

## SCIENTIFIC & RESEARCH SERVICES: PROBLEMS OF ELIMINATION OF ADMINISTRATIVE AND TAX RESTRICTIONS IN THE EAEU SINGLE MARKET\*\*

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The subject. The article analyzes the legal rules of the Eurasian Economic Union (hereinafter 'EAEU') Member States that may potentially create barriers for access to the single market for services in the field of scientific research through establishing requirements for state registration (accreditation, licensing, etc.) of a scientific research participant. These procedures of registration (accreditation, licensing, etc.) may be relevant for the purposes of receiving the preferential tax treatment. The authors consider possible ways to overcome these obstacles.

The aim of this paper is to identify typical obstacles remaining at the level of EAEU Member States' national legislation and preventing respective participants from an access to the scientific research single market. The authors dare to identify the appropriate means of overcoming these obstacles.

The methodology. The authors apply formal logical and comparative legal methods as well as analysis, literal and systematic interpretation of the domestic legal rules of the EAEU Member States and the EAEU legal framework.

The main results, scope of application. The results of a comparative legal analysis of the EAEU Member States' legislation illustrate that certain obstacles to access to the market of research services still remain within the framework of the legal systems of the EAEU Member States. Such obstacles in particular, are related to the requirements for research subjects to undergo the registration or accreditation procedure in order to receive recognition of their activities as scientific ones. Moreover, there are interconnected barriers, which consist, for example, in the requirement to not just incorporate a scientific research subject in the jurisdiction where the services should be provided, but also to register the results of the respective research activities, in particular, for the purpose of exempting these activities from VAT taxation. These barriers impede cross-border research services performance and in some circumstances do not comply with the principles of the EAEU single market of services.

Conclusions. The identified barriers to cross-border scientific research can usually be overcome by directly applying the EAEU Treaty, in particular, the provisions defining the rules of the services' single market (paragraph 38 of Annex 16 to the Treaty). The EAEU Member States' national legislative provisions require clarification in terms of extending the national regime to scientific research subjects incorporated within other EAEU Member States.

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## 1. Introduction

Within the framework of all Eurasian Economic Union (hereinafter 'EAEU') Member States, the legal status of entities engaged in scientific (scientific and technical) activities is regulated by law. The primary scientific activity subjects are scientific organizations, scientific workers associations (scientists, researchers), educational establishments; individuals are allowed to carry out scientific activities as well.

In terms of Russian doctrine, in recent years, a significant number of publications have appeared regarding the problems of access of scientific activity subjects of one EAEU State to the research markets of other EAEU States [1; 2; 3]. Notably, monographic studies have been presented [4; 5], some of the provisions of which are dwelled upon in the article. Foreign fundamental research on integration processes in the EU is essential for the problems in question [6; 7; 8; 9; 10], MERCOSUR [11] and NAFTA [12], in which the established or emerging rules of the single market of research services also encompass many sectors, including the market for research and development services. Research and study of the formation and functioning of the EU single market as a whole [13; 14; 15] and in its particular sectors [16; 17; 18] are traditionally in demand within Russian science. Moreover, the formation of separate segments of the single market and the harmonization of the EAEU States' legislation are examined by Russian authors, as a rule, taking into consideration the experience of implementing integration processes on the basis of the EU [19; 20; 21; 22].

The doctrine analysis demonstrates that, in order to liberalize the services market in the field of research and development (hereinafter 'R&D') within the EAEU, special attention should be paid to the existence of registration, accreditation, accounting, certification, licensing and other similar procedures within the domestic legislation of the EAEU States required for all or some categories of scientific activity subjects representing a different jurisdiction (another EAEU State).

Meanwhile, scientific activity subjects are not exempt from other state registration procedures that are in principle necessary for the entry of

certain persons into civil, administrative and other legal relations, including those connected with the implementation of scientific research. First of all, in this context in particular, this could involve state registration of legal entities. In this regard, in order to liberalize the service sector in the field of research and development, it is of matter of concern whether the internal procedures for registering legal entities are an obstacle / administrative barrier to access to the market of scientific and research works of a foreign person formed within another EAEU State.

It should be noted that similar and other problems of access to the services market are also relevant for other sectors of the EAEU market, including the market of appraisal services [23], the market of construction, design and engineering [24], the market of consulting services [25], the market of public procurement [26], etc.

Some legal systems of the EAEU Member States (regardless of whether it is a question of performing research work in the government purchase order mode or not) envisage *the mandatory establishment of a legal entity* within the jurisdiction of the State where the relevant services are provided. In particular, in a Preliminary comparison table of legislation of the Union Member States upon the services sector in the field of scientific research (hereinafter 'Comparative table')<sup>1</sup> indicated the existence of such requirements within the framework of the Republic of Kazakhstan legislation, the Kyrgyz Republic and the Russian Federation (paragraph 5 of the Comparative table). It should be noted that in accordance with paragraph 38 of Annex 16 to the EAEU Treaty, after the transfer of the R&D services sector to the single market of services format, there will be no respective obligation to register (create) a legal entity.

Based upon the results of the EAEU Member States legislation analysis, it appears that this requirement for state registration of a legal entity in the EAEU State, where research activities are carried out or are expected to be carried out permanently, is considered as distinctive for the legal systems of most (but not all) EAEU Member States. This

<sup>1</sup>[Electronic resource]. Access mode: [http://www.eurasiancommission.org/ru/act/finpol/dobd/work\\_group/Pages/default.aspx](http://www.eurasiancommission.org/ru/act/finpol/dobd/work_group/Pages/default.aspx) (accessed on 22 August 2020).

conclusion can be illustrated more particularly with respect to the specific legal approaches of the EAEU States.

