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Enhancement of the Regional Business Legal Structure within the Eurasian Economic Union based on the Use of the European Union's Experience

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Abstract

Background: The research explains why the regional legal structure is expected to stimulate the creation of new transnational corporations and to contribute to the global competitiveness increase of the Eurasian Economic Union.

Methods: The following different methods were used to solve the tasks of the research: the literature research, the comparative legal analysis, the retrospective analysis and logical approach. **Findings:** The research resulted in the proposals and recommendations for the development of a new regional legal structure within the Eurasian Economic Union based on the most successful international experience. It is obvious that the competitive advantage of the EAEU depends on the productivity of the companies operating in it. The encouragement of the corporate productivity can be achieved by creating the regional business legal structure. This legal structure would facilitate cross-border mergers between strong national companies and encourage competitive governance, which would create favorable environment for the development of business. It eventually would stimulate the shift of the EAEU businesses to the global level. **Improvements:** The possible enhancement of a new regional business legal structure within the Eurasian Economic Union has never been studied before. Therefore, the research conducted in the frame of this paper is believed to become a theoretical basis for the future studies on transnational corporations within the newly created EAEU. From the practical standpoint, the results of this research might be used for the development of the EAEU corporate law and future amendments to the legislation of its Member States in order to facilitate corporate integration within the region.

Keywords: Cross-border Mergers, Eurasian Economic Union, European Union, National Competitive Advantage, Societas Europaea, Transnational Corporations

1. Introduction

Transnational corporations are one of the main phenomena of the globalizing world. The influence of these business conglomerates on the modern economy and international law is significant¹.

It is undoubted that the productivity of transnational corporations has a significant impact on the competitive advantage of nations. The issue of national competitive advantage was well studied² who argued that companies

would become the main driving force for the national competitiveness in the new economic system. He introduced the concept of “home base” to indicate a nation which provided most favorable conditions for the companies. This “home base” concept reflects the tendency for trans-nationalization of business, implying that any competitive company would become transnational and search for the best options to place its business while most competitive countries will be those that will provide the most favorable conditions to transnational corporations for their

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development in the new era. In accordance with his theory, the country will be successful if its policy allows companies of the certain sector to conduct the best strategy.

Therefore, one of the main purposes of the modern countries is to create a favorable environment for the growth of business and to stimulate transnationalization of national companies.

At the same time, the modern world has been witnessing an amplification of regional economic integration since the middle of the 20th century. It seems reasonable to presume that the future global market will be based on regional blocs – pillars, and the notion of “national competitive advantage” might be replaced with the “regional competitive advantage” concept. In this regard, it is logical to presume that the question of transnational corporations’ development tends to become an issue of regional scope. Eventually, the competitive advantage of the region will depend on the ability of the Member States to work out a comprehensive strategy on the stimulation of transnational corporations’ growth within the region through the accumulation of national capital of all Member States.

One of the most recent examples of the regional economic integration is the Eurasian Economic Union (hereinafter – EAEU). It was created in 2015 as an international organization of regional economic integration. The “increase of the competitiveness of national economies on the global scale” is one of the three main purposes of the EAEU according to the Art. 4 of the Treaty on the Eurasian Economic Union³. In this context, the stimulation of the productivity of the large-scale business is an essential question. The encouragement of creation of new transnational corporations might contribute significantly to the competitive advantage of the EAEU in general.

The growth and perspectives of transnational corporations within the regional integration processes is a very urgent and actual topic of research. The development of transnational corporations within the accelerating regionalism has been studied in the frame of different regions. For example, many researchers analyzed transnational corporations in the frame of the dynamically growing Asian regionalism. Thus, the East-Asian regionalism and regionalization from the perspective of transnational corporations was analyzed in the work⁴ regionalism in South Asia and the role of transnational corporations in it⁵. Transnational corporations’ role in frame of trade regionalism in the Asia-Pacific was given attention in the paper⁶. The role and perspectives of transnational corporations in the regionalism and integration processes in Africa presented in the research⁷.

