

**RUSSIA AND THE EU:**  
**THE KALININGRAD DILEMMA**

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## ABOUT THE CEPS-SITRA NETWORK

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CEPS, with financial assistance of the Finnish SITRA Foundation, embarked at the end of 2000 on a programme to examine the impact of Justice and Home Affairs acquis on an enlarged European Union, the implications for the candidate countries and for the states with which they share borders. **The aim of this programme is to help establish a better balance between civil liberties and security in an enlarged Europe.**

This project will lead to a series of policy recommendations that will promote cooperation in EU JHA in the context of an enlarged Europe as well as institutional developments for the medium- to long-term in areas such as a European Public Prosecutors Office, re-shaping Europol and a developed system of policing the external frontier (Euro Border Guard). These must be made within a balanced framework. **There are two key issues:**

First of all, to prevent the distortion of the agenda by “events” – some items are being accelerated and other marginalised. This risks upsetting the balance, carefully crafted by the Finnish Presidency, between freedom, security and justice. The current ‘threat’ is that security issues, at the expense of the others, will predominate after the catastrophic events of 11th September. These have resulted in a formidable political shock, which served as a catalyst to promote certain initiatives on the political agenda, such as the European arrest warrant, and a common definition of terrorism. The monitoring of items, which could be marginalised and the nature of the institutional/political blockages that could distort the Tampere agenda, is our priority.

Secondly, how to look beyond the Tampere agenda, both in terms of providing a flexible approach during the period of completion of the Tampere programme as well as what should come afterwards. Much detail remains to be filled in about rigid items on the Tampere agenda and CEPS will continue to work in three very important areas:

- Arrangements for managing and policing the external frontier
- Judicial co-operation leading to the development of a European Public Prosecutor
- Strengthening of Europol, particularly in the field of serious trans-frontier violence and moves towards a more federalised policing capacity

The CEPS-SITRA programme brings together a multi-disciplinary network of 20 experts drawn from EU member states, applicant countries as well as neighbouring states: the European University Institute in Florence, the Stefan Batory Foundation (Warsaw), European Academy of Law (ERA Trier), Academy of Sciences (Moscow), London School of Economics, International Office of Migration (Helsinki), Fondation Nationale des Sciences Politiques (CERI) in France, Universities of Budapest, Université Catholique de Louvain-la-Neuve, University of Lisbon (Autonoma), University of Nijmegen, University of Burgos, CEIFO in Stockholm, University of Tilberg and University of Vilnius, as well as members with practical judicial and legislative backgrounds.

# **RUSSIA AND THE EU:**

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### ***CEPS POLICY BRIEF No. 15***

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#### **Kaliningrad as a problem in the context of the EU Enlargement**

Strictly speaking, there are two groups of problems related to this topic. Firstly, there are some particular issues arising from the enlargement process; namely the movement of goods and people between Kaliningrad and the rest of Russia, including visa regime, energy supply of the region, trans-border cooperation and fisheries. To solve these problems or not to solve them is like Hamlet's dilemma "to be or not to be". These problems have to be solved by the Union and Russia, with the participation, at least jointly, of Poland and Lithuania.

Secondly, there are some issues of mutual interest not directly linked to enlargement. They relate to the problems of the internal situation in Kaliningrad. The solution to these problems is a task to which Russia must apply itself. However, this region has now become a source of concern for the EU, as in the near future it will turn into an enclave surrounded by the new member states of the European Union. This is the real dilemma: Is Russia and the EU ready and able to act jointly to resolve the internal problems of Kaliningrad and facilitate its inclusion into a broader area of the regional cooperation?

These two groups of problems differ, *inter alia*, from the point of view of the amount of time that Russia and the EU have at their disposal to search for solutions. In the first case, they have to come to some decisions before the start of enlargement. In the second case, there is no direct interconnection between the solution and the beginning of enlargement. Many problems to be addressed are of a long-term character; nevertheless, "the sooner – the better" would be a positive principle to apply.

