THE LAW OF THE EUROPEAN UNION AND
THE EURASIAN ECONOMIC UNION
IN A COMPARATIVE PERSPECTIVE

Course Syllabus

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Protocol N

Approved at the Academic Council of Bachelor Program “Jurisprudence” session
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Academic Supervisor of Bachelor Program

Protocol N

Moscow, 2017

This Syllabus cannot be used by other departments of the University or by other universities without a permission of the Departments, which drafted it.
1. Sphere of Application and Normative References

This Syllabus sets up minimal requirements to knowledge and skills of students studying this discipline, content of lectures and practical exercises, as well as types of examination and requirements thereto. The Syllabus is addressed to lecturers, giving a course on «The Law of the European Union and the Eurasian Economic Union in a comparative perspective», teaching assistants and students of the Bachelor program 40.03.01. «Jurisprudence».

The Syllabus is drafted in full correspondence with:
- Educational Standard of the National Research University “The Higher School of Economics” on the Field of Education 40.03.01. «Jurisprudence», Bachelor level (approved by the Academic Council of the HSE, protocol of 26 December 2014, № 10);
- Educational program on the Field of Education 40.03.01. «Jurisprudence», Bachelor level;
- Curriculum of the HSE on the Field of Education 40.03.01 «Jurisprudence», Bachelor level.

2. Learning Objectives and Outcomes

Abstract

This course aims to illuminate the processes of regional integration and functioning of the legal orders of the European Union (EU) and the Eurasian Economic Union (EAEU). The EU is an established entity with a formed legal order and arguably is the most successful example of supranational integration. The EAEU is a rather recent development, a newly emerged legal order, which takes after the EU in many respects (albeit far from all), which has been constantly reiterated on various levels, including the highest political ones. Taking a comparative perspective will lead to a better understanding of the law of these two organizations and the legal framework of integration processes as such. The course takes into account current affairs and aims to illustrate the strongly dynamic nature of regional integration comparing the two organizations, whose aims, policies, institutional structures, and legal orders have been in a continuous and vibrant process of development and expansion.

Learning Objectives

The objective of the course is twofold: first, to make participants familiar with the institutions, competences, legal orders, judicial practices and some substantive areas of the EU and the EAEU; second, to gain a comprehensive understanding of the integration processes and law through comparison of the two organizations.

Learning Outcomes

Students must gain knowledge on:
— main features of EU law and EAEU law, particularities of its subjects, sources, object of regulation;
— main directions of development of EU law and EAEU law;
— role of EU law and EAEU law in regulation of social and economic relations within the respective legal orders;
— sources of EU law and EAEU law;
— external relations of the EU and the EAEU with third countries and organizations;
— judicial review in the EU and EAEU;
— principles of the internal market of the EU and EAEU;
— implementation of the four freedoms in the EU and EAEU.

Skills and abilities:
— familiarization with and appropriate usage of EU- and EAEU-specific terminology and integration law terminology overall;
— practical abilities of research and analysis of case-law and academic publications;
— skills to analyse and solve cases, building up of a legal position in the sphere of EU and EAEU law.

Students should gain the following competences:
— ability to work with the founding treaties and other legal sources of the EU and EAEU;
— ability to carry out professional activities in the international environment;
— ability to search, analyse, and work with legally relevant information by using the juridical, comparative and other specific methods;
— ability to describe legal problems and situations in the fields of EU and EAEU law.

3. Competences gained as a result of the course

<table>
<thead>
<tr>
<th>Code of the competence</th>
<th>Content of the competence</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK-2</td>
<td>Able to identify core academic problems in professional field</td>
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<tr>
<td>UK-5</td>
<td>Able to work with information: to find, to assess, to use information from different sources which is relevant for resolving academic and professional tasks, including systemic approach</td>
</tr>
<tr>
<td>PK-2</td>
<td>Able to search, analyse and use relevant legal information applying formal-juridical, legal comparative and other</td>
</tr>
</tbody>
</table>
methods

PK-4
Able to write legal opinions, statements, actions, complaints, claims, contracts and other acts of application of law in conformance with rules of legal technique, normative legal acts, local acts and customs

PK-10
Able to present the results of professional activity orally in course of public presentations and discussions

PK-12
Able to carry out different types of professional legal activity and to direct them on the basis of legal and professional ethical rules

PK-13
Able to carry out analytical research in the field of law

PK-20
Able to adapt flexibly to the different professional situations, to demonstrate creative approach, initiative and persistency in reaching aims of professional activity

4. Place of the discipline in the structure of Bachelor program
This discipline is elective and belongs to the optional part of the professional courses. The discipline is based on the following courses, studied by students: primarily “Public International Law” with some aspects of “Private International law” and “Constitutional Law”. Knowledge and skills gained by students during the course can be used in the process of preparation to the final interdisciplinary exam.

