

Template pursuant to Section 3 (a) of the  
ICN Framework on Competition Agency Procedures

**Eurasian Economic Commission**

The following template is submitted by **Eurasian Economic Commission (EEC)** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).<sup>1</sup>

**I. Introduction**

**Please add brief presentation/link to agency website.**

**Agency pre-history**

Initially the [Eurasian Economic Commission](#) (EEC, Commission) was established by the Treaty on the Eurasian Economic Commission of November 18, 2011<sup>2</sup>. The Commission became operational since February 2, 2012 and succeeded the Commission of the Customs Union<sup>3</sup>. Thereby, the EEC was established as joint permanently standing regulatory body of the Customs Union and Joint Economic Space of its member states.

After signing of the [Treaty on the Eurasian Economic Union](#)<sup>4</sup> (Treaty on EAEU, EAEU Treaty) by the Presidents of the Republic of Belarus, Republic of Kazakhstan and the Russian Federation on May 29, 2014 the Treaty on the Eurasian Economic Commission expired. Instead, the legal status of the EEC became regulated by the provisions of Annex 1 to the Treaty on the Eurasian Economic Union i.e. Provision on Eurasian Economic Commission<sup>5</sup> and Decision of the Supreme Council of the Eurasian Economic Union of December 23, 2014 No. 98 “On regulations of the work of the Eurasian Economic Commission.”<sup>6</sup> Later in 2015 the Republic of Armenia and the Republic of Kyrgyzstan

<sup>1</sup> All English translations of legal provisions and regulations referred to below are unofficial. Some of the reference documents are available in Russian only. Some unofficial translations of the EEC procedural regulations are available from EEC upon request at the contact details indicated in this Template.

<sup>2</sup> The official text of the EEC Treaty is available in Russian at

<http://www.eurasiancommission.org/ru/act/trade/Documents/%D0%94%D0%BE%D0%B3%D0%BE%D0%B2%D0%BE%D1%80%20%D0%BE%20%D0%95%D0%AD%D0%9A.pdf> .

<sup>3</sup> An archive of documents of this regulatory body is available in Russian at

<http://www.tsouz.ru/Pages/Default.aspx> .

<sup>4</sup> The official text of the Treaty is available in Russian and English at

<https://docs.eaeunion.org/Pages/DisplayDocument.aspx?s=bef9c798-3978-42f3-9ef2-d0fb3d53b75f&w=632c7868-4ee2-4b21-bc64-1995328e6ef3&l=540294ae-c3c9-4511-9bf8-aaf5d6e0d169&EntityID=3610> .

<sup>5</sup> Available at <https://docs.eaeunion.org/Pages/DisplayDocument.aspx?s=bef9c798-3978-42f3-9ef2-d0fb3d53b75f&w=632c7868-4ee2-4b21-bc64-1995328e6ef3&l=540294ae-c3c9-4511-9bf8-aaf5d6e0d169&EntityID=3610> .

<sup>6</sup> Available in Russian at

[http://www.eurasiancommission.org/ru/act/trade/Documents/%D0%A0%D0%B5%D0%B3%D0%B0%D0%BB%D0%BC%D0%B5%D0%BD%D1%82%20%D0%95%D0%AD%D0%9A%20\(%D1%80%D0%B5%D1%88%D0%B5%D0%BD%D0%B8%D0%B5%20%D0%92%D0%95%D0%AD%D0%A1%2098%20%D0%B2%20%D1%80%D0%B5%D0%B4%20%D0%BD%D0%B0%2012.2018\).pdf](http://www.eurasiancommission.org/ru/act/trade/Documents/%D0%A0%D0%B5%D0%B3%D0%B0%D0%BB%D0%BC%D0%B5%D0%BD%D1%82%20%D0%95%D0%AD%D0%9A%20(%D1%80%D0%B5%D1%88%D0%B5%D0%BD%D0%B8%D0%B5%20%D0%92%D0%95%D0%AD%D0%A1%2098%20%D0%B2%20%D1%80%D0%B5%D0%B4%20%D0%BD%D0%B0%2012.2018).pdf)

*joined the Eurasian Economic Union (EAEU) and the Treaty on the Eurasian Economic Union and became participants of all of its Regulatory bodies.*

### **Sources of Law**

*The sources of law governing EEC activities are provided by Articles 2 and 6 of the Treaty on EAEU and listed below in order that reflects the hierarchy of norms:*

- *The EAEU Treaty;*
- *International agreements within the EAEU; these are “international agreements concluded between the Member States on the issues related to the functioning and development of the EAEU”*
- *Agreements of the EAEU with a third party; these are international agreements concluded with third countries or with international organisations;*
- *Resolutions can be issued by the Supreme Council and the Intergovernmental Council, and shall be performed by Member States in accordance with their national legislation.*
- *Decisions of the Supreme Council, the Intergovernmental Council, as well as those of the Commission, are acts of the Bodies of the EAEU that have a legal nature. Importantly, there are two types of decisions: regulatory decisions are of general application (normative acts), which can be adopted, in the competition field, by the Council of the Commission and individual decisions adopted by the Board of the Commission, such as those that concern the application of competition rules to particular cases.*

*In case of conflict, decisions of the Supreme Council take precedence over the decisions of the Intergovernmental Council and the Commission; while decisions of the Intergovernmental Council take precedence over the decisions of the Commission. Regulatory decisions adopted by the Council of the Commission prevail over individual decisions of the Board.*

- *Finally, instructions are acts of the EAEU institutions that have organizational and administrative nature.*

*According to the above mentioned documents competition law enforcement and policy development is a part of EEC responsibilities along with customs and tariff regulation, consumer safety, establishment of trade regimes with third countries, tax, macro-economic, energy policy and others.*

*Competition issues are regulated by Section XVIII of the Treaty on the Eurasian Economic Union (further EAEU Treaty), “Protocol on general principles and rules of competition” that is Annex 19 to the EAEU Treaty, as well as by the following acts of the EAEU bodies:<sup>7</sup>*

- *Decision of the Supreme Eurasian economic council of December 19, 2012 No. 29 “On approval of criteria of attribution of a market as a cross-border one;”*

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<sup>7</sup> <https://eec.eaeunion.org/commission/department/cpol/konkurentpol/>

- *Decision of the Council of the Commission of January 2013 No. 7 “On methodology of assessment of the state of competition;”*
- *Decision of the Council of the Commission of November 23 2012 No. 97 “On the Procedure of consideration of applications (materials) on violation of common rules of competition in cross-border markets” (further Procedure No. 97);*
- *Decision of the Council of the Commission of November 23, 2012 No. 98 “On the Procedure of investigation of violations of common rules of competition in cross-border markets (further – Procedure No. 98);*
- *Decision of the Council of the Commission of November 23, 2012 No. 99 “On the Procedure of consideration of cases of violations of common rules of competition in cross-border markets” (further – Procedure 99);*
- *Decision of the Council of the Commission of December 17, 2012 No. 117 “On methodology of determination of monopoly high (low) prices;”*
- *Decision of the Council of the Commission of December 17, 2012 No. 118 (On methodology of calculation and imposition of fines for violation of common rules of competition in cross-border markets (further – Methodology on fines);*
- *Decision of the Council of the Commission of September 18, 2014 No.71 “On the Procedure of work with documents of limited dissemination (confidential and for service use only) in the Eurasian Economic Commission;”*
- *Decision of the Council of the Eurasian Economic Commission of March 5, 2021 No. 28 “On the approval of Procedure of issuing caution of unacceptability of commitment of actions that may lead to violations of common rules of competition in cross border markets of the Eurasian Economic Union member states”.*

