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NEW TRENDS IN NON-PROFIT LAW AND THEIR INFLUENCE ON CROSS-BORDER CHARITY IN EURASIAN ECONOMIC UNION

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Abstract:
Eurasian Economic Union (hereinafter «the EAEU») - is an international organization of regional economic integration established by Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia. In non-profit law of the EAEU's Member-States there are two noticeable trends: the first one is the tightening of the administrative processes of registration and operation NGOs, as well as receipt of funds from some sources (primarily foreign). The second trend encompasses internal processes of state support for NGOs and facilitating their access to financing from domestic (especially budgetary sources). These trends can be explained from a political point of view, because NGOs are often subject to accusations of promoting "the political interests" of foreign donors. But these legal restrictions have limited charity in EAEU from reaching its full potential. In our opinion the EAEU Member States should at least remove existing legal barriers limiting the cross-border activities of domestic NPOs and NPOs of other Member States. This applies not only to charitable donations and participation of NPOs in applying for the grants on the territory of the EAEU, it also relates to economic activity of the NPOs through providing the paid services including the services within the framework of the state social contracts. Ultimately this will provide the effective realization the benefits offered by the EAEU to its members.

Keywords: non-profit organizations, Eurasian Economic Union, cross-border charity, philanthropy, EU fundamental freedoms, non-profit law, "the third sector"

1. INTRODUCTION

The activities of non-profit organizations (hereinafter NPO), so-called "the third sector" in post-Soviet countries in recent years had got a significant scale. Legal support of these processes in the post-Soviet countries is associated with a set of objective problems, and has its own peculiarities, that requires in-depth study. Integration trends in the post-Soviet countries undoubtedly actualized this problem. In particular, we are talking about the Eurasian Economic Union that started its functioning in 2015, and the forthcoming process of harmonization of legislation on the territory of Member States. We shall consider changes and major trends in the nonprofit law of the EAEU Member States in the light of the upcoming process of legislative harmonization.

Eurasian Economic Union (hereinafter «the Union», «the EAEU») - is an international organization of regional economic integration having international legal personality and established by the Treaty on the Eurasian Economic Union. The Member-States of the Eurasian Economic Union are the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation (Treaty on the Eurasian Economic Union). The Union is being created to comprehensively upgrade, raise the competitiveness of and cooperation between the national economies, and to promote stable development in order to raise the living standards of the nations of the Member-States.

In non-profit law of the EAEU's Member-States there are two noticeable trends: *The first one* is the tightening of the administrative processes of registration and operation NGOs, as well as the receipt of funds from some sources (primarily foreign). This trend is observed in the majority of the former Soviet Union's countries participating in the EAEU - Russia, Kazakhstan, Kyrgyzstan, Belarus, and in some other countries of the former USSR - for example, in Tajikistan and Azerbaijan. These processes having a relatively common goal, at the same time have different forms and have different degrees of intensity from country to country.

Let's take a closer look at legislative trends in non-profit organizations' law.

1.1. Russian Federation

The basis of this trend was laid by Federal Law "On Amendments to Legislative Acts of the Russian Federation regarding the Regulation of the Activities of Non-profit Organizations Performing the Functions of a Foreign Agent". The bill aimed at regulating the activities of non-profit organizations receiving donations - money and other property - from foreign sources and engaging in political activities.

The law stipulates that political activity does not include activities in the field of science, culture, art, health care, prevention and health protection, social support and protection of citizens, protection of motherhood and childhood, social support for people with disabilities, promoting healthy lifestyles, physical education and sports, protection of flora and fauna, charitable activities, and activities on promoting of the philanthropy and volunteerism.

The law provides for keeping the register of non-profit organizations that perform functions of a foreign agent. According to the law, political non-profit organizations financed from abroad must register with the Ministry of Justice on their own as "foreign agents." The annual financial statements of non-profit organizations with the status of a foreign agent and also structural units of foreign non-profit organizations are subject to mandatory audit.

Materials published or distributed by mentioned NPOs including the media or the Internet-publications, should be accompanied by an indication that the material published or distributed organization acting as a foreign agent. Once labeled as foreign agents, organizations are obliged to begin each oral statement with a disclosure that it is being given by a "foreign agent". Any avoidance of duties determined by the legislation of the Russian Federation on non-profit organizations that perform functions of a foreign agent leads to punishment under criminal law (Federal Law "On Amendments to Legislative Acts of the Russian Federation regarding the Regulation of the Activities of Non-profit Organizations Performing the Functions of a Foreign Agent").

