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POSSIBILITIES FOR THE APPROXIMATION OF THE BELARUSIAN LEGISLATION TO THE EU *ACQUIS* WITHIN EURASIAN INTEGRATION FRAMEWORK

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Summary

This paper analyses the prospects of approximating the Belarusian legislation to the EU *acquis* in the context of the country's pathway to Eurasian integration. A lot of non-EU member states approximate their national legislation to the *acquis*, in order to obtain certain economic advantages, such as a better access to the EU market. Belarus could get the same advantages if it initiated a meaningful approximation process. However, the country lacked political will to achieve this objective and now that Eurasian integration is under way, a lot of areas are being regulated on the integration level. The paper outlines legislative approximation areas and the corresponding regulatory frameworks within the Customs Union and the Common Economic Space. I also describe approximation practices in Belarus and the partner states. The analysis leads to a conclusion that taking the Eurasian integration pathway together with creating the Customs Union and the Common Economic Space facilitate approximation of Belarusian legislation to the *acquis* in a number of areas. In others Belarus still has an opportunity to approximate its legislation on its own, quite independent of the institutions and partners within the Customs Union and the Common Economic Space, should the country display enough political will to do so.

Abbreviations

CES – Common Economic Space

EU – European Union

EurAsEC – Eurasian Economic Community

EAEC – Eurasian Economic Commission

CU – Customs Union

PCA – Partnership and Cooperation Agreement

Introduction

A lot of countries that do not belong to the European Union (EU) take efforts to approximate their national legislation to that of the EU. With reference to non-EU member states legislative approximation means transposition, implementation and enforcement of the *acquis* in their national legal practices.¹ In a narrower sense approximation can be defined as a legislative process that aims gradually to bring closer and eventually to bring into compliance third countries' legislative framework with the *acquis*.²

Both countries outside the EU and EU member states are interested in approximation. For the former the motivation behind approximation can vary essentially. Thus, complete legislative approximation is a pre-requisite for countries seeking EU accession. In this case the *acquis* is integrated in the national legal frameworks. Other countries may be interested in legislative approximation with a view to enjoying a favourable legal environment and economic advantages, encouraging an inflow of investment and obtaining a better access to the EU market, etc. In this case the *acquis* is only partially integrated into the national legal frameworks depending on the objectives that the approximation is supposed to achieve.

At the same time the *acquis* has a long history of development and implementation; it reflects modern legal phenomena, regulating the most recent technological innovations and social and economic changes. Moreover, the *acquis* is a model of quality legal instruments. This allows adopting pieces of national legislation that meet the highest standards. In its turn, the EU is interested in exporting its *acquis* into the legal systems of third countries. Among other things it enables the EU to promote its values abroad.³

There are a number of analyses focusing on the adoption of the *acquis* and legislative approximation for Eastern Europe, including post-Soviet countries. Among the leading modern researchers in the field are R. Petrov, P. Kalinichenko, T. Romanova, J. Langbein, K. Wolczuk et al.⁴ However, there has been no research on Belarus in this field. A study of the kind is all the more necessary considering the speeding-up of the Eurasian integration process. The Customs Union (CU) has already been created and the Common Economic Space (CES) is now being set up, which entails a significant intervention into the national legislative frameworks of their member states, including Belarus.

¹ Czuczai, J. The notion of the *acquis communautaire* in the EU Eastward Enlargement-driven pre-accession as well as post-accession dimension. / J. Czuczai. - Warsaw, 2005 [mimeo]. - 12 p.

² Карлюк, М.У. Еўрапейскі саюз і трэція краіны: метадалогія прававой апраксімацыі / М.У. Карлюк // Журнал міжнароднаго права і міжнародных адносін. – 2012. – № 1. С. 23-28.

³ For more information see: Petrov R., Exporting the *Acquis Communautaire* into the Legal Systems of Third Countries / R. Petrov // European Foreign Affairs Review. – 2008. – N 13. – P. 33-52.

