

Tax Competence of the Eurasian Economic Union: A New Reading by the Court

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Abstract

In October 2022, the Court of the Eurasian Economic Union (EAEU) adopted the first Advisory Opinion fully devoted to the interpretation of the tax provisions of the EAEU Treaty. While reiterating its previous findings that the powers to impose taxes fall within the jurisdiction of the Member States, for the first time, the Court has argued in favour of limiting these powers by the law of the EAEU. Such limitations derive from the principles of non-discrimination and free competition of goods and services regardless of the country of production. In such a manner, the Court has made a significant contribution to the establishment of a single common market within the Union and has enriched the understanding of the principles governing the division of competence between the Member States and the bodies of the Union. The only conclusion that could be seen as dubious by the Court was regarding the collection of VAT on the basis of the country of destination and the fact that this is necessary to maintain competition and avoid double taxation and that the reasoning for such a mechanism is also predetermined by the nature of this tax.

Keywords: Eurasian Economic Union – Advisory opinion – Indirect taxes – Non-discrimination – Single market – Fair competition.

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1. Introduction

The Eurasian Economic Union (EAEU) first started functioning on 1 January 2015 and currently includes 5 states: the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation. Within the framework of the EAEU, a customs union was established, a single customs tariff was applied, and common customs regulations were implemented with the stated goal of forming a single market that ensures the freedom of movement of goods, services, capital and labour resources¹.

EAEU bodies were created, including the Supreme Council, the Intergovernmental Council, the Eurasian Economic Commission and the EAEU Court², with the Court having jurisdiction to resolve disputes and the advisory competence to clarify and interpret the provisions of the EAEU Treaty³. As of December 23, 2022, the Court had considered 70 cases, of which 42 cases were related to the functioning of the customs union, 10 cases were connected to the general principles and rules concerning competition and 5 were related to labour relations within the bodies of the EAEU⁴.

There are only three articles contained within the EAEU Treaty that are devoted to the cooperation of the Member States in the field of taxation: Article 71 outlines the principles of cooperation of the Member States in the field of taxation; Article 72 provides for the principles for the collection of indirect taxes; and Article 73 contains one provision regarding the taxation of income of permanent residents of the Member States who are entitled to a resident tax rate in the other Member State from their first day of employment. The first two articles mentioned above state that goods that are imported from the territory of one Member State into the territory of another Member State are subject to indirect taxes only in the destination country of goods, while in the country of origin, the export of the goods in question is

¹ Articles 1, 2, 4, 25 of the Treaty on the Eurasian Economic Union (TEAEU); See English text of the TEAEU at the docs.eaeunion.org/en-us; See also A. Di Gregorio, *The Eurasian Economic Union: Origin and Development of a New Integration Format Compared to That of the EU*, in A. Di Gregorio, A. Angeli (eds.), *The Eurasian Economic Union and the European Union. Moving Toward a Greater Understanding*, Eleven International Publishing, 2017, 3-26.

² Art. 8 of the TEAEU.

³ Par. 39, 46 of the Statute of the EAEU Court, Annex 2 to the TEAEU; See also E. Diyachenko, K. Entin, *Competence of the Court of the Eurasian Economic Union: myths and reality*, in *International Justice*, No. 3, 2017, 76-95; Z. Kembayev, *The Court of the Eurasian Economic Union. An Adequate Body for Facilitating Eurasian Integration?*, in *Review of Central and East European Law*, Vol. 41 No. 3-4, 2016, 354-360, 365-367; K. Entin, B. Pirker, *The Early Case Law of the Eurasian Economic Union Court: On the Road to Luxembourg?*, in *Maastricht Journal of European and Comparative Law*, No. 3, 2018, 266-287; K. Entin, E. Diyachenko, *The Court of the Eurasian Economic Union* in A. Aseeva, J. Górski (eds.), *The Law and Policy of New Eurasian Regionalization: Economic Integration, Trade, and Investment in the Post-Soviet and Greater Eurasian Space*, Brill Nijhoff, 2021, 90-104.