This law caused a mixed reaction in the community because the "political activities" are described too broadly and vaguely. Therefore the law articulates uncertainly the criteria for including non-profit organizations into the register as "foreign agents".

In Russia there are more than thirty kinds (forms) of non-profit organizations. They are funded by private, public or other donations, government and non-governmental grants and other sources, including international ones. At the same time foreign funding of Russian non-profit organizations was doubled in 2014 in comparison with 2013 (Vklyuchenie NKO v spisok "inostrannih agentov" inogda sporno, 2015).

This law seriously affected the NGOs involved in civil, political, social and economic rights as well as environmental protection and discrimination issues. During one year more than a thousand NPOs were inspected, dozens of them got a notice. Some of the most well-known NPOs were fined, some others were closed. Now the register of organizations which are recognized as "foreign agents" includes according to various estimates, 50-90 NPOs. Human rights activists claim that the majority of them - the human rights, women's and environmental protection organizations.

Russian NGOs have repeatedly expressed their opposition to the law and challenged it in court, including the European Court of Human Rights. Commissioner for Human Rights urged the Russian government to suspend the further application of the law on "foreign agents" and to refrain from imposing additional restrictions on the work of civil society organizations in Russia. Experts of the Venice Commission (during the 99th plenary session) also recommended the Russian authorities to revise the regime of separate registration for NPOs. The European Parliament expressed disappointment at the Russian law and urged the Russian authorities to cease the registration of NPOs as "foreign agents" (European Parliament resolution of 13 June 2013 on the rule of law in Russia).

The cruelty of this law (despite the fact that, in accordance with the request of the President, the legislator is going to clarify the concept of "political activity" as used in the law) explains the reluctance of NPOs to register as foreign agents. This prompts many non-profit (non-governmental) organizations in Russia to seek circuitous loophole in the law. In particular, the idea of creating affiliated commercial entities eligible to receive money from abroad is being discussed.

1.2. Kyrgyzstan

A similar bill on foreign agents caused so strong resonance among the public and international community in Kyrgyzstan that was withdrawn from the agenda of the Kyrgyz Parliament for further discussion and consultation with the wide range of experts and society representatives. The bill had previously been discussed in Parliament and on 29-30 June 2015 it was supposed to undergone a procedure of voting.

The draft law "On non-profit organizations" provides a significant toughening of the control over the activities of NPOs and NGOs in Kyrgyzstan. As in Russia, non-governmental organizations in Kyrgyzstan will be labeled as "foreign agents" if they receive funding from foreign and international sources and participate in "political activities" - a term that too broadly defined as an activity aimed at influencing government policy and public opinion". Under the bill, if passed, would fit almost all the NPOs of Kyrgyzstan (in the country with a population of 5.5 million persons there are approximately 14,000 non-profit organizations), because they all depend on foreign grants. This will limit the access to finance of non-profit organizations from foreign and international sources, that for its part will adversely affect their useful social activities (Kirgizstan: Parlament otozval zakonoproekti ob inostrannih agentah i zaprete propagandi gomoseksualizma, 2015).

1.3. Kazakhstan

The basic law regulating the NGOs activities is the Law of the Republic of Kazakhstan dated January 16, 2001 № 142-II «On Noncommercial Organizations" (with amendments as of 12.29.2014). During the years of independence of the Republic of Kazakhstan according to various estimates about 27000 non-profit organizations have been registered. NPOs in Kazakhstan can receive funding in the form of donations or grants from domestic and international sources. However recent legislative initiatives can virtually eliminate the current model of funding the Kazakhstani NPOs, including funding from foreign sources.
Law of the Republic of Kazakhstan "On amendments and additions to some legislative acts of Kazakhstan on the activities of non-governmental organizations" supposes a number of changes in the regulation of the activities of NGOs, including:

- The appearance nonexistent in this form before a specialized "framework" law regulating the procedure for providing grants to NGOs from all sources;
- Expansion of the powers of the authorized state body. Henceforth it will determine the procedure for awarding grants in the territory of the Republic of Kazakhstan, monitor the allocation grants to NGOs, collect and analyze information about the implementation of the state social contracts and grants (regardless of source of funding);
- The creation of the single "Operator" for grant funding of NGOs in Kazakhstan. The legal powers of operator proposed by law allow monopolizing the provision of grants in Kazakhstan;
- The introduction of the norms establishing a limited list of spheres of activities which can be granted in Kazakhstan by any donors. In itself, the regulation of grants did not exist before and was used only for the funding within the state social contract. Now, regardless of whether donors provide grants directly or through created "Operator", they will not be able to determine the priorities for its grants (Shormanbaeva A., 2015).

