COMMENTS

TOWARDS SINGLE MARKET IN FINANCIAL SERVICES: HIGHLIGHTS OF THE EU AND THE EAEU FINANCIAL MARKETS REGULATION

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The article covers key formats of interstate cooperation in the post-Soviet space. The authors conclude that the Eurasian Economic Union is the major integration project bringing together Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia. This research addresses various legal issues related to founding of the EAEU single financial services market with provisions and annexes of the EAEU Treaty studied. The EAEU meets challenges and creates legal and institutional framework for single financial services market within a relatively short timeframe. By 2025 both Supranational Eurasian financial regulator should be established and EAEU legislation on financial services should be harmonized. These tasks require international and national regulation experience. Therefore through the use of comparative analysis some advantages of the European Union law in the field of financial services market regulation are pointed out alongside with particular national legislation aspects of the EAEU member states in the similar or relative fields. Comparative analysis provides for determination of modern approaches to financial services market regulation in the EAEU and its member states, and allows to emphasize advantages and disadvantages of such regulation. Comparative analysis is applied to specifically investigate three subject areas of high relevance for global financial community: institutional forms of trade in financial instruments; organized *trade in financial derivatives; organization of algorithmic and high-frequency algorithmic trading. Conclusion drawn is that the EU experience in the matters of financial markets regulation is of particular interest for the EAEU and its member states.*

Keywords: integration; Eurasian Economic Union; Law of the Eurasian Economic Union; Russian law; financial market; European Union; exchange trade; derivatives; algorithmic and high-frequency trading; financial regulator.

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1. The EAEU and the EU as Integration Entities

The Eurasian Economic Union (the EAEU) can be described as one of several projects aimed at reintegrating of post-Soviet states. For the first time the idea of Eurasian integration was proposed in the age of fragmentation and fundamental economic crisis in the post-Soviet states. On 29 March 1994 President of Kazakhstan Nursultan Nazarbayev came forward with an initiative to reintegrate Eurasia. This proposal involved expanded cooperation between the post-Soviet states by means of preservation and intensification of economic, practical, social and other long existing ties between the peoples in Eurasia.

In this regard the EAEU has become the most relevant project of integrative nature in the post-Soviet space. This project came to life long after the foundation of the Commonwealth of Independent States (December 1991), and signing of the Treaty on the Union between Belarus and Russia (December 1999).

Founding of the EAEU was preceded by the ten-year-long existence of the EurAsEC (October 2004 – October 2014) that allowed to accomplish the objectives linked to creation of Customs Union and Single economic area, as well as to enhanced integration in economic and humanitarian spheres. On 10 October 2014 leaders of Russia, Belarus, Kazakhstan, Kirgizia, and Tajikistan signed documents in Minsk to dissolve EurAsEC in relation to the launch of the EAEU starting from 1 January 2015. It should be emphasized that the EurAsEC played an important role in stimulating integration in the post-Soviet space, and its upsides were implemented in the EAEU.[1] It has been rightly observed in academic sources that

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[1] In terms of the EurAsEC a solid treaty and legal basis for multilateral cooperation has been formed. Within ten-year existence of the EAEU 215 treaties and agreements have been signed. They cover various spheres, from trade, investment, and high tech to humanitarian issues. In a relatively short term common rules of the EurAsEC were established, that addressed single market with the population over 170 mln and aggregate economic potential exceeding 4% global GDP.

> The ultimate goal of integration is the EAEU with single tariffs, common technical regulation, harmonized labor and migration legislation, single banking system and currency, and fortification of external borders.[2]

The EAEU was established by the Treaty signed on 29 May 2014 in Astana (Kazakhstan). On that day presidents of the Republic of Kazakhstan, the Russian Federation, and the Republic of Belarus put their signatures under the international treaty. The Republic of Armenia and Kyrgyz Republic acceded to the treaty at a later stage. At the current moment the EAEU still comprises five member states, and in May 2019 5-year anniversary of this international organization of regional economic integration was celebrated.

Compared to the EAEU, the integration of the European Union lasted significantly longer. In March 2017 the 60th anniversary of the Treaty of Rome was celebrated (signed on 25 March 1957). According to that treaty the European Economic Community and the European Atomic Energy Community were established. Within the past decades the EU has reached impressive integration results that were inspired by the ideas of Richard von Coudenhove-Kalergi, Robert Schuman, Jean Monnet, Winston Churchill and other outstanding political figures of Western Europe. The Success of the EU in various spheres including creation of internal market and the Economic and Monetary Union explains the need for application of the EU integration experience within the EAEU framework.

In spite of the fact that the Commonwealth of Independent States and the Union State of the Russian Federation and Belarus are the first interstate attempts to unite the former Soviet Republics within a single international organization, and they are still preserved, it is already evident that the EAEU will become the central integration project in the post-Soviet space. This point of view is based on two reliable facts.

Firstly, success of any integration project largely depends on the political will of states that decide to unite the efforts and to initiate an integration process. Despite the fact that when discussing crucial issues pertaining to integration agenda, the member states of the EAEU usually advance national interests, their leaders managed to negotiate such complex questions as creation of the Customs Union. In January 2018 the EAEU Customs Code entered into force. The document was thoroughly and rigorously drafted, and the work required to take maximum account suggestions and proposals of each party. Therefore it took the nations three years to draft and agree on the text of the EAEU Customs Code. It is a short period of time, compared to the fact the Common Customs Tariff entered into force as late as in 1968. Apparently, swift adoption of the EAEU Customs Code was impossible without the political will of the governments to promote integration in this sphere.

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2 *See* Современные проблемы региональной экономической интеграции на примере Европейского союза и Евразийского экономического союза: монография [*Contemporary Problems of Regional Economic Integration: Examples of the European Union and the Eurasian Economic Union: Monograph*] 78 (Moscow: Justitia, 2016).

Secondly, integration is unachievable without a high-quality legal basis. The Treaty on the EAEU is a legal framework of Eurasian integration. It is a multivolume document consisting of 118 articles and 33 protocols that form inalienable part of the EAEU Treaty.

The analysis of the EAEU Treaty allows to identify common patterns in the way the EAEU and the EU are formed and the way the unions function.

The EAEU and the EU as operating regional interstate establishments of integrative nature were founded on the grounds of international treaties that have been signed and entered into force. The EU and the EAEU are granted international legal personality.

Besides, the EAEU and the EU face similar challenges, including the most important one – the need to stimulate economic growth. The analysis of the Preamble to the Treaty proves the predominantly economic nature of the agreement. The EAEU member states express "confidence that further development of the Eurasian economic integration corresponds to the national interests of the Parties,"[3] and state that they are motivated "by the desire to strengthen the economies of the member States of the Eurasian Economic Union and to ensure their harmonious development and convergence, as well as to ensure sustainable growth in business activity, balanced trade and fair competition."[4] Economic nature of the EAEU is also manifested by the type of interstate union: paragraph 2 of Article 1 defines the EAEU as an international organization of regional economic integration. Article 4 names the following objectives of the EAEU: creation of conditions for stable economic development of the member states in order to improve the living standards of their people; creation of a common market for goods, services, capital and labor within the EAEU; comprehensive modernization, cooperation and competitiveness of national economies within the global economy. If we continue analyzing certain provisions of the EAEU Treaty and refer to the most important and large parts – the Second Part "Customs Union" and the Third part "Single Economic Space," the Treaty proves to be an international treaty aimed at satisfying economic interests of all the member states.

