

LEGAL ASPECTS OF STATISTICAL ACTIVITY IN THE EU: PROJECTION ON THE EAEU

Rustam A. Kasyanov¹, Mikhail A. Evdokimov², Shamil A. Guliyev¹

¹ *MGIMO University, Moscow, Russia*

² *BrokerCreditService Ltd, Novosibirsk, Russia*

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The Subject of research is the legal regulation of statistical activities in the European Union (the EU) and the Eurasian Economic Union (the EAEU) in the context of the organizational mechanism of statistical activities.

The purpose of research is the analysis of the main characteristics of organizational mechanisms of statistical activities, the prospects and problems of law enforcement in the field of statistical activity of integration associations.

The research methods include both theoretical (analysis, synthesis, deduction, induction, analogy) and special legal methods of cognition (formal legal and comparative legal).

The main results and the scope of application. Provisions for implementation of organization of statistical activities are reflected in the primary treaties of both the EU and the EAEU. The both integration associations have similar principles lying on basis of regulation of statistical activities, including the organization of the mechanism of interaction between national competent authorities and supranational bodies of integration associations. However, regulation at the level of secondary law complements the norms of primary law and the principles to varying degrees.

In the framework of the legal support for statistical activities, the focus of the EAEU, in contrast to the EU, is on the development of legal instruments for its implementation due in particular to the fact that the EAEU covers much fewer spheres than the EU. At the same time, both the EU and the EAEU face problems of law enforcement which come from the lack of a unified reporting methodology, the desire of states to maintain sovereignty.

Nowadays statistical activities are carried out separately within the framework of sectoral legal acts, but the digitalization has a potential to bring a greater unification of the regulation of statistical activities within each of the integration associations.

1. Introduction

Statistics, which in a broad sense is a quantitative accounting of indicators of the development of production and society, on the one hand, is a fixation of the state of this development, which may be used when searching for the most optimal way to increase the efficiency of activities, and on the other hand, is a product of such activity [1, p. 200]. Having a bidirectional influence on each other, statistics represent a separate type of social relations regulated by law, and has become an integral part of other legal relations.

One of the key features of statistics is its potential for unification [2, p. 310] (harmonization, standardization) of processed data, which makes it an attractive area for establishing regulation within integration associations.

At the very beginning of the European integration process, the European Coal and Steel Community, which began its function in 1952¹, already in 1953 created a statistical department for the coal and steel industry (the first predecessor of Eurostat). The Eurasian Economic Union (EAEU), created in 2014, also contains in its primary treaty² provisions governing statistical issues.

Several major similarities between the European Union (EU) and the EAEU [3, p. 616] (the presence of freedom of movement of goods, persons, services and capital, the establishment of joint economic goals, etc.) raises the relevant question of the comparability of the approaches of these integration associations with respect to the regulation of statistical activities.

2. Organizational and legal mechanism of statistical activities

The legal system of both integration

associations in general is a set of norms of primary, secondary and soft law [4, p. 472; 5]. The current norms of the EU primary law for statistical activities are based on the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU)³. The Treaty on the Eurasian Economic Union (TEAEU)⁴, being the source of the primary law of the EAEU, contains a more comprehensive regulation of statistical activities, which in EU law is specified by the norms of secondary law within the framework of Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008⁵ (Regulation on statistical activities). This difference lies in the history of the legal formation of integration associations, and therefore in the EU, as a rule, innovations are introduced at the level of secondary law (as was previously done with respect to freedom of capital movement [6]) due to the complex procedure for initiating changes at the level of primary law, taking into account the peculiarities of the precedent nature of the EU judicial system [7, p. 135], which are expressed in a greater concretization of statistical principles for the

¹ Traité instituant la Communauté européenne du charbon et de l'acier (Paris, 18 avril 1951). URL: <https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=celex%3A11951K%2FTXT>.

