are established in the Union, in accordance with member states’ legislations until entry into force of the Union’s technical regulations</td>
</tr>
</tbody>
</table>
21 Insufficient harmonization of member states' legislations on accreditation, in particular, non-availability of comparative mutual assessments for the purpose of achievement of equivalency of applied procedures and also procedures for settlement of disputes between member states in relation to accreditation

### Sanitary, Veterinary and Sanitary and Quarantine Phytosanitary Measures

<table>
<thead>
<tr>
<th>No.</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>Possibility of determining the procedure for identification of animals at the national level</td>
</tr>
<tr>
<td>23</td>
<td>Non-availability of unified rules of circulation of medicinal preparations for animals, diagnostic agents, and feed supplements for animals in the territory of the Union</td>
</tr>
<tr>
<td>24</td>
<td>Non-availability of a unified list if quarantine objects (quarantine pests)</td>
</tr>
<tr>
<td>25</td>
<td>Non-availability of unified quarantine phytosanitary requirements</td>
</tr>
<tr>
<td>26</td>
<td>Non-availability of unified rules and methodology of laboratory testing for the purposes of veterinary control (supervision)</td>
</tr>
<tr>
<td>27</td>
<td>Non-availability of unified rules and standards of ensuring plant quarantine</td>
</tr>
</tbody>
</table>

### Energy Industry and Infrastructure

#### Energy Industry

<table>
<thead>
<tr>
<th>No.</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>Absence of the Union’s common oil and oil products markets</td>
</tr>
<tr>
<td>29</td>
<td>Absence of the Union’s common gas market</td>
</tr>
<tr>
<td>30</td>
<td>Absence of the Union’s common electric power market</td>
</tr>
<tr>
<td>31</td>
<td>Non-availability of unified and transparent approaches to determining technical capabilities of oil and oil product transportation systems located in the territory of member states</td>
</tr>
<tr>
<td>32</td>
<td>Non-availability of unified and transparent approaches to determining technical capabilities and free capacity of gas transportation systems located in the territories of member states</td>
</tr>
<tr>
<td>33</td>
<td>Non-availability of unified and transparent approaches to determining technical capabilities at electric power transmission in the territories of member states</td>
</tr>
<tr>
<td>34</td>
<td>Non-availability of unified rules of access to gas transportation systems located in the territories of member states</td>
</tr>
<tr>
<td>35</td>
<td>Non-availability of unified rules of access to oil and oil products transportation systems located in the territories of member states</td>
</tr>
<tr>
<td>36</td>
<td>Non-availability of unified rules of access to services of member states’ natural monopoly entities in electric power industry</td>
</tr>
<tr>
<td>37</td>
<td>Absence of regulation in the member states’ legislations of the mechanism of supporting market prices that ensure commercial profitability of sale of gas in the territories of member states</td>
</tr>
<tr>
<td>38</td>
<td>Restriction on provision of equal access to member states’ gas transportation systems to gas producers not being owners of gas transportation systems</td>
</tr>
</tbody>
</table>

#### Transport

<table>
<thead>
<tr>
<th>No.</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>39</td>
<td>Absence of unrestricted access of vessels under the flag of a member state to navigation in inland water ways of other member states</td>
</tr>
<tr>
<td>40</td>
<td>Non-compliance of the maximum permitted masses, axle loads and overall dimensions of transport vehicles in member states</td>
</tr>
<tr>
<td>41</td>
<td>Differences in the procedures for execution of special authorizations for movement of oversized and (or) heavy transport vehicles in member states</td>
</tr>
<tr>
<td>42</td>
<td>Differences in approaches of member states to state regulation of aviation services.</td>
</tr>
</tbody>
</table>

### Competition and Anti-Monopoly Regulation

<table>
<thead>
<tr>
<th>No.</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>43</td>
<td>Impossibility of bank guarantees issued by resident banks of a member state as security of an application for participation in state procurements or security of performance of a contract (agreement) related to state procurements carried out by customers from another member state</td>
</tr>
</tbody>
</table>
# Derogations