⁴ Statistical data on the activities of the Court of the EAEU as of 23 December 2022 (Table 7), courteurasian.org/analytics/statistical_information/.

exempt from indirect taxation. This particular provision differs from that contained within the taxation system of the European Union, whereas a general rule, goods are subject to indirect taxation in the country of origin⁵. Thus, for example, an exporter of goods from one EAEU state (for example, from Kazakhstan) is not subject to value-added tax (VAT) on exports of goods to another EAEU state (for example, to the Kyrgyz Republic), and VAT that was in fact paid to the supplier of the product within the first country is subject to refund from the budget of Kazakhstan. Thus, continuing with the example above, in Kyrgyzstan, the buyer of the goods, after acquiring full ownership rights over the goods, is obligated to pay the full amount of VAT calculated on the price of the goods into the state budget. However, the EAEU Treaty provides for several exceptions to this rule when VAT is not charged when importing into the territory of a Member State: 1) when the goods in question are exempt from indirect taxes in accordance with the legislation of the destination state; 2) when the goods are imported by individuals and not to be used for business purposes, i.e., when they will be used for the purpose of consumption; and 3) when the goods are moved within the same legal entity (paragraph 6 of Article 72). The interpretation of the last provision has become a subject of the EAEU Court Advisory Opinion, which is commented on in this article.

2. The Facts and Essence of the Case

The Epiroc Central Asia Limited Liability Company⁶ (hereinafter referred to as the Company), which is registered in the Republic of Kazakhstan, transferred goods from the warehouse of its head office to the warehouse of one of its own branches in the Kyrgyz Republic. The branch in question did not pay VAT upon receipt of the goods on the basis of the abovementioned norm of the EAEU Agreement. Furthermore, the goods were then sold in the territory of the Kyrgyz Republic, and sales of the goods were subject to VAT in accordance with established procedures. The Kyrgyz tax authorities then conducted an audit of the company and ordered the company to pay the VAT, which the company allegedly had not paid when transferring the goods into the Kyrgyz Republic. In regard to this issue, the Financial Policy Department of the EAEU executive body (the Commission) then signed two conflicting letters dated 2020 and 2021 with regard to the need to impose

⁵ Council of the European Union, *Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax*, OJ L 347/1, 2006 (last amended by Council Directive 2022/890 of 3 June 2022), art. 193. The Commission in 2016 declared a plan to introduce in the EU the principle of cross-border VAT taxation in the country of destination instead of the country of origin principle. See European Commission, *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT*, Brussels, 7.4.2016 COM(2016) 148 final, at 4. However, this plan was not performed.

⁶ Until January 1, 2018, the company operated under the “Atlas Copco” brand. Atlas Copco is a global industrial company headquartered in Sweden with 49,000 employees in 70 countries, atlas-copco.com/content/dam/atlas-copco/web-only/corporate/documents/about-us/20230219-atlas-copco-facts-and-figures-2023.pdf.

VAT on goods imported into an EAEU Member State for the purpose of further sale. In this regard, the Ministry of Economy and Commerce of the Kyrgyz Republic, which is the official body responsible for tax policy in the country⁷, submitted to the EAEU Court an application for the clarification of Clause 6 of Article 72 of the EAEU Treaty. An explanation of this seemingly obvious provision was then used by the Court to formulate rather important conclusions with regard to the scope of the tax competence of the Eurasian Economic Union as an integration entity. The Advisory Opinion was then adopted on the 12th of October⁸. Nine judges voted in favour of this Opinion, and one judge disagreed with the conclusions of the Grand Panel and signed a dissenting opinion⁹. As expected, the Court interpreted the provision of the EAEU Agreement on the exemption of VAT for goods transferred within the same legal entity as also covering those cases when goods are imported for resale¹⁰. Literally, the conclusion reads as follows: «The import of goods into the territory of a Member State of the Union from the territory of another Member State of the Union related to their transfer within the same legal entity is not subject to indirect taxes, regardless of the purpose of such an import»¹¹.

3. Arguments of the Court and Conclusions on the Tax Competence of the EAEU

It should be noted first and foremost that since its establishment, the EAEU Court has repeatedly noted in its judgements that the sphere of taxation is outside the competence of the Union's bodies. Therefore, for example, in the case of individual entrepreneur *Tarasik*, (28.12.2015, excise duty in connection with the import of a truck) the Court stated that determination of the scope of goods subject to the excises is not within the competence of the Union in accordance with the Treaty on the EAEU and falls under the exclusive right of the Member State¹². In the decision of the Appeals Chamber in this case, the Court then stated that the payment of taxes and duties in the case of the import of vehicles for business purposes into the territory of a Member State from third countries is within the competence of the Member State and cannot be subject to monitoring and control by the Union body¹³.