In general, the authors observe similarities with the purposes of the European Economic Community established in 1957. Since then

> the construction of Europe from the economic point of view is treated as an example of a regional integration, or organized mini-globalization, which is limited today to twenty seven member states for the management of a highly

[3] Договор о Евразийском экономическом союзе (подписан в г. Астане 29 мая 2014 г.) [Treaty on the Eurasian Economic Union, Astana (2014)] (Feb. 10, 2020), available at http://www.consultant.ru/document/cons_doc_LAW_163855/.

[4] *Id.*

desired and disposition-based system of national economies by means of a single market and re-configuration of the industrial network.[5]

Third, analysis of legal norms and enforcement practices brings us to the conclusion that the EU and the EAEU have similar approaches to definition of a common term "market" (common, single, internal). Article 2 of the EAEU Treaty provides a concise and exact definition of a common (single) market:

> a set of economic relations within the EAEU that provides free movement of goods, services, capital and labor.[6]

Apparently, the concept of common (single) market in the EAEU does not differ from the internal market in the EU law.[7]

Existence of at least these three common characteristics provides the basis for a deep comparative analysis of financial integration legal regulation and construction of a single market in financial services in particular. The EU has representative experience in the field of market in financial services construction, inasmuch as real advantages in financial integration became evident only in the early 2000s when the EU member states chose for a complex and systemic approach (Financial Services Action Plan (FSAP)), and applied it on the grounds of an original four-level system of regulation and supervision (the Lamfalussy process).[8] Therefore the existing EU law in the field of market in financial services regulation is relatively new and has to reflect current market tendencies. Beyond that, the law has passed the test of the global financial and economic crisis of 2007–2009. The subsequent reform of certain EU documents concerning financial markets contributed to elimination of regulation shortcomings and led to amendment of a set of legal acts, including Markets in Financial Instruments Directive (MiFID).

2. Legal Framework of the EAEU and EU Financial Integration

2.1. Law and Specialized Bodies in the EAEU

Analysis of the EAEU Treaty provisions aimed at financial integration has to be started with the general statement that today it is a highly developed and complex

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5 Alain Buzelay, *L'Europe à la recherche de son identité* in *Melanges en l'Honneur de Jean Charpentier. La France, L'Europe, Le Monde* 261 (Paris: A. Pedone, 2008).

6 Treaty on the Eurasian Economic Union, *supra* note 3.

7 Rustam A. Kasyanov, *The EU Experience as a Model for the Development of a Single Financial Market Regulation in the Eurasian Economic Union (EAEU)*, 16(5) European Company and Financial Law Review 592, 620 (2019).

8 Giuliano G. Castellano et al., *Reforming European Union Financial Regulation: Thinking Through Governance Models*, 23(3) European Business Law Review 409 (2012).

document that creates a basis for a lengthy and complicated process targeting construction of a single market in financial services in the post-Soviet space. The EAEU Treaty comprises Section XVI "Regulation of the Financial Markets." The Section includes just a sole article – Article 70 "Purposes and Principles of the Regulation of Financial Markets," but nevertheless financial integration remains of utmost importance for member states of the international organization.

It is so, first of all, due to inextricable tie between financial integration and construction of single economic space, what remains a fundamental objective of the EAEU Treaty in its entirety. The structure of the treaty supports the aforementioned statement as Section XVI is the fourth section of Part III "Single Economic Space." It is preceded by three sections:

1) Section XIII "Macroeconomic Policy" consisting of one article;

2) Section XIV "Monetary Policy" including one article;

3) Section XIV "Trade in Services, Establishment, Activities and Investing" comprising five articles.

The structure of Part III of the EAEU Treaty and analysis of Sections XIII–XIV evidence that cooperation of the member states rests upon coordination of their macroeconomic, monetary and financial policy and the willingness to develop investment activity on the basis of freedom of establishment and trade in services. Therefore dynamic investment activity will stimulate economic development in the EAEU member states, and it will finally impact coordination in other contiguous fields. Comparable evolution can be traced in the EU: in 1985 Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) was adopted.[9] The document paved the way to construction of the European Single Market in investment funds and formalized the concept of European passport basing upon freedom of establishment and provision of services. This was followed by entry into force of the Treaty of Maastricht in 1993 and transition to the phase of active construction of Economic and Monetary Union. In 1999 Financial Services Action plan was elaborated, it was targeted at creation of single market in financial services in the EU. There through Sections XIII–XIV of Part III of the EAEU Treaty are deeply interconnected, as long as they precede other import sections of Part III impacting construction of common economic space – Section XVII "Taxes and Taxation," "Common Principles and Rules of Competition" (Section XVIII), or Section XX "Energy." Importance of financial integration is also evidenced by the fact that Part II of the treaty is actually the most substantial one in the context of integration directions and mechanisms implemented. Another backbone integration track stipulated in Part II of the treaty focuses on organization of Customs Union.

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9 Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (Feb. 10, 2020), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31985L0611.

Secondly, single article in Section XVI "Purposes and Principles of the Regulation of Financial Markets" is to some extent compensated by Annex 17 to the treaty Protocol of financial services that develops and supplements the provisions of Article 70 that also states that the member states have to conclude a separate agreement with the aim of further harmonization of financial markets regulation.

Thus, Article 70 of the EAEU Treaty is the cornerstone of financial markets regulation, as long as it comprises general provisions according to which member states coordinate their efforts and establish cooperation mechanisms. The article encompasses seven goals of cooperation that require special attention. The main goal of the article is to deepen economic integration of the member states in order to create a single market in financial services and ensure non-discriminatory access of all member states to financial markets. The other goals are as follows:

1) Effectively protect rights and legal interests of consumers of financial services;

2) Create conditions for mutual recognition of licenses in the banking and insurance sectors, and securities markets;

3) Identify the approaches to risk mitigation on financial markets of the member-states;

4) Define prudential requirements for banking, insurance, and securities services;

5) Determine the approaches to supervision over the participants of financial markets;

6) Ensure transparency of the actions of the participants of financial markets.

These goals though important, remain accessory to the main goal. But at the same time construction of a well-regulated and dynamically developing single market in financial services is impossible without completion of these tasks.

Analysis of the main goal leads us to an important conclusion. General approaches to financial markets regulation have to stimulate economic integration of the EAEU member states. This conclusion corroborates the aforementioned thesis concerning logical disposition of sections in Part III of the treaty. Analysis of the compulsory goals of Article 70 shows that the common financial market of the EAEU embraces three related sectors: insurance, banking and securities market, as well as in the EU. Definition of "financial services" stipulated in the Protocol of financial services supports such theory. The services include insurance and insurance-related services, banking services, and services on the securities market.

Besides, the Protocol embodies the definition of common financial market.

The concept covers financial markets of the EAEU member states that meet the following four conditions:

1) Harmonized requirements for regulation and surveillance in the area of financial markets of the member states;

2) Mutual recognition of licenses in the banking and insurance sectors, as well as at securities markets, issued by the authorized bodies of one member state within the territory of another member states;

3) Carrying out of the activities on granting of financial services over the whole area of the EAEU excluding the additional establishment as a legal person;

4) Administrative cooperation between and among the authorized bodies of the member states, including the information communication.