Thus, the Law created the legal conditions for the limitation of the independence NPOs in searching the funding in the form of grants. The Law significantly restricts the ability of international organizations, foreign governments and international NGOs to provide grants to Kazakhstani NPOs directly.

1.4. Belarus

In Belarus any foreign funding of NGOs is also subject to state registration. In its turn according to the decree "On receiving and using foreign grant aid" grant (donation) couldn't be registered without obtaining prior authorization from the authorities. In November 2011 entered into force the amendments to the Law of the Republic of Belarus "On Public Associations" and the Code of Administrative Offences according to which Belarusian NGOs are not allowed to have accounts in banks or other financial institutions abroad. The law provides for criminal or administrative liability of NGOs and their management for funding from foreign sources without authorization. Experts believe that now the Belarusian legislation contains a number of conceptual problems that hamper inflow of foreign grant aid to Belarus:

1. It is required to obtain prior authorization to use the foreign grant aid.
2. The existing procedure restricting the right to receive;
3. There is a permissive procedure of registration of the foreign grant aid;
4. There is no effective mechanism to ensure transparency in obtaining and using the foreign grants (Recommendations of the ICNL, 2015).
5. A limited list of possible targets, for which a foreign aid may be obtained.

It should be noted that the direct analogy with the Russian law "On foreign agents" in Kazakhstan and Belarus is not observed, but these States stand in the way of restrictions rather than facilitations the receipt of foreign aid, with a view to enhance the monitoring of the objectives and to have possibilities to limit the process of financing NPOs from foreign sources.

1.5. Armenia

In Armenia no significant changes in non-profit law which would illustrate the current trends has been observed. The only thing that could be noted in comparison with other Member States of EAEU is quite liberal legislation and the active participation of NPOs in the Armenian foreign policy. Indeed, the legal status of non-profit organizations in Armenia was recognized, by the international experts as one of the most favorable among post-Soviet countries (along with Georgia and Kyrgyzstan until recently) (Recommendations of the ICNL, 2015).

The second trend encompasses internal processes of state support for NGOs and facilitating their access to financing from domestic (and especially budgetary sources). In particular we are talking about the legislation changes in Belarus which at an early date allow the NGOs to carry out business activities. Other similar processes in Member States confirm this trend - so, the opening of access to budgetary financing for NGOs in the form of state social contractual awards in Kazakhstan as well as the financing through a system of grants in Armenia also looks tendentious.

Both trends having a different expression at the same time have a common aim of the concentration of funding of NGOs' activities on domestic sources, as well as of increasing the state control over foreign funding.

These measures are the only a small part of the legal barriers, known to the world science, impeding the implementation of the cross-border activities of NPOs in particular charity. While the growth of cross-border philanthropy is impressive, the legal environment and other factors have limited global philanthropy from reaching its full potential. Indeed, "[philanthropic] institutions are not functioning optimally, constrained by policies, accepted practice, and legal and structural limitations." At that legal barriers include constraints imposed by both countries: the "donor" country on the outflow of philanthropy, as well as constraints imposed by the "recipient" country on the inflow of philanthropy.

Donor country, or "outflow," constraints include:

- significant limitations on foreign grantmaking by tax-exempt entities;
- advance governmental approval for cross-border giving;
- limited, or no, tax incentives for international philanthropy;
- burdensome procedural requirements for foreign grants;
- counter-terrorism measures; and
- restrictions on financial transactions with sanctioned countries.

Recipient country, or "inflow," constraints include:

- advance government approval to receive foreign funding;
- restrictions on the types of activities that can be supported with foreign funding;
- mandatory routing of foreign funding through government channels;
- post-receipt procedural burdens, such as burdensome notification and reporting requirements;
- the taxation of global philanthropy; and
- foreign exchange requirements.

