



# **THE EU-RUSSIA REVIEW**

**Issue Two**

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## Contents

<b>Introduction</b> Fraser Cameron, Acting Director, EU-Russia Centre	<b>3</b>
<b>A New Agreement Between Russia And The European Union</b> Sami Andoura and Marius Vahl	<b>5</b>
<b>Is The Common Economic Space Doomed?</b> Katinka Barysch	<b>11</b>
<b>Russia-EU Relations: Still at the Crossroads</b> Nadia Alexandrova-Arbatova	<b>17</b>
<b>Prospects For EU-Russia Foreign And Security Policy Cooperation</b> Arkady Moshes	<b>22</b>
<b>EU-Russia Energy Cooperation</b> Andrew Monaghan	<b>27</b>
<b>The Common Space of Science, Education And Culture</b> Mark Entin	<b>33</b>
<b>EU-Russia - Cooperation In Justice And Home Affairs</b> Olga Potemkina	<b>39</b>
<b>Russia's Institutional Regression and its Consequences on Foreign Policy</b> Marie Mendras	<b>46</b>
<b>Contact</b>	<b>49</b>

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## EU-Russia Centre - Review 2

### Introduction

This second issue of the EU-Russia Centre Review is devoted to the future of EU-Russia relations. There is hardly a more important subject for the EU than the relationship with its large neighbour and the important policy areas that include political and security cooperation, trade and economic affairs, energy, justice and home affairs, education, culture, science and technology.

It is no secret that both the EU and Russia have been disappointed with progress under previous agreements. Both the 1997 Partnership and Cooperation Agreement (PCA) and the 1999 strategic partnership have failed to live up to expectations. In the negotiations which the EU hopes to start with Russia early next year, there is an opportunity both for stocktaking and to move forward into a broader framework for a deeper partnership.

But what type of agreement should replace the PCA and what are the implications? This is the theme of the article by *Sami Andoura* and *Marius Vahl* who consider a number of options including abandoning the PCA, extending it or replacing it with a new type of agreement. In discussing the alternatives the authors examine the legal basis for any accord and their analysis quickly reveals the complexity of the issue of the treaty article on which the EU should base the new agreement. They conclude that the perennial question of the competence of the EU and its member states inevitably arises as the EU is likely to seek a comprehensive, mixed, multi-pillar agreement that will require ratification by all 25, (soon 27) member states and the European Parliament.

*Katinka Barysch* touches on the prospects for the common economic space. She also argues that progress in EU-Russia relations has been frustratingly slow and outlines the thinking behind the move towards establishing the common economic space.

Initially, a working group report led to the adoption of the four common spaces at the 2003 St Petersburg EU-Russia summit. Then further road maps were developed and endorsed by the 2005 Moscow summit. The author notes the limited achievements in the field of regulatory convergence, but insists that this is a key point for future cooperation. She also argues that a common economic space could help Russia diversify away from its current over-dependence on oil and gas in its economic structure. She reaches the conclusion that the problem is that the EU has limited means to influence Moscow to move in this direction and Moscow has no say in the formulation of EU rules and regulations.

Russian perspectives on the future of EU-Russia relations are reviewed by *Nadia Arbatova*. She argues that the relationship is at a crossroads, and there are two possibilities - each going their own way or coming together to seek a partnership of equals. Russia is still searching for its true identity, while the EU itself is suffering an identity crisis as a result of difficulties with the constitutional treaty. Nevertheless, the author is confident that there will be a new extended treaty, as this possibility is supported by the Kremlin, leading ministries and business. The birth of a new strategic partnership between the EU and Russia could help lead towards a more open and transparent Russia.

*Arkady Moshes* takes stock of the cooperation between the EU and Russia in foreign and security policy. He argues that, while it may look good on paper, the reality is different, with very little practical cooperation between the two sides. The author attributes this to a number of reasons including the lack of consensus within the foreign

policy elite in Moscow, the impact of EU enlargement, differences over the shared neighbourhood and doubts about the EU as a cohesive actor.

Moshes argues that the list of shared foreign and security policy interests between the EU and Russia is very long and if the internal problems on both sides could be overcome then cooperation could grow quickly. However, based on present trends this area is unlikely to be at the forefront of the relationship.

*Andrew Monaghan* covers a rapidly growing priority area in the relationship, namely energy. He details the concern in the EU after Russia's behaviour towards Ukraine in January 2006 and the veiled threats that Russia could easily divert its oil and gas supplies to Asia. The author argues that Russia is unlikely to try and blackmail the EU as it needs Europe for finance and technology to renew its outdated infrastructure. Asia is not, he believes an alternative to Europe, given the lack of pipelines to Asia and concerns about China. Prospects for closer EU-Russia energy cooperation are fairly good but several problems must be tackled, including Russian accession to, or observance of, the Energy Charter, more transparency in both cases and measures to ensure the sustainability of Russian gas supplies. Above all, he states, the EU needs to establish an internal energy policy if it wants to pursue a coherent external energy policy.

*Mark Entin* reviews the rather limited cooperation between the EU and Russia in the fields of education, culture, science, research and technology. Both appear to be aware of existing problems and several working groups and commissions have been established to consider ways to expand cooperation.

One of the main problem areas is the non-recognition of Russian degrees in the EU. Another issue hindering contact and progress, is the dismal lack of EU students studying Russia. But the author concludes on an optimistic note, believing that the potential in these areas is very high.

*Olga Potemkina* assesses cooperation in the sensitive areas of justice and home affairs. She notes that this is a rapidly growing area of interaction even though this is not a priority in the current PCA. She discusses the prospects for visa-free travel between the EU and Russia and notes that both sides have a vital interest in tackling issues such as terrorism, drugs, human trafficking, etc., together. The author also notes the inherent problems of the Russian judicial system, still struggling to reform itself into a genuine independent structure.

Finally, *Marie Mendras* argues that President Putin's Russia is authoritarian and clannish, controlled by powerful elite groups with little real interest in promoting a more open relationship with neighbouring Europe. She believes that the EU's inability to forge a common foreign policy towards Russia hinders progress still further and is a result of its lack of commitment, energy and invention. Older member states are criticised as reluctant to provoke the Putin administration, and this lack of any real engagement makes it easier for Russia to hide behind a curtain of isolationist rhetoric, designed mainly for home consumption. Any fresh impetus will have to come from the new, more outspoken and critical, EU members who are not afraid to bring issues to the table.

The collection of articles in this Review provides a comprehensive overview of the state of EU-Russia relations on the eve of momentous negotiations to replace the PCA. They are all tinged with a healthy dose of reality, pointing to the opportunities to develop a new and genuine strategic partnership – if the necessary political will is there on both sides. It is to be hoped that our political leaders seize the opportunity.