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Economy and Financial Policy</strong></td>
<td></td>
</tr>
<tr>
<td>44</td>
<td>Non-application of the rules of the common services market in the construction industry of the Republic of Kazakhstan until 2025</td>
</tr>
<tr>
<td><strong>Industry and Agro-Industrial Complex</strong></td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>Availability of local content in contracts for subsoil use between the Government of the Republic of Kazakhstan and a subsoil user, made before January 01, 2015, according to the Law of the Republic of Kazakhstan dated June 24, 2010 No. 291-IV On Subsoil and Subsoil Use</td>
</tr>
<tr>
<td>47</td>
<td>Introduction of measures with respect to investment agreements made in accordance with Order of the Ministry of Industry and new Technologies of the Republic of Kazakhstan dated June 11, 2010 No. 113 On Certain Issues of Conclusion, Terms and Standard Form of Agreement on Industrial Assembly of Motor Transport Vehicles with Legal Entities Who Are Residents of the Republic of Kazakhstan and Resolution of the Customs Union Commission dated November 27, 2009 No. 130 On Unified Customs and Tariff Regulation in the Customs Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation</td>
</tr>
<tr>
<td>48</td>
<td>Introduction of measures with respect to investment agreements made in accordance with Edict of President of the Republic of Belarus dated April 04, 2009 No. 175 On Measures for Development of Manufacture of Light Cars and resolution of the Customs Union Commission dated November 27, 2009 No. 130 On Unified Customs and Tariff Regulation in the Customs Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation</td>
</tr>
<tr>
<td><strong>Trade</strong></td>
<td></td>
</tr>
<tr>
<td>49</td>
<td>Exclusive right of foreign trade (export and import) in mineral or chemical potassium fertilizers belongs to the state and is exercised by Belaruskali Open Joint Stock Company, Belarusian Potash Company Closed Joint Stock Company and other organizations designated by President of the Republic of Belarus</td>
</tr>
<tr>
<td><strong>Technical regulation, Sanitary, Veterinary and Sanitary and Quarantine Phytosanitary Measures</strong></td>
<td></td>
</tr>
<tr>
<td>50</td>
<td>Availability in the Union's technical regulations of references to national legislations of member states, as a result of which member states' legislations establish different binding requirements on objects of technical regulation by the Union’s technical regulations and/or the procedure for activity of member states’ competent authorities and organizations</td>
</tr>
<tr>
<td></td>
<td>Description</td>
</tr>
<tr>
<td>---</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>51</td>
<td>Simultaneous application of the Union’s technical regulations and national legislation of the Kyrgyz Republic in the territory of the Kyrgyz Republic</td>
</tr>
<tr>
<td>52</td>
<td>Simultaneous application of the Union’s technical regulations and national legislation of the Republic of Armenia in the territory of the Republic of Armenia</td>
</tr>
<tr>
<td><strong>Customs Cooperation</strong></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Inconsistencies in provisions of the Union’s transport legislation and customs legislation in the part of prohibition from using temporarily imported transport vehicles intended for international transportation for carriage of goods, passengers and (or) luggage in Internal carriages within the Union’s customs territory</td>
</tr>
<tr>
<td>54</td>
<td>Impossibility of placement under the customs procedure of a free economic area of the Union’s goods located in the territory of the Kaliningrad FEA or the Magadan FEA of the Russian Federation, or imported to the territory of the above said FEAs</td>
</tr>
<tr>
<td><strong>Energy Industry and Infrastructure</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Energy Industry</strong></td>
<td></td>
</tr>
<tr>
<td>55</td>
<td>The Treaty does not cover the relationships of access to services of natural monopoly entities in the field of gas transportation with respect to gas originating from territories of non-Union countries and the relationships in the field of transportation of gas outside the Union and from outside thereof (which have also impact on use of gas pipelines and availability of free capacity)</td>
</tr>
<tr>
<td>56</td>
<td>Existence in the Russian Federation of the exclusive right of gas export to the member states</td>
</tr>
<tr>
<td><strong>Transport</strong></td>
<td></td>
</tr>
<tr>
<td>57</td>
<td>Absence of equal tariff conditions for member states as regards access to air navigation services and airport services</td>
</tr>
<tr>
<td>58</td>
<td>Non-availability of agreed-upon (harmonized) unified approaches to development of member states’ civil aviation</td>
</tr>
<tr>
<td>59</td>
<td>Exception from the right of carriage of goods, passengers and their luggage by vessels under the flag of a member state in inland water ways in the part of carriage and towing between ports of another member state and carriage to (from) ports of another member state and non-Union countries</td>
</tr>
<tr>
<td><strong>Competition and Anti-Monopoly Regulation</strong></td>
<td></td>
</tr>
<tr>
<td>60</td>
<td>Derogations in the field of government procurements of the Kyrgyz Republic, related to transition provisions of the Treaty</td>
</tr>
</tbody>
</table>
Contents

Introduction 5

1.1. Brief Analysis of the Situation in the Union’s Internal Markets 8
1.2. Results of Work for Removal of Obstacles in 2016 10
1.3. Effect of Removal of Obstacles 13

Freedom of movement of goods 15

2.1. Customs and Tariff Regulation and Non-Tariff Regulation 15
2.2. Technical Regulation 16
2.3. Regulation in the Field of Sanitary, Veterinary and Sanitary and Quarantine Phytosanitary Measures 17
2.4. Customs Regulation 18
2.5. State (Municipal) Procurements and Other Procurements 19
2.6. Taxation 20
2.7. Industrial and Agro-Industrial Policy, Subsidization 22
2.8. Energy Policy 24

Freedom of movement of services and capital 25

3.1. Regulation in the Field of Trade in Services and Movement of Capital 25
3.2. Regulation in the Field of Trade in Services and Movement of Capital in Financial Markets 26
3.3. Regulation in the Field of Transport 28

Freedom of movement of labor 30

Priority lines of the Commission’s work for removal of obstacles 31

Conclusion 34

Annex 1 Agreed-Upon List of Obstacles 35
БАРЬЕРЫ, ИЗЪЯТИЯ И ОГРАНИЧЕНИЯ
ЕВРАЗИЙСКОГО ЭКОНОМИЧЕСКОГО СОЮЗА

BARRIERS, DEROGATIONS AND RESTRICTIONS
IN THE EURASIAN ECONOMIC UNION