As the Court pointed out in the *Sevlad* case (07.04.2016, the imposition of VAT on the import of feed additives), the application of the national law with regard to the granting of benefits is clearly and unconditionally within the competence of the state implementing such acts; therefore, the rights granted by national legislation

⁷ See the official website of the Ministry, mineconom.gov.kg/en.

⁸ Court of the Eurasian Economic Union (EAEU), *Advisory Opinion of the Grand Chamber of the Court of 12 Oct. 2022 at the request of the Ministry of Economy and Commerce of the Kyrgyz Republic*, Case CE-2-1/1-22-BK, courteurasian.org/court_cases/aeau/P.2-22/.

⁹ Court of the EAEU, *Dissenting Opinion of Judge T. N. Neshataeva*, of 12 Oct. 2022, Case CE-2-1/1-22-BK, courteurasian.org/court_cases/aeau/P.2-22/.

¹⁰ Court of the EAEU, *Advisory Opinion of the Grand Chamber of the Court of 12 Oct. 2022*, at 8.

¹¹ *Ibid.*

¹² Case CE-1-2/2-15-KC, *Tarasik K.P.*, at 22, courteurasian.org/court_cases/aeau/C-4.15/.

¹³ *Ibid.*, at 31.

cannot be protected by the supranational law¹⁴. By the word “protected” the Court meant that the taxpayer could not invoke the Treaty provisions since the Union didn’t have competence in taxation. The Appeals Chamber confirmed this conclusion, adding that tax relations «according to the law of the Union fall under the exclusive jurisdiction of national Member States»¹⁵.

In its Advisory Opinion on Leasing (10.07.2020), the Grand Panel of the Court also ruled that the Treaty itself and international agreements within the Union did not endow the Union bodies with competence in the field of direct taxation; therefore, the relevant relations are regulated by the legislation of the Member States¹⁶. In the Opinion at issue, the Court repeated this conclusion, pointing out again that taxation matters fall within the competence of the Member States¹⁷.

In the same phrase, however, the Court pointed out that the tax powers of the Member States are limited by the law of the Union and, in particular, by the principle of non-discrimination, which derives from «the need to create equal conditions for the free competition of goods and services regardless of the country of production, and establishes the foundations of a fair trade, and is interrelated with the principle of fair competition»¹⁸. This legal position, in essence, not only allows the Court to clarify the tax provisions of the treaty but also in fact confers the tax competence to the Union bodies. It is important to note that when formulating limitations on the tax competence of the states, in essence, the Court refers to the declaratory norms of the EAEU Treaty (Paragraph 3 of Article 71), which, within the framework of a narrower approach, could have been interpreted as referring only to the harmonization of legislation by the Member States.

When referring to the principles of fair competition, the Court does not mention Article 76 of the Treaty on competition since in this context, the Court refers to the protection of competition not from the actions of companies but from the measures of the Member States. The provisions on the protection of competition in the EAEU Treaty also provide for certain obligations that the Member States must follow to create equal conditions for economic entities registered in different EAEU Member States. However, this obligation does not apply to any measures but only to measures relating to Member States’ antitrust legislation.

Comparing provisions on the protection of competition in the EAEU and the EU Founding Treaty, one would see that the scope of the relevant norms in the latter is more complete. In the Treaty on the Functioning of the European Union (TFEU), competition rules contain provisions prohibiting state aid that distorts or threatens to distort competition by favouring certain undertakings or the production of certain

¹⁴ Case CE-1-2/1-16-KC, Sevlad, at 26, courteurasian.org/court_cases/eaue/C-5.15/.

¹⁵ *Ibid.*, at 29.

¹⁶ Court of the EAEU, *Advisory Opinion of the Grand Chamber of the Court of 10 Aug. 2020 at the request of the Ministry of Justice of the Russian Federation*, Case CE-2-1/2-20-BK, at 12, courteurasian.org/court_cases/eaue/P-1.20/.

¹⁷ Court of the EAEU, *Advisory Opinion of the Grand Chamber of the Court of 12 Oct. 2022*, at 4.

¹⁸ *Ibid.*

goods¹⁹. It is noteworthy that this particular provision was actively used by the Commission to counteract the practice of granting preferential tax regimes to individual corporations (Starbucks, Apple, Fiat and Amazon) by some EU Member States (Luxembourg, Ireland, and the Netherlands)²⁰.