² Treaty on the Eurasian Economic Union (Astana 29 may 2014). URL: <https://docs.eaeunion.org/ru-ru/Pages/DisplayDocument.aspx?s=be9c798-3978-42f3-9ef2-d0fb3d53b75f&w=632c7868-4ee2-4b21-bc64-1995328e6ef3&l=540294ae-c3c9-4511-9bf8-aaf5d6e0d169&EntityID=3610>.

Law Enforcement Review
2025, vol. 9, no. 1, pp. 142–151

³ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union – Consolidated version of the Treaty on the Functioning of the European Union – Protocols – Annexes – Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>, 27.08.2023).

⁴ Treaty on the Eurasian Economic Union (https://docs.eaeunion.org/docs/en-us/0003610/itia_05062014, 03.12.2023).

⁵ Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (Text with relevance for the EEA and for Switzerland), OJ L 87, 31.3.2009, p. 164–173.

purposes of interpreting norms [8, p. 396].

In accordance with Article 4 of the Regulation on statistical activities the European Statistical System is formed in the EU. It implies interaction between two levels: the first level is the supranational statistical authority represented by the European Commission (Eurostat) and national statistical authorities, as well as other competent authorities of the member states. The functioning of the European Statistical System is ensured by the European Statistical Programme, provided for in Article 1 of the Regulation on statistical activities.

The organization of the national level of the European Statistical System presupposes the mandatory presence of national statistical authorities, which shall ensure the implementation of the European Statistical Program through the organization of interaction between the competent authorities of the member states at the national level. These national statistical bodies are included by the European Commission (Eurostat) in the list of responsible organizations, and therefore the latter are entitled to receive EU funding for statistical activities.

An interesting feature relative to other European systems (for example, the European System of Financial Supervision [9]) is the presence of requirements of the European legislator directly to national statistical authorities. For example, Article 5 of the Regulation on statistical activities establishes a number of requirements for the heads of national statistical bodies, based on the principle of independence in the exercise of their powers, which is to some extent similar to the concept of independence of the heads of supranational bodies of an integration association.

This circumstance is interesting from the point of view of the implementation of the principles of subsidiarity and proportionality [10, p. 30], since it seems that in this situation the EU not only has gone for the legal unification of statistical activities in the EU, but also began to establish a model for its implementation at the national level.

The main instrument for interaction between the two levels of the European statistical system is the committee of the said system, consisting of the heads of national statistical

bodies, which discusses the best practices of statistical activities in the EU. The results of such discussions are formed into codes of conduct.

Eurostat has a unique status relative to many other supranational EU authorities [11, 12] (for example, the European Securities and Markets Authority), since it is simultaneously such a body and the Directorate General of the European Commission, and therefore, in accordance with the legal requirements in the text of the Regulation on statistical activities the abbreviation "[European] Commission (Eurostat)" is used rather than simply Eurostat, which is actively interacts with comitology authorities [13].

Although the TEAEU contains a procedure for the generation and dissemination of official statistical information, in fact this procedure is less detailed than the above-mentioned organizational mechanism in the EU.

It is noteworthy that if in the EU the scope of regulation of statistical information is not limited, then in the EAEU the situation is different: paragraph 3 of Annex No. 4 to the TEAEU focuses on statistical information specifically in the field of goods in mutual trade, ordering the authorized bodies of the member states to maintain appropriate statistics. In development of this provision, paragraph 4 hereof contains a requirement on the need of use a methodology approved by the Commission when compiling statistics on goods. At the same time, the Commission has the right to request other information.

The responsibility to ensure the completeness, reliability, and timeliness of the provision of official statistical information is assigned to the competent bodies of member states. Thus, the TEAEU imposes several responsibilities on such bodies in terms of statistical activities. At the same time, these formulations contain legal uncertainty due to the lack of criteria for determining whether information meets the terms for carrying out statistical activities (unlike EU regulation, which provides a disclosure of the essence of the principles for carrying out statistical activities). This circumstance is likely to lead to an unreasonably wide or, conversely, narrow margin of appreciation on the part of the competent bodies in

terms of the preparation of official statistical information, taking into account the right of these bodies to notify the Commission of the impossibility of providing information. Also, the TEAEU and other legal acts of the EAEU do not contain any specific requirements for national statistical bodies (unlike the EU).