Legal barriers to the formation and operation of eligible nonprofit beneficiaries include, among others:

- high minimum thresholds for members or assets;
- burdensome registration procedures;
- excessive government discretion in registration and termination decisions;
- prohibitions on areas of activity;
- invasive supervisory oversight; and
- barriers to cross-border communication.

While a comprehensive treatment of the impact of legal barriers on global philanthropy is beyond the scope of this paper, we note that legal constraints may deter global philanthropy in a number of ways. For example:

- some philanthropists choose not to engage in global philanthropy because the impediments are too daunting;
- some philanthropists – such as corporate foundations with employee matching programs – have chosen to end, or substantially limit, the international component of their philanthropy programs;
- some philanthropists who do choose to engage in global philanthropy will, in the context of giving to some countries, only be able to accomplish philanthropic giving through complex tax planning; and
- in some circumstances, philanthropists seeking to fund local recipients default to funding international organizations (Moore D. & Rutzen D., 2011).

These trends in the Member States EAEC can be explained from a political point of view, because NGOs are often subject to accusations of promoting "the political interests" of foreign donors and of "destabilization of the political situation".

However, the political component is not the subject of this article, so we will raise the only one issue - how these trends are consistent with the principles, objectives and fundamental freedoms set by the Treaty on the Eurasian Economic Union.

As early as the Eurasian Economic Community stage (a phase preceding the signing of the Treaty on EAEU), the acting head of the Eurasian Economic Commission Viktor Khristenko noted that "as a result of creation a single economic space we need to provide "four freedoms": free movement of goods, services, capital and labor" (Hristenko V., 2004). According to him, the Eurasian Economic

Union was created on the basis of the experience of the European Union and in accordance with the rules of the World Trade Organization (Hristenko V., 2015).

Created on the basis of the Treaty of Rome, which came into force on 1 January 1958, the European Community (EC) was aimed at the economic integration of the Member States (members) and the creation of the EU single market for goods, works and services. The Treaty on European Union reflected the idea that the necessary condition for the functioning of this market is the optimum distribution of economic resources throughout the Community. From that moment goods, persons, services and capital should have been treated on the territory of all EU Member States as if they were a single state.

The European Union has the best and most acceptable for the EAEU experience of creating a supranational economic space and an integrated system of economic governance. In the Agreement on partnership and cooperation existing between the EU and Russia, Russia's intention to gradually bring together its economic legislation with the regulatory framework of the European Union is recorded. Similar provisions are contained in bilateral agreements between the EU and almost all CIS countries, many of which have the goal of further rapprochement up to the accession to the European Union (Hristenko V., 2004).
By analogy with European Union the EAEU "is intended to ensure free movement of goods, services, capital and labor within its borders, as well as coordinated, agreed or common policy in the economic sectors determined under the EAEU Treaty and international treaties within the Union" (Art. 1 of The Treaty on EAEU, Article 1). It is logical to assume that the EAEU has borrowed and the EU principle of non-discrimination in the domestic market: 1. The Member States shall not introduce new discriminatory measures with regard to the trade in services, incorporation and activities of persons of other Member States as compared with the regime in force at the date of entry into force of the Treaty... 2. In order to ensure freedom of trade in services, incorporation, activities and investments, the Member States shall conduct gradual liberalization of mutual conditions of trade in services, incorporation, activities and investments… 3. The Member States shall seek to establish and ensure the functioning of a common market for services…» (Art. 1 of The Treaty on EAEU, Article 66).

In the light of abovementioned aspects, it would be appropriate to consider a European approach to the ensuring of the access of NPOs to the fundamental freedoms of the internal European market.

However, in an attempt to use the experience of the EU in providing of fundamental freedoms of the Union for non-profit organizations, we are faced with a paradox: despite of the breadth of interpretation of the TFEU Treaty's provisions some its declared freedoms do not apply (by the literal wording) to the NGOs. For example, by Articles 49 and 54 TFEU (former Articles 43 and 48 TEC and former Articles 52 and 58 TEEC) non-profit entities are explicitly excluded from freedom of establishment which is the second circulation freedom of the single market, by the literal wording of Article 54 TFEU. Article 62 TFEU extends the scope of application of Article 54 TFEU also to Chapter 3 related to services. It follows that non-profit entities are also excluded from the freedom of providing services. These are considered to be of residual nature in the system of the four freedoms (Lombardo S., 2012).