It should also be noted that the EAEU Court's justification for the Union's own tax competence is based on approaches that are similar to the legal positions of the Court of the European Union. Article 113 of the TFEU explicitly provides for the right of the EU to harmonize only the legislation of the Member States with regard to indirect taxation, while direct taxation continues to be mainly regulated by the Member States. However, in cases where direct taxation affects the effective functioning of the internal market, the EU has reserved the right to adopt legislation in the form of directives in relevant areas of which there are currently three: taxation on internal transactions between parent and subsidiary companies (Directive 2011/96/EU)²¹, taxation on mergers and divisions (Directive 2009/133/EC as amended in 2013)²²; and taxation on interest and royalties between associated companies (Directive 2003/49/EC)²³.

Another example of the relationship with regard to taxation and the functioning of the internal market can be given in relation to the interaction of the Double Taxation Treaties (DTTs) and EU law. On the one hand, DTTs apply to direct

¹⁹ Consolidated Version of the Treaty on the Functioning of the European Union, OJ C 202/47, 2016, art. 107.

²⁰ European Commission, Commission decides selective tax advantages for Fiat in Luxembourg and Starbucks in the Netherlands are illegal under EU state aid rules, Brussels, 21 October 2015; European Commission, Letter to Ireland regarding the decision to initiate formal procedure, C(2014) 3606 final 2014, alleged aid to Apple, 2014; European Commission, Letter to the Netherlands regarding the decision to initiate formal procedure, C(2014) 3626 final, alleged aid to Starbucks, 2014; European Commission, Letter to Luxembourg regarding the decision to initiate formal procedure, C(2014) 3627 final, alleged aid to FFT, 2014; European Commission, Letter to Luxembourg regarding the decision to initiate formal procedure, C(2014) 7156 final, alleged aid to Amazon by way of a tax ruling, 2014. See the in-depth analysis in: R. Luja, *EU State Aid Law and National Tax Rulings*, 2015. Available at: [www.europarl.europa.eu/RegData/etudes/IDAN/2015/563453/IPOL_IDA\(2015\)563453_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/563453/IPOL_IDA(2015)563453_EN.pdf). See also C. Bobby, *A Method inside the Madness: Understanding the European Union State Aid and Taxation Rulings*, in *Chicago Journal of International Law*, Vol. 18 No. 1, 2017. Available at: chicagounbound.uchicago.edu/cjil/vol18/iss1/5.

²¹ Council of the European Union, *Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States*, OJ L 345/8, 2011 (last amended by Council Directive (EU) 2015/121 of 27 January 2015).

²² Council of the European Union, *Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States*, OJ L 310/34, 2009 (last amended by Council Directive 2013/13/EU of 13 May 2013).

²³ Council of the European Union, *Council Directive 2003/49/EC of 3 June 2003 on the common system of taxation applicable to interest and royalty payments made between associated companies of different Member States*, OJ L 157/49, 2003 (last amended by Council Directive 2013/13/EU of 13 May 2013).

taxation, the possibilities for the harmonization of which are explicitly not assigned to EU institutions; on the other hand, different tax regimes of the nationals of the various Member States pose an obvious obstacle to the functioning of the internal market²⁴. This fundamental problem of double taxation in the EU was partially resolved by the CJEU by referencing the obligation of Member States to exercise their powers in full compliance with the Community Law²⁵. In cases where the principles of the Founding Treaties are violated as a result of the application of DTTs or due to national laws implementing them, such agreements and laws should be amended²⁶.

The third example taken from EU legal practice concerns mechanisms for combating the use of tax avoidance schemes, which is an area of EU tax competence. In this sphere, the EU Council Directive of 2016 laid down rules against tax avoidance practices that directly affect the functioning of the internal market is currently in force²⁷. The reference to the internal market in the directive's

²⁴ European Commission, Workshop of Experts, *Working Document: EC Law and Tax Treaties*, June 5, 2005, DOC (05) 2306, at 3.

