THE DEVELOPMENT OF TRANSBOUNDARY ENVIRONMENT OF TRUST IN THE EURASIAN ECONOMIC UNION (EAEU) AND THE SIGNIFICANCE OF THE EMERGING WORK OF UNCITRAL

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I   INTRODUCTION

The Eurasian Economic Union (EAEU) is an international organisation of regional economic integration, established by the Treaty on the Eurasian Economic Union to promote balanced trade and competition and to ensure economic progress through joint action and implementation of coordinated and uniform economic policy.[1] For now, the EAEU includes five member states (Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia), one state observer (Moldova), and seven states at different stages of negotiations (China, Cuba, Egypt, Thailand, Mongolia, India and Israel).[2]

Among other initiatives within the EAEU, the member states called for the formation of unified regional cyberspace to unify trade processes and to provide sustainable economic development. According to art 23 of Treaty on

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[1]   The main international agreements for the EAEU: Declaration on Eurasian Economic Integration, 8 November 2011 (until 2014); Treaty on the Eurasian Economic Union, 1 January 2015.

[2]   China – On 17 May 2018, Agreement on trade and economic cooperation was signed; Cuba – 31 May 2018 Memorandum of understanding was signed; Egypt, Thailand, Mongolia, India – at different stages of negotiations; Israel – on 12 September 2019, the President of Russia and the Israeli Prime Minister noted the intention to accelerate the creation of the FTA between Israel and the EAEU.

the Eurasian Economic Union, in order to support the integration processes in all spheres, affecting the functioning of the EAEU, information exchange should be developed, based on "information and communication technologies" (art 23, para 1) and a transboundary environment of trust within the EAEU should be established. The base for this is the Integrated Information System (IIS) that links "the integration of geographically distributed state information resources and information systems of the authorised authorities, as well as information resources and information systems" (art 23, para 1) of the Eurasian Economic Commission.[3] The initiative on the transboundary environment of trust was launched in 2015 based on the achievements of international law.[4]

This paper overviews the development of the transboundary environment of trust concerning the documents of UNCITRAL. The following text will provide a brief analysis of how the initiative is influenced by UNCITRAL's emerging work. It does not aim to highlight the legal problems of the implementation of the Commission's recommendations.

II   THE DEFINITION AND STRUCTURE OF THE TRANSBOUNDARY ENVIRONMENT OF TRUST

The digitalisation and virtualisation of the processes, traditionally associated with a paper workflow, influence all the spheres of life and causes the deterritorialisation[5] of international communication. In the absence of a unified global regulation, it caused two tendencies: states act unilaterally, which usually means the application of national legislation on transboundary activities, or they sign the agreements trying to develop multilateral standards and rules for this. The last caused the formation of the national and regional programmes developing the united virtualised environments (or spaces) that aim to support both the integration of the parties and sustainable development of digital economies of a particular member. This is the core idea of the

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3   The Eurasian Economic Commission (EEC) is the permanent regulatory body of the Eurasian Economic Union (EAEU). It was established on 2 February 2012. See more <http://www.eurasiancommission.org/en>.

4   Nina I Solovyanenko "Legislation on an electronic document as a factor in updating the legal space for an innovative (digital) economy" (2017) Journal on Transactions of the Institute of State and Law of the Russian Academy of Sciences 3(61) 163-164.

5   Cedric Ryngaert and Taylor Mistale "The GDPR as Global Data Protection Regulation?" (2020) AJIL Unbound 114 5.

transboundary environment of trust that was highlighted by the members of EAEU in 2015.

According to the official documents of the EAEU,[6] the transboundary environment of trust is a complex of legal, organisational, and technical settings agreed by member states of the EAEU to ensure trust in the exchange of data and electronic documents between authorised bodies. It is developed in accordance with the concept of promoting the usage of electronic services and electronic documents in interstate interaction.

The members of the EAEU pointed out that such interaction could promote the balanced development and affiliation of the parties, strengthen and support the economies, provide fair competition, and speed up trade regardless of the level of IT development in a particular state. In general, similar initiatives can be found in the EU and the Asia-Pacific.[7]

Experts highlight three different directions of the formation of the transboundary environment of trust.[8] In our opinion, these directions are more focused on the basics of equality that support sustainability and fair processes of development. These are:

(1) the digital transformation[9] of the internal market's management, including the incorporation of the electronic services in the national workflow as a paperless routine (for example single window services, electronic signatures, electronic seals, digital certificates), data exchange in the states and between the states, simultaneous modernisation of the national legislation in every member state and developing of IT technologies;

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6   The main act is the Treaty on the Eurasian Economic Union of 29 May 2014 (art 23 and Appendix No 3).