⁴ See, for example: Петров Р.А., Транспозиция “*acquis*” Европейского Союза в правовые системы третьих стран: Монография. – К.: Истина, 2011; Калиниченко, П.А. Россия и Европейский союз: двухсторонняя нормативная база взаимоотношений. – М: Издательство «Элит», 2011; Petrov R., Kalinichenko P. The Europeanization of Third Country Judiciaries Through the Application of the EU *Acquis*: the Cases of Russia and Ukraine / ICQL. – 2011. – Vol. 60. – P. 325-353; Petrov R., Exporting the *Acquis Communautaire* into the Legal Systems of Third Countries / R. Petrov // European Foreign Affairs Review. – 2008. – N 13. – P. 33-52; Petrov R., Exporting the *Acquis Communautaire* into the Legal Systems of Third Countries / R. Petrov // European Foreign Affairs Review. – 2008. – N 13. – P. 33-52.; Romanova T. European Union-Russian Legal Approximation as the Basis for the Common European Economic Space: Opportunities and Barriers. In: European Union and Russia: 10 Years after Signing of Partnership and Co-operation Agreement. St. Petersburg, St. Petersburg State University. European Studies Library. No 19. – 2005; Langbein J., Wolczuk K. Convergence without membership? The impact of the European Union in the neighbourhood: evidence from Ukraine // Journal of European Public Policy iFirst 2011: 1-19; Langbein J. Organizing Regulatory Convergence Outside the EU. Setting Policy-Specific Conditionality and Building Domestic Capacities // KFG, The Transformative Power of Europe. - Working Paper No. 33, December 2011.

This paper is intended to outline possibilities for approximating the Belarusian legal framework to the *acquis* in the context of Eurasian integration. First, it outlines the areas of approximation. Second, these areas are analysed in terms of approximation potential, in order to determine those that have no approximation potential, those where the possibilities for approximation are limited by Eurasian integration developments and those that still have a considerable approximation potential. The basic methodology employed in the paper is comparative analysis of standard areas of approximation to the *acquis* and new areas of authority vested in the CES institutions, particularly the Eurasian Economic Commission (EAEC).

The first chapter, *Areas of Approximation to the Acquis* determines the approximation areas basing on international agreements between the EU and post-Soviet countries. The second chapter, *Regulation in the Approximation Areas within the Customs Union and the Common Economic Space: An Overview* looks into the overall characteristics of regulation in the approximation areas within the CU and CES frameworks. The third chapter, *Legislative Approximation in Belarus and the Partner States* offers an outline of approximation to the *acquis* in Belarus and its CU and CES partners. The analysis leads to a number of conclusions.

1. Areas of Approximation to the EU *Acquis*

Countries seeking EU accession approximate their legal frameworks to the *acquis* in the most profound fashion. The process starts when a country enters into accession negotiations. In this case all the EU *acquis* is divided into a number of chapters, in which approximation is carried out either consecutively or concurrently.⁵

Approximation areas are usually determined by international agreements between the EU and third countries. The countries of Central and Eastern Europe, including Lithuania, Latvia and Estonia, had Association Agreements. As for the other post-Soviet states, they have Partnership and Cooperation Agreements (PCA); the only exceptions are Belarus and Turkmenistan, which have no such agreements with the EU.⁶ Thus, both Kazakhstan and Russia – Belarus' partner states within the CU and CES – have PCAs. The EU made efforts to enter into PCA with Belarus; in 1995 the Supreme Soviet, *ie* the then Belarusian parliament even ratified it.⁷ However, the EU countries did not ratify the PCA as the political situation in Belarus had deteriorated.⁸ At present Belarus does not rule out the possibility of signing a PCA, according to the National Security Concept for the Republic of Belarus, which was adopted in 2010.⁹

Belarus does not have an Action Plan within the European Neighbourhood Policy, either.¹⁰ An Action Plan is a document shaped depending on the country's needs; it includes a short- and medium-term action plan in the areas of reforms and cooperation, among other things through EU-assisted approximation.¹¹

At the same time having an international agreement is not a precondition for approximation, which can be conducted unilaterally. Such an agreement only simplifies the process and makes it better organised due to the EU assistance.