Analysis of different parts of the EAEU Treaty leads us to the conclusion that the ultimate goal of the EAEU member states is to create a single market in financial services. The first preparatory stage will concern harmonization of national financial legislation; at the second stage starting from 2025 the EAEU will proceed to supranational regulation related to establishment of supranational supervisory institution in the sphere of financial markets located in Astana (Kazakhstan). These provisions were embodied in Article 103 "Transitional Provisions for Section XVI." General program of the first stage harmonization is described in the Protocol of financial services. At the present stage the states retained the right to introduce or preserve additional conditions or limitations.

2.2. Law and Specialized Bodies in the EU

Development of the EU law in the field of financial services was continuous and quite intensive. Two main stages in the history of the regulation can be emphasized in order to characterize the features of the EU financial markets regulation.

The first stage (1996–1999) or pre-FSAP period. During this stage the EU sporadically introduced regulation in three sectors (securities, banking and insurance) in default of any strategy concerning financial markets development.

The second stage (2000 to present time) or post-FSAP period. Systematic and complex approach towards financial markets regulation has been elaborated. Within this period two subperiods can be identified:

1) Strategic planning (2000–2008);

2) Crisis management with subsequent regulation towards new growth path (starting from 2009).

Beginning of the new century mas marked by extensive legislation of the EU financial markets. Several financial directives, adopted in 1980s–1990s, created the framework of financial regulation in the EU, but they were repealed and are no longer in force. Such legislative activity was not a coincidence. As a result of concerted actions of the EU of that time, the common financial markets policy of the EU started emerging at the turn of the 20th century. The Rubicon was crossed in 1999: several EU member states introduced non-cash settlement in single currency – Euro, and the first strategic document in the field of financial markets, Financial Services Action Plan (FSAP), was adopted. The Plan was presented in the Communication of the Commission of 11 May 1999 "Implementing the Framework for Financial Markets: Action Plan."[10] The European

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10 Commission Communication, Implementing the Framework for Financial Markets: Action Plan, COM (1999) 232 final, 11 May 1999 (Feb. 10, 2020), available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51999DC0232&from=EN.

Council adopted FSAP on 23–24 March 2000 in Lisbon, and allotted 5 years on its implementation.[11]

The plan was intended to draft and implement a new improved legal framework for the EU financial markets. Dozens of events were initially scheduled to target financial and capital markets integration. Implementation of these measures created grounds for effective single market in financial services in the EU, and provided an opportunity to enjoy the advantages linked to introduction of Euro and growth of the European economy. It was necessary to ensure stability and competitive ability of the European financial market that still in some respects was inferior to the North American market. Analysis of FSAP permits to outline three strategic goals: creation of a single market in financial services for wholesale trade; accessible and reliable retail markets; enhanced supervision rules.

The founding treaties that are considered in academic and study literature to be the EU primary law, have the highest legal power and form the legal basis of the EU.[12] But still the treaties do not have any provisions regarding financial services. Since foundation of the first European communities and to date it is possible to state only circumstantial effect of the Union primary law on financial markets regulation in the EU. It is so due to protection of the rights inherent to common/internal (single) market.[13] Free movement of persons, services, capital and freedom of establishment constitute the legal basis used when drafting various secondary EU law directives and regulations concerning cross-border movement of capital, performance of legal and natural persons, in investment, insurance and banking spheres, cross-border trade in securities on regulated markets and other trading facilities. It is precisely because of absence of special provisions in the primary EU law, that the EU moved to introduction of rules in financial sphere by means of regulations that are, contrary to directives, always directly applicable and provide for rapid achievement of unification results.

As long as the founding treaties lack articles expressly concerning European financial market, there is no legal definition of such concept. As a consequence, different legal acts contain various definitions. First of all, we are speaking about the term "single financial market" stipulated in Financial Services Action Plan (FSAP) presented in the Communication of the Commission "Implementing the Framework for Financial Markets: Action Plan." It is necessary to highlight that FSAP is the first strategic document of the EU, dedicated directly to regulation of three sectors (banking,

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11 Jan H. Dalhuisen, *Globalization and the Transnationalization of Commercial and Financial Law*, 19(1) Rutgers University Law Review 19 (2015).

12 *Энтин Л.М.* Европейское право. Право Европейского Союза и правовое обеспечение защиты прав человека [Lev M. Entin, *European Law. European Union Law and Legal Provision of the Human Rights Protection*] 67 (Moscow: Norma, 2011).

13 *European Capital Markets Law* 2 (R. Veil (ed.), Oxford: Hart Publishing, 2013).

insurance and securities).[14] Secondly, the term "internal market in financial services" included in Directive 2002/65/EC concerning the distance marketing of consumer financial services contains definition of "financial service" that means any service of a banking, credit, insurance, personal pension, investment or payment nature.[15]

These definitions of financial services are also included in other legal acts of the EU. They are also consistent with the terms drafted for the Eurasian market in financial services.

The authors have analyzed certain directives (e.g. Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)[16] that for the first time formalized the term "European passport" based on the free movement of services[17]), and the results of creation and evolution of the EU institutional mechanism that has been established and successfully functioned through the efforts of Baron Alexandre Lamfalussy and Jacques de Larosière.[18] This analysis shows that due to application of secondary law and non-regulatory acts, as well as the EU institutional arrangements and cumulative EU law enforcement experience the EU has elaborated approaches towards understanding and regulation of the EU market in financial services that hardly differ from similar categories belonging to the financial market of the EAEU. Taking into account the significant age difference between the EU and the EAEU, it is logical to say the authors of the EAEU Treaty considered the EU experience.

It is evident that this experience in financial integration and creation of special institutions can be adopted when developing institutional arrangements in the EAEU.

The task set in FSAP required creation of effective legal and institutional arrangements to regulate the three main sectors of the European financial space (investment

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14 Philippe-Emmanuel Partsch, *Droit bancaire et financier européen. T. 1: Cadre général – Les établissements de crédit* 52–61 (2nd ed., Brussels: Larcier, 2016). *See also European Capital Markets Law*, *supra* note 13, at 2; Paul Richards, *The EU Financial Services Action Plan: A Guide*, Bank of England Quarterly Bulletin (Autumn 2003) (Feb. 10, 2020), available at https://ssrn.com/abstract=706966.

15 Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (Feb. 10, 2020), available at https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0065.