*These Decisions are complemented to by methodological guidelines and information materials such as:*<sup>8</sup>

- *Recommendation of the Board of the Eurasian economic commission of May 25, 2021 No. 9 “On the Review “Competition (anti-monopoly) regulation in digital markets.”*
- *Review “Antimonopoly regulation of relationships with use of the exclusive rights for the objects of intellectual property.”*
- *Other Acts of the EAEU law applicable in specific situations (for example, Regulation of work of the Commission on making decisions of the Board of the Commission on the results of the initiated case, Rules of internal processing of documents related to presentation of documents and other).*

*Currently the EAEU works on improvement of its law, making changes in effective Acts and preparing new Acts.*

### **EEC powers and conditions for regulatory intervention**

*Given the supranational nature of the EEC as a competition regulator its status and authority need more explanation.*

<sup>8</sup> <https://eec.eaeunion.org/commission/department/cpol/konkurentpol/>

*According to the EAEU Treaty, the statutory role of the EEC includes enforcement Common Rules of Competition (Article 76 of the EAEU Treaty). The authority of the Commission to insure observation of Common Rules of Competition and limitations to it are determined by the Decision of the Supreme Eurasian Economic Council of December 19, 2012 No. 29 “On approval of Criteria of referring a market as a cross-border one.”*

*The EEC regulatory powers are limited to prosecution of violations by the undertakings registered in the member states of the Eurasian Economic Union<sup>9</sup> in cross-border markets within the Eurasian Economic Union. According to the EAEU Treaty Art. 74(2) the cross-border markets are defined as these which geographical boundaries include the territory of two or more of its member states. The EAEU Treaty Article 74(2) vested the Supreme Council with powers to establish more detailed criteria for classification of a market as a cross-border one for the purposes to enable the EEC regulatory intervention. The definition of the cross-border markets provided for by the EAEU Treaty Article 74(2) was further confirmed by the Decision of the Supreme Council of the Union of December 12, 2012 “On approval of “Criteria of Market Classification as Cross-Border Market,” as amended<sup>10</sup>.*

*Additionally to that, the above mentioned Decision of the Supreme Council provides for a broader set of criteria of the cross-border nature of a market and, therefore, of possibility of the EEC intervention. The criteria of the EEC intervention depend on particular types of abuses of EAEU Common Rules of Competition provided for in Article 76 of the EAEU Treaty.*

*For the EEC to enforce against unfair competition practices provided for Para 2 of Article 76 of the EAEU Treaty a violator entity and a competing actually or potentially injured entity should be registered in the territory of different EAEU member states (according to Article 3 of the Criteria). Otherwise, the case is to be considered by the NCA of the member-state where both (or more) of the entities are registered.*

*For the EEC to enforce against horizontal (including cartels), vertical and other anticompetitive agreements provided for by Para 3 – 5 of Article 76 of the EAEU Treaty at least two actual or potential violator entities or participants of an illegal anticompetitive agreement/conspiracy should be registered in different EAEU member-states (according to Article 3 of the Criteria). Otherwise, the case is to be considered by the NCA of the member-state where both (or more) of the entities are registered.*

*For the EEC to enforce against abuses of dominant position provided for by Para 1 of Article 76 (monopoly pricing, limitation of supply in order to raise prices, imposition of unfair conditions on customer or supplier, refusal to deal, price discrimination, creating barriers to entry to / exit from the market) the following dominance thresholds and effect-based criteria should be observed:*

*Single-entity dominance:*

<sup>9</sup> See paragraph 20 of Annex 19 to the Treaty on the Eurasian Economic Union stipulating that an economic entity subject to the EAEU law and EEC regulation is “a commercial organization or a non-profit organization operating with generation of profit, an individual entrepreneur, as well as a natural person whose professional income-generating activities are subject to state registration and/or licensing under the legislation of the Member States”

<sup>10</sup> Available in Russian at: <https://eec.eaeunion.org/comission/department/cpol/konkurentpol/> .

- *The alleged violator's share in total sales or purchases of goods in cross border market is not less than 35% (in each of the member-states);*
- *The abuse leads or can lead to hindering, restraint or elimination of competition in cross-border market or affect interests of other persons located in the territory of two or more member states.*

Or

*Collective dominance:*

- *The combined market share of three or less violators is not less than 50% or*
- *The combined market share of not more than four violators is not less than 70% (these thresholds do not apply if a share of at least one of the entities in question is less than 15% in the territory of each member state;*
- *For a long period (not less than one year or less in case the market exists for less than one year) the market shares are stable or their change is insignificant while the entry in these markets is complicated;*
- *The commodity in question cannot be substituted by another one, the growth in commodity price does not lead to a reduction of demand for it the information on price and conditions of sale of commodity is known to an unidentified cycle of persons;*
- *The abuse leads or can lead to hindering, restraint or elimination of competition in cross-border market or affects interests of other persons located in the territory of two or more member states.*

*The dominance thresholds used for the purposes establishing of the EEC powers to intervene are calculated applicably to the national market of each of the member-states affected by the abuse and not to the overall cross-border market.*

*The above mentioned criteria of cross-border character of the market specifics determine procedural aspects of consideration complaints, possibility of intervention of the Commission and its relationships with the national competition authorities.*

*If the Commission determines that consideration of complaint or materials is subject to authority of the national competition authorities it will pass the case to a respective national competition authority(s) at any stage of investigation or case consideration. And conversely, at any stage of investigation or case consideration the national competition authorities will pass the case to the Commission if it determines that the case is subject to its competence. In both situations the respective authorities would use the criteria mentioned above.*

*The EEC addresses unilateral and collective abuses, including cartels and does not have merger control powers.*

**Delineation of authority between EEC and national competition authorities (NCA) of the EAEU member states**

*The EAEU law is delineated from the competition laws of the EAEU member states. The EEC control observation of the competition rules in cross-border markets as defined above (except financial markets controlled by the national competition authorities). Meanwhile, the national competition authorities prosecute violations provided for by Article 76 of the Treaty on EAEU in the national territory of the EAEU member states.*

*The OECD Peer Review of Competition Law and Policy in the EAEU<sup>11</sup> describes the delineation of authority between the EEC and NCAs basing on the data received from the agency as follows:*

*“The Commission is only competent if a situation touches on cross-border markets, i.e. when the relevant geographic market includes the territories of two or more Member States. In addition, the application of individual substantive competition provisions can be subject to additional jurisdictional requirements, e.g. the Commission only has powers as regards anticompetitive agreements if, in addition to there being cross-border effects, there are at least two economic entities registered in two different Member States involved in the alleged infringement. Some of these jurisdictional requirements are quite onerous, particularly for cases of abuse of dominance, where a number of conditions concerning market structure and the existence of market power in several Member States must be met for the Commission to be competent.*

