

SOCIAL PHILOSOPHY

THE PHILOSOPHICAL AND LEGAL ASPECT OF THE UNIFIED INFORMATION AND DIGITAL AREA IN THE EURASIAN ECONOMIC UNION: THE FIFTH FREEDOM OF THE SINGLE MARKET

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Abstract: The article deals with the philosophical and legal foundations of the formation of single information and digital area as one of the contemporary objectives in the Eurasian Economic Union. It is pointed out, that the concept of information society spreads over the integration processes and makes to go beyond traditional approaches to the common market and its four freedoms of movement of goods, services, capital, labor. Freedom of information is the fifth freedom of the common market, and digital agenda is included currently in strategies of many integration associations. However, economic issues are not the only that should be referred to, while implementing the latter. The following elements should shape any information and digital strategy of an integration such as security and data protection, trade and competitiveness, management transparency and accessibility, dispute resolution. To regulate the processes of implementing the digital agenda in the EAEU by 2025, member states have chosen the method of coordination. It is justified to harmonize national policies for the digitalization of the economy and governance, while it is necessary to ensure the digital sovereignty of EAEU states as well as to create a market for their own digital solutions in the region.

Keywords: common market, digitalization, Eurasian Economic Union, freedom of movement, information, regional integration, single economic area.

Introduction

Digitalization and regionalization can be referred to the main trends of the modern world order. The failed globalization has been confidently

replaced by the trend of regional integration blocks and organizations (Mikhaliova, 2016; Dadush & Prost, 2023). The economic integration sector, being evidently exposed by the exponential increase in regional trade agreements

(RTAs), proves the tendency for *jus inter regiones*.

The increasing role of the information component in the life of a modern man (*homo informaticus*) has made the concept of *information society* relevant. The importance of information has grown so much that it has become one of the key elements of the noo-environment; while cyber security is one of the key trends in the evolution of the information society. Digital technologies are being introduced widely into different spheres of life. The concept of the digital economy continues to evolve as the transformative power of digital technology grows. It extends beyond e-commerce to include business, communications and services across all industries, including transportation, financial services, manufacturing, education, health care, agriculture, retail, media, entertainment and even culture and the arts. Information and digital era becomes the new civilization challenge.

The information and digital agenda is relevant not only for states, but also for regional integration associations. ASEAN enacted the Digital Masterplan-2025 for both digital competitive economy and digitally inclusive society in 2021. In 2014, the EU launched its Digital Single Market Strategy, seven years after Europe entered the economic and monetary union phase of the Lisbon Treaty.

The Eurasian Economic Union (hereinafter – EAEU, Union) regards the transition to a digital economy as a key driver of economic growth. The prospects and relevance of the digital development of the economies of the EAEU member states are reflected in the main directions of the EAEU Digital Agenda 2025 (EAEU DA), where the digital transformation acts as a key development factor. It presupposed further development not only of the strategic but also of the legal foundations of the sectoral digital transformation under consideration, which should correspond to the EAEU integration model and be aimed at increasing its competitiveness (Shugurov, 2020).

There are mandatory legal acts envisaging the scope of digitalization in the short-term perspective in the EAEU. The Strategic directions for the development of economic integration until 2025 (hereinafter – Strategy-2025) were approved by the Decision of the Supreme Eurasian Economic Council of 11 December 2020. The fifth direction of the Strategy-2025 is dedicated

to the formation of the Union's digital space, digital infrastructures and ecosystems and includes nine main segments of digital transformation: traceability of goods in the EAEU; cross-border trust space and electronic document circulation; integrated information system of the Union; digital ecosystems (including data turnover, personal data protection); digital transformation in the field of intellectual property, electronic trade; external digital agenda, increasing technical support of digitalization (unimpeded Internet traffic) and improving mechanisms for the development of initiatives and project implementation.