The topic of freedom of establishment of companies in the European Union according to Articles 49 and 54 TFEU has been extensively analyzed by legal doctrine in recent years and some researchers oppose this exception. They wonder whether the exclusion from freedom of establishment for non-profit entities (mainly associations and foundations from a civil law perspective of the original six Member States) as originally provided by Article 58 TEEC is nowadays still systematically justified. The explicit exclusion of non-profit entities (mainly foundations and associations) from two significant freedoms of the European economic system, was decided in a time (almost 60 years ago) when such institutions operated on a local and national dimension. Their activity was considered to be of charitable, philanthropic, scientific, educational character and was considered to be different from the commercial entities (Lombardo S., 2012).

Generally, harmonization of Member States' company laws can be pursued on the basis of Article 50.2(g) TFUE. But this article also refers to Article 54 and focuses on the exclusion of non-profit-making legal entities from freedom of establishment in the single market.

It is worth remembering that in the case of (for-profit) companies the issue of freedom of establishment was strictly linked with the harmonization of the company laws of the Member States according to

Article 54 TEEC, for the protection of the members and other(s). On the contrary, in the case of non-profit entities there was no such harmonization. Since they were indeed excluded from freedom of establishment, there was no need to harmonize their legal provisions, particularly with respect to the protections of creditors.

Nevertheless, in more recent times non-profit entities have been stressing their importance in the realization of the single market and pushing for European legislation to grant recognition of their role in the modern market economies of the Member States and consequently also of the single market.

In a sense non-profit organizations are one of the subjects of the market. It is a well-known fact that developed countries of Global Community consider the Third Sector not only as an additional mechanism regulating social relations and resolving the urgent social problems. Non-profit organizations are currently important subjects of market relations, as they fill the economic niches that can be called dead-end in terms of business. Moreover in developed counties it was finally recognized the fact that Non-governmental organizations are more flexible structures in comparison to state bodies (Saktaganova Z. & Ospanova D., 2013 p.47).

The recent proposal of the European Commission for the introduction of a regulation on the European Foundation Statute refers to the necessity to grant to the EU Foundation freedom of establishment according to Article 49 notwithstanding the explicit wording excluding this possibility. This makes clear that the issue of freedom of establishment for non-profit entities is an important one.

In this connection we can agree with the arguments of Stefano Lombardo (Lombardo S., 2012), who in his article reveals unreasonableness of the exclusion of non-profit-making entities from the right of freedom of establishment of Articles 49 and 54 TFEU. He analyses the historical reasons for this exclusion and argues that the exclusion from freedom of establishment is no longer justified on the basis of two elements.

Firstly, a law and economics treatment of non-profit firms as organizations that efficiently provide goods and services in alternative to for-profit firms weakens the reasons for the exclusion. Secondly, the development of the jurisprudence of the European Court of Justice in the fields of competition law, free movement of capital and tax law makes such exclusion systematically no longer tenable.

The law and economics dimension of the non-profit element and the consideration that non-profit firms are (more) efficient organizers of some economic transactions in comparison to for-profit firms was not considered by legal doctrine and by the European legislator. The law and economics analysis of non-profit firms bring back their operations to the realm of economic activity. The market economy can be properly “occupied” not only by for-profit entities but also by non-profit entities. It explains their natural compatibility with market economy theory, in terms of their economic dimension in pursuing an economic activity on the basis of the non-profit element.

Despite the common definition of NGOs as organizations not having the main purpose of profit, it has been argued that the difference between commercial organizations and noncommercial organizations is solely "non-distribution constraint" - for-profit entities permit the distribution of the gains deriving from the activity while non-profit entities do not permit this distribution.

Moreover, essential for access to basic freedoms is not the purpose of the activity (profit-making / nonprofit making), but the type of undertaken activities (economic or non-economic). And to the extent that the activity is economic in terms of competition law, both for-profit and non-profit firms enjoy freedom of establishment.

The non-profit firms can act as an efficient competitor of the for-profit firm. The effectiveness of NGOs increases when «contract failures» problems are present. In this case the non-profit firms are effective in providing specific (economic) services in the free market as an alternative to commercial firms.