*As a result, enforcement of competition rules falls within the competence of the individual NCAs – even when a case has cross-border effects – whenever infringements do not concern cross-border markets, or, more generally, where the relevant jurisdictional requirements are not met. Furthermore, the Commission also lacks jurisdiction whenever a company under investigation is not registered in an EAEU country. In such cases, competence reverts to those NCAs that can exercise extra-territorial jurisdiction in line with common international practice. This state of affairs means that the Commission cannot prosecute possible breaches of EAEU competition law where the potential infringer is registered in a third country, even where the potential infringement could have similar effects in several or all the EAEU Member States.*

*Competence over competition cases can move between the Commission and NCAs throughout the process. If the Commission establishes, at any stage prior to the procedural step devoted to the adoption of a final decision, that prosecution of a competition infringement falls within the competence of an NCA, the Commission must refer the case to it. In turn, NCAs shall refer competition cases to the Commission throughout the proceedings if it is found that the case falls within the latter’s competence. NCAs may also submit materials to the Commission, and thus initiate Commission proceedings.”*

*In procedural terms the EAEU national competition authorities directly or indirectly participate in control of observation of the competition rules by the Commission. The Commission notifies the national competition authorities on receiving complaints or materials and pass them copies of these documents, as well as of the Commission’s determinations regarding these documents. The EAEU national competition authorities would pass documents and materials they have on the case to the Commission for it to make a more informed investigation and consideration of the case.*

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<sup>11</sup> See: OECD (2021), OECD Peer Reviews of Competition Law and Policy: Eurasian Economic Union <https://www.oecd.org/daf/competition/oecd-peer-reviews-of-competition-law-and-policy-eurasian-economic-union-2021.htm> .

*The national competition authorities assigns candidatures of their staff members responsible for cooperation with the Commission in the course of investigations and case consideration.*

*In the course of investigations the Commission can make requests to the national competition authorities for provision of information and conducting some of the investigatory activities.<sup>12</sup> The staff members of the Commission's Department of antimonopoly regulation can present at these activities.*

*In the course of case consideration the national competition authorities can participate as parties of the case. Therefore, they have a right to familiarize themselves with the materials of the case, make records from them, present evidence and familiarize themselves with evidence, ask questions to persons participating in case consideration, file petitions, provide explanations in written or oral form, present arguments with regards to all questions emerging in the course of case consideration; familiarize themselves with petitions filed by other parties, object against petitions and arguments of other persons participating in the case consideration, object against their petitions.*

*Besides, the EAEU national competition authorities may participate in the process of issuing of so called Warning on actions aimed at elimination of violations of common competition rules and restoration of competition in cross-border markets (remedies).*

*Warning had to be drawn up in all cases, except the following situations:*

- 1. detection of signs of anti-competitive agreements (horizontal, vertical or other) prohibited under Article 76 TEAEU;*
- 2. detection of signs of abuse of the dominant position consisting in fixing or maintaining a monopolistically high or low price;*
- 3. detection of signs of a violation of the general (common) rules of competition in Cross-Border Markets in respect of which a Warning was issued within the preceding 24 months or a formal decision has been adopted following Case Consideration (Procedure 99).*

*Within 10 working days since the date of receiving the draft Warning the authorized bodies submit draft notification on conducting consultations to the Commission, if necessary.*

*While considering issuing Warning, if necessary or by the initiative of the authorized bodies the Department of Antimonopoly Regulation has a right to conduct consultations with authorized bodies, the applicant and the person whose actions have been challenged in the application and the submitted materials. In the course of the consultation the use of confidential information is not allowed, unless the person providing this information submits a written agreement for its use.*

*This procedure is used in the course of consideration of complaints (materials). The procedures of issuing Warnings is provided for in the above mentioned Procedure No. 97. The Warning is issued in case of presence of signs of violation.*

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<sup>12</sup> The EEC does not have an authority of conducting dawn raids.

*(Warnings and Cautions as the EEC pre-investigatory means of prevention of violations and earlier case settlement are considered below in Section c(iv)).*

**EEC structure**<sup>13</sup>:

*The EEC is the permanent regulatory body of the Eurasian Economic Union. The main purpose of the Eurasian Economic Commission is ensuring the functioning and development of the EAEU, and developing proposals for the further development of integration. Decisions of the Commission are obligatory for execution in the territory of the EAEU Member States. As a regional economic integration organization responsible for implementation of the Treaty on the Eurasian Economic Union, the EEC has an authority of practical application of the provisions of the Treaty related to a broad area of issues pertaining the integration process, including but not limited to the following:*

*assignment and distribution of import customs duties;*

*establishment of trade regimes for third parties;*

*statistics of foreign and mutual trade;*

*macroeconomic policy;*

*competition policy;*

*industrial and agricultural subsidies;*

*energy policy;*

*natural monopolies;*

*state and/or municipal procurement;*

*mutual trade in services and investments;*

*transport and transportation;*

*monetary policy;*

*security and protection of intellectual property and the means of branding goods, works and services;*

*labour migration;*

*financial markets (banking, insurance, the currency market, the securities market);*

*customs tariff and non-tariff regulations;*

*customs administration and others.*

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<sup>13</sup> See EEC web-site for more detail of the agency structure at: <https://eec.eaeunion.org/en/comission/collegium/>.

*The EEC is structured accordingly. It is governed by the Board consisting of ten Members of the Board - Ministers (two Ministers from each EAEU member state). One of the Ministers acts as a Chairman of the Board rotating every four years.<sup>14</sup> Each Minister is responsible for integration in particular area and supervises the work of the relevant departments.*

*The Member of the Board – Minister in charge of Competition and Antitrust Regulation heads the EEC competition branch and supervises the work of the Department of [Antitrust regulation](#) and the Department for [Competition and Public Procurement Policy](#).*

*The English version of the EEC web-site is available at <https://eec.eaeunion.org/en/> .*

*For more detailed description of EAEU competition law and policy see: OECD (2021), OECD Peer Reviews of Competition Law and Policy: Eurasian Economic Union <https://www.oecd.org/daf/competition/oecd-peer-reviews-of-competition-law-and-policy-eurasian-economic-union-2021.htm> .*

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<sup>14</sup> According to Annex 1 to the EAEU Treaty the EEC executive body is the Board of the Commission. It consists of the Board members (ministers) one of which serves as its Chairman. The Board includes the representatives of the EAEU member-states basing on the principle of their equal representation. The Board of the Commission governs the work of its Departments. The Board members are appointed by the EAEU Supreme Council for the four-year term. The Chairmen of the Board is appointed for the for-year term on a rotation basis without a right for extension of his/her term. The Board members work on a permanent basis and are independent from power bodies and officials of the respective EAEU member-states and not reportable to them. See Annex No 1 to the Treaty on the Eurasian Economic Union. Regulation on the Eurasian Economic Commission. (Available in English at [https://docs.eaeunion.org/docs/ru-ru/0003610/itia\\_05062014](https://docs.eaeunion.org/docs/ru-ru/0003610/itia_05062014)).