The similarity of the organizational mechanisms for carrying out statistical activities of the EU and the EAEU lies in the fact that the system-forming authority is the European Commission (Eurostat) and the Commission, respectively. At the same time, the powers of the Commission in the EAEU are significantly limited. In particular, the Commission only collects, accumulates, systematizes official statistical information, as well as coordinates methodological interaction between competent authorities (which is very different from the European Statistical System created in the EU).

3. Prospects and problems of law enforcement

The main document providing direction for statistical activities in the EU is the European Statistical Program (the current version is designed for 2021-2027). Currently, it is part of the Single Market Programme for the developing of this market [14, p. 115], and therefore the European Statistical Program is provided for by an act of directly applicable secondary law - a regulation⁶ (Statistical Program Regulation).

The main objectives of the European Statistical Program are divided into several key areas (Annex No. 2 to the Statistical Program Regulation), which include provisions on the Economic and Monetary Union [15, p. 290], including investment issues [16]; provisions on the internal market [17], biodiversity and sustainable development [18].

⁶ Regulation (EU) 2021/690 of the European Parliament and of the Council of 28 April 2021 establishing a programme for the internal market, competitiveness of enterprises, including small and medium-sized enterprises, the area of plants, animals, food and feed, and European statistics (Single Market Programme) and repealing Regulations (EU) No 99/2013, (EU) No 1287/2013, (EU) No 254/2014 and (EU) No 652/2014 (Text with EEA relevance), OJ L 153, 3.5.2021, p. 1–47. Law Enforcement Review 2025, vol. 9, no. 1, pp. 142–151

In the EAEU, similar to the EU, in accordance with paragraph 14 of Annex No. 4 to the TEAEU, a program for the development of integration in the field of statistics of the EAEU is also being implemented (the current program is designed for 2021-2025), adopted in the form of a Decision of the Commission Council⁷ (EAEU Statistical Program). The key objectives of this program are to increase the comparability of official statistical information between member states and to develop a unified classification system.

At the same time, the introductory part of the EAEU Statistical Program states that the formation of official statistical information is carried out not only within the framework of the freedom of movement of goods, but also of persons, services and capital. This indicates that despite the limitation of the competence within the framework of the TEAEU on the formation of statistics in relation to goods only, the EAEU is further seeks to develop integration within the framework of statistical activities.

What the EU and EAEU statistical programs have in common is that both programs are aimed at international cooperation subject to compliance with the obligations on confidentiality of information provided for by relevant legal acts [20]. The key difference of the EAEU Statistical Program is that it also involves the development of the legal framework for statistical activities in the EAEU, including the adoption of new legal acts of the EAEU, and the improvement of the national legislation of the member states.

Particular attention within the framework of statistical activities in the EU is given to data confidentiality [20, 21], the provisions of which are provided for in Chapter 5 of the Regulation on statistical activities. The key difference between the EAEU statistical program is that it also involves the development of the legal framework for statistical activities in the EAEU, including the adoption of new EAEU legal acts and the improvement of national

⁷ Decision of the Council of the Eurasian Economic Commission dated November 23, 2020 No. 116 "On the Program for the Development of Integration in the Field of Statistics of the Eurasian Economic Union for 2021 - 2025" (<https://www.alt.ru/tamdoc/20sr0116/>, 03.12.2023).

legislation of the member states.

The implementation of statistical activities in the EU faces several problems, which include the ineffective implementation of norms on unification (harmonization, standardization) of reporting and effective interaction of subjects of the European statistical system. One of the problem areas is the implementation of a circular economy.

In 2015, the European Commission adopted the Circular economy action plan⁸, from which it followed that for all types of activities defined in the Statistical Classification of Economic Activities in the European Community⁹ (NACE) from 2004 to 2016 in the mining sector (exploration, survey work, mining and processing of ores) produced about 23-30% of the waste, and therefore it was necessary to reduce these volumes. One of the elements of this Action plan was coordination in the field of statistical activities in order to establish accurate information on these indicators in the context of each Member State and the entire EU. However, no measures have been identified to improve the quality of statistics herein.

