

# THE SYSTEM OF PUBLIC PROCUREMENT IN THE EURASIAN ECONOMIC UNION

Dairabayeva N.K. (Republic of Kazakhstan) Email: Dairabayeva52@scientifictext.ru

*Dairabayeva Nurbakyt Kylyshevna - PhD Student,  
DEPARTMENT OF THE THEORY AND HISTORY OF STATE AND LAW, CONSTITUTIONAL LAW,  
L.N. GUMILYOV EURASIAN NATIONAL UNIVERSITY, ASTANA, REPUBLIC OF KAZAKHSTAN*

**Abstract:** *the article reveals aspects of the organization of public procurement in the Eurasian Economic Union, outlines approaches to studying the importance of a procurement management system in the formation of industrial capabilities to compete in the market. The formation of the public procurement system is based on the public necessity to fulfill its functions in order to meet social needs, as well as to ensure the stable functioning and development of economic sectors, and small and medium-sized enterprises. The significant condition is to saturate the market with goods and services of primary necessity for the population, ensuring the satisfaction of other essential needs of people, and ultimately, to promote a sustainable economic growth in the country. The paper provides the assessment of the efficiency of the financial mechanism in the public procurement system and examines the dynamics of the procurement process and its features when using the most common competitive methods of procurement.*

**Keywords:** *procurement, procurement activities, industry, procurement management system, factors of competitiveness, legislation, national treatment, economic integration, electronic digital signature.*

## СИСТЕМА ГОСУДАРСТВЕННЫХ ЗАКУПОК В ЕВРАЗИЙСКОМ ЭКОНОМИЧЕСКОМ СОЮЗЕ

Дайрабаева Н.К. (Республика Казахстан)

*Дайрабаева Нурбакыт Кылышевна - PhD докторант,  
кафедра теории и истории государства и права, конституционного права,  
Евразийский национальный университет имени Л.Н. Гумилева, г. Астана, Республика Казахстан*

**Аннотация:** *в исследовании раскрыты аспекты организации государственных закупок в Евразийском экономическом союзе, изложены подходы к исследованию роли системы управления закупками в формировании способностей промышленных предприятий осуществлять конкурентную борьбу на рынке деятельности. Формирование системы государственных закупок исходит из необходимости реализации государством своих функций с целью удовлетворения общественных потребностей, в том числе для обеспечения стабильного функционирования и развития отраслей экономики, малого и среднего предпринимательства. Значимым является условие насыщения рынка товарами и услугами первой необходимости для населения, обеспечение удовлетворения других необходимых для жизни потребностей населения, и в конечном итоге – достижение стабильного роста экономики в стране. В статье оценивается эффективность механизма финансирования в системе государственных закупок и рассматриваются динамика закупочного процесса и его особенности при использовании наиболее распространенных конкурентных способов закупок.*

**Ключевые слова:** *закупки, закупочная деятельность, промышленность, система управления закупками, факторы конкурентоспособности, законодательство, национальный режим, экономическая интеграция, электронная цифровая подпись.*

### Introduction

The Treaty on the Eurasian Economic Union (EAEC) signed by the Heads of the Republic of Kazakhstan, the Russian Federation and the Republic of Belarus on May 29, 2014 in Astana entered into force on January 1, 2015.

The Treaty establishes the creation of an economic union ensuring free movement of goods, services, capital and labor power within its borders, as well as coordinated, agreed or common policy in the economic sectors determined under this Treaty and international treaties between the Union and other states.

The Eurasian Economic Union is an international organization of regional economic integration, possessing international legal personality [1].

In order to further improve the efficiency of public procurement system in the Republic of Kazakhstan and harmonize it with the Single Economic Space, the draft law proposes to address the following key issues in public procurement:

- Excessive control over public procurement procedures;
- High volume of public procurements from a single source;

- Customer abuse (tender documentation and technical specifications are prepared according to requirements of certain suppliers, unreasonable refusal to accept goods, untimely payment) and lack of effective mechanisms to challenge the customer's decisions;

- Lack of effective mechanisms to prevent participation of unscrupulous suppliers in public procurement.

The provisions of the draft law are aimed at simplifying the public procurement procedures. Its main goal is to create a legal framework for the functioning of the public procurement system due to novelties proposed by the draft law.

