

Research Paper

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The Eurasian Economic Union Deals, Rules and the Exercise of Power



Contents

Summary	2
1. Introduction	3
2. The Grand Narrative	4
3. Deal Making	6
4. The EAEU: Intentions and Limitations	13
5. Scope and Priorities of Integration	18
6. Conclusion	24
About the Authors	25
Acknowledgments	25

Summary

- The Eurasian Economic Union (EAEU) was established in January 2015 with the aim of integrating post-Soviet states, including Russia, into a new cohesive economic entity.
- The rapid launch of the union was made possible through bilateral deals initiated by Russia with individual member countries rather than any particular appetite for integration from member states.
- All member states seek to minimize commitments and maximize flexibility within the common regime. The lack of commitment to deep economic integration is apparent in the institutional architecture of the union.
- The lack of commitment is also evident in the stilted progress of further integration after the EAEU's impressive launch and the unravelling of the early success of initial integration – the Customs Union.
- Satisfied with having created a union, Russia is not preoccupied with making it work. Russia has refused to be constrained within the Eurasian project, as would be expected as a member of a common regime.
- Achieving deep economic integration requires a commitment, mainly from Russia, not only to respect the already adopted rules of the EAEU but also to spearhead regulatory and institutional modernization of the member states, all of which suffer from poor governance.
- Owing to the diverging motives and preferences of member states and weak common institutions, the EAEU is failing to live up to the grand narrative and fanfare that helped launch it. Yet, the EAEU is unlikely to dissolve, as it remains too important for Russia's regional and global agenda.

1. Introduction

The Eurasian Economic Union (EAEU) was established in January 2015. At the time, its creation was proclaimed historic by Vladimir Putin, a key promoter of the project.¹ Underpinning this claim was the development of a functional, rules-based framework to promote deeper economic ties between EAEU members, and thereby integrate states into a new cohesive economic entity – the first such body in the post-Soviet region.

The EAEU received a mixed reaction on its launch. While some dismiss it as merely a fiction serving Russia's geopolitical ends, others, more pragmatically, view EU–EAEU cooperation as a means of diffusing tensions in Russia–EU relations. Neither stance appears to be based on analytical scrutiny of the new organization in terms of its overt aims, let alone how it really functions.

Russia's primary interest in Eurasian integration is to strengthen its own global influence. Other member states have diverse reasons to engage in Eurasian integration but they are not interested in pursuing deep economic integration in a regional context. As such, the competing objectives of member states are actually hindering the project from becoming a genuine economic union. The lack of commitment among member states is reflected in the significant institutional deficiencies within the EAEU. Already the union has seen the reversal of some early successes in integration. The lack of commitment in conjunction with weak institutions is likely to render the organization ineffective in the medium to long term. But even though the union will continue to fall short of its objectives, the EAEU cannot be easily written off. Notwithstanding its shortcomings, Russia retains a strong interest in the EAEU's continued existence. So it is likely to endure, barring any unforeseen events of a cataclysmic nature within Russia itself. This paper aims to explain the political origins of the EAEU, its architecture and its progress to date.

¹ *RIA Novosti* (2014), 'Putin: Peredacha polnomochii v EAES ne oznachaet utratu suvereniteta' [Putin: the transfer of powers in the EAEU does not mean loss of sovereignty], 29 May 2014, <http://ria.ru/economy/20140529/1009842639.html> (accessed 8 Oct. 2016).

2. The Grand Narrative

EAEU member states frequently contend that the alliance is not simply Russia's 'empire-building' project, but instead a legitimate, demand-driven exercise in regional economic governance. The EAEU is a culmination of a multi-step project in deep economic integration. The EAEU built on the achievements of the Eurasian Customs Union (EACU), formed in 2010, and the Single Economic Space (SES), established in 2012.² It promised a common market with 180 million consumers, in which economic policies are coordinated and existing non-tariff trade barriers eliminated. An ambitious regulatory harmonization agenda aims to reduce differences between member states, for example, by creating a common market for electricity, oil and gas – a perennial source of tension between members since the break-up of the Soviet Union.

This integration is to be delivered by a common, rules-based regime. Unlike the EACU or the SES, the economic union was established with a comprehensive agreement, the Treaty on the EAEU, which was signed on 29 May 2014 in Astana and came into force on 1 January 2015. The treaty provides a clear legal foundation for the union and aims to codify the hitherto fragmented and messy legal basis of the EACU and the SES. The treaty is ambitious to the extent that it introduces the concept of 'the law of the Union'. Notably, the law of the union is premised on the principle of formal (institutionalized) equality of all member states.

The common regime is underpinned by a developed institutional architecture, where common regulatory and judicial bodies are given prominence. These include the Eurasian Economic Commission (EEC) as a technocratic, permanent regulator of the integration process (based in Moscow) and a brand new Court of the Eurasian Economic Union (based in Minsk).

The EAEU is an international organization endowed with its own legal personality, a radical improvement on earlier initiatives. Imbuing the EAEU with legal personality has been instrumental in promoting the vision that other international bodies, such as the EU, will need to engage with the EAEU on an inter-regional basis rather than with individual member states.

The EAEU is an important international actor. The union is an appealing body that can benefit potential members, such as Armenia, whose entry was negotiated in parallel with the Treaty on the EAEU and took effect on 2 January 2015, one day after the treaty came into force.³ Kyrgyzstan's accession followed soon after, notwithstanding any misgivings about the country's readiness to take on membership obligations.⁴ More broadly, member states' leaders have promoted the EAEU as a vehicle to implement fundamental shifts in the architectures of Europe and Eurasia. Russia has demonstrated this by actively promoting the EAEU as a platform for structuring relations with the EU, ASEAN and China in regard to the Belt and Road Initiative. Moscow champions accession to the EAEU in its approach to post-Soviet countries, such as Moldova, which have signed an EU

² On the evolution of the Eurasian integration, including the Commonwealth of Independent States and two earlier customs unions see Cooper, J. (2013a), 'The Development of Eurasian Economic Integration', in Dragneva, R. and Wolczuk, K. (eds) (2013), *Eurasian Economic Integration: Law, Policy and Politics*, Cheltenham: Edward Elgar, pp. 15–33.

³ Accession Treaty signed 10 October 2014, entry into force 2 January 2015.

⁴ Accession Treaty signed 23 December 2014, entry into force 12 August 2015.

Association Agreement. Russia also promotes the EAEU as a functional alternative to the EU in the Western Balkans (specifically Serbia) and even in its policies towards current EU member states (such as Bulgaria). The EAEU's importance as an international actor is also reflected in the 'waiting list' of countries, such as Israel, Egypt, Iran and Serbia, which seek to follow in Vietnam's footsteps by concluding a free trade agreement with the EAEU.⁵

In sum, the bloc is presented as an attractive multilateral international entity engaged in deep economic integration on the basis of a rules-based regime. In fact, according to Tatiana Valovaya, minister of the Eurasian Economic Commission, 'the history of Eurasian integration is actually an attempt to build something similar to the EU'.⁶ As such, lingering problems are acknowledged by EAEU politicians and experts as natural 'growing pains' in the development of such an organization; the EU has taken several decades to become a single market and an economic union. Scepticism about the EAEU project is often deemed by the Russian side to be evidence of 'bad will', denial of the region's right to integrate on its own terms, or a sign of a Western anti-Russian conspiracy.

It is this narrative of a functional, rules-based integration that explains the EAEU's appeal to various European politicians, officials and experts. In looking for pragmatic solutions to tensions between Russia and the EU, some believe that the EAEU may contribute to the creation of the much coveted ideal of a 'free trade area from Lisbon to Vladivostok' that could act as a ready-made 'tool for peace and prosperity'.⁷ However, developments have not been smooth and to date the narrative glosses over not only the structural faults of the EAEU, but also its main drivers, which may suggest that it is not the solution that many are hoping for.

⁵ At the December 2016 summit of the Eurasian heads of state, for example, it was decided to start negotiations on free trade agreements with Iran, Egypt, India and Singapore.

⁶ Valovaya, T. (2012), 'Eurasian Economic Integration: Origins, Patterns and Outlooks', *EBD Eurasian Integration Yearbook*.