The legal basis for reporting regarding the management of waste from the extractive industries has become the Directive on the management of waste from the extractive industries¹⁰. According to Article 18 of this directive, once every three years, member states shall submit a report to the European Commission on the implementation of the directive, including

statistical information, then the European Commission prepares a consolidated report, while Eurostat is not listed as a special entity that should prepare such a report. Subsequently, it turned out that although the directive was generally implemented by the member states, some statistical information was not provided or did not meet the standards [22, c. 345] - national statistical authorities publish reports independently, determining the scope and necessary categories for reporting (in particular, in the matter of defining an item as hazardous waste and/or inert waste). In addition, using the example of Poland, the specified data differs depending on the source of publication - Eurostat, Polish Statistical Office [23], Polish Geological Institute, etc., in addition, when preparing reports, NACE classifications are used, as well as national and UN classifications.

Considering the above, it should be noted that the unification of statistical activities has not been fully implemented. The Regulation on statistical activities and the Statistical Program Regulation, in accordance with Article 288 TFEU, have a general effect, are fully binding and are directly applicable in all member states. At the same time, the unified rules hereof are of a general nature; the creation of a system of interaction between the levels of the European Statistical System does not allow effectively establishing standardized approaches to reporting methodology.

The main document ensuring the standardization of reporting methodology is the Regulation on NACE¹¹, which provides for the use of NACE in the preparation of statistical reporting. And although NACE was updated in 2023 for more convenient use with the adoption of the delegated regulation of the European Commission¹², Article 4

⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: closing the loop-an EU action plan for the circular economy, COM (2015) 614/2.

⁹ Statistical Classification of Economic Activities in the European Community (https://showvoc.op.europa.eu/#/datasets/ESTAT_Statistical_Classification_of_Economic_Activities_in_the_European_Community_Rev.2.1.%28NACE_2.1%29/data, 03.12.2023).

¹⁰ Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC - Statement by the European Parliament, the Council and the Commission, OJ L 102, 11.4.2006, p. 15–34.

¹¹ Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains Text with EEA relevance, OJ L 393, 30.12.2006, p. 1–39.

¹² Commission Delegated Regulation (EU) 2023/137 of 10 October 2022 amending Regulation (EC) No 1893/2006 of the European Parliament and of the Council establishing the statistical classification of economic activities NACE

of the Regulation on NACE leaves to member states the right to use a national classifier, which leads to the above-mentioned differences in the results of the prepared reports. This right, for example, is enjoyed by Poland, which has more than once taken the side of the defender of national sovereignty, in fact trying to apply the principles of subsidiarity and proportionality in the opposite direction [24].

The relevant directives (e.g. the Directive on the management of waste from the extractive industries) do not establish sufficient rules to ensure harmonization. In addition, directives by virtue of Article 288 TFEU are binding only in relation to the result that is required to be achieved but leaves the choice of the form and means of achieving it within the competence of national authorities.

Thus, neither the unification method, nor the harmonization method, nor the standardization method makes it possible to achieve more efficient functioning of the European Statistical System at the current stages of integration development within the EU.

Similar problems may be observed in the framework of law enforcement among the EAEU member states.

Several years ago, the Bank of Russia Ordinance No. 5117-U¹³ on reporting (Ordinance on reporting) contained a reference to the use of NACE in the procedure for preparing reports in form 0420421. In 2019, the Bank of Russia provided an explanation, where it recommended that financial organizations, when filling out reports in form 0420416, provided for by Bank of Russia Ordinance on reporting, should be guided by the methodological explanations of the

Recommendation of the Board of the Commission dated 08/18/2015 No. 18 “On the classification of institutional sectors of the economy” (CISE).

At the same time, it is characteristic that in the new Bank of Russia Ordinance No. 6282-U¹⁴ on reporting, which contains current reporting forms, references to NACE are excluded, and the reference to CISE remains in the form of an explanation of the Bank of Russia, which has no legal force.