## **2. Status of a foreign scientific organization in the Russian Federation**

Scientific and (or) scientific and technical activity is carried out in accordance with the Federal law of 23 August 1996 No. 127-FZ "On science and state scientific and technical policy"<sup>2</sup> by natural persons as Russian Federation citizens, foreign nationals, stateless persons within the rights established by the Russian Federation legislation and the Russian Federation regions' legislation, as well as by legal entities, provided that the rules on scientific and (or) scientific and technical activities are envisaged within their constituent documents.

Pursuant to Russian legislation, a scientific organization is recognized as *a legal entity*, regardless of its organizational and legal form and ownership form, or *a public association of researchers* who carry out scientific and (or) scientific and technical activities as their core activity (paragraph 1, Article 5 of Federal Law of 23 August 1996 No. 127-FZ "On science and state scientific and technical policy").

<sup>2</sup> Hereinafter, the texts of all legal acts and judicial practice of the Member States of the EAEU have been extracted from the Official electronic database "Legislation of CIS countries" (<https://base.spininform.ru/>) and the national legal reference systems such as "Consultant Plus" (professional databases comprising the Russian Federation and the Republic of Belarus legislation), "Paragraph-WWW" and "Adilet" (Kaz."Әділет") (the legal database devoted to the legislation of the Kazakh Republic of Kazakhstan), as well as the following resources for legal information of the EAEU: State legal database which is considered to be an element of the Official internet portal of legal data in Russia (<http://pravo.gov.ru/>); The main state information resource in the field of law and legal informatization "National Legal Internet Portal of the Republic of Belarus" (<http://www.pravo.by/>); "Republican Center for Legal Information" of the Kazakhstan's Ministry of Justice (<http://www.rkao.kz/ru/about>); Centralized legal database of the Kyrgyz Republic (<http://cbd.minjust.gov.kg/>); Legal database of the Armenian Republic (<http://www.arlis.am/>).

In this respect, a scientific organization is created, reorganized and liquidated *on the grounds specified within the Russian Federation* legislation (paragraph 6, Article 5 of the Federal Law of 23 August 1996 No. 127-FZ "On science and state scientific and technical policy"); the scientific organization owns, uses and disposes of property transferred to it by founding members for implementation of the activities identified by constituent documents; the rules related to the ownership, use and disposal of a scientific organization's property is determined under the Russian Federation legislation (paragraph 3, Article 5 of Federal Law of 23 August 1996 No. 127-FZ "On science and state scientific and technical policy").

In case of a public association of researchers, the legal status of such public organizations shall be determined given the provisions of Federal Law of 19 May 1995 No. 82-FZ "On public associations". Article 21 of the Law in question stipulates that, in order to acquire the rights of a legal entity, *a public association is subject to state registration*.

Article 4 of the Federal Law of 23 August 1996 No. 127-FZ "On Science and State Scientific and Technical Policy" entitles researchers to establish voluntary-based public associations (including scientific, scientific and technical, as well as educational associations, public academies of sciences) by virtue of the Russian Federation legislation on public associations. Russian Federation state authorities may endeavour to engage voluntary-based public associations of scientific workers in the preparation of the draft decisions in the field of science and technology, providing expert opinions, and competitions to perform scientific, scientific and technical programmes and projects financed by federal funds.

Therefore, the Russian Federation legislation provides for the implementation of scientific activities on the Russian Federation territory by a foreign organization (legal entity), provided that a scientific organization is created as a legal entity or a public association, the main objective of which is to carry out scientific activities; in any event, a scientific organization (Russian or foreign one) is subject to state registration in accordance with the legislation of the Russian Federation.

### **3. Status of a foreign scientific organization in the Republic of Belarus**

Under the Belarus Republic legislation, *individuals and legal entities, associations of individuals and (or) legal entities* engaged in scientific activities are considered as *scientific activity subjects* (see Article 7 of the Law of the Republic of Belarus of 21 October 1996 No. 708-XIII “On scientific activities”).

Subjects of scientific activity can be the following:

- individuals;
- temporary research groups;
- scientific organizations;
- educational institutions;
- entities implementing educational programmes of postgraduate education.

According to the Belarus Republic legislation, scientific organization is regarded as *a legal entity engaged in R&D, skilled and technological works, one of the management authorities which, under the constituent documents, is the academic (scientific and technical) council and which has been granted accreditation as a scientific organization in accordance with Belarus legislation* (Article 1, the Republic of Belarus Law of 21 October 1996 No. 708-XIII “On scientific activities”). Therefore, a scientific organization in the Republic of Belarus must not only be registered as a legal entity in accordance with the rules set out by the respective law, but also shall pass the accreditation procedure.

Among the listed scientific activity subjects, temporary research groups should be noted: the scientific activity subjects in question, as along with individuals, do not obtain the legal entity status. Thus, in order to implement the scientific activities, it is possible to establish *temporary research group as a voluntary-based association of individuals with legal entity status* created to perform scientific activities in the manner and upon the terms and conditions provided by the respective law and a contract (Article 1, the Republic of Belarus Law of 21 October 1996 No. 708-XIII “On scientific activities”). The procedure for creating and operating conditions for temporary research teams was approved by decree of the President of the Republic of Belarus No. 349 of 26.06.2009.