²⁵ The report cites the following judgements of the Court: Case C-279/93, Schumacker, ECLI:EU:C:1995:31, pt. 21, curia.europa.eu/juris/liste.jsf?language=en&num=C-279/93; Case C-80/94, Wielockx, ECLI:EU:C:1995:271, pt. 16, curia.europa.eu/juris/liste.jsf?language=en&num=C-80/94; Case C-107/94, Asscher, ECLI:EU:C:1996:251, pt. 36, //curia.europa.eu/juris/liste.jsf?language=en&num=C-107/94; Case C-250/95, Futura, ECLI:EU:C:1997:239, pt. 19, curia.europa.eu/juris/liste.jsf?language=en&num=C-250/95; Case C-118/96, Safir, ECLI:EU:C:1998:170, pt. 21, curia.europa.eu/juris/liste.jsf?language=en&num=C-118/96; Case C-264/96, I.C.I., ECLI:EU:C:1998:370, pt. 19, curia.europa.eu/juris/liste.jsf?language=en&num=C-264/96 (accessed 31 Mar. 2023). The comprehensive collection of the relevant case law in: I. Panzeri, *Tax Treaties versus EU Law: Which Should Prevail?*, in *European Taxation*, April 2021, note 8 at 148.

²⁶ The report cites the following judgements of the Court: Case C-58/01, Océ Van der Grinten, ECLI:EU:C:2003:495, pt. 54, curia.europa.eu/juris/liste.jsf?language=en&num=C-58/01; Case C-385/00, F.W.L. de Groot v. Staatssecretaris van Financiën, ECLI:EU:C:2002:750, pts 84, 94, 99 et seq, curia.europa.eu/juris/liste.jsf?language=en&num=C-385/00; Case C-397/98, Metallgesellschaft, ECLI:EU:C:2001:134, pts 71 et seq, curia.europa.eu/juris/liste.jsf?language=en&num=C-397/98; Case C-200/98, X AB et Y AB, ECLI:EU:C:1999:566, pts 10 and 31, curia.europa.eu/juris/liste.jsf?language=en&num=C-200/98 (accessed 31 Mar. 2023). The recent jurisprudence of the Court on the application of the DTT by the EU Member States comprises following judgements: Case C-403/19, Société Générale SA v. Ministre de l'Action et des Comptes publics, ECLI:EU:C:2021:136, curia.europa.eu/juris/document/document.jsf?text=&docid=238169&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=15027312; Case C-572/20, ACC Silicones Ltd. v. Bundeszentralamt für Steuern, ECLI:EU:C:2022:469, curia.europa.eu/juris/document/document.jsf?text=&docid=260988&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=15027312, C-538/20, W (Déductibilité des pertes définitives d'un établissement stable non-résident), ECLI:EU:C:2022:717, curia.europa.eu/juris/document/document.jsf?text=&docid=266103&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=15027312.

²⁷ Council of the European Union, *Council Directive (EU) 2016/1164 of 12 July 2016, which laid down rules against tax avoidance practices that directly affect the functioning of the internal market*, OJ L 193/1, 2016 (last amended by Council Directive (EU) 2017/952 of 29 May 2017).

title is not accidental. The basis for its publication was not the tax provisions of the TFEU but Article 115 on the approximation of the Member States legislation, which gives the Council the right to adopt directives specifically designed to ensure the establishment and functioning of the internal market.

Continuing on the analysis of the Advisory Opinion at issue, we must note that the EAEU Court has in fact conducted a fairly detailed analysis of indirect taxation in the Eurasian Economic Union based on the main text of the EAEU Treaty, as well as that of Protocol No. 18, which is an Annex to the Treaty. In this regard, the Court points out that indirect taxes, including VAT and excise tax²⁸, and the taxpayer's obligation to pay indirect taxes arises when it is engaged in a goods purchase and at the moment of obtaining ownership on goods²⁹. Given the clear fact that there is no transfer of ownership when goods are moved within the same legal entity, there are therefore no legal or economic grounds for an obligation to pay taxes. Moreover, even the purpose of transferring any goods within a single legal entity is not legally relevant.

In such a manner as stated above, the Court not only applied very carefully thought on the interpretation of the norms of the EAEU Treaty but also examined the legal and economic grounds for taxation, as well as taking into consideration the concise rules of the EAEU Treaty in a fairly broad context. An additional argument that the Court could have presented is that VAT exemption relating to the goods imported for sale purposes within a single legal entity practically does not affect the fiscal interests of the state of import, since the seller in the case of the further sale pays VAT into the budget of the state without any tax deductions. In this regard, it is thus difficult to agree with the argument of the dissenting opinion that the term "transfer" specified in the Treaty should be interpreted exclusively as «a transfer for own needs, otherwise it may conceal an unjustified tax benefit of multinational companies»³⁰.