⁷ For example, see Steinmeier, F-W. (2014), 'Speech at Ural Federal University, Yekaterinburg', 9 December 2014, http://www.auswaertiges-amt.de/EN/Infoservice/Presse/Reden/2014/141209-BM-Jekaterinburg_ENG.html; Gotev, G. (2015), 'Juncker opens the door to EU-Eurasian Union rapprochement', Euractiv, 20 November 2015, EurActiv.com. <http://www.euractiv.com/sections/europes-east/juncker-opens-door-eu-eurasian-union-rapprochement-319681> and Bertelsmann Stiftung (2016), 'Free Trade from Lisbon to Vladivostok', Focus Paper, <https://www.bertelsmann-stiftung.de/en/publications/publication/did/focus-paper-free-trade-from-lisbon-to-vladivostok/>. Moreover, there is a number of mainly populist and right-wing politicians in EU member states, who without knowing too much about the EAEU, appear to take Russia's narrative on the project at face value.

3. Deal Making

Member states take part in the Eurasian project for various reasons. Yet, the evidence contradicts the view that member states, including Russia, are primarily committed to deeper economic integration. However, all member states have strong reasons to engage in the EAEU, which has enabled the organization to expand rapidly. This seeming contradiction is explained by deals struck between the primary driver of the EAEU, Russia, and other participating states.

Russia

Officially, Kazakhstan's President Nazarbayev is credited with being the 'godfather' of the Eurasian project as he first floated the idea of such a union in 1994. However, in reality, it is a project driven by Russia with the aim of engaging with post-Soviet states.

The key benefit for Russia is the construction of a regional bloc to overcome what the country sees as the loss of power and control in the region after the collapse of the Soviet Union. Further Eurasian integration is one of Russia's key strategies to re-build its status on the international stage.⁸

Putin has sought to counteract economic marginalization and re-establish Russia at the heart of an economic bloc in the belief that 'great powers do not dissolve in some other integration projects but forge their own'.⁹ The EAEU demonstrates Russia's recognition that the world is increasingly split into regional blocs that pool economic might to consolidate power and influence. The Kremlin became concerned about Russia's economic marginalization in response to China's growing strength and an ever enlarging EU. Investing in its own regional bloc as a tool to augment Russia's standing in the global order became a policy priority.¹⁰

Since the late 2000s Eurasian integration has been, at least in part, a defensive response by the Russian leadership to the perceived encroachment on Russia's sphere of influence by the EU and, increasingly, China's regional ambitions. The colour revolutions during Putin's first term as president only strengthened his resolve to address perceived threats to Russia's traditional powerbase in his second term.

An advantage of the EAEU structure is that it allows Russia to influence the foreign policy choices of member states without the onerous responsibility of governing them. This is a form of 'soft' hegemony rather than empire-building in the sense that Russia does not wish to control domestic

⁸ On Russia's efforts to re-build its power, see Lo, B. (2015), *Russia and the New World Disorder*, London and Washington, D.C.: Chatham House and Brookings Institution Press.

⁹ Bordachev, V. and Skriba, A. S. (2014), 'Russia's Eurasian Integration Policies', in *The Geopolitics of Eurasian Economic Integration*, IDEAS (London School of Economics), London, available at: <http://www.lse.ac.uk/IDEAS/publications/reports/pdf/SR019/SR019-Bordachev-Skriba.pdf> (accessed 10 Jan. 2016).

¹⁰ This policy priority was accompanied by rekindled Eurasianist ideological thinking. However, the latter was more of a consequence rather than the primary reason for the Kremlin's investment in the Eurasian structures, see Cooper, J. (2013b), 'Russia and the Eurasian Customs Union', in Dragneva, R. and Wolczuk, K. (eds) (2013), *Eurasian Economic Integration: Law, Policy and Politics*, Cheltenham: Edward Elgar, pp. 81–99.

institutions and policies but wants to align their foreign policies with its own interests. This system amplifies Moscow's global reach and enables it to act like a regional 'gatekeeper' for Eurasia.

Nevertheless, the Kremlin's strategy does not eliminate the essential conundrum of Russia's regional leadership: its massive military superiority and the sheer extent of its economic resources. Even in the 1990s, when Russia was particularly weak, it was vastly more powerful than any other post-Soviet state and thus able to achieve its strategic regional goals with little interference. For nearly two decades after the collapse of the USSR, Russia simply relied on 'hegemonic bilateralism' in relations with its post-Soviet neighbours.¹¹

Such behaviour is not unique. In fact, it can be widely observed in international relations that powerful states tend to prefer weak institutional arrangements that allow them to avoid potentially costly commitments and binding constraints. They favour more power-based – rather than rules-based – interactions with their neighbours. And yet, when it comes to regional integration, the cooperation of other states and their willingness to opt into a regional organization led by the dominant state is vital. Simply speaking, to create a regional bloc, the dominant state needs willing supporters.

However, for smaller states the rationale for opting into a bloc dominated by a powerful state is hardly compelling. With Russia accounting for 84 per cent of the GDP of the EAEU, the danger for weaker states is that Moscow's interests will take precedence over their own. Thus, to placate those fears a dominant state needs to take into account the point of view of the smaller states and curtail its own preferences. Re-assurances and safeguards offered by Russia to members are evident in the economic focus and institutional design of the EAEU.

Russia's main benefits from the EAEU are political rather than economic. The EAEU accounts for only 5 per cent of Russia's trade – the bulk of the country's exports go to the rest of the world. Russia's original plan for integration was essentially political rather than merely economic. At the outset of the EAEU, the Kremlin aimed to establish a comprehensive union, encompassing monetary union and political and defence integration.¹² However, this far-reaching agenda was rejected by other states, particularly Kazakhstan, which succeeded in its efforts to limit the EAEU to economic integration.¹³ This demonstrates the paradox of Russia's efforts to increase its influence in the region: the EAEU is nominally about economic cooperation, yet economic relations with Eurasian members only matter for Russia as a precursor to achieving its political and geopolitical aims.¹⁴ In economic terms alone, deep integration with other member states is of limited

¹¹ Cooper, J. (2009), 'Russia's Trade Relations with the Commonwealth of Independent States', in Rowe, E. W. and Torjesen, S. (eds), *The Multilateral Dimension in Russian Foreign Policy*, Abingdon: Routledge.

¹² Cooper, J. (2013b), 'Russia and the Eurasian Customs Union'.

¹³ Article 1 (2) of the Astana Treaty. The drafting history of the Astana Treaty shows how strong Kazakhstan's position was in this respect, Dragneva, R. (2016), 'The Eurasian Economic Union: Between Sovereignty and Integration', Birmingham IEL Working Papers 2016-10, <http://www.birmingham.ac.uk/research/activity/iel/publications/working-papers.aspx>.

¹⁴ The long-standing reliance on economic means to achieve political aims in Russia's relations with Ukraine is analysed in Dragneva, R. and Wolczuk, K. (2016), 'Between Dependence and Integration: Ukraine's Relations with Russia', *Europe-Asia Studies*, 68:04, pp. 677–698, doi: 10.1080/09668136.2016.1173200 [open access article].

importance for Russia's trade and economic development.¹⁵ This has a definite impact on how Russia approaches Eurasian integration as an economic project.

Members

In purely economic terms, membership of the EAEU has limited appeal.¹⁶ Therefore, to entice potential member states, Russia has offered a degree of formal power-sharing within the union, while also striking a series of individual deals with members. In specific terms, these bargains exploit member states' existing dependencies on Russia for energy, labour migration, finance and security. Some elements of the bargains fall within the legal scope of Eurasian integration (for example, free trade without exemptions), all too often, however, they go beyond the explicit parameters of the union, such as using energy prices or security as negotiation points. In all cases it is Russia that has final say on these informal deals.

For Belarus, trade with Russia and the rest of the world are comparable in terms of volume but trade with other EAEU member states remains negligible. The Russian market is of particular importance for some sectors of the Belarussian economy, accounting for 35 per cent of total food produce exports in 2015 and 22 per cent of machinery and transport equipment exports over the same period. The promise of improved access to the Russian market is an important element of the Eurasian project's appeal.¹⁷ But it is Belarus's dependence on Russia as the main source of imports, particularly hydrocarbons, which is the determining factor. Securing favourable terms for energy imports has underpinned Belarus's willingness to re-integrate with Russia over the last two decades, starting with the Union State, an organization uniting Belarus and Russia in the late 1990s. To this end, President Lukashenka has accommodated Russian preferences, ceding elements of Belarus's sovereignty in the process, arguing that 'sovereignty is not an icon one needs to pray before'.¹⁸ Yet, he has been tough in bargaining with Russia on energy, making Belarus's participation in the project explicitly dependent on favourable terms in energy deals with Russia. This was the case at the launch of the Customs Union in June 2010, in the run-up to the signing of the EAEU treaty in May 2014 and then again in late 2016. As inter-state energy contracts are negotiated annually, there are frequent opportunities for both sides to bargain. On these occasions, Minsk insists on more stable terms of energy supply and access to energy at prices available to Russia's domestic consumers. To achieve this, Belarus has often threatened to leave the EAEU whenever it encounters Russian resistance. However, with the worsening economic situation, a lack of alternative access to finance and growing public dissatisfaction, Lukashenka has no choice but to rely on Moscow's economic support.