## II. Laws, Regulations, and Policies relevant for the implementation of the CAP

***For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.***

***Please update your Template reflecting significant changes as they relate to the CAP, as needed.***

### b) Non-Discrimination

***Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.***

*According to Article 75 (1) of the Treaty on the Eurasian Economic Union “the Member States shall apply their rules of competition (antitrust) legislation to economic entities (market participants) of the Member States in an equitable manner and to the equal extent irrespective of the legal form and place of registration of such economic entities (market participants) on equal terms.” The EEC powers extend only to entities registered in the member states of the EAEU. There are no differences in regulatory and legal treatment depending on the origins of investment and/or control over them, i.e. whether these entities are controlled by national or foreign investors, including these from non-member states.*

*According to point 20 of Section 2 of the Annex 19 to the Treaty on EAEU the “economic entity” (subject to EEC regulation) means commercial enterprise, non-commercial organization conducting activities yielding revenues, individual entrepreneur whose professional revenue generating undertaking should be registered and/or licensed in accordance with the national law of one or more EAEU member states.*

*The Treaty on EAEU implicitly provides for observation of competition neutrality principle because it does not differentiate between private and state owned enterprises subject to competition regulation. No exclusions from competition rules for state owned enterprises are provided for.*

*Additionally to that the international agreements and treaties concluded by EEC normally include provisions ensuring that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances. These agreements provide that the competition law enforcement activities of each Party shall not discriminate on the basis of nationality.*

*The member states have a right to establish additional prohibitions of restraints to competition in their national law (compared to these in the EAEU law).*

*EEC does not use extraterritoriality principle and have no powers to prosecute companies in the countries foreign to the Union’s member states.*

### c) Transparency and Predictability

***i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.***

*Pursuant to Item 11 of the Protocol on common principles and rules of competition (Annex 19 to the Treaty on the Eurasian Economic Union) the Council of the Eurasian Economic Commission made three Decisions regulating procedures used at three major stages of case consideration, such as: consideration of complaints, conducting investigations and consideration of cases of violation of Common rules of competition (based on the results of investigations) on November 23, 2012 (see above). Additionally to that, the Commission issues Warnings, intended to cease a violation before proceeding to investigation stage and Caution of unacceptability of actions that may lead to violations of common rules of competition in cross border markets (according to the Decision of the Council of the EEC of March 5, 2021 No. 28<sup>15</sup>). See above for warnings procedure.*

*These Decisions are as follows:<sup>16</sup>*

- Decision of the Council of the Commission of November 23 2012 No. 97 “On the Procedure of consideration of applications (materials) on violation of common rules of competition in cross-border markets” (further Procedure No. 97);*
- Decision of the Council of the Commission of November 23, 2012 No. 98 “On the Procedure of investigation of violations of common rules of competition in cross-border markets (further – Procedure No. 98);*
- Decision of the Council of the Commission of November 23, 2012 No. 99 “On the Procedure of consideration of cases of violations of common rules of competition in cross-border markets” (further – Procedure 99).*

*Each of the Decisions is supplemented by the detailed description of the respective procedures is available at the EEC web-site (see also section iv for detailed description of case investigation and consideration procedures).*

*Additionally to that the methodology of calculation of fines for violations of the EAEU competition rules is publically available at the EEC site<sup>17</sup>. Further amendments to the Methodology are also available at the [EEC legal portal](https://eec.eaeunion.org/legal/portal/) and at: <https://eec.eaeunion.org/comission/department/cpol/konkurentpol/>.*

*International agreements concluded by the EAEU also serve as a source of law for EEC activities, including that related to public availability of rules applying to its investigations and*

<sup>15</sup> Procedure of issuing warnings caution on unacceptability of actions that may lead to violation of General Rules of Competition in Cross-Border Markets of the member states of the Eurasian Economic Union. Available in Russian at [https://docs.eaeunion.org/docs/ru-ru/01428956/err\\_19042021](https://docs.eaeunion.org/docs/ru-ru/01428956/err_19042021)

<sup>16</sup> <https://eec.eaeunion.org/comission/department/cpol/konkurentpol/>

<sup>17</sup> Available at [https://docs.eaeunion.org/docs/ru-ru/0025628/cncd\\_18122012\\_118](https://docs.eaeunion.org/docs/ru-ru/0025628/cncd_18122012_118).

enforcement proceedings. These agreements stipulate that Each Party shall make public, including on the official websites of relevant competent authorities, its competition laws and regulations, including procedural rules for competition law enforcement activities and information on final decisions of relevant competent authorities.

**ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.**

The procedural regulations mentioned above are mandatory for use by the EEC structural units and officials, primarily by the Department of Antitrust regulation.

**iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.**

As described in Section (i), all normative legal and procedural acts relating to the application of the EAEU competition Law are publicly accessible at the EEC web-site. Additionally to that, the procedural aspects of investigation and settlement process are described in detail in internationally available sources See OECD (2021), OECD Peer Reviews of Competition Law and Policy: Eurasian Economic Union <https://www.oecd.org/daf/competition/oecd-peer-reviews-of-competition-law-and-policy-eurasian-economic-union-2021.htm>, pp. 15-17.

**iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.**

The procedure of cases includes of three stages: consideration of applications, investigation of violations and case consideration. Each stage is regulated by a separate set of rules (also mentioned above: Procedure No. 97, Procedure No. 98, Procedure 99).

Procedure 97 provides requirements to the applications and materials to be provided by an applicant. The applications should be provided by a legal or physical person, materials should be provided by power bodies of the EAEU member states, in the form of a written application. The application (materials) should include the applicant's (power body) information, information on the economic entity, which actions (omission) demonstrate possible signs of violation of the Common rules of competition in cross-border markets at the applicant disposal, the provisions of Article 76 of the Treaty that, are violated. In case the petition is submitted by the power body of the EAEU member-state it should include the details of its staff responsible for interaction with the Commission in the course of the investigation. It also includes the indication of the information to be treated as confidential.

The Commission has to consider the materials in 30 working days. The application is directed to the Board member responsible for competition who has to assign the Department responsible (Department of antimonopoly regulation) in 3 working days. The Commission acknowledges and confirms receiving the petition in 5 working days. The Department send the copy of the application to the authorized bodies of the member states. The latter provide the Commission with the materials related to the case at their disposal and contact details of

*the staff members responsible for the cooperation with the Commission in consideration of the case within 15 days.*

*In the situation when the Department of Antimonopoly Regulation discovers the signs of violation of Article 76 of the Treaty on EAEU in the course of assessment of the state of competition it will in 7 days after competition of the assessment prepare a draft Warning to the alleged violator and send its copy to authorized bodies in 1 day for information purposes. The Warning procedure is described in Section c (iv) in more detail.*

*Within 30 days since the registration of the application (materials) the Department of antimonopoly regulation considers the application and issues one of the following types of the determination:*

- on conducting an investigation of the violation of the Common rules of competition in cross-border markets;*
- on passing the case for consideration to a respective national competition authority of a member-state;*
- on the absence of grounds for conducting investigation of violation of Common Rules of Competition in cross border markets;*
- on resuming consideration of application (materials);*
- on termination of consideration of application (materials) and/or measures provided for in the Warning.*

*The determination is signed by the Board Member on Competition and antimonopoly regulation.*

*The determination on conducting the investigation includes:*

- date of signing the determination;*
- data on the staff conducting the investigation;*
- data on the staff of the national authorized bodies responsible for the case investigation.*

*Alternatively, the Commission makes a determination on passing the petition to a national authorized body of the member-state in case the violations indicated in the application relate not to the competence of the Commission, but to the competence of the authorized body of the member-state.*

*Procedure 98 starts from indication of the goals of investigations that are (1) identification of signs of violation and (2) identification of entities whose conduct has signs of violations. Further, the Procedure indicates the grounds for commencement of the investigation that are determination on conducting the investigation made at the previous stage as a result if*

conducting the Procedure 97. The procedure of the investigation itself includes the following aspects:

- investigation should be conducted by the Commission and/or by the national authorized bodies;
- the duration of the investigation should not exceed 90 working days since the date of signing the determination on conducting investigation; in case of insufficiency of data for the investigation it can be extended for up to 60 days;
- the Commission has powers to request information from physical and legal persons, as well as from power bodies of the EAEU member-states; the copy of the request is provided to the authorized body of the member-state where the requested person is registered; the requested persons are legally bonded to provide the submit the information and subject to fine in case of non-provision of the information;
- the Commission is responsible for protection of confidential information it receives.