From this point of view the fundamental freedoms of the EU have a global goal: the creation of a more or less uniform corporate law to ensure that companies from different countries have equal conditions for competition. Therefore those NPOs that can act as commercial organizations compete for resources and for the implementation of paid services should have the right to use the fundamental freedoms of the EU. Moreover, some scholars argue that non-profit-making entities should be granted

freedom of establishment if they carry on economic activity, even given the literal wording of Article 54 TFEU.

Regardless of the debate about the economic (or non-economic) nature of the activities of NPOs in the case law the European Court touched indirectly the issue of freedom of establishment for non-profit entities. The analysis of these cases shows that the Court has included non-profit entities in the sphere of application of European law. This means that non-profit entities are already subject to European law.

Additionally, in competition law, which is a very important pillar (of the construction) of the single market, the ECJ has already developed a jurisprudence that confirms the application of the relevant Treaty provisions also to non-profit entities. In some cases the ECJ has argued that non-profit entities can be subject to European competition law (meaning also state aid law). At the same time they are excluded from freedom of establishment.

The greatest development of the case law of the European Court of Justice in relation to NPOs had been received from the tax law (because of the large range of different tax exemptions granted to NGOs by European governments).

A series of rulings by the European Court of Justice set out a “non-discrimination principle”, according to which Member States must award equal tax concessions to charities based in other Member States where the foreign charities can be shown to be “comparable” to domestic organizations holding charitable tax status. A judgment by the European Court of Justice also said that tax laws preventing citizens of EU member states from gaining tax relief from transfers to foreign charities was contrary to EU rules encouraging free movement of money (Cross-border Philanthropy in Europe, 2014).

Many authors also have considered a different treatment of domestic charities and EU charities not in accordance with the EC Treaty and violating a number of freedoms of the EU. Their arguments were, briefly, as follows. Article 56 of the EC Treaty prohibits all restrictions on the movement of capital between member states. Annex I to Council Directive 88/361/EEC of 24 June, also referred to as the “Nomenclature of the capital movements”, gives a non-exhaustive classification of capital movements. Included in this list are gifts and endowments, dowries, inheritances and legacies. A different treatment of domestic and EU charities would not be in accordance with the free movement of capital. This difference might also infringe the free movement of persons, as individuals who move to another member state cannot make use of tax incentives when they donate to charities in their former state of residence. Finally the different treatment can also be contrary to the freedom of establishment, as foreign charities are forced to set up branches in the other member state to enjoy the tax incentives (Hemels S., 2008).

On 14 September 2006, the European Court of Justice (ECJ) gave its decision in Case C-386/04: Centro di Musicologia Walter Stauffer v Finanzamt München für Körperschaften. This judgment helped many European citizens who wish to donate to charities in other member states. The Stauffer judgment has become the point of reference as a case concerning the tax privileges of non-profit entities. German tax authorities refused to grant a tax exemption on income deriving from a contract of letting to an Italian foundation which owned a building in Munich. The Court did not solve the case in terms of freedom of establishment. Nor did the Court solve the case in terms of freedom to provide services. The case was solved in terms of freedom of movement of capital with some implications in the area of tax law privileges.

In January 2009, the European Court of Justice issued its judgment in the case C-318/07 of Hein Persche v Finanzamt Lüdenscheid. This case relates to the position of the donor of a non-profit entity. In this case a German citizen donated some movable goods to a Portuguese non-profit entity and asked for tax deduction in Germany. The Court treated the case in terms of freedom of movement of capital and decided that the refusal of German tax authorities to grant the tax deduction was contrary to European Law.

Besides competition law and tax law, there have been several other cases related to non-profit entities active in the single market. These include decisions on public procurement law, and on employment law as well as other cases. This is of course not a surprise as non-profit entities are indeed an important part of the economic landscape of the Member States.

The discussion of the ECJ case law on non-profit entities in relation to several fields of European law has shown that non-profit entities are treated as “active and proud consumers” and “obedient servants” of several areas of European law. As for-profit entities they enjoy the different kinds of rights deriving from European primary and secondary legislation because they are an essential part of the economic landscape of the single market. Non-profit entities are subject to competition law and enjoy freedom of capital movement and tax exemptions (Lombardo S., 2012).