Fraser Cameron - Acting Director

## **A New Agreement Between Russia And The European Union: Legal And Political Aspects**

Sami Andoura and Marius Vahl

### **Sami Andoura**

Sami Andoura is research fellow in the European Affairs Programme at the Royal Institute for International Relations (IRRI-KIIB) in Brussels, the think tank associated with the Belgian Ministry of Foreign Affairs. His main area of work covers the foreign policy of the European Union, the Common Commercial Policy, the EU Budget Reform, and other aspects of the EU integration process as well as the partnership between the EU and Russia. He was a member of the Belgian mission to Moscow in June 2006. Before joining the Institute, He worked at the *Conseil de la Concurrence* in Paris, and in the Brussels office of a British legal firm.

### **Marius Vahl**

Marius Vahl is a Research Fellow at the Centre for European Policy Studies (CEPS) in Brussels (since 2000) and a PhD candidate at the Catholic University of Leuven on a thesis on EU-Russia relations. He received an M.A. in International Relations from the Johns Hopkins University in 1999. At CEPS he works in the European Neighbourhood Programme on relations between the expanding European Union (EU) and its neighbours, focusing on EU relations with the Eastern neighbours and with EFTA. He has published extensively on EU neighbourhood policy, including on EU relations with Russia, Ukraine, Moldova and EFTA countries, as well as on the Northern Dimension initiative, Europeanisation and conflict prevention, and regional co-operation in the Black Sea region.

### **Introduction**

The Partnership and Cooperation Agreement (PCA) forms the contractual basis of EU-Russian relations. It was concluded for an initial period of ten years that ends in November 2007. The question of the future of EU-Russian contractual relations is likely to dominate the bilateral agenda in the next few years, and is of great significance for the development of the relationship in the medium to long-term.

The EU and Russia have essentially three basic options when considering the post-2007 relationship. First, there is the possibility of abandoning the PCA without replacing it with another agreement. Secondly, the parties could allow the PCA to continue after the ten year period expires (this will occur automatically unless either side takes steps). Finally, the EU and Russia could conclude a new bilateral agreement to replace the PCA.

The issue has been discussed between the two sides and they now apparently agree on the last option, with the launch negotiations of a new agreement expected in 2007. According to a European Commission press release of 3 July 2006 on the draft negotiating mandate, the new agreement *“will provide an updated and more ambitious framework for the EU-Russia relationship ... based on recognition of common values such as democracy, human rights and the rule of law”*. It will cover *“the whole range of EU-Russia cooperation”*, including a *“progressive deepening and development of trade relations and fair and open development of the energy relationship”*, as well as *“ambitious objectives on political and external security cooperation”*.

This raises a number of legal and political issues that will have to be addressed. First, the EU has never concluded such an ambitious and comprehensive agreement with any third country, and the EU treaties do not provide any clear guidance as to how such an agreement might be concluded. Secondly, the bilateral relationship has become closer and more challenging in the last few years, and the numerous contentious issues encountered will have to be addressed by the new agreement. How this is done will

have a crucial bearing on the future of the bilateral relationship between the two biggest political actors in Europe.

### **Legal aspects of the new agreement**

The institutional framework of the European Union is based on the principle of attributed competence, and every international agreement concluded by the EU must therefore be grounded in one or more of the legal bases offered by the treaties. Therefore, certain legal issues regarding the future agreement between Russia and the EU directly must refer back to the division of competences between the EU and its Member States - at the risk of reopening Pandora's box on the debate on the foundation and scope of Community competence, which was an issue at the time of the negotiation of the last PCA between Russia and the EU.

According to the European Commission, the future agreement should be a comprehensive agreement covering many different areas of cooperation. However, nothing in the Treaty or in the case law of the European Court of Justice provides for specific rules for the conclusion of such comprehensive agreements when they cover the whole field of external relations. There are therefore a variety of possibilities regarding the type of agreement that such a comprehensive treaty of this kind could be.

First of all, it could be an agreement comparable with the model of the current PCA of 1994: an agreement mainly concluded on commercial issues, but also covering other matters. Such an agreement could be concluded, for example, on the basis of Articles 133 (Common Commercial Policy), 175 (Environment), 170 (Research and Development) and 300 of the EC Treaty.

An alternative would be to conclude an association treaty, although this would not solve the question of the contents of the agreement. Article 310 EC, which provides for the conclusion of association agreements, is very brief and provides little guidance as to the scope and level of commitments of such associations. In practice, the Community has followed a pragmatic approach. Association treaties come in a wide variety of forms, some of which are highly significant in terms of business or trade, while others are much less developed. Such association treaties could offer certain advantages for the relationship between the EU and Russia.

The scope of the agreement could be very large, containing elements of economic integration, political dialogue, and all other factors linked to the partnership. It would create increased flexibility in the relationship, given that the scope of the agreement would not be limited to its specific initial legal basis as in the case of the PCA. However, one has to take into account the widespread perception that association treaties concluded with neighbouring countries have accession to the EU as their ultimate goal.

It is unlikely that this is an impression which either party to this agreement would want to create, as it has been stated, for example, by Russia in its Medium Term Strategy on relations with the EU. On the other hand, an association treaty could be viewed as an alternative to EU membership and signal the opportunity to create a strategic and privileged partnership between both actors.

Finally, and if the parties intend to extend the scope of the future PCA to matters such as those covered by the Common Space on External Security and/or the Common Space on Freedom, Security and Justice, such an agreement would also need to be based on Article 24 and/or 38 of the Treaty on European Union (TEU). A number of key issues would arise in this scenario affecting the nature of the agreement and the actors involved in its conclusion.

In so far as it would cover matters falling under the three different pillars of the European Union's structure, such an agreement would have to be a *multi-pillar* agreement. The agreement would be concluded by the European Community for the matters of the First Pillar (Common Commercial Policy, Environment, Education, Culture, Research and Development ...) and by the European Union for the matters linked to the Common Foreign and Security Policy (CFSP - second pillar) and to Police and Judicial Cooperation in Criminal Matters (PJCCM - third pillar). The problem is, though, that there is no provision in the Treaties providing for the rules for the conclusion of such a comprehensive *multi-pillar* agreement.

Over and above all these considerations, there is the question of whether the agreement would be exclusively concluded by the EU or by the EU and the Member States themselves. The current PCA is a mixed agreement (concluded by the EU and the Member States), given that its scope goes beyond the competence of the European Community. The present ambition of both parties regarding the scope of the future agreement might be taken to mean that it would certainly be a mixed agreement again. The real question at issue with mixed agreement is the constraints that it imposes on the procedure for its conclusion.