Notably, the Republic of Belarus legislation on scientific activity, in addition to the subjects of scientific activity, highlights *participants engaged in scientific activity*, which include, *inter alia*, individuals and legal entities that have acquired the right to participate in the activity in question as its investors, customers, as well as those who carry out information, patent and licensing, software, organizational, methodological, and technical support of scientific activities; ensure the uniformity of measurements in the field of scientific activity (Article 7, the Republic of Belarus Law of 21 October 1996 No. 708-XIII “On scientific activity”). As indicated within the definition, any person can be recognized as *a participant in scientific activity, except for the direct performer of scientific research*, who contributes to its implementation. At the same time, pursuant to Article 8, the Republic of Belarus Law of 21 October 1996 No. 708-XIII “On scientific activity”, relations between subjects and (or) participants in scientific activities are based upon a contractual basis or upon other grounds provided for by law. Within contractual negotiations, scientific activity subjects and participants are entitled to determine the parties to the contract, define the obligations and conditions of relations consistent with the law. In addition to the foregoing, the Republic of Belarus legislation encompasses *legal guarantees for implementation of the foreign nationals’ research activities within the mentioned State jurisdiction*. In particular, “Foreign citizens and stateless persons, foreign legal entities perform research activities across the Republic of Belarus *on an equal basis with citizens and legal entities of the Belarus Republic, unless otherwise provided by laws and international treaties of the Republic Belarus*” (Article 7, the Republic of Belarus Law of 21 October 1996 No. 708-XIII “On scientific activity”).

Consequently, the national regime for carrying out scientific activities on the Republic of Belarus territory extends to foreign persons. Therefore, within the framework of the Belarus Republic, scientific activities can be carried out by both legal entities and individuals (their associations); foreign persons (citizens / legal entities) and stateless persons may perform scientific activities within the territory of the Belarus Republic on an equal basis with citizens and legal entities of

the respective State. Additional requirements for state registration of foreign persons as legal entities of the Republic of Belarus have not been identified. However, for the persons to acquire the status of a scientific organization, they are obliged to obtain the accreditation procedure.

#### **4. Status of a foreign scientific organization in the Republic of Kazakhstan**

Articles 6 and 8 of the Kazakh Republic Law of 18 February 2011 No. 407-IV “On science” do not directly establish the nationality requirements for a scientific activity subject, i.e. a legal entity or a scientific organization. The key generic term of the mentioned subjects (scientific organizations) is the term “legal entity”. Therefore, we believe that it is worth considering the relevant branch of legislation regulating the legal entity status.

Within the Republic of Kazakhstan, business activity is regulated by the Business Code of the Kazakhstan Republic (Code of the Republic of Kazakhstan of 29 October 2015 No. 375-V ZRK).

Under Article 23 of the Code in question, business entities are citizens, oralmans (i.e. Kazakh repatriates) and non-state commercial legal entities engaged in business activities (private business entities), state-owned enterprises (state business entities). An individual who is considered as an entrepreneur is registered as an individual entrepreneur in the manner stipulated by the present Code. A legal entity that is regarded as a business entity may be incorporated in the organizational and legal form provided for by the Republic of Kazakhstan civil legislation. As set out in Article 163 of the Code, a foreign legal entity (its branch and representative office) engaged in business activity is recognized as a market actor.

Nevertheless, it can be concluded that Kazakhstan provides for a national regime for business activities of foreign legal entities. Pursuant to paragraph 7, Article 3 of the Republic of Kazakhstan Civil Code (the General part), foreign individuals and legal entities, as well as stateless persons, are entitled to acquire the same rights and are required to perform the same duties as provided for by civil legislation for Kazakhstan citizens and legal entities, unless otherwise provided by law.

According to article 3 of the law of the Republic of Kazakhstan of 19 June 2005 No. 2337 “On the legal status of foreigners”, within the Kazakhstan jurisdiction, foreigners (i.e. individuals considered as non-Kazakhstan citizens) have all rights and freedoms and bear all responsibilities established by the Constitution, laws and international treaties of the Republic of Kazakhstan, unless otherwise provided.

Within the Republic of Kazakhstan, foreigners are deemed equal before the law, regardless of their origin, social and property status, race and nationality, gender, education, language, attitude to religion, type and nature of occupation.

At the same time, by virtue of Article 1100 of the Kazakhstan Republic Civil Code, a legal entity is governed by such law of the country where it is incorporated.

It is noteworthy that paragraph 5, Chapter 32 entitled as “Features of the contract for R&D, research, development and design work, and technological work” of the Kazakhstan Republic Civil Code, as well as Chapter 33 “Fee-based provision of services”, impose no restrictions or requirements for the performer (contractor) in view of its Kazakh origin.