Although Belarus does not have a PCA in action, it is the type of document that can be the best source to outline approximation areas for the purposes of our research. The reason is that a PCA is a standard agreement for post-Soviet countries. Moreover, the basic agreement that regulates the EU – Belarus relations and is still in force, *ie* the Agreement between the European Community and the European Atomic Energy Community and the USSR on trade and commercial and economic cooperation of 1989 does not include any provisions on approximation.¹²

⁵ The number of chapters has varied over time. Croatia, which finished the EU accession negotiations in 2011, carried out the approximation according to thirty five chapters. See Negotiations Chapters, Delegation of the European Union to the Republic of Croatia <http://www.delhrv.ec.europa.eu/?lang=en&content=67> (available on 04/11/2012).

⁶ Partnership and Cooperation Agreements (PCAs): Russia, Eastern Europe, the Southern Caucasus and Central Asia http://europa.eu/legislation_summaries/external_relations/relations_with_third_countries/eastern_europe_and_central_asia/r17002_en.htm/ (available on 04/11/2012).

⁷ The two parties signed the PCA in 1995. The Belarusian Supreme Soviet ratified it in its Resolution No 3719-XII On the Ratification of the Partnership and Cooperation Agreement between the European Union and Its Member States and the Republic of Belarus of 12 April 1995. (Viedamasci Viarchoŭnaha Savieta Respubliki Belarus, 1996, No 1–2, p.1)

⁸ Relations between Belarus and the EU – an Outline: http://eeas.europa.eu/delegations/belarus/eu_belarus/political_relations/index_en.htm (available on 04/11/2012).

⁹ Article 49(5)(14). On the Approval for the National Security Concept for the Republic of Belarus: Presidential Decree No 575, 9 November 2010 // National Legislation Register of the Republic of Belarus, 2010. No 1/12080.

¹⁰ Relations between Belarus and the EU – an Outline http://eeas.europa.eu/delegations/belarus/eu_belarus/political_relations/index_en.htm (available on 04/11/2012).

¹¹ European Neighbourhood Policy http://ec.europa.eu/world/enp/howitworks_en.htm (available on 04/11/2012).

¹² Agreement between the European Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and commercial and economic cooperation, O.J. 1990 L 68/3.

An analysis of all the existing PCAs leads to determining the following nineteen approximation areas: customs law, investment, company law, banking law and financial services, company accounts and taxes, intellectual property, education and professional training, labour safety, rules on competition, public procurement, protection of health and life of humans, animals and plants, the environment, consumer protection, indirect taxation, technical rules and standards, nuclear laws and regulations, regulations on the transportation and use of gold and silver, transport and telecommunications.¹³

Most of the outlined areas are common for the PCAs of all the countries, even though sometimes they have slight differences. However, two of them, namely education and professional training and regulations on the transportation and use of gold and silver are characteristic of the PCA with Belarus, which was never enacted, and are not to be found in the other agreements. In our further analysis we will proceed in accordance with this list of approximation areas.

¹³ Article 43 of the PCA with Armenia; Article 43 of the PCA with Azerbaijan; Article 52 of the PCA with Belarus; Article 43 of the PCA with Georgia; Article 43 of the PCA with Kazakhstan; Article 44 of the PCA with Kyrgyzstan; Article 50 of the PCA with Moldova; Article 55 of the PCA with Russia; Article 40 of the PCA with Tajikistan; Article 51 of the PCA with Ukraine; Article 42 of the PCA with Uzbekistan.

2. Regulation in the Approximation Areas within the Customs Union and the Common Economic Space: An Overview

The countries that have taken the path of Eurasian integration have already established their CU and are in the process of creating a CES. The latter has introduced a number of new areas of interstate and supranational regulation. Within the CES framework its member states are adopting agreements, etc. that deal with most of the approximation areas as described above. It should be mentioned that none of the areas have become exclusive competence of the CES interstate or supranational institutions. Exclusive competence means that all regulatory authority is transferred from the national to the integration level. (Trade policies, technical specifications and regulations, intellectual property and competition policies may potentially become areas of exclusive interstate and supranational competence in the future.) Appendix 1 shows main agreements in the corresponding approximation areas.