The Union is designed to create conditions for the stable economic growth of its member states in order to improve the living standards of their population, as well as for their comprehensive modernization, cooperation and global competitiveness.

Under the formation of the legal base of the Single Economic Space, the legislative framework of all three member countries is gradually harmonized with one framework that each country's suppliers have the opportunity to participate in public procurement of another country on equality with its residents.

The current legislation of the Republic of Kazakhstan is regularly updated by introducing various amendments, modifications and supplements.

As of today, the relationships between the parties in public procurement system of the Republic of Kazakhstan in relation with execution of procurement activities are governed by the Law "On Public Procurement", № 303-111, dated July 21, 2007.

One of the key problems in the management of public resources is to conduct high-quality public procurement and increase its effectiveness. In the modern world, public procurement remains a source of increased corruption risk. It should be noted that public procurement must meet the needs of society, the state and the private sector as a whole. In the EU countries, two models of procurement organization prevail: centralized and distributed (decentralized). When applying a distributed model, each organizational unit (ministries, departments, etc.) independently conducts the necessary public procurement. The centralized procurement model provides for the formation of a specialized procurement center, where all divisions submit their applications [2; 64].

## **2. Stages of development of the Union before the Treaty entering into force**

On January 1, 2015, the Eurasian Economic Union started to operate at its full capacity when the Eurasian Treaty on the Economic Union dated May 29, 2014 (hereinafter referred to as the Treaty) became effective. Below is the development process algorithm for legislative regulation of procurement, which led to the creation of Section XXII of the Treaty.

The Agreement on Public Procurement dated December 9, 2010 (hereinafter referred to as the Agreement), which entered into force on January 1, 2012, together with 16 other international treaties, as well as concluded before the Treaty, established a single economic space between the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation.

The Agreement provided for several stages before its implementation:

The first stage (in relation to the Russian Federation, the Republic of Belarus) until January 1, 2012: updating of legislation, implementation of information systems for electronic procurement, introduction of a national regime;

The second stage (in relation to the Republic of Kazakhstan) until July 1, 2012: adjustment of legislation, introduction of information systems for conducting electronic procurement;

The third stage (in relation to the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation) until January 1, 2014: introduction of a national regime in the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation.

From the above stages, a sequence of actions followed, firstly harmonization of the national legislation regulating state procurement with requirements established by the Agreement and the subsequent introduction of information systems, since the main procedures (tender and auction) were to be carried out electronically.

The main achievement of the Agreement was the provision of a national regime stipulating that each member state of the Agreement provides for the procurement of goods (works, services) originating from the territories of other member states, suppliers and potential suppliers of other member states offering such goods, performing work and providing services for procurement purposes, and the regime that no less favorable than national goods (works, services), domestic suppliers and potential suppliers, offering such goods, as well as performing work and providing services [2; 38]. For all countries of the Union, a national regime is provided, which will allow companies to participate in public procurement on an equal basis with national suppliers. Thus, it will be possible to avoid the monopoly of participation in tender or auction of only representatives of a particular country. The scope of the EAEC Treaty excludes procurement, information on which, in accordance with the legislation of the member state, constitutes a state secret, procurement by the national (central) banks of the member states for administrative and economic needs, construction and capital repairs in accordance with their internal procurement rules. Currently, issues of public procurement are important in the negotiations on the establishment of a free trade zone between the EAEC and other countries.

The regulatory system consisted of two levels: supranational - the Agreement specified the main requirements to the procurement system, and the detailed requirements and their more detailed regulation were contained in national legislation and by-laws [3; 11].

The Agreement was extended to all procurement, with the exception of procurement, information about which, in accordance with the legislation of the member state of the Agreement, constituted a state secret (state secrets).

The Agreement contained two more lists: the minimum list of goods, works (services) purchased through tender/auction, which could be expanded in national legislation. As well as a list of procurement from a single source or from a single supplier (contractor, contractor), this list included the general part and separate sections for each of the member states of the Agreement, taking into account the national specifics of procurement.