Furthermore, foreign legal entities can operate across the Kazakhstan Republic via a branch (a representative office). Article 6-2 of the of the Republic of Kazakhstan Law of 17 April 1995 No. 2198 “On state registration of legal entities and registration of branches and representative offices” establishes that incorporation of branches (representative offices) of foreign legal entities is performed in the manner stipulated by the Republic of Kazakhstan legal rules related to the registration of branches (representative offices) of legal entities of the Republic of Kazakhstan. Along with the documents provided for within the incorporation procedure, unless otherwise established by international treaties ratified by the Republic of Kazakhstan, the following data shall also be presented: a legalized statement from the commercial register, constituent documents or other legalized document of a foreign legal entity confirming that the foreign legal entity in question establishing a branch (representative office) is considered as a legal entity under the foreign state

legislation; a document confirming tax registration in the country of incorporation of the foreign legal entity must be submitted, specifically indicating the tax registration number (or its equivalent). Documents of a foreign legal entity establishing a branch (a representative office) are submitted with a notarized translation into Kazakh and Russian languages.

It is worth mentioning that individuals can independently carry out scientific (scientific and technical) activities or engage in labour relations with scientific organizations, higher educational institutions performing scientific and (or) scientific and technical activities.

Accordingly, without an explicit indication in the Republic of Kazakhstan Law of 18 February 2011 No. 407-IV “On science” on the nationality of a legal entity as a subject of scientific activity or a scientific organization, there are no grounds to necessitate the incorporation of a particular exclusively Kazakh legal entity for scientific activities. However, the reference to such documents as the taxpayer registration number and business entity identification number, the names of which are specific to the Republic of Kazakhstan legal entities in particular, could cause confusion as to the nationality (Kazakh one) of the applicant in terms of the accreditation procedure.

Additionally, it is possible that during the process of obtaining accreditation of a scientific activity subject or a foreign organization’s branch registration, the latter may encounter with certain obstacles, such as, in particular, the need for notarization, legalization (other forms of authenticity confirmation) and translation of documents drafted and concluded outside the Kazakhstan’s jurisdiction. In this respect, ensuring equal access to the relevant market for R&D services will require at least mutual recognition of the status of the Member States’ national legal entities being eligible for scientific activities, as well as mutual recognition of the respective documents issued within the Member States and required during licensing procedures.

Consequently, the Republic of Kazakhstan Law of 18 February 2011 No. 407-IV “On science” does necessitate state registration of a foreign R&D services provider as Kazakhstan’s legal entity

engaged in scientific activities. At the same time, a different interpretation of the applicable legislation’s provisions at the stage of law enforcement is not excluded. Notably, it is possible to interpret provisions in such a manner as to require the registration of a separate Kazakh legal entity, including for the purposes of scientific (scientific and technical) activities subjects to pass the accreditation procedure.

### **5. Status of a foreign scientific organization in the Republic of Kyrgyzstan**

Paragraph 2, Article 11 of the Kyrgyz Republic Law of 16 June 2017 No. 103 “On science and the basics of state scientific and technical policy” establishes that scientific and scientific and technical organizations, regardless of their ownership forms, *are subject to state registration in accordance with the legislation of the Kyrgyz Republic related to the legal entities’ registration*.

Despite the abovementioned unambiguous provision, a number of other legal provisions of the Kyrgyz Republic in terms of systematic interpretation may indicate a different approach. Although paragraph 2, Article 11 of the Kyrgyz Republic Law of 16 June 2017 No. 103 “On science and the basics of state scientific and technical policy” indicates the requirement for state registration of scientific, scientific and technical organizations by virtue of the Kyrgyz Republic legislation, in principle, the respective provision can be broadly construed not as a ban upon scientific activities for persons incorporated outside the Republic, but rather as an obligation to pass procedures related to various accounting (in particular, with regard to the necessity for tax purposes, obtaining accreditation as a business entity,<sup>3</sup> etc.).

In addition, if we analyze article 13 of the Law in question, pursuant to which scientific and scientific-technical activities subjects are scientific and technical workers and organizations, as well as natural and legal persons involved in the process of research, development and implementation of scientific, scientific and technical products and

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<sup>3</sup> The legislation of the Kyrgyz Republic on foreign investment, foreign economic activity, etc. does not set out requirements for accreditation of foreign organizations’ representative offices.

technologies, it may be concluded that not only scientific organization in the narrow sense, such as national legal entities performing scientific and scientific-technical activity, but other legal entities (without specifying their nationality) are also entitled to carry out such activities.

Article 33 of the Law in question may give rise to questions, which indicates that the activities of foreign scientific organizations and scientists within the Kyrgyzstan jurisdiction is regulated by the international treaties, the participant of which is the Kyrgyz Republic, entered into force under its domestic law. . It has not been possible to establish the existence of such agreements of a non-specific character that introduce any preferences and (or) exceptions, However, the rule's role in the present law, as well as the interconnection between other provisions, lead to the conclusion that such agreements should not be subject to the regulation of admission or the establishment of grounds for non-admission of foreign organizations to scientific and technical activities across the territory of the Republic, but rather granting particular preferences, the designation of cooperation frameworks, etc. Paragraph 3, Article 1 of the Kyrgyz Republic Civil Code enshrines that the rules established by civil legislation apply equally to all subjects regardless of their nationality, unless otherwise provided by law. The abovementioned provision serves as an additional confirmation of the fact that foreign individuals and legal entities incorporated outside the Republic can carry out scientific and technical activities within the jurisdiction of the Kyrgyz Republic. . It may also be noted that under paragraph 5, Chapter 30 of the Kyrgyz Republic Civil Code "Contract for the performance of R&D, research, development and design works" there are no restrictions (additional requirements) both by nationality and by organizational and legal form for the performer of the corresponding works. Therefore, the emerged view that foreign legal entities and individuals are entitled to perform research work across the territory of the Kyrgyz Republic has a rather broad regulatory justification. Specialized legislation relating to investment and foreign economic activity also establishes national treatment as a basic approach. Thus, paragraph 1 of Article 4 of

the Law of the Kyrgyz Republic of 27 March 2003 No. 66 "On Investments in the Kyrgyz Republic" emphasized that the Kyrgyz Republic provides foreign investors, who invest in the territory of the Kyrgyz Republic, with a national regime of economic activity applied to legal entities and individuals of the respective State. The broad definition of foreign investment articulated in the Law allows extending the rules of the abovementioned Article 4 of the Law of the Kyrgyz Republic of 27 March 2003 No. 66 on the national regime to the activities of foreign scientific and technical organizations across the State territory.