When the Eurasian Economic Commission (EAEC) came to replace the Customs Union Commission, the member states determined the list of areas in which the EAEC can act within the authority delegated to it by the Treaty on the Eurasian Economic Commission and other international treaties that constitute the CU and CES legislative framework, as well as decisions of the Supreme Eurasian Economic Council.¹⁴ It is important that the list is open, which means that there is a possibility for the EAEC to exercise authority in other areas. Appendix 2 presents a list of the EAEC areas of authority in the corresponding approximation areas. The table below describes the development status of some areas according to the list.¹⁵

The CU and CES regulation development status in some of the approximation areas

Area	Development status
<i>investment, banking law and financial services</i>	<ul style="list-style-type: none"> - Two basic agreements are in force; a new one is to be signed by the end of 2013.¹⁶ - Issues of setting up a supranational body to regulate financial markets and the functioning of such a body are to be discussed by 2015; harmonisation of the national legislations in the areas of banking, insurance and securities market is to be finished by 2020.¹⁷ - There are plans to make a complete transition to international standards in financial reports.¹⁸ - The member states are not precluded from entering into economic integration agreements with third countries, provided certain qualifications are respected.¹⁹ <p>Thus, these areas are being delegated to the integration regulatory level with respect for international standards. However, the national regulatory institutions maintain considerable authority.</p>
<i>company law</i>	- Regulation is fragmented. Some treaties regulating other areas include certain provisions on business activities and legal framework for businesses. Main authority, however, remains at the national level.

¹⁴ Article 3 of the Treaty on the Eurasian Economic Commission of 18 November 2011.

¹⁵ Customs law is the most developed regulation area due to the fact that the CU has already been established. For this reason it is not included in the table. Other areas that are not presented in the table are discussed further on.

¹⁶ Action plan to implement the Agreements that form the CES, approved by Decision No 77 of the EurAsEC Interstate Council as the Supreme Body of the Customs Union at the head of government level of 15 March 2011.

¹⁷ *Ibid.*

¹⁸ Article 3 of the Agreement on facilitating free capital floating on financial markets of 9 December 2010.

¹⁹ Articles 3 and 9 of the Agreement on services in trade and on investment in the Common Economic Space member states of 9 December 2010.

intellectual property	<ul style="list-style-type: none"> - Regulation is based on the international legal framework.²⁰ Belarus has undertaken to join international agreements that it has not signed yet. - National legislation can have provisions to ensure better protection of intellectual property than the CES regulation does. It means that the legal framework can be approximated to the <i>acquis</i> at the national level.
labour safety	For the most part it is regulated by national legislation, ²¹ but also by the CES framework, where migrant workers and their families are concerned. ²² Thus, it is an important area for the approximation of the national labour health and safety standards to those stipulated by the <i>acquis</i> .
rules on competition	<ul style="list-style-type: none"> - Considerable degree of regulation, including uniform competition rules and appointment of the EAEC as an authorised body to control the implementation of the uniform competition rules (the EAEC has certain functions similar to those of the European Commission in the EU).²³ - Stages of implementation: 1) creation of a legal framework to provide for the functioning of the authorised body entitled to control the implementation of the uniform competition rules within the CES and for appealing against its decisions; 2) harmonisation of each country's legislation; 3) delegation of authority to oversee how market actors follow the uniform competition rules, where infringements have or may potentially have a negative impact on competition on cross-border markets.²⁴ - A model competition law is to be drafted in 2013²⁵. - Natural monopolies are regulated by national regulatory and oversight bodies in accordance with national legislation and basing on common principles and rules. This means that for the time being natural monopolies are chiefly regulated at the coordination level and harmonisation issues need to be further looked into.²⁶
state aid	Considerable authority is to be delegated to the EAEC by 2017 in the area of regulating subsidies to industries. ²⁷ Thus, authority in this field is being gradually delegated to the integration level.
public procurement	<ul style="list-style-type: none"> - A considerable degree of regulation in accordance with the Agreement on public (municipal) purchasing. - Although it is national bodies that are in charge of public procurement, apart from the common principles, there are a number of important requirements that national legislations are to meet.²⁸ - Authority is being gradually delegated to the EAEC level.²⁹

²⁰ Article 2 of the Agreement on common regulation principles in intellectual property of 9 December 2010.

²¹ See, for example, Article 12 of the Agreement on services in trade and on investment in the Common Economic Space member states of 9 December 2010; Article 4 of the Agreement on the legal status of migrant workers and their families of 19 November 2010.

²² The Agreement on the legal status of migrant workers and their families of 19 November 2010.