#### **Several documents approved by the relevant institutions of the EU and Russia**

On the one hand, there is a communication by the European Commission to the Council entitled "The EU and Kaliningrad" (Com-com). It deals with the whole set of above mentioned issues. On the other hand, there are three Russian documents. One of them is a decision by the Russian government on "Measures for ensuring social and economic development and vitality of Kaliningrad *oblast* [region]" (RG-Measures) and relates mainly, to internal problems of the region with some references to the first group of issues. Two other documents – "Possible solutions to the specific problems of Kaliningrad region in connection with the EU enlargement" (RMTED-doc) drafted by the Russian Ministry for Trade and Economic Development, and the "In-depth evaluation" of the Commission's communication (RMFA-doc) sent to the Commission by Ivan Ivanov, Russia's deputy foreign minister, are dedicated to the first group of issues. It is this "package" of documents mainly, that will be analysed and commented on in this paper.

Perhaps the most important thing is that both partners do not only address the same problems, but that they continue to work closely together to action the many concrete proposals that have been made. Russia reacted positively to 10 out of 13 final suggestions that were summarised in the Commission's communication. The rest of them were acceptable in

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principle, although with some reservations and amendments. This attitude, together with a favourable climate in general to Russian-EU relations, provides a good background for dialogue and a search for proper solutions that are acceptable for both the partners. However, it is nothing but a good prerequisite. The parties concerned have to cope with many difficulties and discrepancies. The Commission's final suggestions, referred to above, aim at defining concrete subjects and/or frames of reference, consultations and negotiations with a view to finding answers. They also relate some technical aspects to possible arrangements.

### **Issues of the EU enlargement**

As far as issues arising from the EU enlargement are concerned, both the partners enumerated the same topics for dialogue and consultation: movement of goods, movement of people and visa regime, energy supply, and fisheries. Moreover, Russia included in this list an additional point related to the so-called contract "immunity".

These items can be divided in two parts, according to the core of the problem and the character of solutions to be found. Some of them are of a technical (or operational) character, whereas some others are political.

The *first group* seems to consist of three items:

- movement of goods including (a) transport facilities and (b) border formalities;
- energy supply of Kaliningrad region;
- fisheries.

Each of these items has several problems. Nevertheless, different points of view and approaches of the

partners do not seem to be incompatible in terms of politics. The definition "untrammelled transit", used by the authors of RMTED-doc, may be a too categorical wording. However, some concrete proposals (as the term implies) are of a practical character. *Maritime transport* between Kaliningrad and the rest of Russia should be taken as "coastwise navigation"; *air flights* via Lithuania should be carried out through an "air corridor with transit airport reservation in case of emergency landing"; *freight railway* and *road transportation* should be possible under a regime of "customs control without customs inspection at the EU borders".

The EU approach is more cautious. The Com-com communication underlines that border crossings of goods require attention as there are not only customs aspects, but phytosanitary, veterinary and health ones as well. Does this mean that a compulsory customs inspection is envisaged? In any case, it is a topic for discussion. None-the-less, in my opinion, problems and solutions mainly relate to the technology of managing border crossings (documentation, procedures, mutual information, physical infrastructure etc.). It seems that the most important aspect of the subject under consideration is an area of responsibility in which the Lithuanian authorities are competent. They accumulated experience of cooperation with the Russian authorities in managing problems of transit between Kaliningrad and the rest of Russia in the 1990s. One Lithuanian diplomat I spoke to expressed the opinion that it would be better to keep everything, as it was earlier, within the framework of bilateral relations between Vilnius and Moscow. This is impossible and it would be a mistake if the experience of the Lithuanian authorities were to be ignored.

Last but not least, a regime and particularly, the practice of managing border crossings of goods, also depends on the extent of mutual understanding and confidence between the corresponding institutions of the parties concerned, especially at a local level. This is a general problem of the EU-Russian relations. As far as the energy supply of Kaliningrad is

concerned, the region could either maintain its link with the Russian electricity grid or utilise electricity produced by the Lithuanian power stations. This is not only an economic or technical choice, but also to some extent political one. However, it is not merely political. This point of view relates to the future agreement on fisheries to be negotiated between Russia and the EU.

Unlike the first group, the *second group* of items needs a preliminary decision at the highest political level to start searching for practical (or technical) solutions to the following two items:

- movement of persons, and
- contract “immunities”.