Individuals and foundations are more and more mobile, give in various ways, fund activities in multiple locations and geographies and have international assets and interests. Philanthropy is increasingly without borders. Whether undertaking joint initiatives, implementing multi-country projects, pooling resources, seeking to reach more beneficiaries, or raising funds from a wider group of donors, large numbers of foundations and other public-benefit organizations (PBOs) want and need to be active cross-border to effectively pursue their mission.

The fiscal environment within the EU, however, is still far from satisfactory and hasn’t moved at the same pace as philanthropy in terms of supporting its dynamism and cross-border activity (Surmatz H., 2015).
According to the report «Taxation of Cross-border Philanthropy in Europe after Persche and Stauffer: from landlock to free movement?» even where Member States have amended their laws to ensure formal compliance with the European non-discrimination principle, a number of procedural hurdles still exist. Charities and donors often face long procedures, uncertainty and substantial costs for administrative and translation fees, legal advice and proceedings in national or European courts (Cross-border Philanthropy in Europe, 2014)

The main problem in finally resolving the landlock is still the issue of control and trust among member states.

The economy requires freedom of movement of companies, but national legislators often resist integration because of the distrust of the foreign companies and the doubts about their compliance with national standards. The roots of this mistrust lie in the difference between the corporate law of the Member States and the assumption that the foreign corporate law protects the interests of creditors, employees or participants of the company worse than the national one. For a certain State the allowing foreign company to operate freely in its territory means endangering its own legal turnover (European Corporate Law, 2004). This becomes particularly important for the EU Member States, which although have experience co-existence within the within the framework of the Soviet Union, however, for more than 20 years have created their national legal systems. National legal systems as well as other elements of independence received after the collapse of the USSR are subjects of the zealously protecting.

In our opinion the following forth potentially available options or “next steps” (D. Moore & D. Rutzen, 2011) could improve a situation and resolve the issue of mistrust:

- surveying philanthropists и НКО on legal barriers they confront;
- developing an index of barriers to cross-border philanthropy;
- expanding tools to help foundations navigate the legal environment for cross-border activity of NPO and especially philanthropy;
- developing a more robust system to monitor and share information about legal developments affecting cross-border activity of NPO and especially philanthropy;
- undertaking analytic work to help make the case to skeptical government officials that global philanthropy is in the interest of both donor and recipient countries;
- establishing principles for cross-border activity of NPO and especially philanthropy;
- undertaking or supporting initiatives to reform of laws affecting cross-border activity of NPO and especially philanthropy;
- developing a treaty on cross-border activity of NPO and especially philanthropy.

Freedom of movement of companies in the EAEU is the legal institution which in very next future will begin to grow rapidly and will undoubtedly change the face of corporate law of the EAEU Member States. The opening of national borders for companies will inevitably lead to the fact that every single State in the formation of national corporate law will need to take into account the legislation of their partner countries. As a result, national corporate law protected from external influences gradually be-

comes a phenomenon of the past. According to the head of the Eurasian Economic Commission the implementation of the "four freedoms" is not limited to the removal of border barriers (in other words "entry" barriers) - tariffs, quotas, restrictions on investment, and so on. Complete unity of economic space is achieved only in context of the harmonization of the economic regulation (Hristenko V., 2004) Of course it could be premature to talk about the legal harmonization in the field of NPOs - there is no a good practice of using the advantages and principles of the EAEU by even commercial companies yet. It is frivolous expect that the issue of the free cross-border activities of NPOs would be resolved or at least put on the agenda in the near future. Especially it's too early to expect the harmonization of tax legislation for this type of organizations.

However, we deem it appropriate and even necessary to examine the existing legal barriers of the cross-border activities of NPOs in the single market of EAEU and using the European experience consider the NPOs along with commercial firms as the users of the basic economic freedoms. For this purpose each EAEU Member State at least should remove existing legal barriers limiting the cross-border activities of domestic NPOs and NPOs of other Member States. Existing now they not only prevent the spread of the economic freedoms of the EAEU but also pose a threat to the very existence of cross-border activities of NGOs in the territory of the EAEU. Removing these barriers will also create more favorable access to resources from foreign sources for local non-profit organizations. This applies not only to charitable donations and participation of NPOs in applying for the grants on the territory of the EAEU, it also relates to economic activity of the NPOs through providing the paid services including the services within the framework of the state social contracts - in terms of equal competition and without regard to their nationality. Ultimately this will provide the effective realization the benefits offered by the EAEU to its members.

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