²³ Article 15 of the Agreement on common principles and rules of competition of 9 December 2010.

²⁴ *Ibid.* Article 28.

²⁵ Schedule of drafting documents to implement the Agreements that form the CES. Approved by Decision No 29 of the Eurasian Economic Commission Council of 14 May 2012.

²⁶ *Ibid.*

²⁷ Action plan to implement the Agreements that form the CES, approved by Decision No 77 of the EurAsEC Interstate Council as the Supreme Body of the Customs Union at the head of government level of 15 March 2011.

²⁸ Article 3 and thereon, the Agreement on public (municipal) purchases of 9 December 2010.

²⁹ Action plan to implement the Agreements that form the CES, approved by Decision No 77 of the EurAsEC Interstate Council as the Supreme Body of the Customs Union at the head of government level of 15 March 2011.

health care	<ul style="list-style-type: none"> - A considerable degree of regulation due to a particular importance of this area.³⁰ - The EAEC has considerable authority in issues related to the affirmation of sanitary and veterinary standards, their implementation and oversight. - Some issues can be standardised by technical regulations.
indirect taxation	<ul style="list-style-type: none"> - An agreement on general principles and several procedural protocols are in action.³¹ - This area is much better regulated in the EU; there is a lot of practical experience of implementation, which allows adopting the best practices.
technical rules and standards	<ul style="list-style-type: none"> - Coordinated policies are applied; the EAEC has acquired considerable authority.³² - CU technical regulations have been enacted. They are prepared basing on international standards and have direct force on the customs territory.³³ However, not all products are included into the uniform list³⁴ set by the EAEC, nor all of the CU technical regulations have been enacted. In this case national standards are applied.³⁵ - Voluntary application of a number of international and regional standards and/or national standards is a sufficient prerequisite to meet the requirements of the corresponding CU technical regulations.³⁶ - A uniform product circulation mark is introduced on the CU market.
transportation services	<p>There is no considerable regulation within the framework of Eurasian integration. The EurAsEC Concept³⁷ is in force; railway transportation issues are more thoroughly regulated.³⁸</p>
Tele communications	<p>Regulation within the CES is limited. It applies chiefly to the communication services market.³⁹ However, even here only basic guidelines and intentions are outlined, while most of the authority remains at the national level.</p>

Thus, in a number of areas authority is more or less being delegated to the integration level. References to international principles and standards and the best international practices are common, which brings to the fore approximation of the CES regulation to the EU *acquis* as the best international practice in these areas, particularly in the context of regional integration. In addition, it has been declared more than once that in creating the Eurasian Economic Union and the CES as a step towards it the EU experience is taken into consideration. Indeed, a lot of

³⁰ See Appendix 1.

³¹ The Agreement on the principles of levying indirect taxes on exported and imported goods, work delivery and providing services within the Customs Union of 25 January 2009. See also procedural protocols on the EAEC official website: http://www.tsouz.ru/Docs/IntAgrmnts/Pages/Perechen_MDTs.aspx (available on 04/11/2012).

³² *Ibid.* Article 13.

³³ Point 2 of Article 2 and point 4 of Article 4 of the Agreement on the uniform principles and rules of technical regulation in the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation of 18 November 2010.

³⁴ The Uniform list of products on which mandatory requirements are imposed and procedures for its application. Approved by Decision No 526 of the Customs Union Commission of 28 January 2011.

³⁵ Article 3 of the Agreement on the uniform principles and rules of technical regulation in the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation of 18 November 2010.

³⁶ *Ibid.* point 3 of Article 7.

³⁷ The Concept of creating a common transportation space of the Eurasian Economic Community. Approved by Decision No 374 of the EurAsEC Interstate Council of 25 January 2008.

³⁸ The Agreement on regulating access to railway services, including guidelines of tariff policies of 9 January 2010.

³⁹ The Agreement on trading in services and on investment in the Common Economic Space member states of 9 January 2010. Appendix 1. Communication services market.

provisions are identical to those of the *acquis* and the first drafts of the Treaty on the Establishment of the Eurasian Economic Union borrow extensively from the agreements that lay the foundations for the functioning of the EU.