16 Council Directive 85/611/EEC, *supra* note 9.

17 Partsch 2016, at 52.

18 Thierry Bonneau, *Le Committee of european regulators (CESR) renforcé*, 3 Revue de droit bancaire et financier 110 (2009). *See also* Anne-Catherine Muller, *Rapport Larosière*, 4 Revue de droit bancaire et financier 77 (2009); Marco Lamandini, *Towards a New Architecture for European Banking Supervision*, 6(1) European Company Law 6 (2009); Anne-Catherine Muller, *Présentation des nouvelles autorités européennes de surveillance*, 1 Revue de droit bancaire et financier 33 (2010); Régis Vabres, *Le systéme européen de supervision: état des lieux et perspectives*, 1 Revue de droit bancaire et financier 3 (2010); Thomas Schmitz-Lippert, *International Co-Operation Between Financial Supervisory Authorities*, 7(2) European Company and Financial Law Review 266 (2010); Pierre-Henri Conac & Vincent Caillat, *Du CESR à l'ESMA: le Rubicon est franchi,* 6 Bulletin Joly Bourse 500 (2010); Régis Vabres, *L'articulation des autorités européennes de surveillance et des régulateurs nationaux – Présentation générale*, 12 Bulletin Joly Bourse 584 (2015).

in securities markets, banking and insurance). These sectors are exposed to similar systemic risks which requires an effective control mechanism at pan-European level, while rapid evolution of these financial spheres demands a timely response from the European legislator. In this regard the European institutions initiated the so-called Lamfalussy process, i.e. introduced a new legal and institutional arrangements in financial services markets.[19]

The Lamfalussy process has become the manifestation of the EU reformatory approach to financial markets regulation; it addressed the need to speed up the regulatory process with respect for opinion of the member states. The main innovation is related to establishment of so-called third level committees: first of them (Committee of European Securities Regulators (CESR)) was established in 2001. During ten years (2001–2011) the Committee served as a mediator between the Commission and national regulatory bodies. Third level – is a mechanism of permanent close cooperation between supervisors in financial sphere. Such dialogue ensured CESR's control over correct and uniform implementation of the EU financial law at national level.

Ten years later the Global Financial Crisis of 2007–2009 exposed the problems of the system, and the Lamfalussy process was subjected to serious changes. The EU initiated a new reform of institutional arrangements in the sphere of financial markets that is frequently referred to as "de Larosière reform" or "de Larosière process."[20]

The four-level system was preserved, but the role of the third-level committees has significantly increased. Not only have the committees been reorganized and received the names of the three key financial sectors, but they also gained extra powers. On 24 November 2010 four EU regulations were adopted, three of them were dedicated to the third-level committees (Regulation No. 1093/2010;[21] Regulation No. 1094/2010;[22] Regulation No. 1095/2010[23]). According to these legal acts European Banking Authority (EBA), European Insurance and Occupational Pensions Authority

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19 Sean J. Griffith, *Substituted Compliance and Systemic Risk: How to Make a Global Market in Derivatives Regulation*, 98(4) Minnesota Law Review 1291 (2014).

20 Derek Takehara, *Financial Reform in the European Union: Establishing the Common Technical Rulebook*, 26(2) Global Business & Development Law Journal 531 (2013).

21 Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/78/EC (Feb. 10, 2020), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R1093.

22 Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/79/EC (Feb. 10, 2020), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R1094.

23 Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/77/EC (Feb. 10, 2020), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R1095.

(EIOPA), and European Securities and Markets Authority (ESMA) were established. These agencies were put into operation on 1 January 2011 and keep carrying out several important functions. They are empowered to:

1) Draft special obligatory rules for national authorities and financial institutions;

2) Take urgent measures in case of emergent situations at financial markets, e.g. prohibit certain financial operations, trade in specific financial instruments;

3) Serve as an intermediary between national supervisors and support elaboration of a common position in complicated issues;

4) Ensure proper EU financial law enforcement.

De Larosière reform resulted in a serious strengthening of regulatory and supervisory functions of these agencies.[24] The authorities of ESMA are broader than those of CESR, as the latter mostly exercised consultative functions. ESMA has also been granted regulatory and supervisory authorities. Paragraph 5 of Article 9 of the Regulation No. 1095/2010 clearly states that ESMA is empowered to temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and the integrity of financial markets or the stability of the whole or part of the financial system in the Union.

Reinforcement of these agencies does not mean creation of sectorial megaregulator. Their powers are limited and authority is not absolute.[25] It has been also supported by case-law of the European Court of Justice (ECJ Case C-270/12 *United Kingdom of Great Britain and Northern Ireland v. European Parliament and Council of the European Union*).[26]

The fourth regulation (Regulation No. 1092/2010) established a brand new EU structure – European Systemic Risk Board. Its main objectives include macroprudential supervision over the state of the European economy and timely notification regarding new global economic and financial risks. This body closely interacts with the third-level committees.[27]

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24 Dan Awrey, *Complexity, Innovation, and the Regulation of Modern Financial Markets*, 2(2) Harvard Business Law Review 235 (2012).

25 Jacques Pelkmans & Marta Simoncini, *Mellowing Meroni: How ESMA Can Help Build the Single Market*, CEPS, 18 February 2014 (Feb. 10, 2020), available at https://www.ceps.eu/publications/mellowing-meroni-how-esma-can-help-build-single-market. *See also* Gianni Lo Schiavo, *A Judicial Re-Thinking on the Delegation of Powers to European Agencies Under EU Law? Comment on Case C-270/12UK v. Council and Parliament*, 16(2) German Law Journal 315 (2015).

26 *Касьянов Р.А.* Суд Европейского союза подтвердил полномочия Европейского органа по ценным бумагам и рискам: Комментарий к решению Суда Европейского союза № C-270/12 от 22.01.2014 г. по делу Соединенное Королевство Великобритании и Северной Ирландии против Европейского парламента и Совета Европейского союза // Международное правосудие. 2017. № 2. С. 17–27 [Rustam A. Kasyanov, *Judgment of the Court of Justice of the European Union on the Powers of the European Securities and Markets Authority: A Commentary on the Judgment of European Court of Justice C-270/12 of 22 January 2014 in United Kingdom of Great Britain and Northern Ireland v. European Parliament and Council of the European Union*, 2 Mezhdunarodnoe pravosudie 17 (2017)].

27 Regulation (EU) No. 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European

Summarizing this part of the article it is necessary to make two general conclusions.

First of all, only program and systemic approach to financial markets regulation can ensure swift achievement of the goals in the EAEU. At initial stages the EAEU has to adopt a document similar to FSAP. It is worth highlighting that at the Council of the Eurasian Economic Commission on 30 November 2016 with participation of deputy Prime-ministers of the EAEU, member states indorsed draft Decree of the Supreme Eurasian Economic Council "Development of the Common EAEU Financial Market Concept." At the instruction of the President of the EAEU, member states, governments, national central banks in cooperation the Eurasian Economic Commission work on the Concept of the EAEU common financial market development. The document will become the core of the EAEU legal framework in financial sphere. The Concept will designate the main goals, tasks and key directions of the common financial market development and specify the stages and steps of its implementation. The document will also focus on legal basis of the reforms, institutional cooperation of financial markets' supervisors, as well as tasks and powers of the EAEU supranational regulatory body in financial matters.

In the second place, when establishing supranational supervisor in the EAEU, the necessary balance between regulatory and coordination functions of the new body has to be defined. Close cooperation of the new supranational authority with national supervisory authorities of the EAEU member states has to be grounded on the principles of cooperation and delegation of powers. The common market in financial services requires strong collaboration between supervisors of the EAEU member states with the aim of mutual access to supervision information. The first significant step in this direction has already been made, as in 2014 the parties signed the Agreement on information exchange (including confidential information to ensure free movement of capital on financial markets). Even now the agreement provides exchange of necessary information between the EAEU member states for effective supervision. Apparently the experience of the Lamfalussy-de Larosière system has to be taken into account in the formation of a single supranational body.