The latter topic considers contracts between Russian and Polish or Lithuanian firms signed before the accession of these countries to the EU. This item is proposed only by Russia, which is interested in the immunity of these contracts even if some of them do not correspond with the *acquis communautaire*. The question is whether the Commission will be ready to include this item in the agenda of a dialogue related to Kaliningrad. In my opinion, it would be more appropriate to discuss it within the framework of a general dialogue on the consequences of the enlargement for Russia.

The most sensitive item among them is, without doubt, the movement of people. The initial collision of two approaches to the movement of Russian citizens between Kaliningrad and the rest of Russia has not been overcome. Russia insists on a visa free regime, whereas the EU does not see any alternative to introducing the Schengen system. It seems that Moscow and Brussels remain far from a mutually acceptable compromise.

Of course, Russians travelling to or from Kaliningrad by sea or by air do not need transit visas. It seems that the same regime might be applied to Russians crossing Lithuania by train via Moscow-Minsk-Vilnius-Kaliningrad (or St.Petersburg-Vitebsk-Minsk-Vilnius-Kaliningrad as well). However, even if the EU accepts this suggestion, it will not be applied to Russians moving from Kaliningrad to Russia and vice versa by cars or buses. Thus, the introduction of the Schengen visa regime for the movement of persons between the region and the rest of Russia is inevitable. This is a loss for both the state (the principle of sovereignty is infringed) and the people. In spite of this assessment, a rigid position by Moscow on this matter would be counterproductive.

In my opinion, the first step towards a solution has to be a non-political, *functional* approach to the subject under discussion. This hopefully would lead to a pragmatic solution that aims at diminishing the insults and discomfort experienced by a lot of ordinary people. If this view is taken, the main effort to be made is to facilitate formalities for obtaining visas. In fact, this same task also relates to the movement of persons between Kaliningrad and Lithuania and Poland within the framework of trans-border cooperation.

The Com-com and some other documents (for example, “Draft interim report: prospects for democratic reforms in Serbia, Belarus and Kaliningrad” published by NATO Parliamentary Assembly in May 2001) contain many proposals concerning different sorts of visas, flexible rules etc. According to the opinion of the European Commission, “*most important will be the efficient operation of border crossings, through the upgrading of facilities and procedures and exchange of best practice*” (Com-com, p. 5). One can agree with this assertion although with the one reservation, that the general climate of the human relationships between the people asking for visas and crossing borders, on the one hand, and the staff of those institutions dealing with these people, on the other hand may not constitute ‘best practice’. In

fact, there is not only the best practice of treating Russian citizens after introducing the Schengen visa regime, but there is also the worst one carried out by embassies and consulates of some EU Member States in Moscow. There is a general impression by many Russians, including some of my colleagues and myself personally, that instead of the presumption of innocence, more often, the presumption of guilt is applied.

My intention is not to accuse anyone personally. The point is that there is *a general problem of lack of mutual understanding and confidence between Russia and the West*. Our mutual perceptions are aggravated with old and new stereotypes that are multiplied by both Western and Russian mass media. This attitude is widespread on the political level as well as on the level of public opinion. The task of surmounting the distrust between Russians and Europeans can be achieved by joint efforts. The analysis of relevant ways and methods is out of the frame of this paper. For me this problem is a subject for the next research project and conference under the title: "Sources of distrust between the West and Russia after the Cold War and ways towards confidence". As far as the question under consideration is concerned, one can expect that the EU will scrupulously follow the rigid rules of the Schengen system. Various kinds of misunderstandings, collisions and disputes seem to be inevitable, especially at the beginning. The course and pace of the transition will depend, to a great extent, on the intensity of cooperation between customs and border services of the partners as well as between institutions in the Justice and Home Affairs framework. A very important task will also be the regular exchange of information.

### **The future position of Kaliningrad**

As mentioned earlier, the fundamental problem is the future position of Kaliningrad as an enclave within the enlarged Union. This problem is referred to by the Commission as "issues of mutual interest not directly related to the Enlargement". The core of the problem is how to develop cooperation between Kaliningrad and the EU member states, with account being taken of what would happen if any instability occurred in the region. Is Kaliningrad becoming a "puzzle" or a "pilot project" for EU-Russian cooperation? This represents a dilemma for both the Union and Russia. The former has the choice of either participating in the recovery of the region, or building a new "curtain" around it. The latter has also a choice: either accelerating the integration of Kaliningrad into the European economic area, or the strengthening of control over the region to prevent this trend in spite of the risk of a further backwardness of that region.