¹⁵ For example, the elimination of non-tariff barriers within the EAEU would raise the value of Russia's GDP by 0.2 per cent. Eliminating non-tariff barriers within the EAEU is more important for the Belarussian and Kazakh economies. See Vinokurov, E. (2016), 'Evrozai'skii Ekonomicheskii Soyuz bez e'motsii' [Eurasian Economic Union without emotions], *Voprosy Ekonomiky* (12): 43–60.

¹⁶ The key economic trade partner is Russia whereas trade with other EAEU states is either very limited or simply non-existent (the only exception is Kyrgyzstan, which trades more extensively not only with Russia but also with Kazakhstan). While economic relations with Russia are important to all smaller partners, entering a formal bloc that is tailored to the needs of the Russian economy (e.g. external trade tariffs) has limited appeal.

¹⁷ Frear, M. (2013), 'Belarus: player and pawn in the integration game', in Dragneva, R. and Wolczuk, K. (eds), *Eurasian Economic Integration: Law, Policy and Politics*, Edward Elgar, Cheltenham.

¹⁸ Falyakhov, R. (2013), 'Suverenitet ne ikona' [Sovereignty is not an icon], *Gazeta.Ru*, 24 October 2013, <http://www.gazeta.ru/business/2013/10/24/5722545.shtml>.

For Armenia, the country's security and economic dependence on Russia all but guaranteed it would join the EAEU. In the most striking illustration of bargaining strength, Russia forced Armenia to reverse its initial decision to stay outside the EAEU.¹⁹ After a private meeting with Putin, President Sargsyan suddenly announced his country's intention to start accession to the Customs Union and participate in the formation of the EAEU on 3 September 2013. This was in lieu of signing the Association Agreement with the EU, the negotiations of which had been completed only a few weeks earlier and which Sargsyan intended to sign in Vilnius in November 2013. This U-turn was rationalized on the grounds that 'participating in one military security structure [the Collective Security Treaty Organization] makes it unfeasible and inefficient to stay away from the relevant geo-economic area'.²⁰ Some economic carrots, such as reduced energy prices, a financial loan and various discounts, were also thrown in as enticements.²¹ But it was Russia's strategic use of Armenia's security vulnerability in regard to Azerbaijan, as a result of the Nagorny Karabakh region conflict (during which Russia actually sold arms to Azerbaijan), which forced Yerevan's hand. The centralized decision-making process in Armenia made this volte-face easy to accomplish. The momentous decision to join the EAEU was taken single-handedly by the president without any domestic deliberations and took the Armenian elites, society and the EU by surprise. Domestic actors were hardly enthusiastic about membership, realizing that during the accession negotiation, Armenia was unable to defend its economic interests in relation to Russia.²² However, in simple terms, the cost of 'disloyalty' to Russia and eschewing joining the EAEU was too great for Armenia.²³

For Kyrgyzstan, participation in the EAEU was arguably more pressing than for other members owing to its extensive trade with Kazakhstan and Russia: trade within the EAEU accounted for about 42 per cent of Kyrgyzstan's total trade in 2015, including 16 per cent with Kazakhstan and 26 per cent with Russia. Nevertheless, free trade was not the key motivating factor in its accession decision. Instead, the crucial remittances from labour migration and Russian financial assistance (\$1.2 billion) were the determining factors. Kyrgyzstan has one of the highest rates of reliance on labour migration in the world, the membership of the EAEU created more favourable conditions for migrants from Kyrgyzstan than from non-members, such as Uzbekistan and Tajikistan.²⁴ The political survival of the ruling elites was also dependent on relations with Russia, their vulnerability having been heightened by the 2010 coup and political and ethnic instability in the country. Domestically, Kyrgyzstan was not really ready to assume membership obligations of joining the bloc nor was it expected to make a significant economic contribution to the EAEU – the country accounted for 0.4 per cent of the EAEU's GDP and 0.8 per cent of its trade volume in 2015. Despite

¹⁹ On the initial choice, see for example, Chernenko, E. (2012), "Tamozhennyi soyuz ne imeet dlya nas zmysla." Premier Armenii o vzaimootnosheniyakh s RF ["A customs union does not make sense for us". Armenia's Prime Minister on relations with the RF] *Kommersant*, 4 April 2012, <http://kommersant.ru/doc/1908052>. This course was also in evidence in April 2013, when Armenia signed a Memorandum of Understanding on Cooperation with the Eurasian Economic Commission, which envisaged general cooperation without any indication of Armenia's intention to join the Customs Union.

²⁰ President of the Republic of Armenia, 'The Presidents of Armenia and Russia Summarized the Results of the Negotiations', Press release, 3 September 2013, <http://www.president.am/en/press-release/item/2013/09/03/President-Serzh-Sargsyan-working-visit-to-Russian-Federation/>

²¹ Minasyan, S. (2015), 'Armenia Keeps on Balancing: Between the European Union and the Eurasian Economic Union', Ponars Eurasia Policy Memo, No 377, August.

²² Authors' interviews with EU officials and Armenian experts in Yerevan in February 2014. See also, for example, Aysor (2014), 'Haykakan Zhamanak: Negotiations on customs duties not successful', 18 April 2014, <http://www.aysor.am/en/news/2014/04/18/maqsayin-miutyun/> (accessed 10 Jan. 2017).

²³ Delcour, L. and Wolczuk, K. (2016), 'Perception of the EU in the South Caucasus', CASCADE working paper.

²⁴ See Crisis Group (2016), *The Eurasian Economic Union: Power, Politics and Trade*, Crisis Group Europe and Central Asia Report No. 240, 20 July.

its formal membership, the country does not have full access to the common market.²⁵ The participation of Kyrgyzstan has created problems within the union.²⁶ Yet, at the time of its accession, such was the symbolic importance of attracting a new member, particularly after Ukraine's steadfast refusal to join, that Russia forged ahead, despite its detrimental effect on the union as a whole.

Finally, Kazakhstan's stake in a successful regional integration project is second only to Russia's. This meant that there was no grand bargain as such. The EAEU is seen by Astana as a way to contain Russia within a rules-based organization, in a similar way that the US was required to work within the constraints of the North American Free Trade Agreement (NAFTA). Clearly, however, Kazakhstan is keener on free trade and economic cooperation – best embodied in the SES project of 2012 – rather than a deep, open-ended union.²⁷ Trade with the rest of the world, especially with the EU and China, remains important to Astana: in 2015, Kazakhstan exported 53 per cent of its goods to the EU, 12 per cent to China and 10 per cent to Russia. To protect its overall trade Kazakhstan has ensured that integration is restricted to economic issues rather than an all-encompassing political union. However, the doubts of the benefits of the EAEU membership have deepened in the wake of the ongoing economic crises in Russia and Kazakhstan itself.

Overall individual grand bargains have been relatively easy and quick to strike, owing to the nature of the political regimes in the participating states: all of which are non-democratic with considerable powers concentrated in presidents' hands.²⁸ This greatly simplifies negotiations and decision-making, as it often only depends on the will of the president in office. All of them have used the Eurasian project to secure their own political survival (or to ensure a smooth political succession, in the case of Kazakhstan).

Attracting supporters through grand bargaining has lasting consequences for the common endeavour of creating an equal union. As a result, the EAEU has emerged as a classic 'hub and spoke' model with Russia at its centre.²⁹ Membership of the EAEU has been secured as a result of Russia's show of strength and the inherent weakness of unreformed post-Soviet economies with their dependent relationship with Russia. Kazakhstan is only a partial exception to this with its GDP per capita higher than Russia's in 2016 but it is burdened by a lack of diversity in its economy, which is heavily dependent on energy exports. Except for the case of Kyrgyzstan, there is little evidence to suggest that integrating with Russia is an attractive path towards modernization.

Nevertheless, despite lingering and indeed growing scepticism, member states' leaders rarely question the grand narrative as they are not in a position to resist Russian demands. The countries

²⁵ Putz, C. (2016), 'Kyrgyzstan Gripes about EEU Access', *The Diplomat*, 18 November 2016, <http://thediplomat.com/2016/11/kyrgyzstan-gripes-about-eeu-access/>.