Basing on the results of the investigation the Board Member responsible for competition and antimonopoly regulation makes one of the following decisions by signing the determination:

- on consideration of case on violation of the common rules of competition;
- on refusal of the consideration of such case;
- on passing the case for consideration by the national authorized bodies.

The determination on consideration of the case includes:

- data on the applicant;
- data on the alleged infringer;
- date of case consideration;
- grounds for case consideration;
- provisions of the EAEU Treaty violated;
- composition of the commission considering the case.

The determination on the consideration of the case is made in the situation when signs of the violation of the general (common) rules of competition in cross-border markets are found. In case of absence of such signs the Commission makes a decision on refusal of case consideration. If the investigation determines that the violation in questions does not relate to the competence of the Commission it would make a decision on passing the case to the respective national authority. A copy of the determination is sent to the applicant and authorized national bodies.

Procedure 99 provides for procedural aspects of case consideration. The case consideration in a next step following case investigation and provided for by the relevant determination made as a result of the case consideration phase (see above).

The case is heard by a Case Consideration Commission, which is composed of a chairman, a deputy chairman and members. The Chairman is the Board Member in charge of competition policy, who may delegate this task to the director of the Department for Antitrust Regulation. The members of the Case Consideration Commission are selected from among the officers and employees of that Department. One of the members is appointed to be deputy chairman. The Case Consideration Commission is entitled to consider a case if at least two-

*thirds of the total number of its members are present at the session. Case Consideration also involves the staff of the NCAs responsible for liaising with the Commission in its investigation.*

*The following persons participate in the case consideration: applicant, plaintee, interested parties, power bodies of the EAEU member-states. The parties of the case can participate in its consideration directly or via a designated representative. They have access to the case material and may make records from it. The parties of the case are notified on the sessions of the case consideration process in advance.*

*The term of case consideration cannot exceed 60 working days (extendable for another 60 days in the situation when an additional information is required for making the decision on the case). The Case Consideration Commission has a right to invite experts, translators and other persons knowledgeable in the circumstances of the case.*

*On its session the Case Consideration Commission perform the following types of actions:*

- hear persons participating in the case;*
- consider petitions and makes decisions on them;*
- examine evidence;*
- hear opinions and explanations of persons participating in the case consideration regarding evidence provided by other participants;*
- consider and discuss opinions of experts invited for expressing opinions on the matters related to the case;*
- listen to persons having information on the case considered;*
- per request of the case participants or by its own initiative discuss a possibilities of interruption of the commissions sessions, delay or cancelation of it.*

*The commission has a right to request information, explanations and documents from the case participants. Failure to submit this information or intentional submission of false information is subject to fine.*

*The Case Consideration Commission can also apply to an EAEU member state for assistance in conducting the necessary procedural actions (normally, investigatory activities) in its territory in case the information available is not sufficient for concluding the case. In this situation the violator should be registered in the territory of the requested member state.<sup>18</sup>*

*The procedural actions conducted in the territory of the member state are exercised in presence and/or with participation of the Department for antitrust regulation and representative of the authorized body of the member state where the violation or adverse effect on competition took place.*

*The member of the Board of the Commission in charge of competition and anti-monopoly regulation signs the request. The request is supplemented with copies of the document referred to in the request and other documents related to fulfillment of the request. The requested authority of a member state conducts procedures listed in the request in accordance with its national legislation with regards only to persons located in the territory of the requested member-state. In case of a need to make a request to another executive body or economic entity of the member state the terms of the request can be extended for the*

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<sup>18</sup> The procedure is described in the Annex 19 of the EAEU Treaty

*period of meeting the request. The authorized body of the requested member state conducts the activities required in the request and answer the questions asked. It has also a right to undertake actions not required by the request but related to its execution.*

*The requested authority can turn down the request in full or partially only in case its execution may injure sovereignty, security or public order of the requested member state or contradicts to its national legislation. The member state will inform the Commission about such situation. In this case the Board of the Commission has a right to raise the question about legitimacy of the refuse to perform the request by the member state to the Council of the Commission.*

*The Commission will require no verification of the documents provided by the member state authority in case they are verified with herb seal of the authority.*

*In case the Commission makes a request to authorities to two or more member states, the staff members of the Commission will coordinate cooperation between these bodies and the Commission.*

*Case Consideration Commission prepares draft Board Decision on the case in 45 days since the conclusion of case consideration.*

*The decision on the case is made by the Board of the Eurasian Economic Commission.*

*The decision on the case includes introductory, decretory, motivational parts and resolution. The latter includes conclusions on presence or absence of violation of the Common Rules of Competition and amount of fine calculated in accordance with the Methodology of calculation and imposition of fines. It also includes a cease and desist order and terms of its fulfillment. The decisions of the Board of the EEC can be challenged in due order.*

*Additionally to enforcement procedures described above the EEC applies preemptive and early case resolution means like Cautions and Warnings.*

*The **Caution** is issued to a corporate official or physical person who has made a public statement on planned conduct that may violate the general (common) rules of competition in the absence of the legal grounds for commencement of the investigation of violation of general rules of competition. The Caution cites the part of the public statement related to the conduct and indicates the Articles of the EAEU Treaty that the conduct may violate. In the course of preparation of the Caution the EEC staff would assess the statement in terms of its possible breach with Article 76 of the Treaty on the Eurasian Economic Union, evaluate effects of the cited conduct on cross-border markets and circumstances of making the*

*statement. Basing on that the EEC staff would determine whether issuing the Caution is appropriate. The caution includes:*

- *Name, position and address of the corporate official who has made the public statement;*
- *Source of information about the public statement;*
- *Contents of the statement on conduct that may lead to violation of competition rules in cross-border markets;*
- *Provisions of the Treaty that can be violated as a result of actions indicated in the public statement.*

*The Caution is signed by the Member of the Board. The date of signing is considered as the date of issuing the Caution. The Caution is sent to the address of the person who made the statement and placed on the EEC web-site within two days from the date of its signing. A copy of the Caution is provided to the national competition authority of an EAEU member-state where the person who made the statement is registered or its power body responsible with interaction with the EEC. In case the Caution is ignored and the declared action committed, the national competition authority or injured person can submit a complaint to the EEC, so that the EEC can proceed to formal investigation.*

***Warning*** *is an earlier case settlement means essentially providing for the cease and desist action by the alleged violator. In the situation of effective fulfillment of the Warning terms by the violator the EEC will refrain from further investigation and close the case.<sup>19</sup> The Commission may issue the Warning in the course of implementation of the Procedure 97 described above.*

*Pursuant to the Procedure 97, the Department of antimonopoly regulation makes an assessment of the state of competition in the relevant commodity market. For the period of the assessment the term of consideration of the application can be suspended for up to 90 working days.*

*In 7 days from the date of completion of the assessment of the state of competition, in case of revealing the signs of the violation of Article 76 of the Treaty the Department of Antimonopoly Regulation prepares a draft Warning and within 1 working day submits it to the authorized bodies for information purposes.*

*For the period of issuing the Warning and meeting the requirements and measures provided in it the term of consideration of the application (materials) is suspended.*

*The Commission passes the Warning to its addressee in one day from the date of its issuing.*

*In case of failure to perform the requirements and/or measures provided for in the Warning in full and within the established period, in 3 days from the expiry of this period the*

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<sup>19</sup> Sections 13(1) - 13(3) of Annex 19 to the EAEU Treaty referred to above.