5. Content of the discipline

<table>
<thead>
<tr>
<th>№</th>
<th>Topic</th>
<th>Hours in total</th>
<th>Contact Hours</th>
<th>Self-study</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Lectures</td>
<td>Seminars</td>
</tr>
<tr>
<td>1.</td>
<td>Historical narrative of the EU and EAEU integration projects and respective legal systems</td>
<td>2</td>
<td>2</td>
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<tr>
<td>2.</td>
<td>Supranational and intergovernmental functioning of the EU and the EAEU</td>
<td>2</td>
<td>2</td>
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<tr>
<td>3.</td>
<td>Sources of EU and EAEU law</td>
<td>4</td>
<td>2</td>
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<tr>
<td>4.</td>
<td>Competences of the EU and the EAEU</td>
<td>2</td>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>
5. Judicial review in the EU and the EAEU | 4 | 2
6. The EU and the EAEU as global actors: external relations law | 4 | 4
7. The four freedoms of integration | 2 | 2

Total: 20 16

6. Forms of control

<table>
<thead>
<tr>
<th>Type of control</th>
<th>Forms of control</th>
<th>Modules</th>
<th>Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current control</td>
<td>Participation in class</td>
<td>*</td>
<td>Attendance to class and pro-active participation. Correct answer to the exercises given at home and performance of situations simulated</td>
</tr>
<tr>
<td></td>
<td>Home task: essay</td>
<td>*</td>
<td>Write a 2.500 words essay on a topic assigned in class</td>
</tr>
<tr>
<td>Final control</td>
<td>Oral examination</td>
<td>*</td>
<td>Answer to two questions</td>
</tr>
</tbody>
</table>

Current control is carried out on the basis of a ranking system.

6.1. Criteria for evaluation of knowledge and skills
Oral Examination (Maximum: 10 out of 10 – Weight: 40% of total mark in the Course)

**Overall assessment criteria**
As per learning outcomes.

**Specific marking and grading criteria**
1. Critical analysis and evaluation;
2. Original thinking;
3. Quality of research;
4. Wealth of resources;
5. Quality presentation of your work;
6. Clarity of ideas;
7. Coherence and logic;
8. System and method;
9. Proper division of submitted answer’s entries;
10. Proper application of the law and references to legal and academic authority.

*In addition* students in an oral examination situation are also expected to deliver answers which are followed by the following qualities:

11. Audibility and clarity, pitch, proper articulation, pace and tone / appropriate emphasis;
12. Fluency, appropriate forms of language including addressing the examiner(s), clarity of expression;
13. Appropriate body language (posture, eye contact, appropriate gestures only, appropriate use of notes);
14. Appropriate content (proper coverage of legal issues, relevance of law in their responses, emphasis, anticipating or responding to other side; at least certain justification of the argument which has been supported);
15. Appropriate structure (introduction, development of argument, appropriate use of comparative and legal methodology if necessary, conclusion);
16. Appropriate authority (analysis based on a wealth of ideas, use of appropriate and relevant authority, correct use of authority).

**7. Content of the course**

**Topic 1.**
Historical narrative of the EU and EAEU integration projects and respective legal systems.

2. The concept of integration law and its categories.
3. Defining and delimiting European and Eurasian integration. The notions of Europe and Eurasia in social sciences.
4. Development of European integration from the end of the World War to the establishment of the European Union: the narrative, institutional changes, substantive changes, the three-pillar structure and its elimination, enlargements.
5. Development of Eurasian integration from the fall of the Soviet Union to the establishment of the Eurasian Economic Union: the narrative, stages, institutions and substantive changes.
6. The legal nature and the issue of legal personality of the integration entities within respective integration projects prior to the establishment of the Unions: European Communities, Eurasian Economic Community, Customs Union, Single Economic Space.
7. The legal nature of the EU and EAEU. Defining an international organization. Constitutionalization of international organizations. The issue of international legal personality.

Readings:
Craig P., de Búrca G. EU Law: Text, Cases, and Materials. 6th ed. – Oxford: OUP, 2015, pp. 1-29 or

Additional Suggested Readings:
Craig P., de Búrca G. The Evolution of EU Law. – OUP, 2011, pp. 41-84.
Topic 2.
Supranational and intergovernmental functioning of the EU and the EAEU.

1. The concept of supranationality. ‘Traditional’ and ‘supranational’ international organizations and their fundamental characteristics.
2. The institutional frameworks of the Unions. The separation of powers beyond the state.
3. The broad correspondence between the EU and EAEU institutions. The European Commission and the Eurasian Economic Commission as fundamentally different entities. The issue of representation.
4. The decision-making process in the EU: legislative initiative and practice, the ordinary legislative procedure and the special legislative procedure, delegated acts, implementing acts. Enhanced cooperation.
5. The decision-making process in the EAEU: regulatory initiative and the ‘Belarusian elevator’ principle.
6. The structure of the judiciary: the Court of Justice of the EU and the EAEU Court. The issue of independence and the issue of dissenting opinions.

