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# **The Court of the EAEU: what can be learned from the early case-law?**

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# Mission

“The objective of the Court is to ensure, in accordance with the provisions of this Statute, uniform application by the Member States and bodies of the Union of the Treaty, international treaties within the Union, international treaties of the Union with a third party and decisions of the bodies of the Union”.

Statute, par.2

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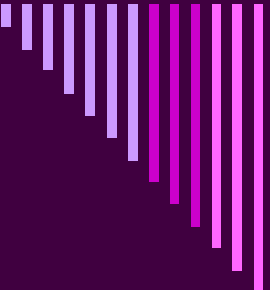
# History of the Court

- Established on January 1<sup>st</sup> 2015 with the creation of the EAEU
  - No legal succession with the Court of the EurAsEC (2012-2014) – problem of continuity?
  - Judgments of the EurAsEC Court continue to apply (Art. 3(3) of the Treaty on termination of the EurAsEC)
  - 2015-2016: 6 judgments (including 3 appeals) and 2 consultative opinions; 2 cases pending.
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# Composition

- Ten judges (two from each MS) appointed by the Supreme Eurasian Economic Council on the proposal of the Member States
  - Term of office – 9 years
  - Two chambers; two appeal chambers and one grand chamber (all the judges)
  - President and vice-president elected for 3 years (without a possibility of reelection)
  - Rigid rules regarding the composition of chambers and the designation of judge-rapporteur (alphabetical order)
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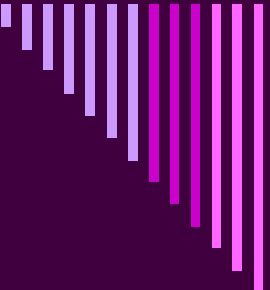
# Competence (I): applications regarding disputes (judgments)

- Actions for failure to fulfil obligations (inter-state only);
  - Actions for annulment (compliance with the Treaty) against international treaties within the Union (MS only);
  - Actions for annulment (compliance) against a decision of the Commission;
  - Actions against actions/failure to act of the Commission.
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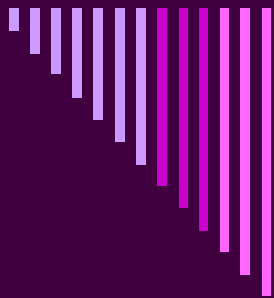
# Challenging the validity of acts

	EAEU Court	CJEU
Types of acts:	Only Commission decisions	Any compulsory acts (both legislative and regulatory)
Locus standi of individuals:	The act shall be <b>directly affecting</b> the rights and legitimate interests of the economic entity in the area of business and other economic activities	The act shall be addressed to the person or be of <b>direct and individual concern</b> to the person
Type of persons:	Economic entities	Both individuals and entities
Time limits:	None	Two months



## Competence (II): requests for clarification (advisory opinions)

- Provisions of the Treaty, international treaties within the Union and decisions of the bodies of the Union (applications by MS and bodies of the Union);
- Provisions of the Treaty, international treaties within the Union and decisions of the bodies of the Union relating to labour relations (applications by officials/employees);
- Provisions of an international treaty with a third party (if the treaty so provides).



# Deprivation of competence? EAEU Court vs. Court of the EurAsEC

Removed	Introduced
Possibility of the highest national courts to ask the Court for clarification (interpretation) of EAEU law provisions	Every Member State can select the bodies and organisations that will have the right to submit applications to resolve a dispute or requests for clarification to the Court
Possibility for the Commission to submit applications vs. Member-States for failure to fulfil obligations	Possibility for the Member-States to submit applications vs. other Member-States for failure to fulfil obligations
	Employees and officials of the bodies of the Union may ask the Court for clarification of EAEU law related to labour relations