²⁶ It is reported, for example, that the volume of drug trafficking from Afghanistan to the EAEU increased by 20 per cent after Kyrgyzstan's accession, Da Vinci AG Analytical Group (2016), 'Evraziiskii ekonomicheskii soiuz. Chto proizhodit za kulisami proekta Putina' [The Eurasian economic union. What happens behind the scenes of Putin's project], 2 March 2016, <http://glavcom.ua/publications/331464-evraziiskij-ekonomicheskij-sojuz.-chto-proizhodit-za-kulisami-proekta-putina-issledovanie.html> (accessed 20 Nov. 2016).

²⁷ Kassenova, N. (2013), 'Kazakhstan and Eurasian economic integration: quick start, mixed results and uncertain future', in Dragneva, R. and Wolczuk, K. (eds) (2013), *Eurasian Economic Integration: Law, Policy and Politics*, Edward Elgar, Cheltenham.

²⁸ However, Armenia is currently in a transition from being a presidential system to a parliamentary republic as a result of the deal between the Armenian government and the opposition forces on reforming the electoral system in 2016.

²⁹ In 2015, almost 97 per cent of the value of trade within the EAEU consisted of bilateral trade with Russia. See Strzelecki, J. (2016), 'The Eurasian Economic Union: a time of crisis'. OSW Commentary, No. 195 (January). See the analysis of trade flows within this hub-and-spoke model see Movchan, V. (2017, forthcoming), 'The Eurasian Economic Union: diverging trends in common trade policy', Kyiv, Institute for Economic Research and Policy Consulting, Kyiv.

that are most doubtful of the benefits of integration – such as Armenia and Kazakhstan – take the pragmatic position that EAEU membership is unavoidable and reflects the balance of power in the region.

The Ukraine effect

At the outset, Ukraine's participation in the EAEU was seen by Russia as being indispensable if Russia were to achieve its global ambitions. Russia's concerted campaign to attract Ukraine during Yanukovich's presidency (2010–14) was premised on dissuading Ukraine from concluding an Association Agreement with the EU. With Ukraine sliding into recession in late 2013, Yanukovich was enticed by a much needed financial package and low energy prices from Russia and, as a result, failed to sign an Association Agreement with the EU. This U-turn triggered mass protests that evolved into an anti-regime revolt, which resulted in the eventual demise of the Yanukovich regime and his fleeing to Russia.³⁰

As Ukraine's new government spurned Russian overtures and proceeded to foster closer ties with the EU, Russia unleashed retaliatory punitive measures, including the annexation of Crimea, a limited war in the Donbass and various economic sanctions.

The failure of Russia to secure Ukraine's membership of the EAEU was a blow to Moscow's ambitions for the organization. It was also a disaster for the organization itself as this setback intensified Russia's hegemonic inclinations, something that in turn heightened the sensitivities of other members in regard to their own sovereignty. Member states are obviously keen to retain their distance from Russia's geopolitical confrontation with the West.

Russia's annexation of Crimea was not publically challenged by EAEU member states but by the same token the Russian explanation was not compliantly accepted; Moscow's narrative on its duty to protect ethnic Russians unsettled countries with large Russian minorities, such as Kazakhstan. As President Nazarbayev stated after the annexation, 'as far as our independence is concerned, it is a constant. Kazakhstan will not surrender to anybody even an iota of its independence'.³¹ Following Putin's dismissive comment that there was no Kazakh statehood before Nazarbayev created it (echoing his similar remarks on Ukraine prior to the annexation), President Nazarbayev asserted the revocability of its commitment to the EAEU: 'if the rules which were previously established in the Treaty are not respected, then Kazakhstan has the complete right to end its membership in the Eurasian Economic Union. Astana will never participate in an organisation which represents a threat to the independence of Kazakhstan'.³² Russia's actions in Ukraine cast a long shadow over the negotiation of the Astana Treaty, exposing latent tensions and prompting member states to

³⁰ For an in-depth analysis of Russia's strategy to attract Ukraine see Dragneva, R. and Wolczuk, K. (2015), *Ukraine between the EU and Russia: The Integration Challenge*. Houndmills, Basingstoke and New York: Palgrave Macmillan.

³¹ Zakon.kz (2014), 'N. Nazarbaev: Kazakhstan ne otdast ni iotu nezavisimosti komu by to ni bylo' [N. Nazarbayev: Kazakhstan will not cede an iota of independence to anyone], 25 March 2014, <http://www.zakon.kz/4611637-n.nazarbaev-kazakhstan-ne-otdast-ni.html>.

³² Newsru.com (2014), 'Nazarbaev zaiavil o vozmozhnom vykhode Kazakhstana iz Evraziiskogo soiuz'a' [Nazarbayev announced Kazakhstan's possible withdrawal from the Eurasian Union], 31 August 2014, <http://newsru.com/world/31aug2014/nazarbaev.html> (accessed 14 Apr. 2015).

think twice about delegating extensive powers to institutions dominated by an openly militant Russia.³³

An economic down-turn, resulting from a drop in energy prices and the international sanctions imposed on Russia by the West, resulted in a 3 per cent fall in Russia's GDP in 2015. This in turn undermined Russia's role as the 'economic engine' in the region. The Russian recession and devaluation of the rouble has had a profound effect on trade with EAEU partners. The country's total trade with EAEU partners fell by about \$15 billion year-on-year in 2015 and declined further in 2016.³⁴ The impact of Russia's economic slowdown was made worse by the protectionist measures imposed by Moscow, ranging from trade bans to import substitution programmes. These actions have severely dented EAEU unity.

As a consequence, the benefits of EAEU membership have been eroding since 2015. For example, being heavily dependent on labour migration, Kyrgyzstan was badly affected by the decreasing remittances of labour migrants in Russia, even though access for Kyrgyz workers improved greatly (in contrast with Tajik migrants). Furthermore, the depreciation of the rouble sparked concerns over the flooding of Russian cheap goods into markets of other member states, especially Kazakhstan, where domestic goods became uncompetitive in relation to depreciated Russian goods. This clearly demonstrated that Russia's own economic troubles inflicted tangible economic costs on other member states. For Belarus, Armenia, Kazakhstan and Kyrgyzstan the costs of participating in the union began to outweigh the benefits.

At the same time, however, Russia's covert and overt actions in Ukraine vividly demonstrated the economic, political and military costs of disobeying Russia.

Inevitably, since 2014, Russia's attention has been diverted from the internal, technocratic aspects of the EAEU towards geopolitical and security issues, with a premium put on its global agenda and freedom to pursue trade policies in support of it. Russia has become increasingly selective about the extent to which it is prepared to be bound by the common EAEU rules and has disregarded the costs its unilateral actions have had on other member states and the EAEU as a whole. Russia signalled that it is prepared to undermine the very organization through which it sought to reassert its regional power. As a result, the events in Ukraine have profoundly altered the design and function of the EAEU.

³³ Dragneva, R. (2016), 'The Eurasian Economic Union: Between Sovereignty and Integration'.

³⁴ Movchan (2017, forthcoming), 'The Eurasian Economic Union: diverging trends in common trade policy'.

4. The EAEU: Intentions and Limitations

Russia's strategy of striking a series of individual deals with potential member states facilitated the rapid launch and widening of the EAEU. However, this has not been accompanied by Russia's willingness to imbue the organization with the formal institutional capacity necessary to live up to the grand idea of a regional common market. With members unenthusiastic about an economic union in the first place, Russia agreed to enshrine institutional flexibility and weak formal commitments in the Astana Treaty. However, this has left the EAEU's long-term viability as an economic union in doubt.

Formal equality

As an organization, the EAEU consists of several governing bodies, in which member states are equally represented. These are the Supreme Council (meeting at the level of heads of state), the Intergovernmental Council (meeting at the level of heads of government), and the two-tier Eurasian Economic Commission (see Table 1). The upper tier of the commission, the EEC Council, which is its principal body, consists of deputy heads of government, whereas the lower body, the collegium, consists of ministers nominated by member states but who must act as non-political representatives.

Table 1: Decision-making bodies of the EAEU

Body	Member state representation	Decision-making mode	Frequency of meeting per treaty
Supreme Council	Heads of state	Consensus	Once a year
Intergovernmental Council	Heads of government	Consensus	Twice a year
Eurasian Economic Commission Council	Deputy heads of government	Consensus	Once a quarter
Eurasian Economic Commission Collegium	Professionals (4-year term)	Qualified majority or consensus	Permanent body

Source: Authors' research

All bodies, except the EEC Collegium, make decisions by consensus. Formally, the collegium can adopt certain acts by a two-thirds majority. However, the scope for such supranationality is limited: all politically sensitive decisions are reserved for the EEC Council.³⁵ This mode of decision-making ensures that no member state can be bound against its will. These formal provisions restrict Russia's ability to impose its agenda and therefore assure partners of their nominal parity within the union.