7   For example, eIDAS Regulation (EU regulation on electronic identification and trust services for electronic transactions in the European Single Market) and PAA Project (Pan-Asian E-Commerce Alliance - E-Commerce alliance aims to promote and provide secure, trusted, reliable and value-adding IT infrastructure and facilities for efficient global trade and logistics: < https://paa.net/about>).

8   Alexey Domrachev, Vladimir Isakov, Igor Furgel "United Regional Digital Spaces Form in Global Economy Frameworks" (2017) 130-131 <https://www.elibrary.ru/item.asp?id=30536068> accessed June 2019.

9   A G Sabanov "Methodology of formulating tasks to improve regulatory! Legal the basis for building a space of trust in electronic documents with legal consequences" (2016) Information security Insider 5 at 14.

(2) the E-commerce development, also as digitalisation of the processes associated with trades and services (blockchain, cryptocurrencies, online-banking, ODR), also providing guaranteed and fair Internet access for all the parties regardless of, for example, their national jurisdiction, citizenship, the place and language of the contract; and

(3) the digital transformation of the "traditional areas of the market", developing and supporting innovative goods and services, especially those associated with the so-called "4.0 industry".

According to all this, the main objectives of the development of the transboundary environment of trust are:

(1) increasing the efficiency of electronic interaction within the EAEU;

(2) creation of single cyberspace with interstate electronic interaction within the EAEU and beyond; and

(3) creation of favourable and trusting conditions for the implementation of the legally significant interstate exchange of data and electronic documents between individuals, legal personalities and officials, state authorities, and governments of member states, officials, and employees of the EAEU.

Being the cloud-computing platform in nature, the transboundary environment of trust can be explained as a combination of technical and non-technical components[10] that both have legal meaning.

Technical components of the environment include four environmental sectors and four service sectors. The environmental sectors are:

(1) the national environment of trust;

(2) the environment of trust of the EAEU;

(3) the environment of trust of the member states; and

(4) the environment of trust of a third party.

The service sectors are:

(1) sub-systems of IIS;

(2) services of trust of member states;

(3) services of trust of a third party; and

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10 Christopher J Millard (ed) *Cloud Computing Law* (Oxford, Oxford University Press, 2013) 6-17.

(4) services of a competent official body of a member state or a third party (on the national level).

However, as we can see, the technical components of the transboundary environment of trust include transnational and national levels, because the digitalisation (and virtualisation[11]) of the communication in general is suggested. These two levels in the structure of the transboundary environment of trust mean that national and international regulations should be unified to provide sustainable development and functioning of the transboundary environment and the IIS.

As for the non-technical components, the analysis of the EAEU official documents was made to highlight them, so the following list is debatable. It includes:

(1) principles of the transboundary environment of trust development, including international legal principles;
(2) basics of the IIS set in the Treaty on the EAEU 2015;
(3) legal framework developing by the Eurasian Economic Commission; and
(4) national legal regulations of the EAEU member-states and third parties.

All these and the fact that the EAEU acts on the transboundary environment of trust and the IIS, allow us to conclude that the national legal norms should be harmonised to satisfy both existing international legal standards and principles and national interests of the parties (member states or not).

The chosen way to achieve the goal is to follow the recommendation of international organisations (for example UNCITRAL, ESCAP, CEFACT), or to develop the views on the harmonisation and sustainability through expert activity during the work of these organisations. In other words, it is the implementation of the international rules and recommendations at transnational and national levels or promotion of the national and transnational achievements as the international initiatives. The legal

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11 Jane K Winn and Benjamin Wright *The Law Of Electronic Commerce* (Aspen Publishers Online, 2000) 5-10.

framework of the transboundary environment of trust is developed in both ways.