The relevant procedural rules for the negotiation, signature, conclusion and implementation of an international agreement by the European Community are contained in Article 300 EC. According to this article, it is the EU Council that takes the decision by qualified majority or unanimity, depending on the type or content of the agreement, under the same rules as apply to the conclusion of the agreement. The European Commission conducts negotiations in accordance with a mandate issued to it by the Council, subject to political review by the Council through the special committees comprising national representatives.

If the agreement were to be a *multi-pillar* agreement however, it would be subject to a different procedure. According to Article 24 TEU, which contains the relevant provisions for concluding international agreements concerning the second and third Pillars, those agreements are negotiated by the presidency of the Council, the Commission being only "fully associated" with this process.

Thus, one could consider two different negotiators: the presidency of the Council for the matters related to the CSFP and PJCCM, and the Commission for EC matters. But who would be responsible for the negotiation of horizontal aspects such as the preamble of the agreement and the setting up of the institutional framework? One could foresee that the Council could, when authorising the Commission to conduct a negotiation pursuant to Article 300 EC, instruct it to include the matters reserved for the presidency and the Member States in order to make this process more practical.

In this way, the Member States agreed, in 1994, to mandate the Commission, in contact with the 'Article 133 Committee', to negotiate all aspects of the current PCA, including those under their restrained competence. As a consequence, the coherence, unity and uniformity of the EU's position prevailed. We can hope for similar consensus in the negotiation of the future agreement.

With regard to the conclusion of the agreement by the EU, the question of whether the agreement should be concluded under qualified majority or unanimity voting arises from the complex nature of such a '*comprehensive mixed multi-pillar agreement*'. Given that certain matters covered by the agreement would be governed by qualified majority voting, and that others would be subject of unanimity voting, how could the EU institutions proceed? Would they have to divide all parts of the agreement and to proceed to separate voting for each different matter covered by the agreement? Or

would it be conceivable to vote on the agreement as a whole package, without distinguishing the matters and the related voting rules, in which case, it is highly likely that unanimity would prevail over qualified majority.

Another issue would be whether the European Parliament would give its assent to the new agreement as a single package, effectively giving it a veto over matters relating to the second and third pillars, for which it is not competent. One possible scenario could be to have CFSP matters negotiated by the Commission and then approved by the European Parliament. This situation is quite far from the supposedly intergovernmental nature of the EU in this policy area. All these questions remain open and would be resolved only by political consensus between all stakeholders, and not by the European Court of Justice, as this last body has the power of judicial review over the external agreement concluded by the EC only for community matters i.e. matters covered by the first pillar.

A mixed agreement entails a complicated ratification process, with the ratification procedures of 27 Member States or more, in addition to Community procedures. The lengthy process and possible likely delays could give the false impression that the EU is dragging its feet. Facing a sometimes suspicious partner like Russia, this institutional clumsiness inherent to the EU integration process could be particularly inconvenient. One should bear in mind that a negative vote by only one Member State in the ratification process would be sufficient to hinder the entry into force of the agreement, although it should be said that so far, this has never happened with a mixed agreement concluded by the Community and its Member States.

#### **The substantive scope of the new agreement**

The legal aspects raised above are far from the only open issues concerning the new agreement between the EU and Russia. There are several as yet unanswered questions related to the substantive scope of the agreement which will also have to be addressed.

It seems clear that the EU aims for a deep and comprehensive treaty with Russia. The EU has already concluded many such agreements, notably with most neighbouring countries. These typically consist of more than 100 articles covering cooperation in dozens of identified policy areas, with detailed provisions set out in series of annexes and protocols attached to the agreements. Indeed, the PCA is itself an example of such an agreement, although the level of commitments is relatively low in most policy areas when compared with most similarly structured agreements between the EU and other neighbouring countries.

A key argument against such a comprehensive agreement is that it is likely to entail long and difficult negotiations and ratification processes. Considering the sensitive nature of many of the various policy dossiers, it is possible that the entire agreement could be held up by disagreements in a few or only one policy area.

There are, however, alternatives to this approach that may alleviate some of the concerns surrounding a new comprehensive treaty between the EU and Russia. The Commission press release also states that the new agreement is to provide a 'framework' for the bilateral relationship. It is possible to envisage a 'framework' agreement that is broad and comprehensive in scope, but that remains quite limited in length and detail. Through such a 'lighter' and shorter framework agreement, it could be possible to avoid long and difficult parallel negotiations which would need to be concluded at the same time. Many of the detailed negotiations in the various areas and sectors could then be concluded separately in sector-specific agreements.



Trade and economic relations constitute the bulk of the provisions of the PCA, and the EU has called for free trade to be included in the agreement, to be negotiated following Russia's WTO accession. The latter is currently expected in 2007, but the process has seen numerous delays in the past, and an agreement on EU-Russian free trade cannot be negotiated and completed before Russia joins the WTO. Furthermore, a simple agreement on tariff-free trade would require greater concessions on the Russian side, as EU tariff levels vis-à-vis Russia are much lower than Russian tariffs on imports from the EU.

The two sides have, however, higher ambitions than tariff-free trade, with the stated aim of economic integration based on common or equivalent rules and standards. Non-tariff barriers and approximation of legislation is likely to be a key sticking point in the new agreement. The PCA includes provisions for Russian adoption of EU legislation in various sectors, but Russia appears reluctant to accept such asymmetric adaptation in the new agreement. In the Road Map on the common economic space, this issue was fudged by avoiding any references to the *acquis communautaire*. If the economic relationship is to move beyond a simple free trade area, this issue must be addressed with greater precision and detail than in the Road Map on the common economic space.

Energy is a central element in EU-Russian relations and has become more urgent following the energy crisis between Ukraine and Russia at the beginning of 2006. How, or the extent to which, the new agreement will deal with energy policy is likely to be another key issue in the negotiations of the new agreement. While the Commission appears committed to including energy in the new agreement, it is unclear how it will be squared with the proposal to conclude a new "comprehensive agreement on energy" with Russia, as suggested in a Commission non-paper on energy policy in June 2006.

In any case, the EU and Russia will have to consider how other bilateral EU-Russian agreements and further agreements already under discussion will relate to the new agreement. While it is clear that the new agreement will replace the PCA, its relationship with the other agreements between the EU and Russia remains uncertain. In addition to the PCA, sector-specific agreements on trade in textiles and steel, a research agreement, and an agreement between Europol and Russia are currently in force.