Readings:
Craig P., de Búrca G. EU Law: Text, Cases, and Materials. 6th ed. – Oxford: OUP, 2015, pp. 30-72, 124-161 or
Кашкин С.Ю., Четвериков А.О. Право Евразийского экономического союза. – М.: Проспект, 2016, с. 33-47.

Additional Suggested Readings
Глазьев, С.Ю. Европейский Союз и Евразийское экономическое сообщество: сходство и различие процессов интеграционного
Topic 4. Competences of the EU and the EAEU.

1. The nature of powers of international organizations. The principle of attributed (conferred) powers.
2. The principles of proportionality and subsidiarity in exercising powers.
3. The powers of the EU and their typology. Exclusive, shared and supporting competences. The concept of pre-emption. The competence within the economic, employment and social policy. The harmonization clause.
4. The powers of the EAEU beyond strict typology.
5. Express and implied powers of international organizations. Genesis of the implied powers doctrine: national legal order (the U.S.) and international legal order (the UN).
6. The implied powers of the EU and the ‘flexibility’ clause. The possibility for implied powers in the EAEU.

Readings:
Craig P., de Búrca G. EU Law: Text, Cases, and Materials. 6th ed. – Oxford: OUP, 2015, 73-104 or

Additional Suggested Readings:

Suggested case-law:
McCulloch v. Maryland, 17 U.S. 316 (1819).
Case 22/70 AETR [1971] ECR 263 (legal personality and treaty-making powers of the EU).
Case 6/76 Kramer [1976] ECR 1279 (external relations; international commitments; authority of the EU).

**Topic 3.**
**The EU and EAEU legal orders.**

1. The concept of autonomy and the autonomous legal order of international organizations. Autonomy relative to member states’ legal orders. Autonomy relative to international legal order(s).

2. Sources of EU law and their hierarchy. Primary sources of EU law: the founding treaties, the reform treaties and the consolidated treaties. Secondary sources of EU law: regulations, directives, decisions.

3. Sources of EAEU law and their hierarchy. The founding treaty, international agreements within the EAEU framework, international agreements of the EAEU with third parties, decisions and orders of the EAEU institutions. Sources of international law as sources of EAEU law.

4. The nature and effect of EU law. Direct effect of treaty provisions, regulations, decisions and directives.

5. The nature and effect of EAEU law. Direct applicability of decisions. The issue of direct effect.

6. National legal orders vis-à-vis Unions’ legal orders. Priority of EU law from the EU perspective and from the perspective of member states. The issue of priority of EAEU law.

**Readings:**

**Additional Suggested Readings:**
Исполинов А.С. Статус международных договоров в национальном праве, 1(94) Российский юридический журнал 191 (2014).
Марочкин С.Ю. Действие и реализация норм международного права в правовой системе Российской Федерации. – М.: Норма, Инфра-М, 2011.

Suggested case-law:
Case 26/62 Van Gend & Loos [1963] ECR 1 (nature of Union law; rights and obligations of individuals).
Case 6/64 Costa v ENEL [1964] ECR 1251 (nature of Union law; direct applicability, primacy of Union law).
Case 14/83 Von Colson and Kamann [1984] ECR 1891 (interpretation of national law in line with Union law).
Case C-213/89 Factortame [1990] ECR I-2433 (direct applicability and primacy of Union law).
Joined Cases C-6/90 and C-9/90 Francovich and others [1991] ECR I-5357 (effect of Union law; liability of Member States for failure to discharge Union obligations; non-transposal of a directive).
Case C-416/00 Morellato [2003] ECR I-9343 (primacy of Union law).
Joined Cases C-397/01 to C-403/01 Pfeiffer and others [2004] ECR I-8835 (interpretation of national law in line with Union law).
Case 2/74 Reyners [1974] ECR 631 (direct applicability; freedom of establishment).
Case 33/74 van Binsbergen [1974] ECR 1299 (direct applicability; provision of services).
Case 41/74 Van Duyn [1974] ECR 1337 (direct applicability; freedom of movement).
Case 11/77 Patrick [1977] ECR 1199 (direct applicability; right of establishment).
Case 70/83 Kloppenburg [1984] ECR 1075 (directives; direct applicability).
Case 103/88 Costanzo [1989] ECR 1861 (directives; direct applicability; conditions; consequences).
Case 322/88 Grimaldi [1989] ECR 4407 (recommendations; direct applicability or its absence; observance by national courts).
Case C-188/89 Forster [1990] ECR I-3343 (directives; horizontal direct effect).
Case C-91/92 Faccini Dori [1994] ECR I-3325 (directives; horizontal direct effect).
Case C-431/92 Commission v Germany (Grosskotzenburg) [1995] ECR I-2189 (directive; effect of objective law).
Case C-465/93 Atlanta Fruchthandelsgesellschaft [1995] ECR I-3761 (examination of validity of a regulation; preliminary ruling; ordering of interim measures; conditions).
Case C-368/96 Generics [1998] ECR I-7967 (statements in minutes; status for interpretation purposes).
Case C-144/01 Mangold [2005] ECR I-9981 (directive; horizontal direct effect).