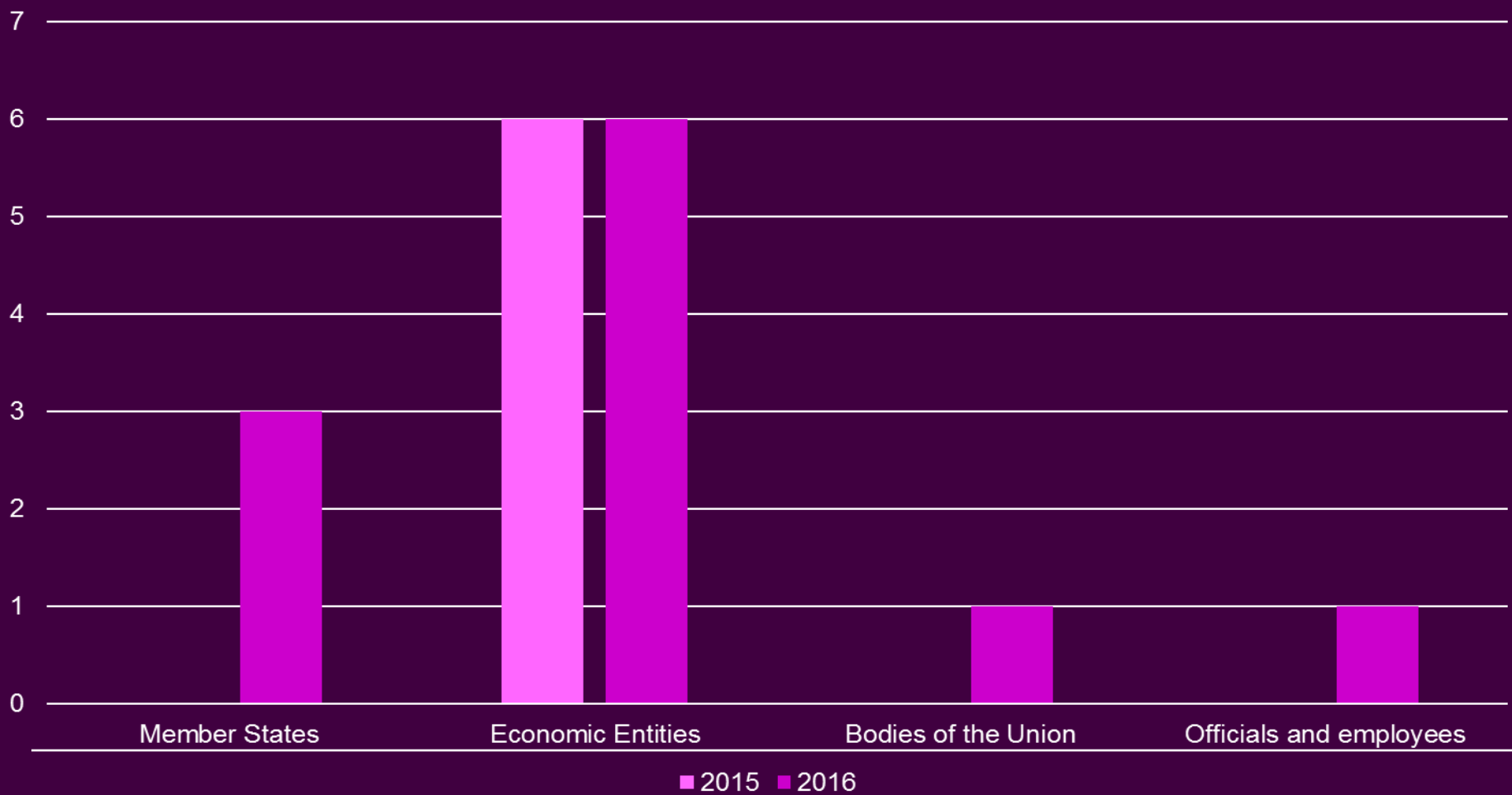
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# Limited competence of the Court

- No power to annul the measure - only to declare it “not in accordance with the Treaty” and suspend its applications
  - No power to award compensation for damages or rule on material claims (absence of actions for damages)
  - No power to adopt interim measures (except in competition law cases)
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# Applications in 2015-2016 (including appeals)



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# Achievements

- ✓ Clarification of *locus standi* of economic entities
  - ✓ Broad definition of Commission's inaction in (*Tarasik case*)
  - ✓ Broad definition of "conflict of interests"
  - ✓ Possibility to apply international agreements (*General Freight case*)
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## Direct concern criterion

In accordance with the principle of legal certainty the decision of the Commission or its particular provisions may be recognised as directly affecting the rights and legitimate interests of an economic entity in the area of business and other economic activities inter alia in cases where the corresponding decision is applied to the specific economic entity in connection with its business activities.

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Judgment of the Chamber in  
*Sevlad case*



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## Definition of “failure to act” in *Tarasik* case

“Improper failure to act” means a non-performance or improper performance by a supranational body / official of the duties assigned to it by the Union law, in particular leaving a request from an economic entity without consideration in whole or in part, or responding to the applicant not on the merits of his request, if the consideration of this request applies to the competence of a supranational body / official.

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## Definition of “conflict of interest” (request of employees of EEC)

The concept of “conflict of interest” in relation to the process of appraisal of international civil servants includes the presence of significant ties (including kinship, protectionism, friendship, finance) between the persons participating in this process, which can be regarded from the view of a reasonable and impartial observer as calling into question the objectivity of the process.

Advisory opinion, par.12 (40))

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# EAEU law and international law

The Eurasian Economic Union is deemed to be bound by an international treaty which is not an “international treaty within the Union” nor a “treaty between the Union and a third party” when two conditions are met:

- 1) all the Member-states of the EAEU are parties to this international treaty;
- 2) the agreement pertains to the field of common policy within the EAEU (competence has been transferred to the supranational level).

Appeal chamber judgment in  
*General Freight case*



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## Main challenge: building a reputation

- ✓ Professionalism
  - ✓ Accessibility
  - ✓ Independence
  - ✓ Efficiency
  - ✓ Reception of its legal positions by national courts
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