Will these agreements be incorporated into the new agreement or will they continue to exist as stand-alone agreements? Moreover, the question whether or not to incorporate into the new agreement the more than a dozen agreements currently under discussion across a wide range of issues (the Road Maps on the four common spaces make explicit references to agreements on investments, veterinary, fisheries, satellite navigation, trade in nuclear materials, visa facilitation, readmission, mutual legal assistance, Eurojust, Europol, judicial cooperation, crisis management operations, and information protection) will also have to be addressed.

This brings us to the question of linkages between various policy areas, which was emphasised in the most recent review of EU-Russian relations from the Commission i.e. the 2004 communication. There are various ways in which agreements can be linked. One option is to include a legally binding link, modelled, for example, on the so-called 'guillotine clause' known from EU-Swiss relations, which stipulates that a set of agreements must enter into force and be terminated at the same time. A looser 'political' link could also be envisaged, and has indeed been the case previously in EU-Russian relations, seen, for instance, with the WTO negotiations and Russian ratification of the Kyoto Protocol in 2004, or more recently, with the visa facilitation and readmission agreements.

The question of linkages is relevant to the fundamental question of the extent to which the new agreement should be based on common values. While the EU has become increasingly concerned about the direction of Russia on fundamental issues such as democracy, human rights and the rule of law, Russia on its side is less inclined to accept a partnership based on European definitions of such common values. The EU Member States are themselves divided as to the optimal balance between 'common values' and 'common interest' in relations with Russia.

This was one of the most contentious issues in the negotiations on the Road Maps, and was eventually resolved by including only limited and vague references to such common values. The extent to which further cooperation and integration should depend on common values is likely to be a dominant theme surrounding the upcoming negotiations and eventual ratification of a new comprehensive agreement between Russia and the EU.

### **Conclusions**

Given that the ambition of both parties is to approach all the dimensions of their relationship within a single legal instrument, the new bilateral treaty between the EU and Russia is likely to be a 'comprehensive mixed multi-pillar association agreement'. This agreement will affect the balance between community method and inter-governmentalism in EU decision-making. While external relations have been a source of conflict between the various EU institutions in the past, the inclusion of the CFSP and PJCCM in the new agreement between the EU and Russia raises new important challenges to the foreign policy-making process in the EU.

A new comprehensive treaty as outlined above will also force the EU and Russia to confront yet again the contentious issues raised in the negotiation of the four Road Maps on the common spaces. Many of the divisive issues that were avoided in the Road Maps, for instance, whether or not the common economic space shall move beyond simple tariff-free trade and be based on common rules and standards, any links between the new agreement and other EU-Russian agreements, and the extent to which the relationship should be based on adherence to common values, will have to be addressed.

In the light of all this, it seems clear that the EU and Russia are faced with difficult and lengthy negotiation and ratification processes before a new comprehensive bilateral agreement to replace the PCA can enter into force.

## Is The Common Economic Space Doomed?

### **Katinka Barysch**

Katinka Barysch joined the Centre for European Reform (CER) in July 2002 as chief economist. She previously worked as an analyst and editor for the Economist Intelligence Unit in London, specialising in eastern Europe and Russia. Prior to this, she was a consultant in Brussels, where she was also involved in formulating the European Commission's strategy towards the eastern European candidate countries. Her own research focuses on economic transition in eastern Europe and EU enlargement, as well as European macro-economic policy co-ordination and the political economy of structural reforms. She also supervises the CER's research programme on Russia. Her main areas of expertise include: economic reform, macro-economic policy co-ordination and EU enlargement.

### **Background: Re-thinking EU-Russia relations**

Mutual disillusionment has been the main feature of EU-Russia relations in recent years. This was perhaps inevitable: when the EU and Russia first started to build a relationship in the early 1990s, they knew little of each other but expected a lot. Russia – economically distraught and struggling to shake off the communist past – was keen to join a ‘common European house’. The EU was happy to help, on the assumption that Russia would follow the path of the Central and East European countries towards liberal democracy and market capitalism. The EU gave Russia money, trade and advice. It also offered a gradual transfer of its own laws, policies and standards of democracy, not only to help Russia to become a better place but also to enable it to gradually integrate with the Union. Although officially dubbed a ‘strategic partnership’, this original EU strategy was very much built on the assumption that Russia wanted and needed the EU’s help.

By 2003 it had become abundantly clear that the initial blueprint was not working. Russia, with its weak bureaucracy and often cavalier attitude towards the law, would have struggled to take over EU rules, even had it wanted to. But an increasingly self-confident Russia started to question the basic assumption that it should align itself with European norms, standards and values. A combination of oil windfall revenue and almost unprecedented political stability under President Vladimir Putin were behind Russia’s growing assertiveness. The EU looked on helplessly as the Putin administration rolled back civil liberties, took control over sections of the mass media, tightened its grip over the energy sector and made angry gestures towards its smaller neighbours.

EU-Russia relations, meanwhile, have made little headway. Despite a proliferation of co-operation agreements, working groups and dialogues, progress in most areas has remained frustratingly slow. Today, grand summit declarations can no longer hide the fact that the two sides do not agree on what their partnership should look like. Day-to-day dealings between the two sides are marred by misunderstandings and mistrust. Disagreements abound, be it over elections in Ukraine and Belarus, disrupted gas supplies or fees that European airlines pay for flying over Siberia.

### **Russia and the EU: basic figures**

	<b>EU-25</b>	<b>Russia</b>
Population, million	459	143.4
Area, 1,000 km <sup>2</sup>	3,191	17,075
GDP, US\$ bn	13,400	764
GDP per head, US\$	29,200	5,300
Exports, US\$ bn	3,920	240
Imports, US\$ bn	3,960	125

**Sources: European Commission, EIU.**

Both the EU and Russia have begun to rethink their mutual relationship. There has been a noticeable shift from declaratory diplomacy to pragmatic co-operation.<sup>1</sup> At a time when many observers talked about a 'crisis' in EU-Russia relations, there have been multiple small successes. For example, over the last three years, the EU and Russia have managed to: agree the terms of Russia's WTO accession; extend the PCA to the new member-states; make it easier for people and goods to move between Kaliningrad and Russia proper; thrash out plans for building four 'common spaces'; re-launch their security and defence co-operation; set up new co-operation forums, such as the 'permanent partnership council' for transport questions and an expert group on removing trade barriers; promise to ease visa requirements; sign a declaration on non-proliferation and a tax deal; established a new European Institute in Moscow to train more Russia EU specialist; and intensify co-operation in counter-terrorism and between Russian police forces and Europol.