As Mikhail Myasnikovich, the Chairman of the Eurasian Economic Commission pointed out at the V Eurasian Digital Forum EADF-2023, the current year is crucial for digital agenda in the EAEU: the Commission and the member states must solve the serious task of circumscribing the proper functioning of more than 50 business processes, and by the end of 2023, the Commission will create a technical possibility of information exchange between the countries of the Union for 70 of the 78 required common processes, it will enhance the platform solutions for common processes. However, is digitalization still a technology, though primary and innovative, for a common market development, or does freedom of movement for information, data and digital assets become the fifth freedom of the market along with goods, services, capital and labor? Moreover, does informatization and digitalization become a common value for integrated society and, therefore, a common concern for supranational regulation?

Methodology

The methodological basis of the study is the dialectic approach. Digitalization changes not only the territorial boundaries of interaction and cooperation, but also the models of socio-economic relations, making it necessary to form a new architecture of “inter-penetration” of objectified reality and cyberspace. As any phenomenon, digitalization has two sides regarding the development and absorption of technology, which need to be balanced. The doctrinal understanding of how the productivity and competitiveness of factors of production, economic actors in any form depend on the ability to generate, process, safely

and promptly use knowledge-based information, began in the end of the twentieth century (Castells, 1985, 2009).

Today, digital technologies, moving business processes online, the Internet of Things, E-government, and even artificial intelligence – these and many other advances in digitalization are becoming commonplace. New challenges of a derivative order are also emerging – access to digital public goods, the distribution of responsibility for managing Internet use, ethics, cybersecurity (see, e.g., UN General Assembly Resolution A/C.3/74/L.11 “Countering the Use of Information and Communication Technologies for Criminal Purposes”). Therefore, the dualistic approach is applied: to assess the economic benefits through legal norms, as well as to evaluate the scope of informatization and digitalization of regional common markets and societies within them via potential objects of digital agenda.

Comparative-legal and technical-legal methods were used as special research methods to consider and conclude on legal peculiarities of the named processes.

Main Study

The construction of new relationships leads to the most important change in legal reality. The digital component transforms from being a factor, which mediates and influences relations, to one defining them. Digital reality as a qualitatively new type of social relations (Khabriyeva & Chernogor, 2018). Building a single market in today’s world would not only be incomplete without the inclusion of the digital agenda in the legal and organizational matter of integration associations, but also ineffective. Today we speak of a “digital development imperative” (Ovchinnikov & Fatkhi, 2018; Khabriyeva & Chernogor, 2018). The main problem associated with the penetration of digital technology into virtually all areas of society and possible legal difficulties is that technology integrates faster than laws are passed (Rusakova & Frolova, 2022).

As Pankratov notes, there is no sample or unique model of digital transformation of integration associations, but several common patterns can be identified:

- digitalization is a key factor of competitive-

ness, which can provide cross-border flow of data, speed of response to technological and economic changes, which, in our opinion, reflects only one side of the cross-cutting nature of digital technology,

- qualitatively new processes are created for the activities of the member state bodies, the digital exchange of data online is facilitated, which, in our opinion, belongs to the general characteristics of the digitalization of the state,
- the creation of the digital space of the integration association (single digital market) goes in separate directions - the digitalization of industry, the transformation of national and regional bodies, etc., which are separate fragments, often unrelated and difficult to administer, due to which there are problems of decomposing strategies into separate activities and programs, as well as the problem of the general level of management in the systems,
- digitalization of integration processes is focused primarily on supporting the provision and expanding the use of cross-border digital services and services with online feedback for all participants (citizens, businesses, government agencies) (Pankratov & Givargizova, 2021).

The EAEU DA was launched in 2016, less than two years after the signing of the Treaty on the Eurasian Economic Union. The main directions of implementation of the EAEU DA until 2025 are approved by the decision of the Supreme Eurasian Economic Council of 11.10.2017 № 12. They are implemented taking into consideration the national interests of each of the member states, the level of their economic development, the level of development of national markets, technological features and the state of the digital infrastructure, peculiarities of the regulation of sectors and industries within the digital agenda. It is also noted in the document that the digital transformation of the goods and services market will lead to a significant simplification of trade procedures by going digital, the active use of e-commerce, and the effective implementation and use of “single window” mechanisms in the economy. It requires further harmonization of cross-border e-commerce rules, promotion of digital business, coordination of actions in the field of protection of intellectual property rights and rights of digital market consumers, as well as inclusion of the regulation of

cooperation in the digital economy on the agenda of trade negotiations of the Union with third countries.