The only flaw in the Court's argument, in our opinion, occurred when discussing the principle of the country of destination. The Court made it a point that the collection of VAT on the basis of the country of destination is 1) determined for the purpose of maintaining competition and elimination of double taxation and 2) determined by the legal nature of the VAT as a consumption tax³¹. Note that VAT on the sale of goods within customs unions of states can be collected on the basis of the country of origin, as it occurs in most cases in the EU³². In such a case, norms on competition are not violated, double taxation does not occur, and the legal

²⁸ Court of the EAEU, *Advisory Opinion of the Grand Chamber of the Court of 12 Oct. 2022 at the request of the Ministry of Economy and Commerce of the Kyrgyz Republic*, at 3.

²⁹ *Ibid.*, at 7-8.

³⁰ Court of the EAEU, *Dissenting Opinion of Judge T. N. Neshataeva, of 12 Oct. 2022*, Case CE-2-1/1-22-BK, at 1-2.

³¹ Court of the EAEU, *Advisory Opinion of the Grand Chamber of the Court of 12 Oct. 2022*, at 6.

³² Art. 193 of the *Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax*: «VAT shall be payable by any taxable individual carrying out the taxable supply of goods or services [...]»; for a brief explanation of the VAT calculation and payment mechanism, see the website of the European Commission, taxation-customs.ec.europa.eu/eu-vat-rules-topic_en.

foundation for the application of VAT is not distorted. Moreover, such a system is evidence of the development of a more “mature” customs union. As a general rule in the EU, VAT is paid by the seller to the budget of the seller’s state of origin with a deduction from the tax charged on the price of the goods a tax, which has been paid to the suppliers of acquired goods, materials and/or services³³. A buyer from an EU Member State, paying VAT to the seller in the price of the goods, can then deduct this VAT from the further sale of the goods. VAT can also be paid into the state budget by the buyer, but this happens, with only a few exceptions, only when goods are imported from outside the EU³⁴. However, some researchers argue that both “the principle of the country of destination” and “the principle of the country of origin” are imperfect: in the first case, the efficiency of production is ensured but not the efficiency of exchange (trade), and in the second case, the opposite of the aforementioned occurs³⁵.

4. Conclusion

The Advisory Opinion of the EAEU Court at issue, like all the Advisory Opinions of the Court, has the nature of *res interpretata*³⁶. It is a very important stage in the Court’s development of the legal system of the Eurasian Economic Union³⁷. It should be underlined that the Court has formulated notable provisions in recent years on the supremacy of the law of the Union³⁸, on its direct effect³⁹, on

³³ Exceptions, when VAT is paid to the budget by the buyer, in particular cases where the seller is a business that is not established in the EU, see *Council Directive 2006/112/EC of 28 November 2006*, arts. 195-198.

³⁴ *Ibid.*, art. 70.

³⁵ S. Ene, D. Micuda, *Indirect Taxation in the European Union*, in *MPRA Paper*, No. 30414, 2007, 315 ff.

³⁶ E. Diyachenko, K. Entin, *Competence of the Court of the Eurasian Economic Union: myths and reality* cit., at 84, 93, 76–95.

³⁷ Note that by analogy with the European Court of Justice (Digest of case-law, curia.europa.eu/jcms/jcms/Jo2_7046/en/), the EAEU Court’s website contains a compendium-material of exceptional value including a detailed compilation of its legal positions as of 31 December 2022. The legal positions of the EAEU Court are divided into sections: EAEU Law order, EAEU Institutional System, EAEU Court Proceedings, EAEU Substantive Law, Accession of New Members to the Union, Union International Service; the annex contains a list of cases heard by the EAEU Court, courteurasian.org/analytics/publications/.

³⁸ Case CE-2-2/1-17-BK, Eurasian Economic Commission (Redundancy case), *Advisory opinion of the Grand Chamber of the Court of 12 Sept. 2017*, at 13, courteurasian.org/court_cases/eaau/P-2.17/; Case CE-2-2/5-18-BK, Eurasian Economic Commission (Professional Athletes case), *Advisory opinion of the Grand Chamber of the Court of 7 Dec. 2018*, at 12, courteurasian.org/court_cases/eaau/P-3.18/; Petrov and Kalinichenko argue that drafters of the TEAEU intentionally avoided any references to the supranationality and supremacy of “Union Law” and defined the EAEU as an “international organization of regional economic integration”, see R. Petrov, P. Kalinichenko, *On Similarities and Differences of the European Union and Eurasian Economic Union Legal Orders: Is There the ‘Eurasian Economic Union Acquis’?*, in *Legal Issues of Economic Integration*, 43, 2016, 299.