The experience of working together in all these different areas – frustrating as it may be at times – is itself valuable. It familiarises Russian officials with how the EU works and vice-versa. It is teaching the EU and Russia a lot about what they like and dislike about each other. Diplomats and officials are now spending less time on debating principles and 'shared values'. Instead, they are exploring how common or diverging values and interests impact on everyday co-operation.

#### **Trade and the common economic space**

Trade and energy must be at the heart of this new approach because it is in these areas that mutual and shared interests are strongest. The value of EU-Russian trade has grown by more than 70 per cent over the last five years, and by 400 per cent over the last ten. In 2005, trade turnover reached €163 billion, with Russia exporting €107 billion to the EU and the EU selling €56 billion worth of goods to Russia. The resulting trade surplus – a whopping € 50 billion last year – is Russia's biggest source of foreign exchange.

Companies from the EU are also big foreign investors in the booming Russian economy. Eurostat reports that the stock of EU foreign direct investment (FDI) in Russia had reached almost € 20 billion by the end of 2004 – and FDI inflows have accelerated further since then. Such statistics need to be interpreted carefully, since a lot of the FDI that originates in the EU is really repatriated Russia flight capital. For example, the Netherlands and Cyprus (both preferred locations for Russian offshore companies) each account for around 30 per cent of the stock of Russian FDI. Nevertheless, there is little doubt that West European companies are increasingly investing in the Russian economy.

#### **EU-Russian trade, € billion**

	2001	2002	2003	2004	2005
EU Exports to Russia	31.4	34.3	37.1	45.8	56.4
EU Imports from					
Russia	63.0	62.0	67.8	80.7	106.7
Trade balance	-31.6	-27.7	-30.7	-34.9	-50.3

**Source: European Commission**

It is perhaps not surprising that the EU and Russia have put economic integration at the heart of their efforts to build a stronger partnership. Ever since the early 1990s, the two

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<sup>1</sup> Katinka Barysch, 'The EU and Russia: Strategic partners or squabbling neighbours?', Centre for European Reform, May 2004.

sides have been talking about building a 'common economic space' (CES).<sup>2</sup> The basic idea is to give Russia improved access to the EU's single market, provided that Russia brings its standards and regulations in line with the *acquis communautaire* (the EU's accumulated rulebook).

In 2001, the two sides set up a high-level group to lead the process and a team of economists set to work to thrash out the details.<sup>3</sup> However, when the high-level group reported to the Rome EU-Russia summit in November 2003, it still did not have a workable road map for economic integration. It only listed some guiding principles but stated that it was still too early to set concrete targets. Irrespective of these difficulties, the EU and Russia have since put the 'common spaces' concept at the heart of the attempted shift away from grand rhetoric and towards pragmatic co-operation. At their St Petersburg summit in May 2003, the EU and Russia agreed to build four 'common spaces' – in addition to economics and trade, they are now seeking closer co-operation in internal security; foreign and security policy; and science, education and culture.

It took the EU and Russia another two years to agree on a plan for filling the spaces. These so-called 'road maps' were adopted at the EU-Russia summit in Moscow in May 2005. Although the 52-page document lists hundreds of possible measures and institutions, it contains few concrete project proposals and no deadlines. One expert therefore describes it as "another exercise in a reasonably courteous management of ambiguity".<sup>4</sup>

Under the four common spaces agreement, the concept of the CES was expanded to include energy (dealt with elsewhere in this volume). But at its core remain measures to facilitate trade and investment, and help Russia to 'converge' towards EU regulatory norms and standards. However, although the EU and Russia have now been talking about legal approximation and harmonisation for almost a decade, they have made remarkably little progress.

**Box: The road map for the CES**

A selection of possible measures to be adopted for building a common economic space between the EU and Russia:

- **Regulatory convergence**, for example in telecoms, automotive, pharmaceuticals; EU and Russia to set up a regulatory dialogue and increase transparency; establish where there is scope for harmonising laws; similar on financial services
- **Public procurement**: Russia to take over EU best practice on public tenders; establishment of a dialogue
- **IPR**: Establishment of a dialogue on the protection of intellectual property rights; Russia to learn from EU experience with enforcing IPR rules
- **Competition**: Russia to approximate its rules on competition policy with those of the EU and strengthen their implementation and enforcement; including rules on industrial subsidies (state aid)

<sup>2</sup> The Partnership and Co-operation Agreement, signed in 1994 and in force since 1997, stipulates that "Russia shall endeavour to ensure that its legislation will be gradually made compatible with that of the Community. The term 'common European economic space' first appeared in the EU's Common Strategy of 1999.

<sup>3</sup> Russian-European Centre for Economic Policy, *Common Economic Space: Prospects of Russia-EU relations*. Tacis, 2002.

<sup>4</sup> Michael Emerson, 'Four common spaces and the proliferation of the fuzzy', Policy brief 71, Centre for European Policy Studies, May 2005.

- **Investment:** Russia to improve the transparency and predictability of its investment climate; more systematic dialogue with the EU on investment regulations, including prior notification of changes and impact assessment; strengthen role of business in this area; Russia to ensure better implementation of rules across all regions; EU and Russia to explore the possibility of an agreement on investment-related issues
- **Economic and industrial policies:** dialogue on how internal investment conditions can be improved, especially for SME; sectoral dialogues on cars, textiles, aerospace, mining and metals, chemicals, etc
- **Agriculture:** approximation of food standards; EU and Russia to seek veterinary agreement or at least work harder to avoid trade disputes
- **Trade and customs:** use compatible computer systems; harmonise rules for example on risk assessment; build up capacity in Russian customs administration with EU technical assistance

Until 2005, the EU and Russia were very much focused on reaching a bilateral deal for Russia's accession to the World Trade Organisation (WTO), and they had little time and energy for working on the CES. But even after the bilateral deal was struck in May 2005, the EU has struggled to get Russia interested in the kind of legal approximation that underlies the CES.

Many economists, both from Russia and the EU, are sceptical about the whole idea of the CES. They say that the gap between the EU's well developed and densely regulated market and Russia's shaky, oil-dependent transition economy is so wide as to make the CES meaningless as a framework for concrete policy measures. Russian experts insist that that only a small part of the *acquis* – notably the free movement of goods, services, capital and people – would be good for Russia's development. Other EU rules, for example environmental and social standards, could harm Russia's growth prospects. Most of the *acquis* would be either irrelevant or have little impact.<sup>5</sup>

The European Commission has reassured Russia repeatedly that it would not have to take over the whole *acquis*. But some EU member-states fear that Russia will 'cherry pick' those parts of the *acquis* that it likes but reject those that are difficult, restrictive or expensive. Such a selective approach, they fear, could give Russia an unfair advantage.