The formal equality coexists with informal means of influence. Of particular concern to the members has been Moscow's dominance over the EEC Collegium and its departments responsible

³⁵ The list of 130 such powers includes the adoption of technical standards and changes to import tariffs on certain goods.

for key operational aspects of the integration agenda.³⁶ This unease was demonstrated when, in the autumn 2013, the Kazakh president complained about Russia's influence over the EEC's departments.³⁷ As a consequence, Kazakhstan sought explicit guarantees for the EEC Collegium's political independence from member states in the Astana Treaty, it remains to be seen how effective this has been.

More important, it is high-level political bargaining that shapes decision-making within the EAEU. For example, countries have refused to sign key EAEU legal documents, such as the Customs Code in December 2016, in order to secure further benefits or resolve disputed issues, such as gas prices and other bilateral grievances.³⁸ Russia's repeated generosity with regard to energy prices and security is premised on continued loyalty and the acquiescence of other members. But following the launch of the EAEU, Russia has become less attentive. This has led to member states engaging in brinkmanship to achieve their goals. Balancing their own priorities against their ability to withstand Russian pressure is made possible by the sheer complexity of the organization.

Notwithstanding nominal equality, the organizing principle of Eurasian integration is geopolitical and economic strength rather than a formal structure. Russia's drive to launch and sustain the EAEU implies a willingness to adhere to and be constrained by the rules of the EAEU. However, Russia repeatedly displays hegemonic behaviour within the EAEU and the individual deals it has struck with member states undermine the formal design of the EAEU. If the participation of states can be negotiated and secured on an ad hoc basis, due to Russia's sheer might, then Russia has little motivation to comply with the common rules of the union. Ultimately, economic integration with countries that have small economies further reduces Russia's respect for the common rules, particularly in the post-Ukraine crisis context where security interests come to the fore. This is evident in a tangible reduction in Russia's attention to the technocratic, institutional detail of integration since 2014.

Common institutions

The ability to enact the ambitious integration agenda of the EAEU is critically dependent on the strength of its common institutions. Deep, EU-style integration, which the EAEU claims to emulate, entails a considerable sacrifice of sovereignty in favour of delegating competences to common institutions. This is vital as the EAEU plans to move on from liberalizing trade to the development of common policies and the harmonization of regulatory and economic institutions of the participating states. Furthermore, effective common institutions are particularly important in the case of the EAEU because of the low quality of governance overall:

The members of the Eurasian Economic Community [...] are similar in terms of institutional quality and much-needed improvements cannot merely rely on the forces of convergence. Instead, member

³⁶ These include all powers of the commission not reserved for the EEC Council.

³⁷ President Nazarbayev referred to the participation of Russia's Ministers in meetings of the Russian government allowing them to receive guidance on specific issues. He also protested about the minimal time given to evaluate lengthy drafts prior to their tabling for approval. Kazinform (2013), 'Kazakhstan nameren vstupit' v VTO do sozdaniia Evraziiskogo ekonomicheskogo soiuza – Glava gosudarstva' [Kazakhstan intends to join the WTO before the creation of the Eurasian Economic Union – head of state], Kazinform, 24 October 2013, <http://inform.kz/rus/article/2599908> (accessed 20 Jan. 2015).

³⁸ Klysinski, K. (2017), 'The Risk of Escalating Tensions in Minsk-Moscow Relations', OSW Analysis, 4 January 2017, <https://www.osw.waw.pl/en/publikacje/analyses/2017-01-04/risk-escalating-tensions-minsk-moscow-relations> (accessed 10 Jan. 2017).

states face the challenge of creating supranational structures with better governance capacity than national institutions, which may eventually help lift the overall institutional standard in the region.³⁹

The Eurasian Economic Commission is the key institution tasked with managing further integration. Its decisions are deemed to be binding and ‘directly applicable’ in member states. Yet, the powers of this supranational body are curtailed in several areas. It is telling that the final version of the Astana Treaty excluded any designations of the commission as a supranational institution, which was proposed in previous drafts.

Despite the delegation of powers, the commission’s autonomy from member states is limited and revocable. A member state that disagrees with a decision of the collegium or the council of the commission can appeal to higher bodies. This has informally become known as the ‘Belarusian elevator’ system.⁴⁰

Furthermore, the commission is a part of a decision-making system akin to the hierarchical organization of executive power in member states, known as the *vertical* system. Domestic decision-making is centralized with little respect for state institutions. Within the EAEU’s hierarchical, politicized system, there is little scope or incentive for the commission to take key decisions; instead, it tends to prepare draft decisions for the higher councils, involving heads of state or government.⁴¹ As Putin’s adviser Sergei Glazyev pointed out, decisions are taken with input from national governments as well as higher levels of the union’s decision-making structure.⁴² However, it is high-level politics that ultimately determines the pace and direction of integration, which results in the imposition of unrealistic timetables and top-down priorities on the commission. By the same token, the technocratic agenda and compliance by the commission are undermined when ‘high politics’ allows member states to unilaterally depart from the common regime.

The commission is too weak to promote integration. The Astana Treaty that established the EAEU weakened the commission by removing some of its previous powers on monitoring the compliance of the member states. Notably, the commission is no longer entitled to bring a country before the court in case of non-compliance, as it was during the EACU and SES phase.⁴³ When the collegium has raised the problem of non-compliance with a member state, its notification has amounted to little more than a plea for action. Indeed, during the so-called ‘meat war’ between Russia and Belarus, the Minister of the Commission Sidorskii acknowledged that the commission may deem Belarussian meat products to be compliant with standards, but the commission lacks a mechanism to influence domestic institutions in a non-complying member, in this case Russia’s food safety agency, *Rossselkhoz nadzor*, to remove the punitive measures it had imposed on Belarussian meat.⁴⁴

³⁹ EBRD (2012), ‘Integration Across Borders’, *Transition Report*, p.78.

⁴⁰ Karliuk, M. (2015), ‘The Eurasian Economic Union: an EU-like Legal Order in the Post-Soviet Space?’, HSE Working Paper BPR/LAW/2015.

⁴¹ Bail’dinov, E. (2014), ‘Dogovor o Evraziiskom ekonomicheskom soiuze: shag vpered, dva shaga nazad’ [The Eurasian Economic Union treaty: one step forward, two steps back], *Evrasiiskii iuridicheskii zhurnal*, Nr. 10(77).

⁴² Politicheskii Kaleidoskop (2017), ‘Glaz’ev o proval’nykh perspektivakh EAES’ [Glazyev on the disastrous prospects of the EAEU], 24 January 2017, <http://k-politika.ru/glazev-o-provalnykh-perspektivax-aeas/> (accessed 28 January 2017).

⁴³ This power was granted in Article 20 of the Treaty on the Eurasian Economic Commission.

⁴⁴ Eurasian Economic Commission (2017), ‘Sergey Sidorskii: “Produktsiya zhivotnogo proizhozhdeniya Belarusi otvechaet vsem trebovaniyam veterinarno-sanitarnogo kontrolya EAES”’ [Sergey Sidorskii: Products of animal origin from Belarus meet all veterinary and sanitary requirements], 11 January 2017, <http://www.eurasiancommission.org/ru/nae/news/Pages/11-01-2017.aspx> (accessed 20 Feb. 2017).

Critically, the concept of a binding law of the union is more symbolic than real, even when the acts of the commission are defined as having authority. This is because member states determine the domestic reach of such legal acts depending on their own constitution. In fact, the very notion of ‘direct applicability’ and ‘supremacy’ of Eurasian law has already been challenged by none other than the Russian Constitutional Court.⁴⁵ As such, member states remain the formal ‘gatekeepers’ with regard to the application of Eurasian law in a domestic context.

Finally, common institutions are further undermined by the design of the judicial body of the EAEU. The Astana Treaty set up the Court of the EAEU, which can rule on inter-state disputes as well as hear appeals against the commission, including those launched by commercial entities. Indeed, the court’s predecessor, the Court of the Eurasian Economic Community, was quite active in ruling on specific appeals from businesses and attempted to develop union law in a similar way to the EU.⁴⁶ The Astana Treaty, however, curbed this tendency, excluding the decisions of the court from the category ‘law of the Union’ and stipulating in a rather convoluted fashion that the decisions ‘do not change and/or invalidate any norms of the law of the Union in force and the legislation of the member states, nor create new ones’.⁴⁷ Similarly, commentators have observed that many of the changes in the institutional set up of the court have weakened it, raising concerns about its independence and effectiveness.⁴⁸

Nominally, the EAEU is an international organization with a considerable pooling of sovereignty. Yet a close examination of the institutional design reveals that the common institutions are made deliberately weak in order to minimize disruption to domestic institutions and policies of the member states.