II   IMPLEMENTATION: FROM INTERNATIONAL DOCUMENTS TO REGIONAL ACTS

The legal basis of the transboundary environment of trust in the EAEU includes regulatory support which was established to promote the IIS sustainable development and functioning. UNCITRAL emphasises that, while promoting credibility in the online space, such a legal framework is a factor contributing to the achievement of sustainable development goals in the field of innovative economic cooperation at all levels.[12] For the formation of such cross-border cyber-social systems, the necessary backlog was worked out in the formats of UNCITRAL, ESCAP, and CEFACT. Therefore, the harmonisation of the national legislation in accordance with the aims of the EAEU was highlighted as a priority and based on the achievements of UNCITRAL, CEFACT, and, less, on ESCAP.

In recent years, the different directions of the emerging work at the international, regional, and national levels can be distinguished. All of them are concentrated on the joint efforts to build and shape an inclusive information society, and a transboundary cyberspace, where "transboundary" has not only technical but also political, economic and social value. The transboundary narratives in the WSIS+10 Statement on Implementation of WSIS Outcomes,[13] reflected as a cross-border regional project, was established in 2015 by art 23 of the Treaty on the Eurasian Economic Union.

The needs in the legal framework for technical development led to the initiatives proposed by the member states of EAEU. The regional initiative to implement Recommendation No 36 of the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) led to the development of the framework for identification mechanisms and authentication as a part of the cross-border trust space. The draft CEFACT recommendations were also described within the framework of UNCITRAL Working Group III in

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12 Draft Instrument on Cross-Border Legal Recognition of Identity Management and Trust Services – Proposal of Germany <https://undocs.org/en/A/CN.9/WG.IV/WP.155>.

13 WSIS+10 Statement on Implementation of WSIS Outcomes and the WSIS+10 Vision for WSIS Beyond 2015. WSIS+10 High-Level Event (9-13 June 2014, Geneva). <http://www.itu.int/net/wsis/documents/HLE.html>.

the proposal of Russia for the use of Online Dispute Resolution. The results of the sessions of UNCITRAL Working Group III on the issues of ODR in particular, its IT Department recommendations were implemented in the documents of the Eurasian Economic Commission of the EAEU.

A centralised model of the transboundary infrastructure for trade is accepted and developed not only in the regional (CIS, ASEAN, EAEU) but also at the international level (for example UNCITRAL, ESCAP, CEFACT). In our opinion, the attractiveness of this model leads to its neutral international environment for parties (states) and associations, as well as in the sustainability of the system and its distancing from any political, economic, social, and other influences. The transboundary environment of trust is built as a jointly unified system of public cooperation, which is institutionalised by the users of the environment. It is based on harmonised requirements and obtains its legal nature from the documents of international organisations like UNCITRAL or ESCAP, not from strict rules of national legislation.

For example, ESCAP work allows consideration of improving transboundary trust environment as one of the universal principles of transboundary paperless workflow along with principles such as technological neutrality, functional equivalence, and non-discrimination, which were developed by UNCITRAL, and laid the foundation for the development of the transboundary environment of trust. These principles, as we can see from the documents of EAEU and its bodies, have been implemented into the framework of the environment of trust and not from the principles from the national legal acts, which are very diverse in all the member states.

IV   PROMOTION: FROM A NATIONAL INITIATIVE TO INTERNATIONAL AGENDA

However, the process of development has not only the examples of implementation – recommendations, outlines, and principles – but also examples of promotion, when national initiative goes beyond its boundaries, to the drafts of the international organisations.

Since 2014, when the WSIS +10 Recommendations N 36 became the source of inspiration for art 23 of the Treaty, several of such initiatives were promoted.

First, it was the Proposal of Russia in the UNCITRAL Working Group III (Online Dispute Resolution) 32nd session, which had a vision and conceptual approaches regarding online dispute resolution. Here we can find the term "transboundary trust space". It was defined as:[14]

> a combination of legal, organizational and technical conditions recommended by relevant specialized United Nations agencies (departments) and international organizations to ensure trust (confidence in authenticity) in the international exchange of electronic documents and data between electronically interacting parties (subjects).

This description is not very different from those in the documents that were approved by the member states of the EAEU. The proposal states that the provisions on forming and functioning of regional and global clusters for a transboundary environment of trust, as well as the functional services provided in the frames of these clusters, should be considered in accordance with the UNECEUN/CEFACT "Recommendation for ensuring legally significant trusted transboundary electronic interaction".

The statements link with the inseparability of the technical and non-technical legal components of the transboundary environment because this position is reflected in the draft package of international standards, prepared for the International Telecommunication Union (ITU) on the basis of its recommendations on interoperability of radio communication equipment and systems.[15] This package was a part of proposals for ESCAP in the preparation of the draft on international cross-border electronic document management agreements, and it was taken into account.