When the Agreement started to be translated into practice, the first issue arose - the need to ensure cross-border participation in procurement. To solve this issue, it was necessary to ensure the functioning of an electronic digital signature for participants from the Republic of Belarus and the Russian Federation. Since the main procedures were to be carried out electronically, the Agreement enshrined willing of the parties to conduct procedures primarily in electronic form. There were 7 electronic trading platforms in these states, but mutual participation was impossible, because due to technical difficulties (different encryption technologies (cryptography), signature key structure, etc.) and the imperfection of legal regulation in this area, as well as the possibility of participation of non-resident suppliers was limited [4; 327].

At the initiative of the Republic of Belarus, this issue was considered at a meeting of the Council of the Eurasian Economic Commission (hereinafter referred to as the Commission), where the authorized bodies of the Republic of Belarus and the Russian Federation, and the Commission were instructed to prepare, coordinate and submit a action plan of measures for approval by the Commission Board. This plan was approved by the Resolution of the Commission Board № 144 dated August 23, 2012. The plan contained a sequence of actions, the implementation of which allowed ensuring mutual recognition of already existing electronic digital signatures in the territories of the two states, what ensured in a short time (by September 2012) the possibility of mutual participation of potential suppliers of the two countries in public procurement conducted on electronic trading platforms of the Republic of Belarus and the Russian Federation. Since the scheme chosen allowed participation in procurement with already available certificates of electronic digital signature, the financial costs of businesses were minimal.

In addition to the issues of ensuring cross-border participation, the powers of the Commission included a control over the provision of the national treatment by the member states of the Agreement. At the same time, states had the opportunity to withdraw from the national regime for a period of not more than two years. The Commission was given powers to control and withdraw from the national regime and provided for the possibility of lifting unlawfully imposed exemptions [5,174].

The Commission, during monitoring the national legislation, revealed in 2012 the fact that the Russian Federation established exemptions from the national regime by Government Resolution "On Establishment of Additional Requirements for Participants in the Placement Orders for the Supply of Military Uniforms and Accessories for Needs of Federal Executive Authorities" (hereinafter - Decree № 269), № 269 dated March 30, 2012, in violation of the requirements of the Agreement.

At the request of the Republic of Belarus, the Commission held consultations, on which it was found that Decree № 269 established the duration of exemptions for 2 years, 8 months, 14 days in violation of the maximum period of exemptions (two years) stipulated in the Agreement.

The Commission Board by Resolution № 160 dated September 18, 2012 abolished exemptions from the national regime established by Resolution № 269. In pursuance of this Resolution, the Government of the Russian Federation adopted Decree "On Amendments to the Resolution of the Government of the Russian Federation № 269 dated March 30, 2012" № 1389 dated December 24, 2012, which eliminated exemptions from the national regime.

Also, within the framework of monitoring, the Commission revealed the Order of the Government of the Russian Federation № 1612-p dated September 5, 2012, the validity of which in violation of the requirements of the Agreement was not established, and submitted the letter in this regard to the Government of the Russian Federation. After consideration of this letter, the Government of Russia dated May 13, 2013, № 762-p, amended the terms of exemptions in accordance with the requirements of the Agreement.

Further work was related to prepare a Treaty on the Eurasian Economic Union, the necessity of which was caused by the task on the need to establish the institutional framework for the functioning of the Eurasian Economic Union set by the heads of state and to consolidate them in a single codified act, instead of a large number of disparate documents and international treaties. The new treaty was to ensure the free movement of goods, services, capital and labor force, as well as harmonization of the provisions of the legal framework of the Customs Union and the Common Economic Space with the rules and regulations of the World Trade Organization.

### **3. Properties and features of the system**

The issues of public procurement are specified in section XXII "Public Procurements" of the Treaty and the Protocol on the Procedure for Regulation of Procurement (Annex № 25 to the Treaty, hereinafter referred to as the Protocol).

The Treaty retained the main provisions of the Agreement on the granting of the national regime and clearly established that this regime was granted to the member states, and it also fixed the general principle of regulating public procurement was the inadmissibility of granting third countries a procurement regime more favorable than to the member states.

Unlike the basic Agreement, the provision of the national regime was not linked to the stages, but was implemented for the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation from the date of entry into force of the Treaty (January 1, 2015); for the Republic of Armenia - since January 2, 2015 - after accession to the Treaty. With the accession of the Kyrgyz Republic, a transitional period until August 2017 was adopted in terms of granting the national treatment.