Implementation, commitment and capacity

In founding the EAEU, member states committed themselves to a number of obligations. The nature of these commitments varies across different areas of integration, amounting to a highly complex regime. Yet, even where countries have made far-reaching legal commitments – such as through their participation in the Customs Union – there are no effective common monitoring or enforcement mechanisms to ensure that states follow through on their promises. Compliance can be prompted by high-level diplomatic pressure on specific issues, but ultimately it depends on the sincerity of member states’ commitment and domestic capacity.

Overall, the top-heavy integration regime reproduces the domestic systems of governance of the member states. Individual agreements between Russia and the other member states reflect the specific priorities of the respective leaders – they agree to formally participate but without any genuine underlying commitment to multi-faceted, deep economic integration. As such, domestic

⁴⁵ Judgement of the Constitutional Court of the Russian Federation, *Avangard-Agro-Orel Ltd* (Nr 417-O, 3 March 2015), where the Constitutional Court refused to recognize the direct applicability of a decision of the commission and a judgement of the Court of the Eurasian Economic Community when in breach of the established standards of protection of human rights and the constitutional foundations of the Russian Federation, see Petrov, R. and Kalinichenko, P. (2016), ‘On Similarities and Differences of the European Union and Eurasian Union Legal Orders: Is There the ‘Eurasian Economic Union Acquis’?’, *Legal Issues of Economic Integration*, 43:3, pp. 295–308.

⁴⁶ Ispolinov, A. (2013), ‘First Judgments of the Court of the Eurasian Economic Community: Reviewing Private Rights in a New Regional Agreement’, *Legal Issues in Economic Integration*, 40:3, pp. 225–246.

⁴⁷ Article 102 of the Statute of the Court, Annex 2 of the Astana Treaty.

⁴⁸ Karliuk, M. (2015), ‘The Eurasian Economic Union: an EU-like Legal Order in the Post-Soviet Space?’ HSE Working Paper BPR/LAW/2015.

parliaments rubber-stamp these deals into law, with little sense of the obligation to implement the treaties that they have approved.

With key decisions being taken in EAEU member states by powerful, largely unaccountable political leaders, little time and attention is dedicated to the technical aspects of compliance. This is not conducive to those integration decisions that require a transformation of domestic institutions and policies. Even if political leaders were fully committed, the sheer speed and scope of integration is jeopardized by the absence of systemic political, administrative and judicial reforms in member states. Furthermore, the required modernization of domestic institutions to facilitate effective integration – such as, for example, dismantling the monopolies controlling the Armenian economy – would disrupt rent-seeking networks and impinge on the interests of those close to political leaders. Given that further integration in the EAEU mould would disrupt ‘business as usual’ inside the countries, there is little incentive for it to happen.

The poor governance characterizing EAEU member states, including Russia, creates a formidable obstacle to the effective functioning of the union as a rules-based regime. And yet, the EAEU explicitly abstains from promoting the rule of law and good governance in its member states. If anything, the Astana Treaty seeks to ensure that integration ‘respects the specificities of the political order of its member states’.⁴⁹ As a result, even though the planned integration might lead to modernization, for example, through the simplification of customs procedures, further integration ultimately depends on the willingness of domestic political regimes and the quality of governance in member states.

To sum up, launching an economic union as the ultimate platform of integration implies an intention to strengthen a common regime. In comparison with the preceding period of 2010–14, however, the Astana Treaty re-affirmed the intergovernmental rather than supranational features of integration. Member states’ preferences for maintaining control over their commitments means that there is limited buy-in to the EAEU supranational ethos. Certainly, the intergovernmental mode of decision-making offers numerous advantages to the member states – above all, the flexibility to tailor integration to their changing preferences. Yet, the lack of formally binding provisions limits the scope and pace of Eurasian integration to the least sensitive, non-contentious areas. Even within so-called ‘safe’ areas, the EAEU framework lacks mechanisms to ensure domestic compliance, which remains highly dependent on the state’s often questionable underlying commitment and capacity for implementation.

⁴⁹ Article 3 of the Astana Treaty.

5. Scope and Priorities of Integration

The Astana Treaty codifies the framework for integration related to the Customs Union and the SES, up to and including creating a common market without internal barriers. This agenda entails the removal of non-tariff barriers, the setting up of common markets in energy and electricity, as well as the harmonization of various policies, such as transport, public procurement and financial services. In this, the EAEU has sought to emulate the EU and its approach to eliminating internal barriers has included extensive regulatory harmonization, including common technical standards and sanitary and phytosanitary standards (SPS).⁵⁰

This ambitious agenda stems from the recognition that the real benefits of preferential trade agreements arise from deep integration and not merely from changing tariff rates. This is especially so as the region's trade in goods had already been largely liberalized within the context of the multilateral and bilateral trade agreements concluded within the Commonwealth of Independent States (CIS).

Such an objective requires effective, strong domestic institutions and a high level of cooperation and commitment. Yet, in practice the priorities and progress of integration are critically affected by bargaining among the member states, all of which value flexibility. The degree of flexibility they enjoy within the EAEU depends on their relationship with Russia. This power-driven dynamic is evident both with regard to the internal and external functioning of the EAEU.

Internal market

While deep integration is an explicit objective for the EAEU, its scope is not easy to ascertain – it requires delving into the technical details, embedded in the union's founding treaty, its extensive appendices and subsequent agreements.

The Astana Treaty proclaims that member states can trade freely with each other without the application of tariffs, non-tariff barriers, other protective measures and internal customs controls (articles 25 and 28). Free trade within the EAEU relies on the pre-existing bilateral and multilateral free trade agreements between member states and, as a result, has been the easiest to achieve. Tariff removal was accompanied by the elimination of customs controls between the countries in 2011. Complications arise when the agenda moves beyond simple tariff-free trade into the domain of border trade facilitation and particularly, the elimination of domestic regulatory and other non-tariff barriers to trade.

One of the early successes of integration was the provision of common border regulation through the adoption of a common customs code when the Customs Union was established in 2010. That code brought about modernization as it incorporated current international customs practices. Yet, it

⁵⁰ As Tarr points out, regulatory harmonization has been preferred to the alternative and simpler route of concluding mutual recognition agreements, Tarr, D. (2016), 'The Eurasian Economic Union among Russia, Belarus, Kazakhstan, Armenia and the Kyrgyz Republic: Can it Succeed where its Predecessor Failed?', *Eastern European Economics*, 54:1, pp. 1–22, doi:10.1080/00128775.2015.1105672.

resulted in complex customs regulations, due to its numerous references to national legislation, and was extensively criticized by businesses. The drafting of a new code began as early as 2011 and progressed slowly to its planned but problematic adoption in December 2016. The code as well as related trade facilitation activities took a back seat during the drafting of the Astana Treaty. Reflecting Russia's priorities, the final stage of integration – the economic union – took precedence over the key foundation steps – the Customs Union. Further delays were caused by diverging priorities and last-minute bargaining. Ultimately, the signing of the new code in December 2016 became another opportunity for Kyrgyzstan and Belarus to secure better economic hand-outs from Russia. Even when the code enters into force, most likely in 2017, this kind of bargaining is likely to plague its implementation within the EAEU.

The progress in removing regulatory barriers has exhibited similar dynamics, where investment in technical aspects of integration has suffered from the institutional deficiencies of integration. It is widely recognized that non-tariff barriers – such as technical standards, SPS, competition and public procurement issues – hinder free trade and pose the biggest challenge for any integration project. Removing such barriers requires consensus amongst the member states for the commission to decide on the process stipulating which barriers and when should be tackled.

Non-tariff barriers form a strong impediment to free trade in the EAEU. The *ad valorem* equivalents of such barriers range from 10–30 per cent of some countries' export value.⁵¹

Non-tariff barriers were not an EAEU agenda priority, instead attention was focused on the new treaty negotiations and further enlargement of the union. Since 2015, the EAEU commission has sought to identify, list and classify existing barriers as a first step towards their elimination, which will be followed by a road map with specific measures and timetables.⁵²

The progress, however, will be particularly difficult, given that the bulk of such barriers result from gaps in the union regime or exemptions granted under the Astana Treaty. The highest proportion of extant barriers are the result of 'under integration' (*nedointegratsiya*), according to Commissioner for the Internal Market Karine Minasian.⁵³ In a range of policy areas pertaining to the internal market, member states agreed only to a loose, fragmented framework for cooperation, in defiance of the proclaimed intentions of integration. Notably, references to 'unified' policies were eliminated from the Astana Treaty, in favour of vaguely described forms of 'coordination' and 'harmonization'. In addition, even where the removal of existing barriers is a treaty obligation, their removal has been hampered by a lack of domestic compliance and complex bilateral negotiations.⁵⁴ Clearly,

⁵¹ Vinokurov, E. et al. (2016), 'Assessing the impact of non-tariff barriers in the EEU: Results of enterprise surveys', EDB Centre for Integration Studies Report #30.