### **Conditions necessary for Russian-EU cooperation**

The best scenario for Kaliningrad would be a joint programme of actions elaborated and implemented by Russia and the Union. The main areas of this programme could include the following:

- Economic recovery and development of the region (industry, agriculture, infrastructure, management);
- Environment;
- Social problems (employment and training, public health, social protection etc.);
- Governance and the rule of law; and the
- Fight against criminality and illegal migration.

I do not want to get into a detailed description of these areas of joint activities but rather wish to pay attention to the conditions *sine qua non* for the Russian-EU cooperation in the region.

The elaboration and implementation of the programme depends, first of all, on the Russian government. Its decision "*On measures for ensuring social and economic development and vitality of Kaliningrad oblast*" was nothing but a draft to be re-shaped into a real programme of actions. This work has not finished yet. Moreover, the Federal authorities have not yet defined whether it is necessary to change the status of Kaliningrad and redistribute competence between Moscow and the regional administration. In particular, the status of the Special Economic Zone (SEZ) has to be confirmed, legally strengthened and put into full practice. My fear is that Moscow has not come to any conclusion on this matter either. A further question is whether the new regional administration headed by Admiral Egorov is able to implement a comprehensive and realistic programme of development of the region and, in particular, to cope efficiently with criminality and corruption.

The next step towards the EU-Russian common programme might be an examination carried out by a joint group of experts to define concrete fields and methods of EU assistance as well as sources of financing. Many activities depend on the EU's readiness to participate in the financing through the EIB facilities. The first step was made recently within the limited area of financing an environmental project to be carried out in Kaliningrad. However, is it possible to broaden this area? What is the difference, from the point of view of investment, between the environmental and, for example, the economic infrastructure? After all, it is not a question of the amount given. The main reason for the participation of the EIB is its important role as an investment multiplier. The final step could be an elaboration of some concrete joint projects that will contribute to the development of the region and its cooperation with Lithuania, Poland and the EU member states.

A general framework for a dialogue and cooperation with Kaliningrad is the Partnership and Cooperation Agreement (PCA) between Russia and the EU, mainly within the institutions set up in the PCA's accordance. It seems clear that the idea of concluding a comprehensive agreement covering all aspects of the subject under consideration is both improper and unattainable. However, there is a danger that the dispersion of dialogues and the process of preparing concrete projects between various sub-committees of the Committee on EU-Russia Cooperation will result in the duplication of efforts and/or in simultaneous lacunas. It is because of this risk that the creation of a special sub-committee on Kaliningrad matters seems to be useful. It might play the role of a coordinating unit within the Committee for the EU-Russia Cooperation.

As far as concrete decisions are concerned, they depend on the character of the issues to be under consideration. They are seen as special agreements between Russia and the EU (for example, on fisheries or the special visa regime for residents of Kaliningrad), joint decisions (Indicative TACIS programs), or unilateral decisions (participation of European Investment Bank or Regulation for Kaliningrad SEZ), etc. In particular, Russia is interested in concluding the agreements on the Kaliningrad issues with the authorities of Poland, Lithuania, and Latvia within their national competences, which would remain in force after enlargement. The potentials of the "Northern Dimension" programme and some other frames of regional cooperation have therefore also to be taken into consideration.

### **Instead of a conclusion**

The first document on Russia's concerns inspired by the forthcoming enlargement of the European Union was submitted to the Commission in August 1999. A dialogue started more than a year later, in October 2000. As a world-famous proverb, "better late than never", tells us it is in fact not too late. The dialogue about Kaliningrad has been going on for eight months. The first treaties on the applicant countries' accession to the EU have to be prepared

for signing by the end of 2002. The EU enlargement is declared to start in 2004. Russia and the Union have one and half to two and half years at their disposal. The question remains to be answered whether this time is enough for a successful conclusion to this dialogue. In any case, the answer depends, to a great extent, on the political will and energy of the partners involved and, last but not least, on their readiness for to make compromises.



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