Normatively, the EAEU DA is based on the founding Treaty of the EAEU: art. 23 and the Protocol on Information and communication technologies (Annex No 3 to the Treaty of the EAEU, hereinafter – the ICT Protocol). The founding act of the Union sets forth the readiness for the digital transformation of the economy and social relations, based on a number of general and special norms of the Treaty, despite the fact that the text literally uses categories related primarily to “information support” of integration processes and “information interaction”.

However, the theory and practice go beyond the concept of mere support. In December 2020, the Prime Minister of the Russian Federation proposed at the First Eurasian Congress that to the four market freedoms should be added one more – the *fifth freedom of movement of information*. The four freedoms are indicated in art.4, art. 28, some other provisions of the Treaty and encounter goods, services, capital and work force (labor) – traditional economic basis for cooperation within a single market.

In 2021, a comprehensive approach on information and digitalization was chosen in the Strategy-2025: from technical equipment issues to unified information systems. The trade and economic nature of the tasks is clearly expressed in the document. The digital component focuses on the economic issues, proving the thesis on the combined and complex nature of the fifth freedom of the common market.

However, it is not the same as the traditional goods or services movement. As well, it is recognized, there is a shift from the work’s and workers’ flows to the knowledge flows (Manyika et al., 2016). So, digitalization transforms traditional economic background or cooperation and it goes further. The information, data and digital images need to be treated differently, not only as a technology or a means of cooperation, but as a digital transformation of socioeconomic relations in the integration community and, therefore, *a Single Information and Digital Space* should be availed.

1. Analyzing the text of the Treaty of the EAEU, one can conclude that the Union’s founding act already uses, including at the level of terms and definitions, the elements of *building a*

digital society (Mikhaliova, 2022). The ICT Protocol regulates many issues of electronic document circulation, the use of electronic digital signature. It is necessary to note the already existing experience in the implementation of joint projects in the field of digital economy of the member-states, which are related to industry. These examples include equipping vehicles with the ERA-GLONASS system, introducing an electronic vehicle passport, creating information databases in the field of drug circulation, introducing a mechanism for monitoring the traceability of goods, introducing identification and labeling of certain types of goods, etc.

Generally, these aspects are integral to the construction of cyber-social accounting systems at any level (Domrachev et al., 2016). The introduction of cybersocial systems represents a new stage in the development of Industry 4.0 and *is critical to innovation and competitive advantage* (Karlik et al., 2019). We agree, that the formation of the “digital” Union and its entry into the era of Industry 4.0 depends largely on the degree of digital transformation of scientific and technological integration (Shugurov, 2020).

2. The Treaty, in addition, lays down another important notion for building a digital society within the framework of the integration association, namely “cross-border trust space”. Formation of the trust space is intended for free exchange of data and electronic documents, security of information and telecommunication networks, information security. It is considered as one of the progressive projects in the region (Stupakov, 2019). Functioning of the transboundary trust space is ensured in accordance with the Concept of Using Services and Legally Valid Electronic Documents in Cross-border Information Interaction, approved by Decision of the Eurasian Economic Commission Council of 18.09.2014 No. 73, the Strategy for Development of Cross-border Trust Space, approved by Decision of the Eurasian Economic Commission Board of 27.09.2016 No. 105, the Regulation on Exchange of Electronic Documents in Cross-border Interaction of State Bodies of No. 96 “On Requirements for Creation, Development and Functioning of the Cross-border Confidence Space”. An analysis of these documents shows a high level of legal elaboration of the architecture of building and functioning of the transboundary trust space at the supranational level, though with

the assistance of interstate method of cooperation. An important part of success in the implementation of this direction of information interaction will be proper implementation of requirements, contained in these acts, in national segments of an integrated information system, especially in part of *data protection and security*.

The conclusion of an international treaty within the Union on data circulation (planned for 2023) seems to be a positive step in this direction. There is a need for uniform and ultimately unified regulation of data circulation in the EAEU. It is necessary to define clear approaches to the division of data, which information is expedient to exchange within the integration processes, and which information should be stored exclusively in a member state, as well as to develop mechanisms for data security (such as de-personalization), which can help expand the list of information types to be exchanged.