This situation is explained by the fact that in accordance with clause 7.16 of the Bank of Russia Regulation No. 602-P¹⁵ dated on the preparation of Bank of Russia regulations, the text of a Bank of Russia regulation subject to submission for state registration to the Ministry of Justice of the Russian Federation may contain references only to regulatory legal acts of higher or equal legal force.

In this regard, the exclusion of the reference to NACE is quite logical, given that EU legal acts are not applicable in Russia, while the EAEU creates its own classifiers. At the same time, the current form of publication of the CISE in the form of a recommendation does not allow the EAEU classifiers to be given binding legal force (as, for example, published in the form of the Regulation on NACE in the EU).

4. Conclusion

The key aspect in the framework of the legal support for statistical activities of the EU and the EAEU is the focus of the EAEU on the development of legal instruments for its implementation, due in particular to the fact that the EAEU covers much fewer areas that are the focus for statistical activities, while both integration

Revision 2 (Text with EEA relevance) C/2022/7104, OJ L 19, 20.1.2023, p. 5–42.

¹³ Ordinance of the Bank of Russia dated 04.04.2019 No. 5117-U “On the forms, deadlines and procedure for compiling and submitting reports of professional participants in the securities market, trade organizers, clearing organizations and persons performing the functions of a central counterparty, as well as other information to the Central Bank of the Russian Federation” (<https://www.cbr.ru/Queries/UniDbQuery/File/90134/879>, 03.12.2023).

Law Enforcement Review
2025, vol. 9, no. 1, pp. 142–151

¹⁴ Ordinance of the Bank of Russia dated 30.09.2022 No. 6282-U “On the volume, forms, deadlines and procedure for compiling and submitting to the Bank of Russia reports of professional participants in the securities market, trade organizers and clearing organizations, as well as other information” (<https://www.cbr.ru/Queries/UniDbQuery/File/90134/2735>, 03.12.2023).

¹⁵ Regulation of the Bank of Russia dated 22.09.2017 No. 602-P “On the rules for preparing regulations of the Bank of Russia” (<https://www.cbr.ru/Queries/UniDbQuery/File/90134/380>, 03.12.2023).

associations have the goal of ensuring the free movement of goods, persons, services and capital, including as part of the development of the dynamics of industry markets, taking into account their digitalization.

In the framework of statistical activities, both the EU and the EAEU are faced with problems of law enforcement, due, on the one hand, to the lack of a unified reporting methodology, and on the other hand, to the desire of states to maintain sovereignty within the framework of their legal system, and therefore national law is tailored to application of national standards and classifiers. The latter occurs regardless of the application of unification methods (within the EU) and standardization methods (within the EAEU).

In addition, it should be noted that despite the consolidation of the totality of legal norms in constituent agreements and specialized legal acts, statistical activities are carried out separately within the framework of sectoral legal acts. It seems that the growing pace of digitalization [25] will provide more uniform approaches to the preparation and analysis of statistical reporting, which will subsequently lead to greater unification of the regulation of statistical activities within each of the integration associations.

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INFORMATION ABOUT AUTHORS

Rustam A. Kasyanov – Doct. of Law, Professor,
European Law Department
MGIMO University
76, Vernadskogo pr., Moscow, 119454, Russia E-
mail: rprof@mail.ru
ORCID: 0000-0003-2946-5744

Mikhail A. Evdokimov – PhD in Law, Head of the Le-
gal Practice
BrokerCreditService Ltd
37, Sovetskaya ul., Novosibirsk, 630099, Russia E-
mail: evdokimov.m.a@ya.ru
ORCID: 0000-0002-5376-1749

Shamil A. Guliyev – Master of Law; PhD Student,
Department of Integration Law and Human Rights
Law
MGIMO University
76, Vernadskogo pr., Moscow, 119454, Russia E-
mail: shiatunnabi313@gmail.com
ORCID: 0009-0006-7308-6003

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