Most importantly perhaps, the CES concept is politically flawed. Countries that want to join the EU have a strong incentive to take over EU rules and regulations, irrespective of whether they suit them or not. Russia, however, has no intention of joining the EU and the EU has not invited Russia to do so. Therefore, the CES would ultimately require Russia to play according to rules the development of which it cannot influence.

The basic idea is thus similar to that underlying the European Economic Area (EEA).<sup>6</sup> The EEA gives non-EU members such as Norway and Iceland full access to the EU single market. In return, these countries implement the *acquis* in all relevant areas. Although the EU consults EEA countries in the law-making process, it does not give them a say when it decides on new rules. This asymmetry has led many former EEA members to apply for EU membership, including Sweden Finland and Austria. Norway and Iceland have their own problems with the EEA model.

<sup>5</sup> Vladimir Mau and Vadim Novikov, *Otnosheiya Rossii i ES: Prostranstvo Vybor ili Vybor Prostranstva?*, *Voprosy ekonomiki* 6, 2002. Peka Sutela, 'EU, Russia and the common economic space', *Bofit online*, number 3 2005.

<sup>6</sup> Tim Gold, *The European Economic Area as a model for the wider Europe*. Background paper for the EFTA parliamentary meeting, June 2003.

Given that Russians are more prickly about sovereignty than say, Norwegians, anything resembling the EEA model would be very difficult to accept. What is more, past plans for the CES would not even have allowed Russia the consultative role that the EEA countries enjoy.<sup>7</sup> Russian officials and politicians made it clear from the beginning that they dislike the idea of having to unilaterally adapt to EU rules. Instead, they have been calling for a more “balanced” approach to legal approximation in which both sides converge towards each other and new rules involve mutual consultation. In recent years, that stance has hardened. Many in Russia say that the CES idea was born at a time when Russia was weak. Now that the Russian economy is booming and political stability has been restored, Russia wants to establish a more “equal partnership”. This appears to be Russia’s main objectives for the forthcoming negotiations on a new agreement with the EU to replace the 1997 Partnership and Co-operation Agreement (PCA).<sup>8</sup>

EU officials, on the other hand, remain adamant that non-members cannot be part of EU internal decision-making. And they point out that the *acquis* is a complex body of law that has grown over decades and often embodies delicate compromises among the EU member countries. It also often embodies international best practice and has served the EU well in building a well-functioning internal markets. In short, the EU cannot and will not adjust its laws to Russia. The process would be one-sided or not at all.

#### **The way forward?**

Perhaps realising that regulatory convergence is not the most promising way forward, the EU in July 2006 suggested that it could open talks on a free trade agreement (FTA), as part of the negotiations on a post-PCA agreement. So far, however, Russia has not shown that much enthusiasm for the idea. Russia may suspect that the EU could link the offer of free trade to demands to make the Russian energy sector more open and competitive.

However, at present, the FTA ‘carrot’ simply does not look juicy enough for Russia to compromise on vital questions such as energy sector reform or third-party access to pipelines. It is true that exports to the EU account for 15-20 per cent of Russian GDP. But most of this consists of energy and other raw materials which are hardly affected by EU trade policy. The EU, on the other hand, sells Russia machinery, cars, chemicals, consumer goods and foodstuffs. But for the EU, Russia remains a market of secondary importance: in 2005 Russia accounted for only 5 per cent of total EU external exports. Moreover, both sides have always insisted that talking about a free trade agreement would only make sense once Russia has actually joined the WTO. However, the accession process is taking longer than most observers had expected<sup>9</sup>, as Moscow struggles to reach a bilateral deal with Washington against the backdrop of a chillier Russia-US relationship. In September, Igor Shuvalov, a senior Putin adviser, even suggested that Russia may walk away from the WTO talks unless the US softens its demands.

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<sup>7</sup> Marius Vahl, *Whither the CEES? Political and institutional aspects of closer integration between the EU and Russia*, in T. de Wilde and L. Spetschinsky (ed.), *La politique étrangère de la Russie et ses implications pour l'Europe*, P.I.E.-Peter Lang, 2004

<sup>8</sup> Michael Emerson, Fabrizio Tassinari and Marius Vahl: ‘A new agreement between the EU and Russia: Why, what and when?’ CEPS policy brief no. 103, May 2006.

<sup>9</sup> Katinka Barysch, Pascal Lamy, Maxim Medvedkov and others, ‘Russia and the WTO’, Centre for European Reform, December 2002.

Composition of EU-Russian trade, € billion, 2005

	EU exports to Russia		EU imports from Russia	
	€ bn	% of total	€ bn	% of total
Machinery	20.8	36.9	0.7	0.7
Transport equipment	5.7	10.1	0.5	0.5
Chemicals	8.2	14.5	3.5	3.2
Farm products	8.0	8.8	2.4	2.3
Oil & gas	0.3	0.6	68.7	64.4
Textiles and clothing	2.6	4.6	0.2	0.2

Source: European Commission.

In line with Russia's current specialisation, the Putin administration now concentrates on seeking 'security of demand' for its oil and gas sales, rather than securing better market access for its manufactured goods. This choice of priorities is as rational as it is short-sighted. The Russian economy is doing well on the back of the current oil boom. But it is becoming dangerously exposed to the vagaries of the international commodities market. Not only export revenues, but also the state budget and investment spending are intimately linked with international oil prices. Resource dependent economies are not only unstable, they also tend to be badly run as the huge revenues available from oil exports foster cronyism, crime and corruption. Between 2004 and 2005 Russia dropped from 90<sup>th</sup> to 126<sup>th</sup> place (on a list of 156 countries in the Corruption Index) and now ranks alongside Niger, Sierra Leone and Albania.

### Conclusion

President Putin and his team are very aware of these problems. The government has launched a series of initiatives aimed at diversifying the economy away from hydrocarbons and fighting widespread corruption. During his first term, Putin tried to clean up Russia's regulations and licensing procedures to make life easier for businesses – especially smaller ones – and remove opportunities for bribe-taking. More recently, the Kremlin is setting up a number of 'special economic zones' to attract foreign and domestic investment into high-tech ventures. The preparations for WTO entry have also entailed some valuable changes, for example a simplification customs procedures.