³⁹ Case CE-1-1/1-16-BK, Russian Federation/Republic of Belarus (Kaliningrad Transit Case), at 9; Case CE-2-2/5-18-BK, at 6. See also A. Rosano, *Wrong Way to Direct Effect?: Case Note on the*

the supranational competence of the Union⁴⁰ and on the principles of mutual recognition and freedom of movement of goods⁴¹.

In the Advisory Opinion at issue, the Court formulated important provisions that make it clear that even within the sphere of national competence, states are not free from obligations and must take into account the provisions of the Treaty on non-discrimination and the freedom of movement of goods and services. This shows the peculiarity that characterizes the Court of the EAEU as the court that carries out the function of the constitutional court of the Union. In addition, the Treaty on the EAEU plays the same role for the Court as constitutions do for national constitutional courts and therefore, the Court is obliged to ensure the supremacy of the EAEU law and the protection of its values⁴². It should also be emphasized that the Advisory Opinions of the EAEU Court, including the Opinion at issue, allow for a certain mechanism to protect the rights of private persons that do not have *locus standi* with regard to claims for non-performance or improper performance by the authorities of a Member State under the norms of the Union law⁴³.

In conclusion, we note that the judicial act of the EAEU Court is notable for the following reasons: 1) it is the first judicial act devoted entirely to taxes; 2) the Court made an important conclusion that the tax powers of the Member States of the Union are limited by the law of the Union and placed special emphasis on the principle of non-discrimination; and finally, 3) the Court linked the principles of tax non-discrimination with the principles governing the free competition of goods and services, regardless of their country of production.

Finally, it can be concluded that the Court has formulated important provisions that, in fact, grant the Union's bodies the right to exercise measures regarding tax competence, although the EAEU Treaty does not explicitly grant them such powers. A practical consequence of the adoption of this Advisory Opinion may be the closer monitoring of the national tax legislation and national tax practices of the Member

Advisory Opinion of the Court of the Eurasian Economic Union Delivered on April 4, 2017 at the Request of the Republic of Belarus, in *Legal Issues of Econ. Integration*, No. 2, 2018, 211-220.

⁴⁰ Case CE-1-2/2-15-KC, Tarasik K.P., at 15; Case CE-1-2/1-16-KC, Sevlad, at 26; Case CE-1-2/2-16, General Freight CJSC, at 15; Case CE-3/2-16-KC, TP Rusta-Broker, at 4, courteurasian.org/court_cases/eaue/C-4.16/; Case CE-2-1/1-17-BK at the request of the Ministry of Justice of Belarus (Vertical Agreements Case), *Advisory Opinion of the Court of 4 Apr. 2017*, at 4, courteurasian.org/court_cases/eaue/P-1.17/; Case CE-2-2/2-17-BK, The Eurasian Economic Commission (Free Movement of Goods), *Advisory Opinion of the Grand Chamber of the Court of 30 Oct. 2017*, at 4, 6, docs.eaeunion.org/docs/ru-ru/01220306/ac_21122018_att.pdf; Case CE-2-1/2-18-BK at the request of the Ministry of Justice of Belarus, *Advisory Opinion of the Court of 10 Jul. 2018*, at 3, 5-7; Case CE-2-2/6-18-BK, Eurasian Economic Commission (Coordination Case), *Advisory Opinion of the Grand Chamber of the Court of 17 Dec. 2018*, at 8; Case CE-2-2/7-18-BK, Eurasian Economic Commission, *Advisory Opinion of the Court of 20 Dec. 2018*.

⁴¹ Case CE-1-1/1-16-BK, Russian Federation/Republic of Belarus (Kaliningrad Transit Case), at 3-4, 7; Case CE-2-2/5-18-BK, Free Movement of Goods, at 8-9.

⁴² K.L. Chaika, *The Court of Integrative Organization as International Judicial Body*, in *Proceedings of the Institute of State and Law of the RAS*, No. 6, 2019, at 147-166.

⁴³ E. Diyachenko, K. Entin, *Competence of the Court of the Eurasian Economic Union: myths and reality*, cit., at 76-95.

States to identify possible violations of the non-discrimination provisions contained in the Treaty on the Eurasian Economic Union. In addition, Member States national courts applying the EAEU Treaty to the tax relations will take into consideration the interpretation of the Court in the Advisory Opinion at issue.