3. Legal Regulation of Certain Financial Services Market Segments. Analysis of the Legal Framework in the EU (MiFID II, MiFIR, EMIR) and in Russia as EAEU Member State

3.1. Possible Reception of the EU Law in the EAEU and its Member States

Awaiting publication of the Concept of the EAEU common financial market development that has to become an EAEU FSAP, it is necessary to ponder over advantages of the EU legislation that could be borne in mind when drafting this document.

Systemic Risk Board (Feb. 10, 2020), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R1092.

Markets in Financial Instruments Directive has for a long time been one of the central EU legal acts in terms of single market in financial services regulation.[28] In spite of positive aspects of the directive the Global Financial Crisis of 2007–2009 exposed the need for a new reform with the aim of creation of new improved rules. MiFID reform was launched in 2009 and ended in the middle of 2014 with adoption of two new legal acts. First of all, we are speaking about the Directive 2014/65/EU that retained the original entitling (Markets in Financial Instruments Directive), but underwent serious revision. For convenience and simplicity the document is referred to as "MiFID II."[29] Regulation No. 600/2014/EU (Markets in Financial Instruments Regulation (MiFIR)) is to be applied simultaneously with the directive.[30] These legal acts entered into force as of January 2018 and substituted MiFID.

MiFID and MiFIR are of utmost importance for single market in financial services, therefore several authors call them "backbone of financial regulation."[31]

The significance of the legal acts is also proved by natural and legal persons that participated in deliberations. These persons can be divided in two groups.

The first group comprises responses and comments received from different public authorities: ministries of finance of the EU member states (Germany, the Netherlands, Slovakia, France, Czech Republic, Sweden, etc.) and non-EU states (Norway); central banks of the EU member states (Ireland, Slovakia, France, Czech Republic, etc.), financial supervisors of the EU member states (Austria, UK, Latvia, Poland, Portugal, France, etc.), and financial regulatory bodies of third states (UAE, USA). The second group included responses and suggestions originating from various persons having private interest in the issue. Apart from private persons (approximately 4000 responses), prominent transnational investments companies AXA Investment Managers, BlackRock, JP Morgan Securities Ltd, etc., and banks (Bank of America, Merrill Lynch, BNP PARIBAS, Credit Agricole SA, Société Générale) expressed their opinion. A separate group was formed by regulated markets (Börse Berlin AG, Deutsche Börse Group), while professional associations such as Association of British Insurers, Association of the Luxembourg Fund Industry, Association Française des Investisseurs Institutionnels, Italian Banking Association, Swedish Securities Dealers Association have also actively participated in discussion. Non-financial production (L'Oréal, Rolls-Royce, Siemens AG,

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28 Aman Jairath, *The Impact of the Market in Financial Instruments Directive (MiFID)*, 6(3) Journal of Investment Compliance 50 (2005).

29 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (Feb. 10, 2020), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0065.

30 Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No. 648/2012 (Feb. 10, 2020), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0600.

31 Thierry Bonneau, *MIFID II : aperçu général de la directive et du règlement du 15 mai 2014*, 6 Revue de droit bancaire et financier 59 (2014).

etc.), gas and oil companies (GDF Suez, BP International Limited, ExxonMobil, Total) could not stay away from the process either.[32]

The provided list demonstrates that the new documents were negotiated by a wide list of interested persons that have own global interests exceeding framework of the EU and its financial markets. Taking into account the aforementioned issues, the Commission decided to attract wide range of participants and make an open discussion. Such measure made it possible to assess the best practices accumulated by the most successful companies and to take into account the features of public administration of financial markets in different states. There is no doubt that the experience of the EU has to be examined while drafting the EAEU legal framework in the field of financial markets regulation. In this regard the main directions of the reform have to be highlighted. Authors of the Article do not intend to carry out thorough analysis of MiFID II and MiFIR provisions, but rather try to emphasize the main concepts of the reform that, according to our point of view, deserve special attention, as they are ignored by the EAEU and its member states.

3.1.1. Institutional Forms of Trade in Financial Instruments

3.1.1.1. European Union

One of the main advantages of the new EU legislation in terms of financial matters is that all legal and institutional forms of trade in financial instruments were defined, and the rules of institutional interaction were established. According to the new provisions trade has to take place on one of the following three regulated platforms: regulated markets (RM), multilateral trading facility (MTF), or organized trading facility (OTF). MiFID II provides for legal definition of these three types of regulated platforms which is, by itself, a significant advantage of the reform. Two definitions, that of regulated market and multilateral trading facility had already been determined in MiFID I; they were updated in the document of 2014.[33] Besides, MiFID II introduced a brand new definition of organized trading facility.[34] The OTF

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32 Guido Ferrarini & Niamh Moloney, *Reshaping Order Execution in the EU and the Role of Interest Groups: From MiFID I to MiFID II*, 13(4) European Business Organization Law Review 557 (2012).

33 "Regulated market" means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Title III of this Directive (para. 1(21) of Art. 4 of MiFID II).

"Multilateral trading facility" or "MTF" means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with Title II of this Directive (para. 1(22) of Art. 4 of MiFID II).

34 "Organised trading facility" or "OTF" means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance

concept was included in the MiFID II in order to create a level playing field between the platforms offering multilateral trading services.[35] By virtue of MiFID II and MiFIR OTF activities have become regulated. According to the provisions of MiFIR new OTF category was broadly defined so that it could embrace present and future platforms trading financial instruments irrespective of their institutional arrangements and in order to regulate the trading that does not meet functional capabilities or regulation standards of regulated markets and MTF. Therefore the new OTF category has to supplement existing regulated platforms. The definition of organized trading facility implicitly demonstrates that OTF is a unique trading platform with individual features that distinguish it from RM and MTF. An important aspect derives from the definition of OTF, as it states that this platform has to operate trading in obligations, structured financial products, emission quotes and derivatives. Eventually the new rules were to address trade in financial instruments that had been previously neglected from the legal point of view. These measures have become another response to one of the problems revealed during the reform of MiFID II. In such a manner RM, MTF, and OTF are three possible institutional forms of trade in various financial instruments, and each of them is an independent type of trading platform. It is evident that the EAEU has to discuss the creation of uniform institutional and legal rules for trade in financial services in the medium term, as long as trade in financial instruments in the EAEU member states takes place only at classic regulated markets.[36]

3.1.1.2. Russia

It can be assumed that when creating legal basis for gradual construction of the single EAEU financial market legislators have to pay attention not only to international, but also to national experience of the member states. Development of exchanges in modern Russia is very representative: due to historical reasons Russia has the widest experience in this sphere among the EAEU member states.[37]

Modern stage of stock exchange development in Russia started in 1990s. At the end of 1990 the Council of Ministers of Russian Soviet Federative Socialist Republic adopted the Decision introducing a Statute No. 601 on stock companies, and the Federal Law "On Commodities Exchanges and Exchange Trade" in 1992. Federal Law

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products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of this Directive (para. 1(23) of Art. 4 of MiFID II).

35 Preamble of MiFIR (para. 8).

36 Lars Gorton, *Financial Law in a Global Surrounding*, 23(6) European Business Law Review 913 (2012).

37 The idea to create an exchange belongs to Peter the Great, who got acquainted with the work of Amsterdam exchange during his visit to the Netherlands. Impressed by advantages of the exchange, Peter the Great decided to found a similar trading facility in Russia. Saint Petersburg exchange was established in 1703 while trading started only in the 1760s and concerned mostly Dutch securities. Almost one century later, in 1796, Odessa exchange opened its doors for pubic, followed by Warsaw exchange in 1816. And only in 1837 Moscow Exchange was founded.