Analyzed the development of transnational corporations within the North American Regionalism⁸. The perspectives of transnational corporations in the light of South-American regionalism were considered⁹.

It is no doubt that the most prominent regional alliance nowadays seems to be the European Union. The regionalism processes in this part of the world and transnational corporations’ role in them was analyzed¹⁰⁻¹².

The question of development and perspectives of transnational corporations within the regional integration process on the Post-Soviet territory was not well studied. The transnational corporations were basically studied in the frame of the single countries of this region. For example, transnational corporation’ growth and perspectives in Russia were studied^{13,14}. The perspectives of transnational corporations in Kazakhstan were analyzed^{15,16}. The development of transnational corporations in Belarus was analyzed^{17,18}. There were certain attempts to analyze the development of transnational corporations from the regional standpoint. Thus¹⁹ considered the development of transnational corporations within the Commonwealth of Independent States. However, the relevancy of such studies seems rather doubtful in the scope of the EAEU creation, which implies the deeper level of integration than the Commonwealth of Independent States did. At the same time, the perspectives and regulation of transnational corporations in the frame of the EAEU have not been studied yet.

On the basis of the aforementioned information the primary target of this paper is an in-depth study of the enhancement of the regional legal structure (*form of incorporation*) within the EAEU in order to facilitate corporate integration and increase the competitiveness of national business. The success of the initiatives within the regional integration depends on the effective use of the experience of other regional associations. It helps to avoid mistakes and to adopt the most well-turned ideas.

It is worth to notice that the attempts to enhance the regional legal structures were taken in the frame of the European Union, the Andean Community and the CARICOM. They have been studied by several researchers. Thus, the *Societas Europaea* legal structure was well studied²⁰⁻²³. The cross-border mergers within the EU were examined²⁴. The Andean multinational enterprises (AME) were studied²⁵. The CARICOM enterprise regime was analyzed^{26,27}.

2. Aim and Authors' Concept

The primary target of this research is a comprehensive study of the possible enhancement of the regional legal structure within the EAEU in order to facilitate corporate integration and stimulate the creation of new transnational corporations.

In order to achieve the abovementioned target, the authors indicated the following sub-targets to be solved:

- to analyze the existing regional legal structures implemented in other regional associations (Societas Europaea, Empresa Multinacional Andina, CARICOM enterprise) and level of their success;
- to find out the specific features of regional legal structures which might be successfully implemented within the EAEU and contribute to the creation of new transnational corporations;
- to discuss the possible hindrances which shall not be neglected during the implementation of the regional legal structure within the EAEU.

The research conducted in the frame of this paper is believed to have a theoretical significance because it will create the basis for the future studies on transnational corporations within the newly created EAEU. It is also expected to have practical significance because it contains explicit legislative recommendations which might facilitate the corporate integration within the region and, therefore, to accelerate the creation of new transnational corporations.

3. Research Methods

To solve the tasks of the research the different materials and scientific methods were used, including the following: the literature research, the comparative legal analysis, the induction and deduction, the retrospective analysis, and the logical approach.

The literature research allowed identifying the most successful regional legal structure by comparison of the existing ones (the CARICOM enterprise, the Andean multinational enterprise, and the Societas Europaea). The analysis conducted in the framework of this research enabled to conclude that the Societas Europaea nowadays is the most well-turned regional legal structure.

The comparative legal analysis method allowed indicating the strengths of the Societas Europaea through the analysis of the corresponding EU secondary law:

1. Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE)²⁸;
2. Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies²⁹;
3. Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)³⁰.

Such research design helps to achieve deeper understanding of the regional legal structures and of their practical benefit for the EAEU, and to elaborate recommendations which would help to enhance regional business legal structure within the EAEU.