Commission would make the determination on resuming the consideration of the application (materials).

**v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.**

As mentioned before, the above mentioned Procedures include detailed explanation of procedural issues of initiation, investigation and consideration of cases. The official description of the procedures are available on the EEC web-site.

Additionally to that, the EEC has the “Public Reception” on-line facility that conducts periodical meetings between the agency officials and business community on various issues of common interest. The meetings are being broadcasted in the web and recorded. The records are being kept at the “Public Reception” site and are publically available 24/7. The Public Reception also provides individual consultations to interested parties on the procedural issues of their concern with no participation of third parties.

The EEC officials periodically have in person meetings with the representatives of business community and legal profession and discuss issues of mutual interest, including these procedural.

Additional point of reference for the EEC procedures is the EEC white book on “Competition in Cross-Border Markets of the Eurasian Economic Union.”<sup>20</sup>

Additionally to that the EEC and national competition authorities of the EAEU member-states may request advisory opinions from the EAEU Court on procedural matters.<sup>21</sup>

The EEC is also working on implementing a recommendation of the OECD (2021), OECD Peer Reviews of Competition Law and Policy in the Eurasian Economic Union on developing further guidance on procedural matters and application of the procedural rules.

**d) Investigative Process**

**i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will**

<sup>20</sup> Available in Russian at <https://eec.eaeunion.org/upload/medialibrary/311/Belaya-kniga.pdf> .

<sup>21</sup> See the Statute of EAEU Court for more detailed information available in Russian at <https://courteurasian.org/upload/iblock/b30/2%20%D0%A1%D1%82%D0%B0%D1%82%D1%83%D1%82%20%D0%A1%D1%83%D0%B4%D0%B0.pdf> .

**include the legal basis for the Investigation and the conduct or action under Investigation.**

*According to the Procedure of conducting investigations of violations of Common rules of competition in cross-border markets mentioned above, upon consideration of complaints or signs of violation of Common Competition Rules the EEC makes a decision on conducting investigation in the form of Determination on conducting investigation. The EEC provides an information on conducting investigation to Person that is the subject of an Investigation as soon as practical and legally permissible of that investigation. The Determination will include a reference to the provisions of Common Rules of Competition allegedly violated by the Person, as well as reference to the rights and obligations of the Person under investigation.*

*The total duration of the investigation is generally limited to 90 working days since signing the Determination. The Minister in charge of competition and anti-monopoly regulation has a right to extend it by the term not exceeding 60 working days in case the Commission needs additional time for collecting information pertaining the case. See the detailed description of the Procedure 98 on the case investigation above for more details.*

**ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.**

*From the moment of initiating the consideration of the case of violation of Common Competition Rules persons participating in the case have the right to familiarize themselves with the materials of the case, to make abstracts from them, to give evidence and to familiarize themselves with the evidence, to enter petitions, to give written and oral explanations to the Case Consideration Commission, to present their arguments on all questions arising in the course of examination of the case, to familiarize themselves with the petitions entered by the other persons, to object to the other Participants' of the case petitions, arguments. The case participants can exercise these rights at each stage of the case consideration regulated by Procedures 97-99 described above.*

**iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.**

*In the course of each of the three stages of case handling described in section (iv) the Department of antitrust regulation has powers to request written information, including documents, data and explanations (including these confidential) from physical and legal persons, state government bodies of the EAEU member states, local self-governance bodies*

*and other institutions of the member states. A copy of the request is provided to authorized body of the member state where operates the requested power body, or where the requested legal person is registered, or where the requested physical person resides on a permanent or temporary basis.*

*The request includes an indication of its legal foundations, the purpose of the request, the requested information, as well as the term of provision of the information. The requested persons and institutions are liable for provision of the requested information (including that confidential) to the EEC in the indicated term. They can provide either originals or copies of the requested documents. The copies of the documents provided by the legal person should be verified by signature of its head and stamp, while these provided by the physical person should be verified by signature of this person or authorized person.*

*In case the information provided is not sufficient the Commission can undertake the necessary investigative activities compliant with currently effective legislation. Failure or delay with provision of the information is penalized with fine calculated according to the Decision of the Council of the Eurasian Economic Commission of December 17, 2012 No. 118.*

*The Case Consideration Commission has a right to request such information at each of the stages of case consideration described above.*

#### **e) Timing of Investigations and Enforcement Proceedings**

***Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.***

*According to the Procedure of conducting investigations of violations of Common rules of competition in cross-border markets mentioned above, the EEC must conclude its investigation procedures within 90 working days since signing Determination on conducting investigation and EEC has 60 working days for case consideration process.*

*In case of insufficiency of information for making a conclusion on presence or absence of signs of violation of general (common) rules of competition in cross-border markets the member of the EEC Board responsible for competition and anti-monopoly regulation has a right to extend the term of investigation for the period not exceeding 60 working days. The Commission will provide a written notification to the plaintive and government bodies of the EAEU member states responsible for implementation of competition policy on the extension of the term of the investigation.*

*Similarly, the term of case consideration (see Procedure 99 above) cannot exceed 60 working days, extendable for up to another 60 days in a situation when an additional information for concluding the investigation of the case. See section (iv) above for a more detailed description of all of the three stages of case handling.*

## **f) Confidentiality**

### ***i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.***

*The fundamental EEC document providing rules, policies, or guidance regarding the identification and treatment of confidential information is the “Agreement on order of protection of confidential information and liability of its disclosure in the course of exercising powers of the Eurasian Economic Commission of control and observation of common competition rules.”<sup>22</sup> The Agreement provides for protection of confidential information provided the EEC, power bodies of the Parties of the Agreement, their legal and physical persons.*

*According to the Agreement, the Commission will undertake measures on protection of confidential information that will be recognized and reasonably sufficient in case:*

- 1) Access of the third parties to confidential information without the agreement of its owners is excluded;*
- 2) The Commission has a possibility to use confidential information that excludes its disclosure.*

*Measures on protection of the confidential information must guarantee the following:*

- 1) Prevention of possibility of violation of procedure of access to confidential information and its treatment;*
- 2) Prevention of unauthorized access to confidential information and/or its passing to persons not having access to confidential information;*
- 3) Timely disclosure and cancellation of unauthorized access to confidential information;*
- 4) Permanent control over the level of protection of confidential information;*
- 5) Prevention of manipulations with technical means of processing confidential information that may result to infringements of their functioning*
- 6) Registration of persons having access to confidential information and persons to whom it was provided or passed.*

*The Procedure of work with documents of limited dissemination includes but is not limited to the following procedures:*

- 1) Work with outgoing documents that include confidential information;*
- 2) Registration, storage and transfer of documents containing confidential information;*
- 3) Keeping records at meetings where confidential information was discussed;*
- 4) Familiarization with materials of cases of competition violations containing confidential information (including familiarization by persons participating in consideration of cases);*
- 5) Conduct of internal inspection of violations of obligation of non-disclosure of confidential information and Procedure of work with document of limited access;*
- 6) Registration of persons having access to confidential information and persons to whom this information was provided or passed.*

<sup>22</sup> Available in Russian at: [https://docs.eaeunion.org/docs/ru-ru/0043817/itot\\_14112014](https://docs.eaeunion.org/docs/ru-ru/0043817/itot_14112014) .