"On Securities Market" enacted in 1996 defined stock exchange as the organizer of trade, and one of seven professional market participants. According to Russian legislation stock exchanges could either have a status of nonprofit partnership or of a private company limited by shares. Freedom of exchange activity resulted in an uncontrolled emergence of exchanges: in the mid-1990s, according to different sources, between 300 and 800 exchanges co-existed in Russia, meanwhile the global number of exchanges measured up to 200. Most of these exchanges were mere mailbox companies, as long as the volume of capital and commodities suitable for exchange trade was not sufficient. Affected by the 1998 bailout the majority of the exchanges disappeared. According to the information provided by the Central Bank of Russia, Ministry of Finance and Federal Antimonopoly Authority, by the end of 1990s there used to be approximately 30 licensed exchanges, while most of them did not operate as a proper exchange. The leading stock exchange, Moscow Interbank Currency Exchange (MICEX), was established in 1992, and in spite of its name has shortly become a multifunctional trading facility. Licensed exchanges also remained in the largest cities of Russia. Most of these exchanges became affiliated with MICEX in the 2000s, and keep operating even today. The second largest exchange – Russian Trading System (RTS) was founded in 1994 and got a license in 2001. Even though MICEX and RTS used to be universal stock exchanges, they focused on certain securities. While MICEX was the main platform for trade in stock and bonds, RTS worked mainly with fixed-term contract, futures and options.

The idea to create an international financial center in Moscow required organization of a large exchange. Merger of MICEX and RTS finally took place in 2011, and Moscow Exchange (MOEX) was created. It has become the largest exchange in Eastern Europe and is among 10 largest exchanges of the world by capitalization. Right before the merger the legislation concerning status of exchanges was amended, and a decision was taken to establish exchanges as public stock corporation. Fluctuations of ruble led to the fall in USD capitalization in 2014. Even though within the past four years ruble capitalization of Moscow Exchange doubled, the exchange is at 22nd place in the global ranking (620 bln. USD) and is significantly lower than the leading exchange – NYSE (23 tn. USD). The second exchange center of Russia is Saint-Petersburg where four trading facilities operate: Saint Petersburg Stock Exchange, Saint Petersburg International Mercantile Exchange, Saint-Petersburg Currency Exchange, and Saint-Petersburg Exchange. Volume of trading at these four exchanges is inferior to the volume of Moscow Exchange. National Mercantile Exchange also operates as a member of Moscow Exchange.

Shortcomings of the legislation. In 2013 amendments were introduced to the Federal Law No. 249 "On Exchange Trade" to eliminate the consequences of the 1990s' chaos at stock market. Pursuant these novations, division of exchanges on stock, mercantile and currency platforms was annulled. All operating exchanges were required to undergo additional licensing. But nevertheless problem of legislative regulation has not been fully solved. In the 1990s exchange regulation was based on the U.S. regulatory example that contradicted to Russian practice and tradition in finance and economy. During the past 25 years Russian financial legislation has undergone changes due to emerging circumstances, but there is still no uniform approach to regulating relations between financial market participants. In case of controversial situations between counterparties, the legislator makes efforts to introduce regulating methods applied in other states, for example, in the USA. Such adoption of alien provisions without regard to continental legal system can possibly lead to legislative collisions. Within this context application of European experience appears to be essential, as long as the EU gained significant results in construction of the single market in financial services.

3.1.2. Organized Trade in Derivatives

3.1.2.1. European Union

The problem of growing derivatives markets was unraveled and actively discussed in the late 2000s. Development of financial markets exposed the need for strong regulation of markets in financial instruments, including derivatives markets, in order to increase transparency, protect investors, strengthen their certitude, minimize deregulated spheres and ascertain that the supervisory authorities enjoy sufficient powers to carry out their tasks. MiFID II and MiFIR concern trading facilities, as well as OTC markets.

The number of unsolved problems was so high that the legislator took the decision to enshrine new rules in regulation. Title V of MiFID II was dedicated to the new regulation of derivatives markets. According to the new provisions, trade in derivatives in the EU can take place at three trading facilities: regulated markets, multilateral trading facilities, and organized trading facilities. Trade in derivatives can also take place at third-country trading facilities that can operate in line with divergent institutional and supervision rules. In order to avert possible collision that can violate the rights of European investors and threaten transparency of financial transactions, third-country trading facilities are obliged to receive special authorization issued by the Commission.

One of the most important rules affecting trade in derivatives concerns settlement payments and clearing obligation at regulated markets.[38] According to the MiFIR provisions, operator of a regulated market has to ensure that all transactions settled at the trading platform are subject to central counterparty clearing. Investment companies, trading platforms and central counterparties operate as clearing members and dispose effective systems, procedures and agreements respectfully cleared derivatives. These provisions aim to guarantee that the derivatives transaction

[38] Jo Braithwaite, *The Dilemma of Client Clearing in the OTC Derivatives Markets*, European Business Organization Law Review (2016) (Feb. 10, 2020), available at http://eprints.lse.ac.uk/64476/1/Braithwaite_Dilemma%20of%20client%20clearing_2016.pdf.

are executed as soon as it is technologically possible with appliance of automated systems. Indirect clearing of derivatives traded at regulated markets is also acceptable provided that these agreements do not increase counterparty risks.

Trade operations permit portfolio compression, and this procedure has also been in-depth regulated. First of all, portfolio compression investment companies and market operators are not bound by best execution and transparency obligations. Second, investment companies and market operators participating in portfolio compression have to publicly announce via APA (Approved Publication Arrangement) the volume of transactions subject to portfolio compression, and time of transaction. Third, the companies have to make full notes that can be presented upon request of ESMA. MiFIR also specifies that ESMA has to publish and regularly update the register of derivatives that are subject to trading obligation, as well as trading platforms where the derivatives can be traded, and starting date of the obligations. MiFID stipulates that the EU member states guarantee that investment companies trading in derivatives or emission quotes beyond trading facilities have to present full information including clients, positions regarding open commodities, emissions or other derivatives on a daily basis. This information is transmitted to the competent authority of the trading platform (where commodity derivatives or emission quotes are traded) or to the central competent authority of the trading platform (in case commodity derivatives or emission quotas are traded in significant volumes on trading platforms in more than one jurisdiction). To sum up, MiFIR has made a breakthrough in derivatives markets and has become an important step towards regularized EU financial markets.

In conclusion, it is worth highlighting that the impact of MiFIR and MiFID II in this sphere is incompatible to the role of EMIR, the main EU legal act, directly dedicated to the regulation of OTC trade in derivatives, central counterparties and trade repositories.[39]

The European Markets Infrastructure Regulation, commonly referred to as "EMIR" regulation – is the central document in the sphere of derivatives regulation in the EU. The regulation was adopted in 2012 as a response to the Global Financial Crisis of 2007–2009. EMIR regulation was drafted in line with certain internationally accepted standards in the field of derivatives regulation.[40]

EMIR was initiated by the Leaders' Statement of the Group of Twenty. At Pittsburgh summit in September 2009 the global leaders acknowledged the need for a uniform action in order to ensure transparency and stability of derivatives markets.