Of the approximation areas that have been defined above the following ones are not considerably regulated within Eurasian integration: *company law, company accounts and taxes, education and professional training, labour safety, the environment* (except for areas that are dealt with in technical rules, sanitary standards, etc.), *consumer protection* (regulated only partially in sector agreements), *nuclear laws and regulations on the transportation and use of gold and silver*. Of the above mentioned areas nuclear energy is of particular importance because a nuclear power plant is going to be constructed in Belarus. Both in this and other areas that are not considerably regulated within the CES, however, approximation efforts can be concentrated at the national level. In order to achieve this objective, the government should provide the adequate conditions and show political will, which it has lacked so far.

Of course, practice will show how far integration will be taken forward and how the declared provisions will be implemented. In theory all the areas that are delegated to the integration level need approximation at the level of interstate and supranational institutions within the Eurasian integration framework, which includes, among other things, promoting the national interests and influencing decision making. The EU can play an important role here, particularly through sharing experience, know-how, etc. To a certain extent the process is already under way.⁴⁰

⁴⁰ For example, TAIEX workshop on the codification of law for Belarusian office holders, which is aimed at applying the EU experience to creating the Customs Union (18–19 April 2012).

3. Legislative Approximation in Belarus and the Partner States

Ukraine has developed the most full-scale approximation process in the whole region. It is based on a state programme of adapting the legislation to the *acquis*, which gives priority to the process.⁴¹ A number of state institutions in charge of approximation have been set up and considerable progress has been achieved in a lot of areas. Signing an Association Agreement which has already been drawn up will further advance the process.

Belarus has never made any meaningful effort to approximate its national legislation to the *acquis*. On the whole some work is being done within the EU technical assistance framework towards introducing EU standards in environmental protection, energy and product quality.⁴² However, legislative approximation has never been a priority due to the lack of political will and absence of agreements with the EU. Thus, according to the Legislation Advancement Concept, the *first priority* is harmonisation of the national legislation with that of Russia, the EurAsEC and CIS member states. 'The European countries' are lower on the priority list.⁴³ Moreover, the Belarus National Centre for Legislation and Legal Research, which prepares rationales for adopting pieces of legislation on an annual basis, seldom provides grounds for legislative approximation to the *acquis*. Sometimes such reasoning can be found both in the rationales and pieces of legislation, particularly in the areas of environmental protection and technical regulations and standards.⁴⁴

From this perspective it is essential that international standards, including the EU *acquis* lay the foundations for the creation of the CES and regulation within its framework in a number of areas. It allows ensuring, even if indirectly, that the Belarusian legislation conforms to the EU legal standards.

At the same time, both Russia and Kazakhstan, which are Belarus' partners in the CU and CES, have their PCAs, containing provisions for legislative approximation. The question is whether these agreements are implemented and how far the two countries have gone in legislative approximation. Indeed, the agreements and basically the EU legislation are implemented, among other things, by national courts.⁴⁵ Legislative approximation is also ongoing. This process is a prerequisite for lifting non-tariff restrictions in trade with the EU and for obtaining a better access to the EU market.⁴⁶ Russia and the EU are now negotiating a new more comprehensive agreement.⁴⁷

In this situation a special effect is *approximation through Belarus' partners in trade, particularly Russia*. As we have said above, Belarus gives priority to harmonising its legislation with the Russian one, and this is what happens in practice. At the same time, it makes Belarus adopt the EU legal provisions that have found their way into the Russian legislation. This

⁴¹ The Law of Ukraine of 18 March 2004 on State Programme of Adapting the Ukrainian Legislation to the Legislation of the European Union, Vidomosti Verkhovnoi Rady Ukrainy, 2004, No 29, p. 367.

⁴² See, for example Support for the infrastructure of quality in Belarus – Food Safety http://www.belgim.by/podderjka_infrastrukturyi_kachestva_v_respublike_bielarus_pischevaya_bezopasnost_1/ (available on 04/11/2012).

⁴³ Article 21. On the Legislation Advancement Concept for the Republic of Belarus: Presidential Decree No 205 of 10 April 2002 // National Legislation Register of the Republic of Belarus, 2002. – No 1/3636.