**Topic 5.**
**Judicial review in the EU and the EAEU.**

1. The essence of powers of the EU and the EAEU judiciaries.
2. Infringements, actions for annulment and failures to act.
3. Enforcement actions against member states.
4. Preliminary rulings as the major feature of preserving uniform interpretation of EU law and effective functioning of the legal order. Courts or tribunals which can or must refer. Relationships between national courts.
5. Preliminary ruling procedure in the Eurasian Economic Community. Mechanisms ensuring identical contents of law in all member states available in the EAEU. The relations between the EAEU Court and national courts.
6. The reduction in powers and the limitations of the EAEU Court as compared to the Court of Justice of the EU.

**Readings:**
Additional Suggested Readings:


Ispolinov A.C. Навязанный монолог: первое преюдициальное заключение Суда ЕврАзЭС, 8(63) Евразийский юридический журнал 21-30 (2013).


Topic 6.
The EU and the EAEU as global actors: external relations law.
1. The framework and general principles of the EU external action. The post-Lisbon institutions of the EU international action. The limited nature of the EAEU international action.
2. External relations competences of the Unions.
3. Fields of law of the EU external action. The Common Commercial Policy (CCP). Development policy, technical cooperation, and humanitarian aid. External dimensions of other internal policies. Regulation of external trade in the framework of the WTO.
5. EU’s regional initiatives: European Neighbourhood Policy and Common Spaces with Russia.
7. The procedures for concluding international agreements by the EU and the EAEU. Competence issues prior to and after the negotiations and the conclusion of agreements.
8. The legal basis, criteria and procedures for accession to and withdrawal from the EU and the EAEU. The case study of Brexit.
9. International legal order vis-à-vis the legal orders of the Unions. The legal effect of international agreements in the legal orders of the EU and EAEU. The effect of other rules of international law and of international agreements to which member states are party.
10. The role of the EU and EAEU courts in the external relations. The issue of pre-emptive jurisdiction.

Readings:

Additional Suggested Readings:

**Suggested case-law:**
- Opinion 1/09 *Patents Court* [2011] ECR 0.

**Topic 7.**
**The four freedoms of integration.**

1. Economic integration: forms and techniques.
2. The internal market and its purpose in the EU and the EAEU. Varying techniques of regulation in the two Unions.
3. Customs Union and the regulatory framework of the free movement of goods. Measures equivalent to a quantitative restriction, product standards and selling arrangements. Duties and charges, discriminatory tax provisions, barriers to trade.
4. Single economic space and the regulatory framework of free movement of services, capital and workers. The four modes of services and the scope of their implementation. Taking up and pursuit of an occupation in another member state. The Economic and Monetary Union in the EU and prospects for the EAEU.

5. The regulatory framework of the coordinated economic policy.

Readings:
Кашкин С.Ю., Четвериков А.О. Право Евразийского экономического союза. – М.: Проспект, 2016, с. 70-90.

Additional Suggested Readings:

8. Methods of Instruction

- use of interactive educational technologies (problematic lectures, Socratic method, work in small groups);
- use of ratings and accumulative system of control.

10. Evaluation tools and samples

Essay topics and sample questions will be provided during the class.

11. Final mark for the discipline

\[
\text{Mark final} = 0.3 \times \text{Mark}_{\text{essay}} + 0.3 \times \text{Mark}_{\text{attendance/participation}} + 0.4 \times \text{Mark}_{\text{exam}}
\]

Re-examination is carried out in the form of an oral exam (research paper of 6.000 words on an assigned topic).

12. Reading list

Books
Paul Craig, Gráinne de Búrca. The Evolution of EU Law. – OUP, 2011.


Articles


Исполинов А.С. Статус международных договоров в национальном праве, 1(94) Российский юридический журнал 191 (2014).
Исполинов А.С. Навязанный монолог: первое преюдициальное заключение Суда ЕврАзЭС, 8(63) Евразийский юридический журнал 21-30 (2013).
Нешатаева, Т.Н. К вопросу о создании Евразийского союза: интеграция и наднационализм / Т.Н. Нешатаева // Международное правосудие. 2014. – № 2. – С. 57-70.

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