4. Results

The regional integration of the Eurasian Union Member States enlarges the common market. Therefore, the national companies will be forced to compete on the regional scale. At the same time, the competition between similar strong companies operating in one sector sometimes leads to the fight for the scarce resources and does not allow the companies to move to the international level.

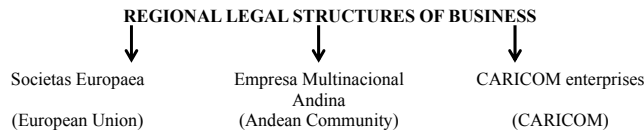
In this regard, it seems reasonable to encourage the corporate integration between the companies from the EAEU Member States. It would help national companies to consolidate their resources and minimize expenses. The accumulation of the resources of the companies, operating in one sector, will lead to the creation of a coordinated regional value chain, which will significantly increase the competitiveness of the business on the global scale.

The establishment of common markets for electricity, gas, oil and petroleum products within the EAEU, which is planned for 2019 (electricity) and 2025 (gas, oil and petroleum products), will definitely contribute to the accelerations of these corporate integration processes because the energy industry has been traditionally the driving force for the economies of the EAEU Member States. For example, there are strong companies in the oil and gas sector, such as Gazprom, Lukoil, Rosneft, Zarubezhneft (Russia), KazMunaiGaz, Kazakhoil (Kazakhstan), in the atomic sector, such as Rosatom (Russia), Kazatom (Kazakhstan), in the gold mining sector, such as Kyrgyzaltyn (Kyrgyzstan). The corporate integration in these sectors might eventually result in internationally recognized and globally competitive transnational corporations.

Therefore, the EAEU Member States shall concentrate on the legislative initiatives which might facilitate the

establishment of regional transnational corporations. In this context, the introduction of a new legal structure of regional dimension seems to be a perspective idea.

It is worth to notice that the idea of a regional legal structure has been implemented by several regional associations:



The CARICOM enterprise regime was introduced³¹ However this attempt failed. The regime ended up in 1995 without giving a birth to any prominent CARICOM enterprise.

Another example of the regional form of business is the Andean Multinational Enterprises [in Spanish “Empresa Multinacional Andina” or “EMA”]³². It was established in 1991 when the Commission of the Cartagena Agreement (Andean Community) adopted the Decision 292 on Uniform Code on Andean Multinational Enterprises. In general, the AME regime is more successful than the CARICOM enterprise regime. At least, there are certain companies that adopted this business legal structure for their activities. Even so, argues that the AME regime did not fulfill its grand promises and seems to be outdated nowadays. According to his data, in 2005, there were around 80 Andean Multinational Enterprises in total and they were not significant market players.

The common problem of the CARICOM enterprise and the AME seems to lie in the absence of facilitation of cross-border mergers and lack of prominent incentives for business. It also seems logical to presume that another reason for the failure in the implementation of these business structures was the fact that the level of regional integration between the Member States was not “deep” enough.

In comparison to these regional business forms, the Societas Europaea seems to be most successfully implemented regional business legal structure. It proved its attractiveness for the European entrepreneurial community due to many reasons.

The Societas Europaea has been introduced by the Council Regulation (EC) No 2157/2001. The provisions of the Regulation allow the establishment and management of a company with a European dimension, which would be free from the obstacles arising from the disparity and limited territorial application of the national corporate law.

The European company might be established in different ways in accordance with the Art. 2 of the Council Regulation No 2157/2001 (see Table 1).

The main advantages which motivate national companies to opt for the Societas Europaea seem to be following:

1. Cross-border mergers. On the contrary to the Societas Europaea neither AME regime nor CARICOM regime facilitates cross-border mergers. At the same time, it is worth to notice that the Societas Europaea companies were the only instrument for cross-border mergers only till 2005. In 2005, cross-border mergers between companies domiciled in the different EU Member States were enhanced by the Directive 2005/56/EC of the European Parliament and of the Council. In general, the effective enhancement of the cross-border mergers enables to avoid complicated and expensive legal procedures and fastens the integration of business. It allows large corporate groups to facilitate their business management and structure through obtaining a legal structure of a supranational nature.