Worth to note the broad and comprehensive nature of a number of definitions in the ICT Protocol. For example, “information protection” is formulated as “adoption and implementation of a set of legal, organizational and technical measures to determine, achieve and maintain confidentiality, integrity and availability of information and means of its processing in order to exclude or minimize unacceptable risks for subjects of information interaction”. This definition contains both the principles of data circulation and the basics of information security, and the unity of categories of social (information) and physical (means of its processing) contexts.

At the same time, the formation, for example, of common security protocols for the use of ICTs and the protection of personal data can and must take place promptly and in a *unified manner*, which requires an active legislative position of the Commission and supranational legislative methods. Currently, the Commission is proactive in the introduction of electronic accompanying documents and their recognition in the member states, an integrated system of foreign and mutual trade, a single digital catalog of goods and an ecosystem of digital industrial cooperation; the system of identification and traceability, digital transport corridors, etc.

3. The digitalization of various sectors of the economy on the scale of the integration project should be accompanied by the maintenance of *transparency and accessibility* of integration re-

sources, the creation of unified information and telecommunications networks and the ability to use them by citizens and residents of member states, individuals and legal entities. It is advisable to assign common digital rights and obligations to citizens. The development and consolidation of digital rights and obligations (we emphasize, only in this inseparable connection, because great opportunities of digitalization give rise to great threats) can begin now at the level of the Commission at least in the form of recommendations.

When designing the Single Information and Digital Space, it is necessary to lay the possibility of providing electronic services to individuals and legal entities by the integration bodies. According to Shinkaretskaya and Berman (2019), the governing structures of the future must be digitalized implicitly; it means that public institutions must provide their services electronically whenever possible. By analogy with the processes of G2B and G2Px (elements of e-government), it is advisable to create digital communications in procedures between integration association bodies and businesses, as well as citizens. This will significantly “bring” multilevel actors of integration closer to each other, and make the integration processes more transparent. These and any other issues of digitalization of EAEU bodies’ activities require careful planning and legal support, starting from the inclusion of relevant provisions in the acts of primary law of the Union and ending with technical legal acts.

In this regard, it seems necessary to ensure the full implementation of the “prerequisites” of any digital transformation, including the technical equipment of broadband Internet and independent of external operators of databases, information platforms, electronic trading platforms, exchange resources. The involvement of the states and their readiness, technological, organizational and technical, managerial, to implement a common digital agenda is different, though comparatively middle and higher than middle. The EAEU countries are ranked as follows in the Digital Economy Index: Armenia - 75th, Belarus - 32nd, Kazakhstan - 52nd, Kyrgyzstan - 109th, Russia - 45th, Armenia - 70, Kazakhstan - 59, Kyrgyzstan - 97, Russia - 43. Russia - 15 and Kazakhstan - 25 are mentioned in the Global Digital Competitiveness Index.

4. It is similarly important to develop ele-

ments of the EAEU digital strategy and relevant acts aimed, firstly, at the possibility of using digital technologies in the current *dispute resolution mechanism* in the EAEU, and secondly, at qualitatively new procedural regulation in the field of digital circulation, elements of which should include clear legal guarantees of their protection. As part of the first direction, the procedures for applicants to the Court of the EAEU should gradually be brought to a digital standard (e.g., sending any procedural documents by electronic means of communication, using electronic digital signatures) with a step-by-step approach to more complex elements of electronic justice (e.g., creating electronic offices and administering court proceedings using technology, implementing telecommunications technology at various stages of justice administration).

Finally, to implement the digital agenda, an *institutional mechanism should be modified* accordingly. However, we do not support the idea to create the Eurasian Digital Transformation Center with the following functions: design and promotion of a single EAEU architecture and digital sectoral transformation models, design of integration digital processes, coordination of cross-country breakthrough projects of digital transformation of the economy, development of integration digital infrastructure, monitoring of digital development indicators, information law center (Pankratov & Givargizova, 2021). It seems to us that in this form the center may become a bureaucratic layer, which will not contribute to the rapid digitalization of the Eurasian space and the transition to qualitatively new technologies of production and interaction of all actors, but will “distance” the subjects of decision-making and implementation. All these functions should be solved at the level of mobile interstate and inter-branch commissions, integrated business communities with a clear plan of action, activities (such a plan is available, it is necessary to competently decompose it into subtasks in the sectors and at their levels) and strict powers of the Commission in case of non-fulfillment. The latter needs to be elaborated.