Among other things, the text of Proposal A/CN.9/WG.III/WP.136 mentions the common provisions about forming and functioning of regional and global clusters, the functional services that are provided in the frames of these clusters, as well as sets of trusted infrastructural communication services in the UNECEUN/CEFACT "Recommendation for ensuring legally significant trusted transboundary electronic interaction". We can conclude from the comparison of this document and documents of EAEU, that the

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14 See Introduction of UN doc A/CN.9/WG.III/WP.136.

15 Resolution 62-2 of the International Telecommunication Union (2019). <https://www.itu.int/pub/R-RES-R.62-2-2019>.

adaptation of this set is an important requirement to achieve the final stage of the implementation of the transboundary environment of trust.

However, we should mention the two models of the legal architecture of the transboundary environment of trust. They are called centralised and non-centralised infrastructures, and, as was said, they include the combination of the technical and non-technical (legal) components.

A centralised model is defined as a "neutral international environment for separate states and unions, resilient to political, economic, social and other interests of parties".[16] The supporters of it suggest that independent and fair audits of compliance by all members or parties will provide stability of the model. The relation between members should be based on "institutionalisation" of all legal and technical aspects of the environment and that is why the model is called "centralised".

On the contrary, the decentralised model is based on the "mass social relation of trust" that does not include the system of legal standardisation. Experts note that the decentralised model has a larger technical component than legal, whereas the centralised one is built on the prevailing legal regulation.

This centralised model has been implemented as a chosen one for the transboundary environment of trust within the EAEU. We can suggest two reasons for this: firstly, the initiative on the transboundary environment of trust was suggested earlier than 2015, so the technical development of that period should be taken into account. The decentralised model is based on blockchain technology, which was concerning in that period. The second reason is related to the high level of state participation in the environment – as we can see, national bodies and national regulations are the basics for some of the processes (like identification of the parties and so on).

V   CONCLUSION

The transboundary environment of trust, established within EAEU, is an example of accumulating experience and knowledge among regional unions,

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16 Alexey Domrachev, Vladimir Isakov, Igor Furgel "United Regional Digital Spaces Form in Global Economy Frameworks" [2017] 133 <https://www.elibrary.ru/item.asp ?id=30536068> accessed June 2019.

members of which are equally interested in both facilitating and simplifying transboundary cyber services and giving to them a unified legal framework.

It is bigger than bilateral agreement and cooperation – because it gives the possibility to involve third parties – and, mostly, is concentrated on trade and economy, not political issues.

Such a kind of initiatives and unions have the potential to promote the national supremacy of one of the members if the technical possibilities of a state becomes more developed. This happens with some IT services and products when the pioneers of the technology became monopolists and started to dictate the policy of legal development to the consumers as well as to the jurisdictions these consumers belong to. Therefore, international law, in general, is the most prominent way to not only promote a culture of online security and safety, empowering users, and encouraging national, regional and international cybersecurity strategies to protect users, but to also develop the economy and financial system, and ease the process of transboundary trade.

On the other hand, when negotiating between the members, the need arises to refer to the higher authorities, and having recommendations from the bodies such as UNCEFACT/UNECE, UNCITRAL and others that are built on the non-discrimination principle, will be more beneficial.

The concept of the centralised model of the transboundary environment is based on international regulation, including documents of UNCITRAL, and includes all the technical and legal guarantees to provide fair trade and fair competition, as well as equality and non-discrimination. However, in practice, there is a big gap between both technical and non-technical components of the environment. The model faces all the issues that other services or environments of the same nature do: the regulation does not follow the technology. Here we are not speaking about the progress (even though it should be mentioned) but the typical issues of such kinds of complexes.

On the contrary, the decentralised model fills the gap with technology. We understand blockchain as a legal phenomenon where the basic principles of law (here, it means trades and economy) are embodied in the architecture of computing. Unfortunately, the decentralised model excludes the state as an entity of supremacy, which the centralised model does not, so it is unpredictable when it will be implemented in international trade. In addition, the possible risks of it are still more speculative than real, which does not

attract the main actors of such concepts as EAEU suggests. However, as the transboundary environment of trust includes not only goods and services, the decentralised model also should be taken into account as a possible topic for UNCITRAL's future agenda.