The methods of procurement were expanded - a request for proposals were introduced, which makes it possible to choose the best offer not only according to the price criterion, but also the open tender provides the use two-stage procedures and prequalification. A list of procurement cases was determined by conducting a request for proposals [5; 46].

The Treaty enshrined the provision of the bidding and auction procedures in electronic format only and willing of member states to switch to electronic format in the implementation of other methods of procurement and by 2016 - the transition to the conclusion of procurement contracts (contracts) in electronic format.

More fully than in the Agreement, provisions are disclosed on persons who are included in the register of unscrupulous suppliers. At the same time, keeping such a register becomes mandatory. The term of inclusion of persons in the register of unfair suppliers has been standardized (2 years). Earlier, a deadline was set, within which member states could set the time limits by national legislation.

Requirements for the procurement documentation are described more detailed. The novelty was the inclusion of the customer right to establish requirements for goods, works and services on their compliance with technical regulations, national and (or) international standards.

A single list of cases of procurement from one source or from a single supplier (contractor, contractor) was established in the contractual and legal framework of the CU and CES, it was formed taking into account the country principle, and the possibility of unilateral expansion of this single list by the member states of the Union was eliminated. This list was significantly reduced from 81 positions to 64, which allowed conducting more procurement in competitive ways.

There are provisions aimed at improving the efficiency of procurement, such as procurement planning, procurement regulation, public control and public procurement discussions. It is planned to hold at least 3 meetings a year at the level of experts and heads of the authorities of member states and the Commission for Public Procurement to exchange information, discuss problems of improving and harmonizing legislation, and jointly developing methodological materials.

#### **4. Practice in the development of the Treaty**

After Treaty on the EAEU became effective, the next stage to monitor granting the national treatment by the EAEC member states began. In 2015, at the request of the Republic of Belarus, the Commission Board adopted the Decision "On the Necessity to Abolish Certain Orders of the Government of the Russian Federation in the field of state (municipal) procurement" 6 № 81 dated July 14, 2015, which canceled 17 Orders of the Government of the Russian Federation establishing exemptions and procurement peculiarities in violation of the Agreement on the EAEU.

In connection with the receipt of a letter from the Chairman of the Government of the Russian Federation D. Medvedev about the cancellation of the Decision of the Commission Board № 81 dated July 14, 2015, in the Commission, the entry into force of this decision was suspended.

Upon the Decision of the Eurasian Intergovernmental Council № 8 dated September 8, 2015 it was tasked to reconsider the Decision of the Commission Board № 81 dated July 14, 2015 after approval of the procedure to consider by the Commission the notifications of the EAEU member states on the adoption of acts on the establishment by member states of exemptions from the national regime in the sphere of state (municipal) procurement, appeals of member states on the cancellation of such acts, as well as the adoption by the Commission of decisions on the necessity to abolish such acts (hereinafter the "Procedure") by the Commission Council. The specified Procedure was approved by the Decision of the Commission Council № 69 dated November 23, 2015.

Based on the results of reconsideration of the Decision of the Commission Board № 81 dated July 14, 2015, taking into account the requirements of the Procedure, there were no grounds revealed for its revocation.

The next issue of ensuring the national treatment arose in 2016, when upon the Decision of the Commission Board "On Recognizing the Fact of Violation by the Russian Federation of the Obligations Provided by Section XXII of the Treaty "On the Eurasian Economic Union" dated May 29, 2014, and the Necessity to Eliminate the

Detected Violation" № 3 dated April 12, 2016, it was established that the Decree of the Government of the Russian Federation "On the Establishment of Prohibitions and Restrictions on the Admission of Goods Originating in Foreign Countries, Works (Services) Performed (Rendered) by Foreign Citizens for the Purposes of Procurement of Goods, Works (Services) for the Needs of National Defense and State Security " № 1224 dated December 24, 2013 violated the provisions of Section XXII of the Treaty, Paragraph 30 (regarding the provision of a national procurement regime) and Paragraph 31 (regarding the possibility of establishing in exceptional cases, by a member state of the Union of exemptions from the national regime for a period not exceeding 2 years) of the Minutes.