J. A. Kirshner argues that the cross-border mergers allow absorbing the subsidiaries and acquiring a branched configuration instead. It enables to reduce tax expenses, e.g. to eliminate VAT taxes on transactions between a subsidiary and a parent company.

2. The possibility to transfer the registered office. In fact, this provision allows the European company to choose the most favorable legislation among the Member States, creating the competitive governance. Here we can see the effective realization of the “home base” notion, introduced by M. Porter. The SA is given the possibility to choose a “home base”, which provides best options for business development. Such option has not been implemented by any other regional associations.

At the same time, the SE has serious disadvantage. The SE Statute refers to the national legislation of Member States in almost all the matters. Thus, there is lack of single regulation, which results in practical problems for the business, e.g. difficulties and confusions with the calculation and payment of taxes by the regional business legal structures.

Thus in short the advantages and disadvantages of the SE business structure might be presented as follows (see Table 2).

Table 1. Ways and conditions for the Societas Europaea establishment

Type of creation	Merger	Holding European company	Subsidiary European company	Conversion
<i>Participants</i>	Public limited liability companies formed under the law of the EU Member State	Public and private limited-liability companies formed under the law of the EU Member State	Legal bodies governed by public or private law (companies, enterprises or other legal bodies) and formed under the law of the EU Member State	A public limited-liability company formed under the law of the EU Member State
<i>Special requirements</i>	At least two of participants are to be governed by the law of different EU Member States	At least two of participants are to be governed by the law of different EU Member States, or have for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State	At least two of participants are to be governed by the law of different EU Member States, or have for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State	The participant shall have for at least two years had a subsidiary company governed by the law of another Member State

Table 2. Advantages and disadvantages of SE business structure

Main advantages of the SE business structure	Main disadvantage of the SE business structure
<ul style="list-style-type: none"> – facilitation of cross-border mergers – possibility to choose favorable legislation through transfer of registered office 	<ul style="list-style-type: none"> – lack of single regulation, too many references to national legislation of Member States (e.g. absence of common tax regime)

The example of the Societas Europaea might be effectively used within the EAEU in order to stimulate the creation of new transnational corporations through establishing the regional business legal structure. The appropriate legislative background will make a significant contribution to the corporate integration between national companies of the EAEU.

The EAEU has enough economic prerequisites for the successful corporate integration, such as:

1. formation of common markets (free movement of capital, services)
2. enhancement of free movement of labor
3. enhancement of free movement of capital

At the same time these economic prerequisites for the corporate integration shall be accompanied by the adequate legal initiatives. In this regard, the creation of regional business legal structure seems to be a recommendable solution. It will help national companies to consolidate their resources and minimize expenses

without going through expensive and time-consuming legal procedures. In general, this might help the EAEU business to shift to a global scale.

In order to facilitate the corporate integration on the regional level it is logical to use the experience of other regional alliances. The retrospective analysis shows that the Societas Europaea companies have the most well-turned regional legal structure in comparison with others, such as the Andean multinational enterprise or the CARICOM enterprise. Therefore, it seems reasonable to adopt the best features of the Societas Europaea for the future regional legal structure of the EAEU: 1) facilitation of cross-border mergers, which allows companies from different EU Member States to accumulate resources and minimize expenses without expensive and time-consuming legal procedures; 2) the possibility to transfer the registered office, which allows the European companies to choose the most favorable national legislation for their business. This is an example of the effective realization of the “home base” concept introduced by M. Porter.

5. Discussion

Due to the constant changes in the modern economy, it is difficult to predict the final success of any new initiative. That is why the implementation of the regional business legal structure should be carried out carefully.