⁵² Various commission sources refer to between 200 and 450 barriers that have been identified and a special department to lead work in this matter was set up in 2016.

⁵³ Eurasian Economic Commission (2017), 'Interv'yu chlena Kollegii (ministra) po vnutrennim ryнкam, informatizatsii, IKT YEEK Karine Minasian Telegrafnomu agentstvu Belarusi «Belta»: «YEEK iskhodit iz printsipa o nedopustimosti bar'yerov v YEAEs' [Interview of member of the Board (Minister) on Internal Markets, Informatization, and ICT Karine Minasian with Belarusian news agency Belta: 'EEC is based on the principle of impermissibility of barriers inside the EAEU'], 9 February 2017, <http://www.eurasiancommission.org/ru/nae/news/Pages/09-02-2017-165921.aspx> (accessed 21 Jan. 2017). Such legal barriers are estimated to be as high as 80 per cent, see International Centre for Trade and Sustainable Development (2016), 'Yevraziyskaya ekonomicheskaya komissiya rabotayet nad ustraneniym prepyatstviy na vnutrennem ryнке YEAEs' [Eurasian Economic Commission works on removal of restrictions on the EAEU domestic market], ICTSD Bridges, 14 July 2016, <http://www.ictsd.org/bridges-news/москy/news/евразийская-экономическая-комиссия-работает-над-устранением-препятствий-на>.

⁵⁴ For example, the commission's decision No. 42 of 10 May 2016 refers to such non-compliance by Kazakhstan in relation to trade in recycled paper with Kyrgyzstan.

much needs to be done in order to make deep integration a realistic proposition if the EAEU is to achieve its aims.

Even more important, progress in eliminating existing barriers is undermined, by the explosion of new obstacles to free trade within the EAEU. Most visible have been the ‘trade wars’ such as the ‘milk and meat wars’ between Russia and Belarus or the ‘potato wars’ between Kazakhstan and Kyrgyzstan, where exemptions to free trade on the basis of alleged violations of food safety standards have been invoked. The effect of these ‘trade wars’ by the back door is not easy to quantify, not only do they signal a continuous lack of predictability in intra-union trade relations but also result in the unravelling of previous achievements. For example, Belarus retaliated against Russia’s bans of its products by the re-introduction of internal customs border controls in December 2014. The standing disputes have been aggravated by the wider dynamics of relations between Russia and Belarus in relation to gas prices and border controls,⁵⁵ resulting in the unilateral re-introduction of a stronger border protection regime on the Belarusian–Russian border by Russia in February 2017.

Finally, the objectives of the EAEU include the harmonizing of a range of state policies, such as competition, taxation, public procurement and financial market regulation. An important part of this agenda has been the establishment of a common market for pharmaceuticals and energy (electricity, gas and oil). Yet, the Astana Treaty delivers only a general road map for future developments, with few specific and immediate obligations. The common market is to be created in several steps, starting with defining common principles, followed by an action plan with a timetable for implementation of the agreed measures. Meeting these intermediary deadlines requires inter-state consensus and will ultimately need members’ commitment and additional international agreements to implement the action plans. It is indicative that some of the earlier deadlines, for example, the timetable for the pharmaceuticals industries, have been delayed – the commission could not surmount the political and technical difficulties.⁵⁶ Clearly, any progress will continue to depend on the underlying power dynamics in what are highly sensitive areas of cooperation.

The lack of progress on non-tariff barriers reflects the mismatch between the grand narrative and the limited powers of EAEU institutions when confronted with resistance from member states to pursue deep integration. Solutions for these issues are available. For example, Tarr suggests that the EAEU could abandon its ambition to create common technical regulations and, instead, move towards a system of voluntary standards and mutual recognition agreements.⁵⁷ Indeed, this would be easier to achieve, but is premised on Russia’s interest in seeking such pragmatic solutions. Russia would have to take the lead and there is little evidence that Russian authorities are keen to spearhead such a modernization of the regulatory framework within the EAEU. Ultimately, progress is hampered by backsliding and departures from the core principles of the union, something that is also seen in the external dimension of integration.

⁵⁵ Klysinski, K. (2017), ‘The Risk of Escalating Tensions in Minsk-Moscow Relations’.

⁵⁶ Vinokurov, E. et al. (2016), ‘Assessing the impact of non-tariff barriers in the EEU: Results of enterprise surveys’

⁵⁷ Tarr, D. (2016), ‘The Eurasian Economic Union’, p. 23.

External dimension – the unravelling of the Customs Union’s tariffs

Understanding the external relations of the EAEU requires delving into technical detail. However, analysis shows that at its core the union is weak and its member states put a premium on flexibility. As a result, there is little unity in the EAEU’s external relations.

In terms of the fundamentals of a common external policy, the EAEU added little to the Customs Union launched in 2010, which adopted a common external tariff and empowered the commission to develop a common customs policy, such as the imposition of anti-dumping measures. The 2010 regime did not set up a fully-fledged customs union. The establishment and expansion of the EAEU in fact led to the contraction and fragmentation of the Customs Union – to the point of undermining the viability of earlier achievements of integration. This is best illustrated by exploring the departures from the common external tariff of the union and the unilateral introduction of various external trade protection measures and their impact on the integration process.

The launch of the Customs Union demonstrated Russia’s ability to impose its own terms within the Eurasian project, owing to its economic might. In 2010, Russia’s high, protectionist import tariffs were embedded in the Customs Union common external tariff.⁵⁸ This continued after Russia’s accession to the WTO: the Customs Union as a whole committed to implementing Russia’s tariff reduction and other WTO obligations.⁵⁹

Russian preferences have affected the trading relations of other member states with the rest of the world after they joined the Customs Union. Kazakhstan, for example, which had had more open trade with the rest of the world than Russia, was required to significantly increase its tariff levels. Even after the progressive reduction of Russia’s tariffs in line with its WTO commitments, the Customs Union tariffs were higher than Kazakh tariffs had been prior to joining the Customs Union. The problem was temporarily eased by granting Kazakhstan a large number of exemptions, which were gradually phased out, but tensions remain.⁶⁰

The issue reappeared during Kazakhstan’s own accession to the WTO in 2015. In its long process of accession, Kazakhstan negotiated a schedule of WTO commitments that was more liberal than that of Russia. For agricultural products it agreed an average final tariff rate of 7.6 per cent versus 10.8 per cent that Russia agreed, and for industrial products – 6 per cent versus 7.3 per cent respectively.⁶¹ Owing to the WTO accession, Kazakhstan ended up with different tariffs than the Customs Union as a whole. The discrepancy was addressed by introducing a schedule of exemptions from the EAEU external tariff on imports. The proportion of products covered by these exemptions is massive: 3,500 tariff lines accounting for 49 per cent of Kazakhstan’s imports from non-EAEU

⁵⁸ Export tariffs remained a matter of national discretion, to be harmonised at some point in the future.

⁵⁹ Agreement on the Customs Union in the Multilateral Trading System of 19 May 2011, see Connolly, R. (2013), ‘Russia, the Eurasian customs Union and the WTO’, in Dragneva, R. and Wolczuk, K., (eds) (2013), *Eurasian Economic Integration: Law, Policy and Politics*, Edward Elgar, Cheltenham.

⁶⁰ Kassenova, N. (2013), ‘Kazakhstan and Eurasian economic integration: quick start, mixed results and uncertain future’.

⁶¹ Tochitskaya, I. (2016), ‘Kazakhstan’s Accession to the WTO: Overview and Implications for the Eurasian Economic Union’, GET Belarus / IPM Research Center Policy Paper Series [PP/01/2016], <http://eng.research.by/webroot/delivery/files/english/pp/pp2016e01.pdf> (accessed 18 Jan. 2017).

partners.⁶² As such, in the short to medium term, Kazakhstan’s import duties will be lower than those of other EAEU members. Kazakhstan committed itself to start negotiations on tariff increases to match the EAEU level in three and a half years after the end of all transitional periods, which would mean talks commencing in approximately 2024. These negotiations are not expected to be quick and easy. Of more immediate and vocal concern, however, has been the potential re-export of those goods to the rest of the EAEU. As a result, the union came up with a list of ‘risky goods’ most liable to be re-exported and introduced a customs monitoring scheme. This effectively reintroduced barriers within the internal market.