*The Commission can use confidential information provided by other government and/or private parties only for purposes this information was provided for. The Commission can pass confidential information to third parties only at written agreement of the owner of the information, except passing information to authorized bodies in order of their fulfillment of powers provided for by the EAEU Treaty. Transfer of information from an authorized body of one member state to authorized body of other member state is possible only at written consent of the body that provided the information.*

*The information loses its confidential status in case its owner has provided free access to it to an unidentified circle of persons.*

*Members of the Board of the Commission has access to confidential information in full extent. The members of the Board of the Commission are obliged not to disclose confidential information they learned in the course of performance of their professional duties.*

*The Commission officials and the staff members can have access to confidential information only to the extent necessary for performance of their duties on case. The Commission officials and staff members having access to confidential information are assigned by the Member of the Board of the Commission responsible for competition issues and anti-monopoly regulation. The Commission officials and staff members are obliged to sign and observe Obligation on non-disclosure of confidential information they learned by virtue of fulfillment of their professions duties.*

*A violation of the Procedure of work with documents of limited dissemination that has not led to disclosure of confidential information forms grounds for disciplinary sanctions on the guilty staff members of the Commission according to the EAEU Treaty.*

*Disclosure or use of the confidential documents for the purposes not related to service duties known by the person by virtue of his/her service duties forms ground for the disciplinary sanctions.*

*Additionally to that a Service Contract between the Commission and its staff member includes a provision obliging the staff member to observe the Commission's rules of handling confidential information. Also, the staff member cannot disclose or use confidential or internal information accessed in the course of performance of his/her service duties for the purposes other than performance of his/her service duties. Failure to observe these provisions may result into administrative penalties up to dismissal.*

*The Commission cooperates with the Parties of a case in a matter of disclosure and cancellation of actions in breach with the Procedure of work with documents of limited dissemination. The Parties cooperate with the Commission in the matter of administration of justice in cases related to disclosure of confidential information.*

*Authorized bodies insure the protection of confidential information received from the Commission. They can pass this information to third parties only upon a written agreement of the Commission.*

*The material means and documents bearing confidential information transferred to the Commission or outgoing from the Commission are stamped as "Confidential," or "Commercial Secret," or "For service use only." If external party marks documents sent to the Commission this way they are treated by the Commission and confidential. If the Commission transfers*

*the documents marked as confidential to the other parties these documents are recognized as “Commercial Secret” or “For service use only.” Confidential documents incoming or outgoing from the Commission are sent by post service as registered mail or with a courier.*

*The Commission also has rules and procedures of protecting confidential information in the course of consideration of cases of violations of the Common Competition Rules. The EEC appoints case consideration commission headed by the Chairman. According to Section 14 of the above mentioned Procedure of Consideration of cases of violation of Common rules of competition in cross-border markets, in a situation of use of confidential information in the course of case consideration the Chairman has a right to make a decision on prohibition of audio, photo and video records by persons participating in case consideration.*

#### **g) Conflicts of Interest**

***Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.***

*Prevention of conflict of interest is a highest priority for the EEC. The EEC has rules and policies to ensure that its officials are objective and impartial and do not have material conflicts of interest.*

*A service contract between the EEC and its staff member includes provisions intended to prevent the conflict of interest that the staff member has to strictly observe. Failure to observe the contract provisions on the conflict result into administrative sanctions, including a possibility of dismissal. In case the staff member is engaged in corruption he/she will be subject of sanctions provided for by the national law of the country of location of the EEC (Russian Federation).*

*In order to avoid the conflict of interest the staff member is precluded from the following activities:*

- have other job than that in the Commission or perform other paid for activity except teaching, scientific research or other creative activity;*
- participate in the governance body of a commercial entity on a paid for basis;*
- engage in entrepreneurship;*
- to receive remuneration for his/her professional activity from physical and legal persons (including gifts, monetary remuneration, loans, services compensation of payments for rest, distraction, transportation and other);*
- make business trips related to his/her professional responsibilities paid for by physical and legal persons;*
- use material assets and property of the Commission for the purposes not related to performance of his/her service duties and pass these assets and property to other persons;*
- disclose or use confidential or internal information accessed in the course of performance of his/her service duties for the purposes other than performance of his/her service duties;*

- use his/her professional authority in the interests of political parties, other public associations, religious associations and other organizations as well as to express his/her attitude toward such organizations in a capacity of the Commission staff member, unless the latter is included in his/her professional responsibilities;

- create affiliations of political parties and other public organizations (except trade unions, veteran and other bodies of public activity) as well as religious associations and facilitate creation of such structures.

Additionally to that, the EEC officials involved in investigation of a case cannot participate in its consideration.

Officials assigned to the EEC by the EAEU member-states cannot act in the interests of their respective member-states while exercising their duties in the EEC.

## **h) Notice and Opportunity to Defend**

***i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.***

***ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.***

***iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.***

*The Commission considers cases of violations of Common Rules of Competition in accordance with the above mentioned procedures of considering the application (Procedure 97), investigation (Procedure 98) and consideration of cases of violation of Common rules of competition in cross-border markets (Procedure 99). According to the Procedure 99, persons participating in the case consideration will be notified on its time and place by a Determination of initiation of the case consideration that can be delivered to person by any available means that enables to establish a fact of receiving a copy of the Determination by a relevant person.*

*Since the moment of the commencement of the case consideration, i.e. since the date of the issuing of the Determination persons engaged in case consideration process receive the following rights:*

- familiarize themselves with the materials of the case;*
- make records from these materials;*
- provide evidence and learn evidence provided by other parties;*
- ask questions to other persons participating in the case;*
- file petitions:*
- provide explanations in written or oral form;*
- provide arguments on all questions emerging in the course of case consideration;*
- familiarize themselves with petitions filed by other persons participating in case*

consideration;  
- object against petitions and arguments of other persons participating in case consideration.