⁴⁴ See, for example point 35 of the Rationale for including legislative proposals in the 2011 schedule for drafting legislation. It mentions approximation to the EU *acquis* in drafting the Law of the Republic of Belarus On Amendments to some laws of the Republic of Belarus on protection of rare and endangered species and specially protected natural areas.

⁴⁵ See, for example Petrov R., Kalinichenko P. The Europeanization of Third Country Judiciaries through the Application of the EU *Acquis*: the Cases of Russia and Ukraine / ICQL. – 2011. – Vol. 60. – P. 325-353.

⁴⁶ Калининченко, П.А. Россия и Европейский союз: двухсторонняя нормативная база взаимоотношений. – М: Издательство «Элит», 2011. с. 76.

⁴⁷ European External Action Service – Russia http://eeas.europa.eu/russia/index_en.htm (available on 04/11/2012).

creates an effect of 'backdoor approximation', when under the guise of pursuing a different goal the legislation essentially borrows from the *acquis*.⁴⁸

⁴⁸ This was the case with the Resolution of the General Commissioner for Food Safety, Disease Control and Prevention of 24 January 2005, when the EU standards were actually introduced in order to harmonise Belarusian and Russian legislations. On Amendments to sanitary regulations and standards *Hygienic requirements for the quality and safety of food additives and supplements and their use*. 13-10 ПБ 2002: Resolution No 2 of the General Commissioner for Food Safety, Disease Control and Prevention of 24 January 2005..

Conclusions

Eurasian integration has reached a stage at which most of the potential approximation areas are more or less regulated within the CU and CES framework. The main approximation areas that are essentially not regulated are company law, company accounts and taxes, education and professional training, labour safety, the environment, consumer protection, and nuclear energy. In these areas all meaningful authority remains at the national level. None of the other areas, however, is within exclusive competence of the CU and CES institutions. Very often only general guidelines and certain limits on regulations are outlined.

Belarus has shown no political will to approximate its legislation to the *acquis*. Consequently, participation in Eurasian integration, in which international standards are implemented and the EU experience is made use of, indirectly promotes approximation. The research findings show that there are two basic methods of this 'backdoor approximation':

1. To ensure that the national legislation conforms to the provisions of the CU and CES agreements and other documents;
2. To harmonise the national legislation with that of the leading partners in trade that to a certain degree approximate their legislation to the *acquis*.

Thus, if the EU legal standards are borrowed at the CU and CES level or from Belarus' partners in trade in the areas that are not regulated at the CU and CES level, it will invariably result in conforming to the EU *acquis*. This is particularly true of such areas as investment, banking law and financial services, intellectual property, rules on competition, and technical rules and standards. The EU can play a significant role in the process by actively 'exporting' its *acquis*.

Should there be political will, Belarus can approximate its legislation to the *acquis* on its own in the abovementioned areas that are not regulated within the CU and CES framework. At the same time approximation is possible in the other areas as well, provided the actual CU and CES regulation is accounted for.

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Приложение I. Рынок услуг связи. Соглашения о торговле услугами и инвестициях в государствах - участниках Единого экономического пространства от 9 декабря 2010 г.

Соглашение о государственных (муниципальных) закупках от 9 декабря 2010 г.

Соглашение о единых принципах и правилах конкуренции от 9 декабря 2010 г.

Соглашение о единых принципах регулирования в сфере охраны и защиты прав интеллектуальной собственности от 9 декабря 2010 г.

Соглашение о правовом статусе трудящихся-мигрантов и членов их семей от 19 ноября 2010 г.

Соглашение о принципах взимания косвенных налогов при экспорте и импорте товаров, выполнении работ, оказании услуг в Таможенном союзе от 25 января 2009 г.

Соглашение о регулировании доступа к услугам железнодорожного транспорта, включая основы тарифной политики от 9 января 2010 г.

Соглашение о регулировании доступа к услугам железнодорожного транспорта, включая основы тарифной политики от 9 января 2010 г.

Соглашение о создании условий на финансовых рынках для обеспечения свободного движения капитала от 9 декабря 2010 г.

Соглашение о торговле услугами и инвестициях в государствах-участниках Единого экономического пространства от 9 декабря 2010 г.

Соглашения о единых принципах и правилах технического регулирования в Республике Беларусь, Республике Казахстан и Российской Федерации от 18 ноября 2010 г.