However, there may be certain administrative restrictions connected with the necessity for tax purposes registration (Article 96 of the Kyrgyz Republic Tax Code) and compliance with other formalities. However, no significant barriers were identified.

Consequently, the need for state registration of a foreign person engaged in scientific activity as a legal entity of the Kyrgyz Republic is not established by law, except in cases of performing scientific activity in the capacity of a *scientific (scientific and technical) organization*.

## **6. Status of a foreign scientific organization in the Republic of Armenia**

The main legal instrument regulating the scientific activity sphere within the Armenian Republic Law of 26 December 2000 No. ZR-119 "On scientific and technical activities". The Law in question comprises such concepts that, when analyzed, lead to the conclusion vis-à-vis complex character of the particular area under study (i.e. performing research work, providing services within the science field), which encompasses the dimensions of civil law, administrative law, as well as tax law regulation. In particular, Article 1 of the abovementioned legal act provides the following noteworthy definitions:

- scientific and (or) scientific and technical result, which is understood as the result of scientific and (or) scientific and technical activities generating new knowledge or solutions and recorded on any storage media that can be implemented in various spheres of public life.

Based upon the analysis of the definition in question, it is therefore suggested that the results of scientific activities (as in the within the humanitarian sphere and applied fields) may be issued in the traditional manner (as paper documents) or electronic/digital form, which is increasingly developing at the present stage of technology development and its implementation in daily life. From this perspective, given that some information can be delivered via electronic communication channels, including those that have appropriate protection (if it concerns services and works for state and municipal needs, which may have a share of secrecy), it is necessary to ensure equal access to such communication channels both at the stage of initiating particular works/services and at the stage of providing the results of such works/services.

- scientific researcher is understood as a person conducting research, development, scientific and pedagogical, experimental and technological, design and engineering, design and technological, exploration work within scientific organizations, establishments, and higher educational institutions. The present definitions' analysis suggests that in practice, the scope of services and work in the field of science includes not only subjects engaged in scientific activities as the main occupation, but also teachers and organizations whose activities are regulated by special laws.<sup>4</sup>

Based upon the current legislation review, there are no explicit restrictions on access to the market and implementation of scientific activities within the territory of the Republic of Armenia. Notably, international scientific and technical cooperation is permitted as well (see Article 24 of

the Republic of Armenia Law of 26 December 2000 No. ZR-119 "On scientific and technical activities"). Notably, a scientific organization is entitled have any legal form of commercial or non-commercial organizations envisaged by the civil legislation of the Republic of Armenia and the special provisions of the Republic of Armenia Law of 26 December 2000 No. ZR-119 "On scientific and technical activities" (see paragraph 1, Article 6 of the Law in question). Scientific organizations are divided into scientific and research organizations, scientific divisions of specialized higher educational institutions, research and development, design and engineering, design and technology or similar organizations developing scientific, scientific and technical activities (see paragraph 2, Article 6 of the present Law). Scientific divisions may be established within a higher educational institution in accordance with the legal provisions (see paragraph 2, Article 10 of the present Law). What is more, scientific and technical activities are considered as one of the most significant functions of higher education institutions (see Article 10 of the present Law). The selection of scientific, scientific and technical programmes and projects financed from the Armenian state fund is carried out through an expert examination, via a competition, the procedure for which is established by the Government (see Article 20 of the present Law).

The result of scientific and technical work as intellectual property legal regime is established by law (see Article 18 of the present Law). Within the framework of the Armenian Republic Civil Code, Chapter 38 entitled "Implementation of research, development and technological works", the legislator articulated the rules of the contractor's participation within such works. In particular, under Article 768 of the Code in question, "the contractor is obliged to conduct scientific research in person. He or she is entitled to involve third parties within the contract's execution with respect to the performance of research works only with the customer's consent. When performing research, development and design work, the contractor has the right, unless otherwise provided by the agreement, to involve third parties in its execution. The general contractor and subcontractor rules apply to the contractor's relations with third parties (Article 704)".

<sup>4</sup> See e.g. The Republic of Armenia Law of 18 January 2005 No. ZR-62 "On higher and postgraduate professional education" [Electronic resource]. Access mode: [http://base.spininform.ru/show\\_doc.fwx?rgn=75853](http://base.spininform.ru/show_doc.fwx?rgn=75853) (accessed 22 August 2020), the Republic of Armenia Law of 08 May 1999 No. ZR-297 "On education" [Electronic resource]. Access mode: [http://base.spininform.ru/show\\_doc.fwx?rgn=7468](http://base.spininform.ru/show_doc.fwx?rgn=7468) (accessed on 22 August 2020).