First of all, it is no doubt that the initiatives facilitating merger shall be accompanied by the adequate evolution of the antitrust law. It is necessary not to lose sight of the competition protection to a necessary extent. It means that the limits for the regional mergers shall be established by the legislation. It is necessary to encourage the corporate ambition for the global expansion, rather than the ambition to dominate simply on the regional and national markets through a merger.

Therefore, the undertakings shall be obliged to provide adequate remedies for the reduction of competition caused by a merger. Thus, the cross-border merger implementation requires certain evolution of the antitrust legislation. For example, the EU regulates cross-border mergers with the Council Regulation (EC) No 139/2004, which applies to business concentrations with a regional dimension.

Secondly, it is necessary to bear in mind that one of the main hindrances to the efficient use of the *Societas Europaea* legal structure is the absence of common tax regime. Therefore, it is necessary for the EAEU to define the adequate tax regulation of regional legal structure prior to its implementation. It may include double taxation relief and other tax privileges.

Moreover, it is required to stimulate corporate integration in the weak sectors of the economy through providing government support. It is worth to say that the regional business legal structure would be most probably attractive only for the large-scale businesses. This assumption was confirmed by the example of the *Societas Europaea*. It may, therefore, contribute to the productivity of national companies, but only those which operate in the traditionally strong sector. The energy industry is the main driving force for the economies of the EAEU Member States. At the same time, the creation of the regional transnational corporations in the manufacturing industry seems to be unlikely because there are few strong national market players currently in this industry.

In terms of the competitive advantage, it is reasonable to put an emphasis on the development of traditionally strong energy industry, focusing on the productivity of companies operating in this sector. However, it does not

enable long-lasting economic stability because it is very vulnerable to the fluctuation of the world economy. In this regard, it is necessary to support national companies in the manufacturing and especially high-tech manufacturing industries in spite of the fact that these companies would most probably not make a significant contribution to the competitive advantage of the region during next decades. The corporate integration for such companies would allow accumulating intellectual resources and stimulating the innovation achievements. In this context, the government support is essential for corporate integration in the manufacturing industry. It is also worth to stimulate the corporate integration of the transportation industry within the EAEU. The integration of this industry would facilitate corporate integration in other sectors of the economy.

Finally, in order to enhance the corporate integration, it is essential to provide effective realization of "free movement of labor" concept, which is guaranteed under Art. 1 of the Treaty on the Eurasian Economic Union. Nowadays the significant gap between the educational levels of the EAEU Member States is one of the main hindrances towards such effective realization. (According to the World Economic Forum's Global Competitiveness Ranking in terms of higher education and training Kazakhstan, Russia, Armenia, and Kyrgyzstan are ranked 60, 38, 72, and 80, respectively, while evaluation of Belarus is not currently performed by the World Economic Forum). Therefore, it is necessary to harmonize the educational level of the EAEU Member States.

6. Conclusion

The main goal of the integration of the EAEU Member States is to increase the competitiveness of the region on the global scale. The ultimate success depends on the right strategic plan. In this regard, the role of the large-scale business and especially transnational corporations shall not be underestimated.

It is undoubted that the competitive advantage of the EAEU depends on the productivity of the companies operating in it. The encouragement of the corporate productivity can be achieved by the creation of the regional business legal structure. This legal structure would facilitate cross-border mergers between strong national companies and encourage competitive governance, which would create favorable environment for the development of business. It eventually would stimulate the shift of the EAEU businesses to the global level.

In this regard, the experience of the European Union seems to be most helpful because the *Societas Europaea* is nowadays the most successfully implemented regional legal structure. At the same time, the encouragement of the corporate integration has to be accompanied by the adequate antitrust policy, the reasonable tax regulation, the effective realization of “freedom of movement of labor” concept, etc.

In general, the impact of the legislative reforms on the development of the economy shall not be underestimated. The economic progress is stipulated by the dynamic evolution of the legislation, which has to correspond to the changing world situation. Therefore, the timely development of corporate law would facilitate the expansion of business on the global scale and contribute to the national competitive advantage.

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