Currently, to regulate the processes of implementing the digital agenda, member states have chosen the *method of coordination*. According to the Eurasian Intergovernmental Council Decision No. 1 of February 1, 2019, the mechanism for implementing projects within the digital

agenda includes the powers of the Commission Council (action plan, composition of the coordination group, etc.), the Commission Board (terms of reference, etc.), member states (determined by commissioners at the national level), the coordination group (project methodology, coordination, monitoring, reports) and has a project nature (consortium as an association of member state organizations to implement a specific project). This project approach and the coordinating role of the Commission certainly reflect the dynamics of legal relations.

At the same time, not only an organizational and legal mechanism, but also *a regulatory framework for coordinated digitalization and harmonization in information and digital sphere is needed*.

The Treaty differentiates three types of policy and therefore measures which can be applicable for regulation. “Unified policy” means an application of uniform legal regulation by the member states, including on the basis of decisions of the bodies of the Union within their authority; “harmonized policy” refers to the harmonization of legal regulation, including on the basis of decisions of the organs of the Union, to the extent necessary to achieve the objectives of the Union provided for in this Treaty; and “coordinated policy” involves cooperation by the Member States based on common approaches approved within the organs of the Union, necessary to achieve the objectives of the Union provided for in this Treaty (art. 2 of the Treaty).

The lack of a coordinated policy in the digital sphere may be an obstacle to achieving synergies in the development of the digital economies of the member states and the digital Union (Inshakova & Goncharov, 2023). It is necessary to take into account the spill-over effects of digitalization in all areas of integration - not only information support, but also the forecast impact of “digitization” of entire sectors of the economy. So, according to economists’ calculations, based also on the comparative experience of other countries and integration associations, “as a result of the implementation of the “Digital Agenda” of the EAEU states, the achievement of targets of up to 3% of employment in the ICT sector for the EAEU member states may ensure an increase in the employment rate to 2.4% by 2025” (Yeryomenko, 2021). These trends and forecasts should be kept in mind for the devel-

opment of a common labor market in the EAEU, estimates of migration flows within the Union, domestic investment, etc.

In this connection, we believe that there is no need to unify the digital agenda within the member states in all aspects, as it is proposed (Yeryomenko, 2021), it is outlined in all states in its own way. However, coordinated policy is not enough for a current objectives of development, it is certainly necessary to synchronize national efforts in digitalization of economy and go beyond coordination. In this respect, the proposals to *harmonize national policies on the digitalization* of the economy and governance sound more justified (Dyatlov & Nuyanzin, 2019). In the same time, it is necessary to ensure the digital sovereignty of EAEU states and create a large market for their own electronic solutions in the region, especially in the areas of information security, big data and artificial intelligence. A number of areas should be left within national regulation to localize cyber threats (Kondratyeva, 2019). Therefore, a combination of policies and regulatory methods seems appropriate for the sphere of information and digitalization.

Conclusion

Digital component is not only a means of technological development of the traditional freedoms of the common market, but also an independent object of regulation in the framework of integration association. With the penetration of digital and information technology in various spheres, one of the central tasks is the formation of a Single Information and Digital Space. We point out four main elements in forming the Single Information and Digital Space in an integration organization, the EAEU particularly: security and data protection; trade and competitiveness; management transparency and accessibility; dispute resolution. There should be different approaches and methods in achieving results in each of them. However, the method of coordinated policy is not enough to achieve the objectives of the digitalized economy in the EAEU. A combination of policies and regulatory methods are efficient to digital matters within the Union: harmonization is necessary for data protection, a unified approach with regard to trade matters, coordination is relevant in information security sphere with

the aim to strengthen the information and digital sovereignty of the member-states. Institutional and regulatory digitalized modifications should enhance accessibility and efficient decision-making.

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