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[39] Kathryn Collard, *Advantages of a Co-Regulatory OTC Derivatives Regime*, 46(3) Georgetown Journal of International Law 877 (2015).

[40] Jeremmy Okonjo, *Assessing the Impact of the Extraterritorial Provisions of the European Markets Infrastructure Regulation (EMIR) on Emerging Economies' OTC Derivatives Markets: A Doctrine of Proportionality Perspective Challenges and Unresolved Issues*, 7 Indian Journal of International Economic Law 1 (2015).

The participants of the summit agreed to reform financial markets by means of introduction of clearing, trading and reporting obligations.

EMIR regulation is a result of the reform conducted by the Commission and de Larosière group. The main advantage of EMIR is that it is a complex document addressing several problems inherent to OTC derivatives markets in the EU: lack of transparency, instability and insufficient control of supranational and national authorities over the markets.

In line with the aforementioned G20 provisions and with the aim of tackling existing shortcomings of the OTC derivatives market, EMIR regulation stipulated a set of other pre- and posttrading obligations that have to be fulfilled by market participants. All the counterparties to derivatives transactions were divided into financial and non-financial ones according to their activities and the derivatives turnover on the basis of clearing threshold. Financial and non-financial counterparties exceeding clearing threshold (non-financial counterparties +) are obliged to comply with clearing and reporting obligations.

Clearing obligation in a nutshell is an important mechanism ensuring execution of obligations according to a contract. Clearing services are rendered by central counterparties or clearing members. EMIR regulation focuses on general requirements for central counterparties, their accountability and supervision by ESMA, meanwhile rules of clearing procedures and legal constructions can be chosen by central counterparties according to national law of an EU member states. Irrespective of a legal framework chosen, clearing is a procedure where central counterparty or a clearing member enters existing OTC derivative contract, so that it ceases to exist. Therefore, counterparty to a derivative contract is liable to central counterparty or a clearing member to fulfill his obligations.

Reporting obligation is a set of rules according to which counterparties regardless of their status (both, financial and non-financial counterparties) have to submit information about an OTC derivatives transaction to trade repository. Trade repository is a legal entity established according to the EU law that accumulates information about all contracts. Details of a contract can be disclosed to the parties, national competent authorities and ESMA, so that supervisory bodies could carry out timely control over behavior of market participants. The main goal of the trading repository is to ensure stability and transparency at the OTC derivatives markets.[41] Universality of reporting obligation evidences high importance of transparency at the EU financial markets.

In addition to the two mentioned obligations EMIR introduced a set of risk mitigation techniques that are to be applied by counterparties. Among them there are such procedures as timely confirmation, portfolio consolidation, portfolio

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[41] Colleen M. Baker, *Regulating the Invisible: The Case of Over-the-Counter Derivatives*, 85 Notre Dame Law Review 1287 (2010).

compression, dispute resolution, mark-to-market, etc. Risk mitigation techniques have been for a long time applied by market participant, and have finally been enshrined in EMIR regulation.

Even though the regulation entered into force in 2012, and obligations were implemented by early 2018, the document still does not cover all OTC derivatives transactions. It is so due to the fact that the EU introduced temporary waiver for certain categories of derivatives: pension funds financial instruments are temporarily exempted from trading and reporting obligations, as well as derivatives that are used for hedging.

3.1.2.2. Russia

Systematic trade in futures and options at MICEX and RTS started in 2001. RTS was far ahead of MICEX in terms of trading volumes: by 2010, the daily trading volume at RTS was 10 bigger that on MICEX. The merger of MICEX and RTS in 2011 led to the following. The newly formed Moscow Exchange used to be the 9^{th} exchange platform in the world in terms of derivatives turnover. Fluctuations of ruble exchange rate at the end of 2014 degraded rating of Moscow Exchange, but nevertheless, in 2018, the exchange entered the top five leading derivatives platforms. Currently, Moscow Exchange operates trading in stock indices, currency, domestic and foreign stocks. Trade in commodity oil and oil products futures is also conducted at the St. Petersburg International Commodity Exchange.

Problems of legislation. The paradox of the situation with regard to derivatives in Russian is as following. Although the derivatives market is, in principle, better organized than the stock market, legislation in this sphere is fragmentary and sometimes contradictory. There is still no federal law on the derivatives market, although a draft law was proposed by the State Duma of the Third Convocation (2000–2003), and there was also every reason to expect this law to enter into force in 2010. Currently, the main regulatory acts governing the derivatives market are: Federal Law of 22 April 1996 No. 39 "On Securities Market"; Order of the Federal Financial Markets Service of 4 March 2010 No. 10-13 "On Approval of the Regulations on Types of Derivative Financial Instruments," and Ordinance of the Bank of Russia of 16 February 2015 No. 3565-U "On Types of Derivatives." Apparently these legal acts have certain gaps, and do not cover all possible financial instruments.

Prospects for derivatives in Russia. According to some experts, in the coming years most of the exchanges operating in Russia will focus on the derivatives market, since it is more standardized, convenient for hedging of risks and more liquid than the market of current cash transactions (spot). Russia's goal is to increase demand for Urals oil futures and to make Brent and WTI oil less attractive. But the main task is to attract more investors and customers to the Russian derivatives market. Both, the state and domestic oil companies, are interested in it. Another leading project is creation of futures and swaps market for Russian grain, which in recent years has become one of the main export assets. It requires development of entire infrastructure, ranging from port terminals to improved quality of grain. Development of other spheres of derivatives markets is also required, but all risks associated with financial instruments and possibility of a global default have to be taken into account.

3.1.3. Organization of Algorithmic and High-Frequency Algorithmic Trading

3.1.3.1. European Union

An important element of the reform of the EU financial legislation was consolidation of the rules concerning algorithmic (AT) and high-frequency algorithmic trading (HFT). The pre-MiFID II EU law did not contain any special rules relating to regulation of algorithmic trading and high-frequency algorithmic trading.

Algorithmic and high-frequency algorithmic trading expanded rapidly and extensively in the world against the background of complete absence of EU legal basis that could allow giving a response to global challenges caused by the rapid technological progress. That is why the EU was obliged to include relevant provisions in MiFID II.

> Trading based on an algorithm used to have an air of mystique about it, but not anymore. Currently, 75 percent of equities trading and 40 percent of foreign exchange trading relies on algorithmic processes.[42]

MiFID II is not limited to definitions of algorithmic and high-frequency algorithmic trading.[43] The directive defines the basic rules that should be taken into account when carrying out trading operations with the use of these technological advances. MiFID II aimed to minimize the risks of trading with AT and HFT. To tackle these and some other threats, MiFID II introduced a general obligation, according to which an investment company applying algorithmic trading methods should have effective risk management and control systems, which have to correspond to the nature of the

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42 Iain Sheridan, *MiFID II in the Context of Financial Technology and Regulatory Technology*, 12(4) Capital Markets Law Journal 417, 419 (2017).

43 "Algorithmic trading" means trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention, and does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions (para. 1(39) of Art. 4 of MiFID II).