It appears that the Russian government knows what is required to make the economy more open, competitive and transparent. So there might be an opportunity for the EU to 'sell' the CES to Russia as being in Russia's own best interest. It could help the development of the non-oil sector and generally create a better business environment. If more Russian goods were produced in accordance with EU requirements (for example food or safety standards) they could be more easily sold to EU countries. The EU would also 'reward' reform progress in Russia with removing remaining restrictions on Russian non-oil exports. EU rules often represent international best practice, so they are better suited for a modern market economy than Russia's complex, often outdated and at times contradictory legal base. EU rules for say, competition policy and public procurement could help to establish a level-playing field in an economy where large, well-connected companies still too often stifle smaller, nimbler competitors. In short, regulatory convergence could help Russia's attempt to diversify its economy away from oil and gas. Russia needs to understand that the CES is not a burdensome EU demand but an opportunity for its own economic development.



## **Russia-EU Relations: Still at the Crossroads**

### **Nadia Alexandrova-Arbatova**

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### **From Crisis to Turning Point**

In spite of Russia and the EU having common Russian and EU interests in many spheres, above all in the international security and energy sectors, and continuing intensive contact, including the Russia-EU summits, one of the most fashionable topics in academic discussions today is whether there is a crisis in relations between two partners.

If one defines a crisis as the threat of a collapse in EU-Russia relations, there is no crisis, because the interdependence of the two partners is high. Even during the Cold War, the USSR and the West were able to cooperate in many spheres, notably in trade and arms control, but it made little difference to the overall nature and character of these relations. If we agree to define a crisis as a turning point, a condition of uncertainty leading to decisive change, we should recognise that there is a crisis in EU-Russia relations because of the absence of clear strategic goals and mutual trust. The partners have approached a fork in the road and it is not clear whether they will travel together or take divergent paths.

The crisis has not arisen overnight. Many of the problems in Russia-EU relations after the disintegration of the USSR have acquired a qualitative character. The expectations of each side with regard to the other have not been fulfilled. The EU expected that Russia would build a functioning democracy and introduce market economy reforms overnight. Russia expected cooperation with the European Union to deliver an economic miracle and help her find a proper place in post-Cold War Europe.

### **Changes in the EU and Russia**

Both partners are still undergoing deep internal transformations. After the French and Dutch "no" votes on the European Constitution, the European Union is undergoing a deep internal crisis comprising three elements:

- the crisis of its previous strategy based on simultaneous and supposedly painless implementation of two key processes of European integration;
- widening and deepening of the crisis over its institutions;
- the legitimacy crisis that embodies a growing gap between political elites in EU countries and their respective electorates.

In order to relaunch a new integration strategy, the EU needs stability on its borders. From this point of view, Russia is one of the most important neighbours of the European Union because stability in the post-Soviet space, and in Europe at large, will depend on Russia's domestic transformation.

Russia is still in the process of re-establishing her statehood and international position after the chaos of the first decade of post-Communist evolution. President Putin has

never made a secret of the fact that he is going to build a strong state, reduce the informal influences established under Yeltsin, and strengthen the integrity of the Russian Federation. This has been basically accepted by the EU and the United States, who were becoming tired of Russia's controversial development under Yeltsin.

At the same time, and on many occasions, Vladimir Putin has reaffirmed Russia's European vocation and her readiness to promote market economy reforms. In his last annual address to the Russian Parliament (May 2006), the European Union was singled out as Russia's main foreign partner after the CIS countries.

The future of EU-Russia relations, will depend a great deal on what the EU countries with a long history of democracy want from a Russia still involved in the painful process of transition from communism that began just 15 years ago. Lack of trust in Russia, which can be partly put down to the legacy of the past and partly to Russia's present development, induces the EU to distance itself from its eastern neighbour and perceive it chiefly in terms of "oil, gas and nuclear weapons". If this approach prevails in the EU, it will have dramatic consequences for Russia's internal evolution and could lead to a scenario in which EU-Russia relations are trapped between cooperation and confrontation.

Indeed, in the absence of clear strategic goals in relations between Russia and the EU, there remains the danger of Russia being stuck with the role of raw materials supplier, and a temptation to use economic levers for political purposes, thus creating the possibility of new conflicts between Russia and individual EU countries. If the EU needs Russia as a stable and reliable partner, there needs to be a totally different scenario, more beneficial to European and international security, not to mention the European Union and Russia.

### **A Vicious Circle**

In 2007, the EU and Russia will have to agree on the future of the Partnership and Cooperation Agreement (PCA) – either to extend the existing, or a slightly modified treaty, or sign a new agreement. The PCA was first offered to Russia, Ukraine, Belarus and Moldova in 1994-1995 as the lowest legal form of relations between the EU and third countries. The PCA still remains the main legal document for Russia-EU cooperation, but both parties recognise that it is now outdated. The PCA model represents a purely technocratic EU approach to Russia and other post-Soviet states, and bypasses the question of strategic goals.

Beyond this, the PCA neither fully reflects the substantial changes that have taken place in Russia, the EU and the world, nor the experiences, achievements and new areas of cooperation. Russia's membership of the WTO will deprive the PCA section on trade of any real meaning. As for political relations, the last decade of Russia-EU political cooperation has gone far beyond the limits of the PCA, regardless of mutual dissatisfaction, Russia and the EU closely cooperate on the most urgent problems of international security, be it Iran or the unresolved question of Kosovo's status.

As the date approached for EU enlargement to embrace the CEE counties, Brussels was confronted by the problem of its eastern borders and the necessity of defining its policy vis-a-vis Russia and other areas in the post-Soviet European space. At the St. Petersburg summit in May 2003, the EU and Russia agreed to reinforce their co-operation by creating four long-term 'Common Spaces' within the framework of the PCA - a common economic space; a common space for freedom, security and justice; a space for co-operation in the field of external security; and a space for research and education, including cultural aspects. The decisions of the St. Petersburg summit demonstrated the parties' resolve to elevate the level of cooperation without changing the legal

foundation. The fact is that the idea of four common spaces for cooperation cannot be implemented on the basis of an outdated and narrow agreement.

The Moscow summit in May 2005 adopted a single package of road maps to act as the short and medium-term instruments for the creation and implementation of the four Common Spaces. The London summit in October 2005 focused on the practical implementation of the road maps, but despite good intentions, these road maps are too technical and cannot provide the necessary foundation for implementing the St. Petersburg initiative. Their development can be assessed more as process than progress.

The Brussels strategy vis-à-vis the post-Soviet space has been further developed within the framework of the EU Neighbourhood Policy, a policy directed at the stabilisation of the Union's immediate neighbourhood. In the first draft ("Communication on Wider Europe"), which was criticised in Russian political and academic circles, Russia was put in a group with Southern Mediterranean countries. This draft did not define any clear priorities for the EU's neighbourhood, which was regarded as one integral space. The final draft ("The EU Neighbourhood Policy") has entirely excluded Russia from the EU strategy. This document defines Russia as 'an EU strategic partner', but it says that EU-Russia relations will be built around the St. Petersburg decision on the four Common Spaces of cooperation.