Similar dynamics were demonstrated when Armenia and Kyrgyzstan joined the EAEU, despite their longstanding membership of the WTO. In joining the EAEU they undertook to match Russia’s higher tariff schedule and launch compensatory negotiations within the WTO.⁶³ As with Kazakhstan, some relief to those countries was provided by envisaging a schedule of transitional exemptions, which in the case of Armenia was much larger than Kyrgyzstan (see Table 2). Unlike Kazakhstan, however, exemptions will be removed and a progressive move to the EAEU tariff effected in a shorter period of time, by 2022 in the case of Armenia and even sooner, 2020, in the case of Kyrgyzstan. In the meantime, Armenia and Kyrgyzstan have agreed to refrain from re-exporting goods imported at lower tariffs to the rest of the EAEU during the transition periods. As with Kazakhstan, a special mechanism was put in place to monitor the intra-EAEU movement of such goods and the repayment of duties to the union, in cases when entry into the common EAEU market has been established.

Table 2: Members’ exemptions to EAEU tariffs related to WTO membership

	Armenia	Kyrgyzstan	Kazakhstan
WTO entry	5 Feb 2003	20 Dec 1998	30 Nov 2015
Volume of exemptions	800 tariff lines: 40 per cent of non-EAEU imports	200 tariff lines: 14 per cent of non-EAEU imports	3,500 tariff lines: 49 per cent of non-EAEU imports (starting at 21%)
Transition periods until	2022	2020	2024
Position after end of transition period	Move to Customs Union schedule	Move to Customs Union schedule	Start of negotiations within the EAEU

Source: Movchan, V. (2017, forthcoming), ‘The Eurasian Economic Union: diverging trends in common trade policy’, Kyiv, Institute for Economic Research and Policy Consulting, Kyiv.

If these developments were not problematic enough for the union, the fragmentation of the common customs regime has been compounded by Russia’s own exemptions. Most spectacularly, Russia acted unilaterally in order to punish Ukraine for proceeding with its Association Agreement with the EU. It threatened Ukraine that it would withdraw from the free trade deal granted through the 2011 Free Trade CIS Agreement and instead impose ‘most favoured nation’ (MFN) duties on

⁶² However, given the five-year transition period for implementation of the changes in imports duties (until 2020), the initial schedule of exemptions applied in 2016 is much shorter, covering about 21 per cent of Kazakhstan’s imports from non-EAEU states.

⁶³ Armenia notified the WTO in November 2014, Kyrgyzstan – in April 2015.

Ukraine exports to Russia.⁶⁴ Russia sought consent from Belarus and Kazakhstan to introduce MFN tariffs through the entire Customs Union in June 2014. However, Belarus and Kazakhstan declined. Despite this refusal, Russia unilaterally imposed a range of trade restrictions on Ukraine, including MFN tariffs, in January 2016. It also imposed transit restrictions on Ukrainian goods through Russian territory. This means that to import goods from Ukraine, Kazakhstan or Kyrgyzstan need to obtain Russia's permission, something that further increases Russia's leverage over their trade, which further undermines the very ethos of the union. In a similar vein, when member states refused to impose retaliatory measures in response to EU economic sanctions against Russia for its actions in Ukraine, once again Russia proceeded to impose its own sanctions on goods from the West. Quite simply, when Russia's interests are at stake, it ignores the constraints that a common regime would normally impose.

Russia has been unable to resist sacrificing the Customs Union in order to maintain freedom of action in its foreign policy. While Russia's partners have not followed suit, they have not challenged Moscow's hegemonic impulses or the Kremlin's disregard for the common regime. In fact, Moscow's unilateral trade restrictions and tariff changes were formally authorized by the EAEU's highest council, implying a nominal compliance with formal processes. However, to its cost, the Customs Union has been devalued and the hollowness of EAEU solidarity has been exposed.

At the same time, Moscow's actions legitimized its partners' subsequent efforts to evade and profit from the sanctions regime. Famously, Belarus started exporting bananas and seafood to Russia. This, in part, triggered the 'trade wars' already mentioned. At the same time, Russia's partners have been complaining about exclusion from Moscow's generous import substitution programmes introduced to protect its industries from the effect of sanctions.⁶⁵

These developments have prompted renewed efforts to reduce dependence on Russia through developing partnerships with other strategic players. Having been prevented from concluding an Association Agreement in 2013, Armenia completed negotiations on a new agreement with the EU in 2017. Kazakhstan has also concluded a new agreement with the EU, whereas Belarus made a number of overtures to improve relations with the EU. Both countries have also shown keen interest in developing relations with China, particularly in the context of its Belt and Road Initiative. So far Russia has refrained from responding directly to these overtures.⁶⁶ However, many of the sectors covered by the Belt and Road Initiative relate to cooperation on transport, logistics and infrastructure matters, something that Russia seeks to influence. Within the EAEU, cooperation in those policy areas tends to be loose, rarely amounting to more than a coordination of efforts. In formal legal terms, individual member states retain much of their discretion regarding China. However, Russia has been keen to spearhead a collective approach and coordinate cooperation initiatives with China, seeking to retain its ability to direct these initiatives and thereby act as a 'gatekeeper' in the external relations of the EAEU.

⁶⁴ This option was available to the Customs Union members in the event of harm to an industry of the customs union member, resulting from tariff increases following the participation of a party in another regional agreement, pursuant to Annex 6 of the agreement. See Dragneva, R. and Wolczuk, K. (2015), *Ukraine between the EU and Russia: The Integration Challenge*.

⁶⁵ For example, see Belta (2016), 'Call for coordinating import substitution in Belarus, Russia', 7 June 2016, <http://eng.belta.by/economics/view/call-for-coordinating-import-substitution-in-belarus-russia-91937-2016> (accessed 20 Nov. 2016).

⁶⁶ The introduction of border controls at the Russia–Belarus border in February 2017, however, is a clear response to the visa liberalization measures applied by Belarus to the West.

6. Conclusion

The EAEU suffers from a lack of commitment and enthusiasm from its member states. The union is mainly a Russia-led project but other members have exercised significant influence over its direction. Kazakhstan, the country least dependent on Russia, has been the most effective in making its voice heard. However, this limited sway is easily negated whenever Russia's broader interests are at stake. The nature of the relationships between Russia and other member states gives Russia a free hand to pursue its agenda inside and outside the EAEU.

Real economic benefits of a union such as the EAEU are derived not from tariff changes but, above all, from removing non-tariff barriers. Accordingly, the potential benefits of the EAEU depend on tackling non-tariff barriers and the modernization of domestic institutions and policies.⁶⁷ Russia has been keen to establish the union but has not shown the same enthusiasm for, or indeed necessary investment in, strong supranational institutions. The architecture as well as the modes of operation of Eurasian integration make it highly unlikely the EAEU will stimulate a profound transformation of policies and institutions of member states. To date, dynamics of integration are at odds with the 'grand narrative' of the union and time alone is unlikely to remedy the shortcomings. This requires a commitment, above all from Russia, to not only cease undermining the cohesion of the EAEU but also spearhead regulatory and institutional modernization.

Regardless of its multiple shortcomings, the EAEU should not be dismissed out of hand. For Russia, the EAEU is the primary vehicle for realizing a global geopolitical agenda. Despite Moscow's unwillingness to be bound by common rules, the utility of the EAEU remains high. For other member states, even with modest economic benefits (at best) and an inability to tame Russia, there remain sufficient reasons to participate. In theory, the members could resort to the ultimate option – withdrawal from the bloc. However, the risk to Russia of members withdrawing from the regime is mitigated by member states' dependence on it. Bluntly speaking, with Ukraine's example in mind, an 'exit' from the Eurasian bloc is too risky. Thus, the Eurasian 'integration game' is unlikely to cease any time soon, bar some dramatic political changes in the member states, especially Russia.

The project has become an institutional, regulatory and economic reality. However, this paper demonstrates that this reality is exceedingly complex, not least because all member states seek to minimize commitments and maximize flexibility within the common regime. Satisfied with having created a union, Russia is not preoccupied with making it work. Members, in turn, put a premium on flexibility because the union does not deliver economically and yet the 'exit' option is simply not viable. The divergent interests of member states have hollowed out the union from the inside.

Therefore, the Eurasian project is likely to stumble on and will continue to be promoted as a Eurasian replica of the EU, merely experiencing some ups and downs, typical of any integration project. However, with tailored individual deals between Russia and other member states, the lacklustre commitment of its members, and weak institutions, there is little to inspire confidence that the Eurasian project is capable of delivering on its grand promises.

⁶⁷ For example, see Tarr, D. (2016), 'The Eurasian Economic Union'.

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