Consequently, the respective legal regulation does not necessitate and require the state registration of a foreign person engaged in scientific activities as a legal entity of Armenian Republic.

#### **7. Connection of requirements for scientific organization registration within the EAEU States with the requirement of licensing particular types of activities**

As noted previously, in some instances, market access may be restricted by virtue of a direct and unambiguous requirement for state registration within the jurisdiction where the services are provided. However, such restrictions and requirements *may also be imposed indirectly*. Thus, although within the meaning of legislative provisions of the EAEU Member States, scientific activities as such are usually not subject to licensing, but educational organizations (universities, institutes) that in practice are the core subjects performing research activities in specific areas of scientific activity should receive a license.

We shall consider the situation with respect to particular jurisdictions in more detail.

For instance, as for the Russian Federation, educational organizations (universities, institutes) are in principle regarded as the core subjects carrying out research activities in specific areas of scientific activity.

In accordance with the Russian Federation legislation, organizations carrying out educational activities are considered as educational organizations, as well as organizations providing training.

*Educational organization* is a non-profit organization carrying out educational activities *under the license* as its principal activity in accordance with the objectives for the sake of which this organization was created; (paragraph 18, Article 2 of the Federal Law of 29 December 2012 No. 273-FZ “On education in the Russian Federation”). A *training organization* is considered a legal entity that, *based upon a license*, carries out educational activities as an auxiliary activity along with its main occupation (paragraph 19, Article 2 of Federal Law of 29 December 2012 No. 273-FZ “On education in the Russian Federation”).

Therefore, educational activities within the Russian Federation are subject to mandatory licensing (paragraph 40, part 1, Article 12 of Federal Law of 04 May 2011 No. 99-FZ “On licensing certain types of activities”). Meanwhile, as reflected within the abovementioned provisions, *non-profit organizations* (as educational organizations) and *legal entities* (as organizations providing training) can carry out educational activities. A foreign organization has is entitled to perform educational activities *at the location of a branch on the territory of the Russian Federation* (part 1, Article 15, subparagraph “d”, paragraph 7, part 1, Article 6 of Federal Law of 29 December 2012 No. 273-FZ “On education in the Russian Federation”).

Another illustrative example may be interconnected with the Armenian Republic legislation. Thus, the second paragraph of article 4 of the Law of the Republic of Armenia of 26 December 2000 No. ZR-119 “On scientific, scientific and technical activities” stipulates that scientists, researchers, employees of the scientific and pedagogical field, scientific (including public ones) organizations, as well as higher educational institutions are the subjects engaged in scientific, scientific and technical activities. Provided that educational organizations (universities, institutes) that virtually operate as the core subjects performing research activities within certain areas of scientific activity, we can speak of indirect restrictions. In such cases, one of the conditions for an educational organization to carry out scientific activities (admission of educational organizations to the R&D market) is the possession of a license for such operations, which can only be obtained if the entity is incorporated within the jurisdiction where the services are expected to be provided (in this case, on the territory of the Armenian Republic).

In similar cases, it may be argued that one of the conditions for an educational organization to carry out scientific activities (educational organizations’ access to the R&D market) is the possession of a license for performing educational activities, which can be obtained solely in case the subject is incorporated within the jurisdiction where it is planned to provide services. For example, within the Armenian Republic, the Kyrgyz Republic, and the

Russian Federation,<sup>5</sup> the license applicants aiming at obtaining educational services may be organizations established in accordance with the national legislation of the respective EAEU Member State<sup>6</sup> (as a rule, branches or representative offices of foreign organizations are not eligible applicants for an educational license).

#### **8. Methodology for eliminating barriers (related to the requirements of state registration, accreditation, and licensing) in the single research market**

It appears that we shall consider the methodology for removing the aforementioned barriers via a specific hypothetical example related to the application of the of the EAEU international treaty framework. Assume that a Russian scientific organization has submitted an application for participation in a private tender, the subject of which is the services provision in the area of scientific research for a customer located within the Belarus Republic territory. The customer rejected the application due to the lack of Russian scientific organization's accreditation within the territory of the Belarus Republic. In particular, the customer could have justified the application

rejection relying upon the tender documentation's provisions which sets out the requirement for the tender participant to have accreditation provided for in Article 10 the Republic of Belarus Law of 21 October 1996 No. 708-XIII "On scientific activities".

The scientific organization is entitled to object to the customer's actions in the light of requirements towards suppliers that violate the rules of the single market of services in the field of scientific research. Indeed, pursuant to Article 1 of the Belarus Republic Law of 21 October 1996 No. 708-XIII "On scientific activity" "the scientific organization is a legal entity engaged in the performance of research, developmental and skilled-technological works, one of the management authorities which, in accordance with the constituent documents is the academic (scientific and technical) council and which took place under the respective rules of scientific organizations' accreditation. At the same time, it is determined that "accreditation of a scientific organization is a form of state recognition legal entity's capacity in carrying out research & development, experimental and technological works".

Pursuant to Article 10 of the Belarus Republic Law of 21 October 1996 No. 708-XIII "On scientific activity", the accreditation process of scientific organizations is conducted every five years. The National Academy of Sciences of Belarus and the State Committee for Science and Technology of the Belarus Republic jointly undertake accreditation procedure with respect to scientific organizations based upon the assessment of the results of their scientific, scientific-technical and innovative activities. Resolution No. 7/20/2 of the National Academy of Sciences of Belarus, the State Committee for Science and Technology of the Belarus Republic and the Higher Attestation Commission of the Republic of Belarus of 08 September 2010 approved instructions regarding the procedure for scientific organizations' accreditation. However, the Russian Federation legislation neither obliges accreditation of scientific organizations nor establishes other similar licensing requirements.