*Thereby, the Procedure provides meets the requirements stated in Sections i-iii of Article h) of this Template.*

*Provision of opportunity for defense for a person subject to competition law enforcement activities is also mandatory for EEC according to the EAEU Treaty, Procedure 99 and other documents, which stipulate that that a person subject to competition law enforcement activities is provided with the opportunity to present opinion or evidence in its defense.*

## **i) Representation by Counsel and Privilege**

***i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.***

***ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.***

***iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.***

*According to Section 12 of the Procedure of Consideration of cases of violation of Common rules of competition in cross-border markets (Procedure 99) mentioned above, the participants of case consideration have rights to perform their rights and duties either themselves or by representatives. The credentials of the representatives are issued and verified in accordance with the laws of the EAEU member states.*

*The Procedure does not indicate on any circumstances when the request of the Person to be represented by qualified legal council of its choosing will be denied, i.e. such request will be accommodated by default. None of the Persons participating in the case is obliged to disclose information exchanged between the person and its legal council. The Commission does not intervene anyhow in the exchange of information between the Person and its legal council and does not require its disclosure in any form, including information relating to solicitation or rendering legal advice.*

*The Commission does not have any guidance related to treatment of information exchanged between the Person and its legal council.*

*For more information see: OECD (2021), OECD Peer Reviews of Competition Law and Policy: Eurasian Economic Union <https://www.oecd.org/daf/competition/oecd-peer-reviews-of-competition-law-and-policy-urasian-economic-union-2021.htm>.*

## j) Decisions in Writing

***i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.***

***ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.***

*According to Section 42 of the above mentioned Procedure 99 (see section (iv)), the Case Consideration Commission's decisions/determinations on the case consideration has a form of a separate act signed by the Chairman and members of the commission considering case. Procedure 99 provides that Persons participating in the case consideration will receive its copies in any way permitting to confirm receiving. Procedure 99 stipulates that upon the closure of the case the commission that considered it prepared the draft of the Decision to the Board of the EEC. The Board makes the decision on the case. Further, the Decision will be published on the EEC site describing its major features and remedies imposed, except confidential information considered in the course of case consideration.*

*A Decision on a case on violating the Common Competition Rules includes an introduction, a descriptive part, a statement of reasons and substantive provisions.*

*An introduction to a decision on a case on violating the Common Competition Rules includes:*

- date and place where the Decision was made;*
- the members of the Case Consideration Commission that investigated the case;*
- information about the persons participating in the consideration of the case;*
- information about the applicant and defendant.*

*A descriptive part of the Decision on a case on violating the Common rules on competition must contain indication of the applicant's information about a possible violation or the fact that the EEC has identified a violation ex-officio, the arguments of the defendant and explanations of other persons participating in the consideration of the case.*

*A statement of reasons in a decision on a case on violating the Common Competition Rules must indicate the circumstances of the case established during the investigation, the evidence on which the conclusions of the Case Consideration Commission are based, the legal acts that guided the Case Consideration Commission. The fact that the defendant recognized that a violation of the general (common) rules of competition in cross-border markets was committed is reflected in the motivational part of the decision.*

*Substantive provisions of a decision on a case on violating the Common Competition Rules must contain information about the defendant, conclusions about the presence or absence of grounds for terminating the case, conclusions about the presence or absence of a violation of the common rules of competition in cross-border markets in actions (inaction) of the*

*defendant, the amount of the fine and calculated in accordance with the Methodology, measures to prevent and (or) eliminate the consequences of violations of the common rules of competition in cross-border markets, ensure competition, indicating the timing of their implementation, as well as bank details by which the fine should be transferred.*

#### **k) Independent Review**

***No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).***

*According to the Treaty on the Eurasian Economic Union of 29 May, 2014, each party subject to a Decision of the EEC on a prohibition, remedy or sanction taken as a result of case consideration by the EEC has an opportunity to seek review of the case by the Court of the Eurasian Economic Union.<sup>23</sup> that is independent and impartial adjudicative body.*

*The Court was created by the Treaty on the Eurasian Economic Union as a permanently standing body of the Union. Status, composition, competence Procedure of functioning and forming of the Court is determined by the Statute of the Court of the Eurasian Economic Union (Annex 2 to the Treaty on the Eurasian Economic Union of 29 May 2014). Geographically the Court is located in Minsk.*

*According to Section 14 of Annex 19 to the Treaty on EAEU act, actions (inactions) of the EEC related to competition regulation can be challenged in EAEU Court in the order provided for by Statute of the EAEU Court (Annex 2 to the Treaty on EAEU) with reference to provisions of Annex No. 19 to the Treaty of the EAEU. In case the EAEU Court accepts the appeal of the Decision of the EEC for consideration the Decision of the EEC becomes suspended till the day of coming of the decision of the EAEU Court into force.*

*The Court may accept the appeal for consideration without prior application of the applicant to the EEC in order to regulate the issue in question in a pre-trial order.*

*Additionally to that according to Article 30 of the Provision on the Eurasian Economic Commission (Annex 1 to the Treaty on EAEU) a member state or a member of the Council of the EEC can apply to the Board of the EEC and make a suggestion of its cancellation or introduction of changes into it within 15 calendar days from the date of publication of the Decision. In the day of receiving such suggestion the Chairman of the Board of the EEC distribute the materials on the relevant decision among the members of the Council. Upon receiving these materials the Council of the EEC will make the relevant decision within 10 calendar days.*

*In case of disagreement with the Decision of the Council of the EEC a member state can present a letter to the EEC signed by the Head of the Government with a suggestion to bring about the issue in question of Intergovernmental Council and/or Supreme Council.*

*Coming into force of the protested Decision of the EEC will be suspended for the term necessary for consideration of the question of its cancellation by the Intergovernmental Council and/or Supreme Council and making the relevant decision.*

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<sup>23</sup> More information on the Court, its structure and authority is available in Russian at its web-site at [https://courteurasian.org/about\\_the\\_court/](https://courteurasian.org/about_the_court/).

*For example, there was an occasion of exercising veto with regards of the Decision of the EEC.*

*According to Section 39 of the Statute of the Court of the EAEU (Annex No. 2 to the Treaty on the EAEU) the Court of the EAEU considers disputes related to the Treaty on the EAEU, international agreements within EAEU and/or decisions by EAEU bodies. Per request of an economic entity the Court can consider the following issues:*

- compliance of a EEC Decision or its part directly influencing rights and lawful interests of the entity to the Treaty on the EAEU or international agreements within EAEU;*
- on challenging actions/inactions of the EEC directly affecting rights and lawful interest of economic entity in case such action/inaction resulted in violation of the rights provided to the entity by the Treaty on EAEU.*

*According to Article 45 of the Regulations of the Court of the EAEU approved by the Decision of Supreme Eurasian Economic Council on December 23, 2014 in case of challenging of Decision of EEC by economic entity the Court in the course of court proceedings will make examination of the following issues:*

- a) The EEC's authority for making the challenged decision;*
- b) The fact of violation of rights and lawful interests of the entity provided to it by the Treaty or international agreements within EAEU;*
- c) The challenged Decision or its separate parts or challenged action/inaction of the EEC from the position of their compliance to the Treaty or international agreements within EAEU.*

*According to the regulation of the Court of the Eurasian Economic Union the judges administer justice independently of any influence basing only on universally recognized principles and norms of international law. No intervention in administration of justice by judges is accepted.*

*In the course of administration of justice the Court applies the following principles:*

- Universally recognized principles and norms of international law;*
- Treaty on EAEU, international agreements within EAEU;*
- Decision and Orders by the EAEU bodies;*
- International custom as a proof universal practice recognized as a legal norm.*

*Appeals by economic entities are considered by the Board of the Court. It includes judges from all member states. The entity can challenge the Decision of the Court in Appellation Chamber. The latter includes judges from all member states who did not take part in the consideration of the challenged decision by the Court.*

*There is no Court or Court Chamber specializing on consideration of the violations of competition law.*