It is necessary to work on monitoring the legislative acts of states in the field of public procurement that adopted at the national level. At the same time, normative and legal acts that do not comply with accepted standards are amended, and regulations that restrict competition or infringe the rights of suppliers and customers are changed or canceled by issuing appropriate decrees or orders [6; 51].

The economic content of procurement activities is acquired when concluding public contracts. The conclusion of public contracts on the basis of conducted tenders, and the request for price proposals stipulates the existence of a functioning system of public procurement at the national and regional levels. At the heart of the procedure of competitive procuring placements is the inrush of potential suppliers, new proposals, the formation of a differentiated price policy of potential suppliers. The state procurement system serves as a tool for stimulating the activity of representatives of small businesses.

It should also be noted that in connection with the global economic crisis, as well as the decline in energy prices in the EAEU countries, the turnover has decreased. If more recently the countries of the custom three had a single market of goods that moved freely within the EAEU borders, then, in connection with the fall in turnover, as well as creating the Unified State Register of Reports, the most interesting for suppliers and customers is the following innovation: a similar agreement has been reached in several dozen service sectors. It is considered that these concessions are serious, because this is about half of the economy of Belarus, Russia and Kazakhstan.

## **5. Conclusion**

From the above mentioned, it can be concluded that the public procurement system in the Eurasian Economic Union has reached a new stage due to the adoption of the Treaty, and it will continue to improve and upgrade with the development and making decisions by the bodies of the Eurasian Economic Union.

The development and improvement of the Law "On Public Procurement" and the formation of the legal framework for the single economic space has become an important step in the way of building the public procurement system in the Republic of Kazakhstan.

In this regard, a national regime will be introduced, which involves admission to participation in public procurement of foreign producers, in particular, the member countries of the Customs Union, on equal terms with domestic suppliers.

The member states of the Eurasian Economic Union take measures to modernize public procurement systems. This is stipulated by the legal norms of the EAEU, according to which countries must ensure the formation of four basic economic freedoms, namely the unimpeded movement of goods, services, capital and labor power. To fully liberalize the market, the parties will have to ensure not only the openness of customs borders. The program to form a single economic space includes softening the regimes for the movement of funds, goods and services in virtually all sectors. The necessity to increase the openness of the public procurement system in each member state of the EAEC is no exception. It can be said that the degree of participation of residents of one country in public procurement of another country indicates the effectiveness of economic integration.

The public procurement system developed in the economy of modern Kazakhstan is in the stage of constant development and needs further improvement. Prerequisites for improving the efficiency of public procurement management mechanisms in the conditions of modern Kazakhstan include the successful implementation of administrative reform, the introduction of performance audit about effectiveness of budget expenditures. These processes will create favorable socio-economic conditions, and procurement activities will be provided with an adequate environment for competition.

## ***References / Список литературы***

1. Law of the Republic of Kazakhstan "On Ratification of the Treaty on the Eurasian Economic Union" № 240-УЗР dated October 14, 2014 // "Kazakhstanskaya Pravda" Newspaper № 201 (27822 dated October 15, 2014). "Egemen Kazakhstan" Newspaper. № 201 (28424) dated 15.10.2014.
2. *Andreyev I.A.* Financial services for natural monopolists: a competitive contract. M.: Statut, 2012. 64 p.
3. *Andreyeva L.V.* Procurement of goods for federal national needs: legal regulation. Moscow: Wolters Kluwer, 2011. 38 p.

4. *Dudin M.N., Lyasnikov N.V.* Development of the Russian economy under economic sanctions: national interests and security // National interests: priorities and security, 2014. 11 p.
5. Innovative processes in the Russian economy. Multi-authored monograph / edited by Veselovsky M.Ya., Kirova I.V. M.: Scientific Adviser, 2016. 327 p.
6. *Medvedev G.B.* Maintenance of balance of interests of social and functional groups in strategy of development of mechanical engineering // Real sector of economy: conditions of formation and development / responsible editor. L.V. Nikiforov, A.S. Naumov. M., 2013. P. 46.
7. *Burtsev V.V.* Organization of the system of state financial control in the Russian Federation: theory and practice. M., 2002. 51 p.