In accordance with subparagraph 3, paragraph 38 of Annex 16 to the EAEU Treaty the single services market is understood a state market services in the particular in which each Member

<sup>5</sup> See Chapter 7 of the Republic of Armenia Law of 27 June 2001 No. ZR-193 "On Licensing" [Electronic resource]. Access mode: [http://base.spininform.ru/show\\_doc.fwx?rgn=8670](http://base.spininform.ru/show_doc.fwx?rgn=8670) (accessed 22.08.2020), paragraph 56 of Article 15 of the Law of the Kyrgyz Republic of 19 October 2013 No. 195 "On the licensing and licensing system in the Kyrgyz Republic" [Electronic resource]. Access mode: [http://base.spininform.ru/show\\_doc.fwx?rgn=63232](http://base.spininform.ru/show_doc.fwx?rgn=63232) (accessed 22.08.2020); paragraph 40, part 1, Article 12 of the Federal Law of 04 May 2011 No. 99-FZ "On licensing of certain types of activities" [Electronic resource]. Access mode: [http://base.spininform.ru/show\\_doc.fwx?rgn=43154](http://base.spininform.ru/show_doc.fwx?rgn=43154) (accessed on 22 August 2020).

<sup>6</sup> See part 1, Article 22 of the Federal Law of 29 December 2012 No. 273-FZ "On Education in the Russian Federation" [Electronic resource]. Access mode: [http://base.spininform.ru/show\\_doc.fwx?rgn=57340](http://base.spininform.ru/show_doc.fwx?rgn=57340) (accessed on 22 August 2020), Article 30 of the Republic of Armenia Law of 08 May 1999 No. ZR-297 "On education" [Electronic resource]. Access mode: [http://base.spininform.ru/show\\_doc.fwx?rgn=7468](http://base.spininform.ru/show_doc.fwx?rgn=7468) (accessed on 22 August 2020).

State grants persons of any other Member State the right to supply services on the basis of a permit for the supply of services obtained by the service supplier on the territory of its Member State. The list of sectors (subsectors) of services in which the single market of services operates within the framework of the Eurasian Economic Union was approved by the Decision of the Supreme Eurasian Economic Council of 23 December 2014 No. 110. By decision of the Supreme Eurasian Economic Council of 14 May 2018 No. 7 the list in question was supplemented by the following sectors (subsectors):

“51. Services for conducting scientific research and implementation in the field of social and humanitarian sciences (from SRS 81210, 81220, 81230, 81240 and 81290).

52. Services for conducting research and creating experimental developments in the field of natural sciences (from SRS 81110, 81120, 81130, 81140, 81150 and 81190) regarding applied research within the following fields: 1) heat, light, electromagnetism, astronomy; 2) catalysis, fermentation, physiology and ecology of animals, plants and microorganisms; 3) technology of casting, metallurgy, machinery, electricity, communications, ships, aircraft, civil engineering, construction, information; 4) agricultural engineering, horticulture, forestry, animal husbandry, fishing; 5) diseases treatment, preventive hygiene and pharmaceuticals; 6) ecology”. The Regulation on the functioning of the single market in these service sectors is effective since 1 January 2020.

Based on the above, it may be concluded that the appeal of the Russian scientific organization is justified, since the customer has established requirements that violate the rules of the single market of services in the field of scientific research, namely, by preventing organizations established on the territory of the Russian Federation from participating in the tender. Accordingly, from a regulatory perspective, the barriers to market access for scientific research services may be eliminated by means of the implementation of the provisions of subparagraph

3 of paragraph 38 and paragraphs 54 and 55 of Annex 16 to the EAEU Treaty.<sup>7</sup>

### **9. Hidden tax barriers and methodology for their elimination**

It is commonly known that, for instance, the right to exemption from VAT collection on the basis of subparagraph 16 of paragraph 3 of Article 149 of the Russian Federation Tax Code, as a rule, is not subject to the condition of including information relating to research and development in a certain state information system for accounting for research, development and technological works for non-military purposes (i.e. before the signing of the EAEU Treaty). The Russian Federation does not establish other similar procedures for accreditation or state registration of R&D directly for the purposes of VAT exemption (see sub-paragraphs 16, 16.1, paragraph 3, Article 149 of the Russian Federation Tax Code).<sup>8</sup>

However, the tax legislation of the Belarus Republic of still provides for similar procedural

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<sup>7</sup> In order to ensure legal certainty of regulation at the level of national legislation, it would be meaningful for the EAEU member States to consider the possibility of amending their national legislation in the form of a reservation on equating foreign legal entities that having status of a scientific organization under the legislation of another EAEU Member State with a scientific organization recognized *per se* under their own domestic law (i.e., under the law of the EAEU Member State where it is expected to provide scientific research services).