"High-frequency algorithmic trading technique" means an algorithmic trading technique characterized by: (*a*) infrastructure intended to minimize network and other types of latencies, including at least one of the following facilities for algorithmic order entry: co-location, proximity hosting or high-speed direct electronic access; (*b*) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and (*c*) high message intraday rates which constitute orders, quotes or cancellations (para. 1(40) of Art. 4 of MiFID II).

company's business. It ensures stability and resilience of trading systems. Investment companies should provide mechanisms excluding submission of erroneous applications. It is necessary to foresee appropriate trading thresholds and limits that guarantee stability of the market. An investment company that applies algorithmic trading methods should also dispose of an effective security systems in order to prevent the financial market abuse (insider trading and market manipulation). An investment company is obliged to employ effective tools ensuring business continuity to solve any problem in its trading systems, as well as to provide verification and control over the systems. In accordance with MiFID II, an investment company that deals with algorithmic trading in an EU member state has to notify the competent authorities of the state of origin and that of the trading platform where the investment company conducts algorithmic trading as a member or participant. The competent authority of the state of origin of the investment company has the right to oblige the company to provide, on a regular or ad-hoc basis, a description of the nature of algorithmic trading strategies, details of trading parameters or restrictions set for the system, risk mitigation techniques, test results of their systems, or to carry out other actions in order to meet the requirements of the directive. In compliance with the rules, the competent authority of the state of origin of the investment company has absolute freedom to request additional information from the investment company regarding the methods of algorithmic trading and the systems involved. These are the general rules of AT and HFT that are to be applied throughout the EU. It is obvious that the EAEU cannot ignore the latest global trends related to the influence of technological process on the financial services industry.

3.1.3.2. Russia

Moscow Exchange is the leading center for algorithmic and high-frequency trading in Russia, and if low- and medium-frequency robots are widely used by many investors in both stock and over-the-counter markets, HFT trading requires fairly sophisticated software, and it can be done mainly through an exchange. According to Russian legislation, access to exchange markets is possible only by means of a brokerage company or through a dealer. As a result, the HFT transaction time substantially increases. If for small and medium investors such delay is insignificant, large investors bear risks of severe losses. It should be borne in mind that a single transaction in HFT-trading is less profitable even compared to the "mid-frequency" algorithmic transaction: high-frequency robots are only effective in case of a large number of transactions.

For this reason, the Moscow Exchange derivatives market established following rules: trading is considered to be algorithmic in case the number of transactions exceeds 5000 and the total volume is over 300 million rubles, and HFT-trading – over 10000 transactions and 800 million rubles, respectively.

Direct access. Direct access system accelerates transactions at the market. In line with Russian legislation investors have to enter into an agreement with a brokerage firm for direct access. Although the investor's costs increase due to brokerage fees, higher speed of transactions results in reduction of risks: the same HFT algorithm transactions might be successful with direct access and unprofitable in its absence.

Data transfer protocols.[44] Initially, Russian traders used foreign protocols, in particular, FIX or FAST. However, later qualified Russian programmers developed domestic, or so-called "native" protocols for direct access to trading on the stock market in circumvention of broker systems.

These protocols were developed by specialists of the RTS and MICEX exchanges and are currently applied at the MOEX. The Plaza II protocol was created by RTS specialists. It serves both to receive information and to transfer stock market tasks to the exchange trading system called Spectra. The client request is added using the special FutAddOrder method. MICEX created its own protocol for executing trading operations and receiving exchange data on the foreign exchange and stock market using the ASTS Bridge (TEAP) gateway.

The LiveTrade Professional trading terminal created by St. Petersburg company CoFiTe, is popular at the Moscow Exchange's derivatives market. This terminal provides direct access to the market via the Plaza II, FIX protocols or through QUIK, AlorTrade, SmartCOM, Transaq domestic gateways.

Problems and prospects of algorithmic trading in Russia. At present, the share of exchange-based algorithmic trading varies, according to different estimations, from 30 to 50% of the total volume of exchange transactions. At the same time, the volume of mid-frequency and HFT transactions at Moscow Exchange are almost the same. Despite the growth of algorithmic turnover at Moscow Exchange within 5 years (2010 to 2015) from 20 to 50% of total turnover of the exchange, experts seem to be skeptical that in certain time algorithmic trading will extrude all other types of transactions. This opinion is based on the fact that the USA and the EU have started taking measures against the rampant use of trading robots, especially high-frequency machines. According to these states, algorithmic traders have an opportunity to manipulate the market, what is contrary to current trends in lawmaking aimed at investor protection. Even at the NASDAQ exchange, that is the undisputed world leader in use of high-speed robots, 20% of transactions are accomplished by means of traditional "psychological" method involving traders relying on their own intuition. Such market regulation has led to the fact that the share of algorithmic trading, especially high-frequency trading, in the U.S. and the EU member states, has been declining since 2012. Russia has witnessed continuous growth of algorithmic trading

[44] The term "protocol" requires clarification for further understanding of HFT algorithmic trading. Protocol is necessary so that trading computers could interact with each other according to the same rules. Otherwise the tasks given from one computer will not be recognized by another one. Data transfer protocol is a set of agreements establishing rules of data exchange between different programs used by traders. Protocols include means of correspondence and default standards typical for all trading platforms.

since the 2010s, but the rate of growth has slowed down recent years. The Bank of Russia intends to introduce passport system for trading robots used in stock trading in the near future, since no robot can guarantee profitability of transactions, and it contradicts to the goal of investor protection. There is no reliable legislative protection of investors in Russia yet, but it is undoubtable that our state will follow the global trend of investor protection. Therefore, despite rapid development of high technologies, trading robots will not be able to completely force out "psychological" trade based on the combination of technical fundamental analysis and human intuition.

Conclusion

The Eurasian Economic Union is not only the youngest interstate integration entity in the world (established in 2014), but also the most powerful integration movement in the post-Soviet space, bringing Russia, Kazakhstan, Belarus, Armenia, and Kyrgyzstan together. This project is supported by the political elites of these five states, while the Treaty on the Eurasian Economic Union constitutes a thoroughly developed legal framework. This international document is devoted to a wide range of issues, and sets the goal of financial integration of the EAEU member states and construction of single market in financial services. This integrated market should be based upon a solid institutional framework – of a supranational body – regulating financial market, that will be created in 2025. Harmonization of national financial legislation of the EAEU member states has to be completed by this year too. It is obvious that the EAEU will face considerable challenges in the upcoming six years, and work in this sphere has to result in publication of the Common EAEU Financial Market Concept. This Concept is to circumstantiate further steps towards integration of financial markets, and best practices from around the globe have to be taken into consideration. The achievements of the European Union can be attributed to the best world financial practices, as long as the EU has successfully vested the impetus for development in the policy document – the Financial Services Action Plan 1999. In recent years the European Union has significantly accrued its legal framework. EU reform of financial markets regulation has become an indispensable measure due to necessity to overcome the negative consequences of the Global Financial Crisis of 2007–2009.

As a result, such new legal acts as MiFID II, MiFIR, and EMIR were introduced that covered the most important and relevant issues of the modern finance: institutional forms of trade in financial instruments, organized trading in financial derivatives instruments, algorithmic and high-frequency algorithmic trading. EU experience can be taken into account when creating EAEU legal framework for the common market in financial services. Besides, these provisions should not be neglected by national and supranational legislators in case of amendments to Russian or EAEU legal acts concerning financial markets regulation.

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