Соглашения о торговле услугами и инвестициях в государствах - участниках Единого экономического пространства от 9 декабря 2010 г.

Appendix 1

Basic Eurasian integration agreements that regulate legislative approximation areas

Approximation area	Basic agreements
Customs law	The Treaty on creating a common customs territory and establishing the Customs Union of 6 October 2007, etc.
Investment	The Agreement on services in trade and on investment in the Common Economic Space member states of 9 December 2010
Banking law and financial services	The Agreement on facilitating free capital floating on financial markets of 9 December 2010 The Agreement on coordinated principles of currency policies in the Common Economic Space member states of 9 December 2010
Company law	-
Company accounts and taxes	-
Intellectual property	The Agreement on common regulation principles in intellectual property of 9 December 2010
Education and professional training	
Labour safety	The Agreement on the legal status of migrant workers and their families of 19 November 2010
Rules on competition	The Agreement on common principles and regulations for natural monopolies of 9 December 2010 The Agreement on common principles and rules of competition of 9 December 2010 The Agreement on accessibility of the services provided by natural monopolies in electricity industry, including basic principles of pricing and tariff policies of 19 November 2010 The Agreement on uniform rules of providing subsidies to industries of 9 December 2010 The Agreement on rules of access to services provided by natural monopolies in natural gas transportation via gas pipeline systems, including basic principles of pricing and tariff policies of 9 December 2010
Public procurement	The Agreement on public (municipal) purchases of 9 December 2010
Protection of health and life of humans, animals and plants	The Agreement on coordinated policies in technical regulations, sanitary and phytosanitary measures of 25 January 2008 The Customs Union Agreement on sanitary measures of 11 December 2009 The Customs Union Agreement on veterinary and sanitary measures of 11 December 2009 The Customs Union Agreement on plant quarantine of 11 December 2009
Environment	-
Consumer protection	-
Indirect taxation	The Agreement on the principles of levying indirect taxes on exported and imported goods, work delivery and providing services within the Customs Union of 25 January 2009

Technical rules and standards	<p>The Agreement on the guidelines of technical regulation harmonisation in the Eurasian Economic community member states of 24 March 2005</p> <p>The Agreement on coordinated policies in the field of technical regulations, sanitary and phytosanitary measures of 25 January 2008</p> <p>The Agreement on the circulation of products which must be certified for meeting the specified standards on the customs territory of the Customs Union of 11 December 2009</p> <p>The Agreement on mutual recognition of the accreditation of the certification bodies and testing laboratories carrying out conformity validation of 11 December 2009</p> <p>The Agreement on common guidelines and rules of technical regulation in the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation of 18 November 2010</p>
Nuclear laws and regulations	-
Regulations on the transportation and use of gold and silver	-
Transport	<p>The Concept of creating a common transportation space of the Eurasian Economic Community of 25 January 2008</p> <p>The Agreement on regulating access to railway services, including guidelines of tariff policies of 9 January 2010</p>
Telecommunications	The Agreement on trading in services and on investment in the Common Economic Space member states of 9 January 2010

Appendix 2

Correlation between the areas of authority of the Eurasian Economic Commission and the areas of legislative approximation

Approximation areas	Areas of authority of the Eurasian Economic Commission
Customs law	customs and tariff regulation, non-tariff regulation customs administration set-off and distribution of customs dues on imports fixing trade regimes with third countries statistics in foreign trade and mutual trade
Investment	trade in services and investment
Banking law and financial services	financial markets (banking, insurance, currency market, stock market)
Company accounts and taxes	
Accountancy and company taxation	
Intellectual property	protection of intellectual products and means of product and service differentiation
Education and professional training	
Labour safety	labour migration
Rules on competition	competition policies subsidies to industries and agriculture natural monopolies
Public procurement	public and/or municipal purchasing
Protection of health and life of humans, animals and plants	sanitary, veterinary and phytosanitary measures
Environment	
Consumer protection	
Indirect taxation	
Technical rules and standards	technical regulation
Nuclear laws and regulations	energy policies
Regulations on the transportation and use of gold and silver	
Transportation	transport and transportation
Telecommunications	
-	macroeconomic policies
-	currency policies
	other areas