<sup>8</sup> It should be noted that, earlier within the jurisdiction, the risk of such an obstacle occurred in the context of the practice during the existence of the All-Russian Scientific and Technical Information Center (Rus. “VNTIC”): the tax authorities held the position that tax exemption under subparagraph 16, paragraph 3, Article 149 of the Russian Federation Tax Code can be used only for those research projects that have been registered in VNTIC. However, law enforcement judicial practice found no link between such registration and the right to VAT exemption (см.: Judgment of the Moscow District Federal Arbitration (Commercial) Court of 08 May 2007 within the case No. KA-A40/3755-07, Judgment of the Moscow District Federal Arbitration (Commercial) Court of 23 September 2009 No. KA-A40/9487-09 within the case No. A40-10222/08-20-16, Judgment of the Povolzhskiy District Federal Arbitration (Commercial) Court of 26 June 2008 within the case No. A55-17064/07).

requirements in the form of obligatory state registration of R&D in order to apply VAT exemption (see sub-paragraphs 1.23, Article 118 of the Republic of Belarus Tax Code, Decree of the Belarus Republic President of 25 May 2006 No. 356 “On state registration of scientific research, research and development, design and technological works”<sup>9</sup>). The respective registration procedure, based upon some formal requirements imposed upon the applicant’s documents, may not be available for scientific activity subjects from other EAEU Member States. In particular, when applying for or changing basic data concerning the applicant, the executive organization’s registration card is submitted, under which following sections shall be filled in: The Taxpayer Identification Number (Rus. “UNP”), Russian National Classifier of Ownership Forms (Rus. “OKFS”), Russian National Classifier of Legal Entity’s Organizational and Legal Status (Rus. “OKOPF”), Common Classifier of Economic Activity (Rus. “OKED”), Russian National Classifier of Public Authorities (Rus. “OKOGU”), Indications System for Administrative and Territorial Formations (Rus. “SOATO”). Additionally, it is mandatory to indicate the following encoding approved by the National Classifiers of the Belarus Republic: OKRB 004-2014 “State authorities and management”, OKRB 019-2013 “Legal entities’ organizational and legal forms”, OKRB 005-2011 “Types of economic activities” and other ones.

Such formal requirements can be qualified as a violation of the national regime established by the Belarus Republic legislation with respect to foreign organizations being scientific activity subjects, and, consequently, as a tax and administrative barrier preventing foreign organizations’ free access to the market of scientific research works within the Belarus jurisdiction [27, p. 339].

In the light of the above, there are reasons to believe that the barrier in question may be eliminated by participants in the R&D market from the EAEU Member States by virtue of the EAEU

Treaty application, namely the provisions of Subsections 1-4, Section VI of the Protocol, pursuant to which the national regime, the most-favoured-nation regime and other guarantees for the functioning of the single market of services are established. Additionally, in the future, the barrier elimination is possible by amending the legal provisions enshrined the Republic of Belarus domestic law.<sup>10</sup>

## 10. Conclusions

The present analysis demonstrates that the provisions of the EAEU law and plans for liberalizing the market for research and development services approved by the decision of the Supreme Eurasian Economic Council No. 23 of 26 December 2016, within the comparison with the Member States’ domestic law, reveal certain administrative and tax barriers hindering cross-border research services in practice under particular circumstances. The corresponding barriers may lie within the requirement of state registration, accreditation and license of scientific organizations (as well as in some cases requirements for full-time employees and their certification, which are associated with problems of mutual recognition of scientific qualifications). However, in general, in terms of the sources hierarchy, these barriers (in particular, when they directly concern R&D) are likely to be overcome by direct application of the single market for services rules enshrined in paragraph 38, Annex 16 to the

<sup>9</sup> See paragraph 2 of the Regulation on the procedure for state registration of research, development and experimental and technological works approved by Decree of the Belarus Republic President of 25 May 2006 No. 356.

<sup>10</sup> As for determining the location of R&D services for VAT purposes, a comparison of the tax legislation of Russia and Belarus, in our opinion, does not allow us to identify barriers and contradictions. Notably, under paragraph 29 (4) of the Protocol on the Procedure for Collecting Indirect Taxes and the Mechanism for Controlling their Payment in the Export and Import of Goods, Performance of Works, Provision of Services (Annex No. 28 to the Treaty on the EAEU), the territory of a Member State is recognized as the place of implementation of works and services, provided that the taxpayer of the respective Member State purchases consulting, legal, accounting, auditing, engineering, advertising, design, marketing, information processing services, as well as research & development, experimental (technological) works. Similar rules are articulated within the framework of the Russian Federation Tax Code (Article 148), as well as the Belarus Republic Tax Code of the Republic of Belarus (Article 117).

Agreement.<sup>11</sup>

It appears that the elimination of the respective barriers in the future will not only ensure the freedom of scientific research within the Eurasian dimension, but also establish essential prerequisites for new research infrastructure modelled upon supranational research associations in the EU (in the context of the EAEU, it is considered as the potential application in the form of scientific cooperation, typical for the integration relations, and, in principle, the experience of cross-border relations liberalization; for instance, the EU has deservedly become the subject of research within Russian science [28; 29; 30]).

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<sup>11</sup> Meanwhile, the Republic of Kazakhstan included licensed activities within the list of exceptions to the single (common) market rules (approved by the Decision of the Supreme Eurasian Economic Council No. 112 of 23 December 2014). Therefore, within this sphere, barriers may remain within to the extent established by Annex 16 to the EAEU Treaty. However, scientific activity as such (with the exception of specific segments) is not subject to licensing in Kazakhstan, so that this exclusion does not affect the entire field of R&D *per se*.

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