What is the balance sheet of EU-Russia relations? We have the outdated PCA, the brilliant St. Petersburg initiative, which cannot be implemented on the basis of an outdated PCA, and the EU Neighbourhood Policy that excludes Russia and refers to the St. Petersburg initiative as a foundation for strategic partnership. As has been demonstrated this cannot advance within the present framework without major changes. It appears as though EU-Russia relations are now trapped in a vicious circle.

The only way to get out of this vicious circle is to create a new legal foundation for the St. Petersburg decision that, if implemented, could upgrade the level of the EU-Russia partnership and tackle other problems, the energy dialogue and the CIS. Upgrading relations between Russia and the EU, drawing closer not only on the basis of common interests but also common values, would remove or greatly diminish the chances of a clash of interests regarding the CIS (Ukraine, Georgia, Moldavia and Byelorussia). In other words, the stability of greater Europe and the effectiveness of multilateral cooperation in countering new threats to international security hinge on how the "2007 problem" will be solved.

Without a new legal form for the relationship, the EU's potential enlargement with the CIS will be opposed by Russia, a contrast to her initially positive attitude towards the EU's widening strategy. The last wave of enlargement demonstrated that although NATO membership for EU applicant countries is not part of the Copenhagen criteria, it has defacto become a necessary precondition for joining the EU. These two enlargement processes, which have been presented as complementary, will create serious problems in the post-Soviet space because the latter, unlike central and eastern Europe, is still unstable.

### **The Moment of Truth**

As far as the fate of the PCA is concerned, there are three possible options for formalising relations between the EU and Russia in an international agreement beyond 2007:

1. Extend the PCA, as stipulated under Article 106 of the Agreement, until such time as the parties deem it practicable to replace it with a new agreement.

2. Introduce amendments and additions to the existing text of the Agreement to take account of the present level of “advanced cooperation” and the real prospects for developing relations over the next 10-15 years.
3. Prepare a completely new agreement.

A year ago, the Russian NGO, “Russia in a United Europe Committee” ([www.rue.ru](http://www.rue.ru)), created to promote partnership between Russia and the EU, initiated a broad discussion on the so-called 2007 problem, post-PCA, following the presentation of its concept. This discussion resulted in the emergence of different ideas, ranging from a minimalist approach (“PCA-plus”) to an ambitious vision of a new treaty. The extension of the existing PCA in 2007, which would be confirmation that the partners were not ready for closer interaction, could, of course be “sweetened” with a non-binding political declaration on “strategic partnership”, and a series of agreements that could be concluded from time to time for specific tasks. Many in Russia and in the EU are leaning towards this “low-cost” variant that would not require a new ratification of the agreement.

The main concept of the “Russia in a United Europe Committee” is aimed at a thorough modernisation of the PCA by introducing amendments that could radically change the content of the treaty, and even its name, but still preserve legal continuity (a common practice in the EU and in the State Duma of the Russian Federation). Their ultimate goal of a renewed Agreement would be an association based on the concept of an advanced (strategic) partnership that in turn would be based on the four Common Spaces. The agreement would be for an indefinite period and would define each of the Common Spaces.

#### **Different Associations**

There is a common misconception that the main difference between partnership and association is that an association envisages membership of the European Union as the final goal. For a multitude of reasons, this is not a viable proposition today for either Brussels or Moscow. The main difference between the PCA and an association agreement is that the former has no provision for the liberalisation of the movement of goods, people, services and capital, while the latter is based on free trade. Although a PCA does mention the creation of a free trade zone as an ultimate goal, it does not contain provisions for practical steps in this direction.

Beyond this, there are several types of association agreements that have different names and content, and which do not necessarily lead to full EU membership: the European Agreement (for CEE countries); the Agreement on Association and Stabilisation (for the Western Balkans); and the European-Mediterranean Agreement (for the countries of the Southern Mediterranean). European Agreements mention EU membership both in the preamble and in the first articles. The first articles of Agreements on Association and Stabilisation with Macedonia and Croatia say nothing about their possible membership of the EU, but the preambles do refer to them as potential candidates. As for Agreements on Association with Mediterranean countries, the prospect of their membership of the EU is not considered at all. This form of association is the lowest that applies to political cooperation.

From the legal point of view, relations between the EU and EFTA are also associations; indeed, the highest forms of association. It is significant that many supporters of Russia’s self-reliance, while advocating that Russia-EU relations be patterned on the Swiss or Norwegian models, do not even realise that they are calling for the highest level of association. All the EFTA countries – Switzerland, Norway, Iceland and Liechtenstein – meet EU membership criteria but their non-membership is a matter of their free choice. From the point of view, of the Committee for “Russia in a United

Europe”, an association between the EU and Russia should more resemble the Stabilisation and Association Agreements, and avoid the question of Russia’s membership of the EU. Nonetheless, even this moderate concept is too frightening for the partisans of a minimalist approach, in both Russia and the EU.

It appears that there will be a new treaty replacing the PCA and regardless of its name, it should be based on the four Common Spaces for cooperation. This could provide not only a good structure for the new treaty but also the strategic goals that are badly needed in the EU-Russia relationship. If, in the best-case scenario, these Common Spaces of cooperation develop, the very question of Russia’s membership of the EU will become irrelevant.

### **Official and Business Views**

The official position of Russia’s top leadership and the state structures responsible for the formulation and implementation of foreign policy (predominantly the Ministry of Foreign Affairs) is to favour a new treaty based on the four Common Spaces and special sectoral agreements. The government is not considering association, as it desires that Russia be “an equal partner of the EU”. The very fact that the Kremlin understands the importance of a new and more comprehensive treaty with the EU is a positive sign in Russia’s foreign policy evolution.

As for Russian business, as in any country with developing business structures, there is a tendency to protectionism and this has been most vividly evident in domestic discussions on Russia’s membership of the WTO. At the same time, there is a growing understanding amongst the Russian business community, in particular the energy and steel sectors, that a new treaty could introduce more precise and transparent rules for their activities.

### **Conclusion**

The year 2007, when the fate of the PCA will be decided, can without exaggeration be described as a turning point in relations between Russia and the EU, and in the evolution of post Soviet Europe. How should one deal with a Russia that is far from perfect? It would be worthwhile to remember the advice given by George Kennan in 1951 in his article “America and the Russian Future” where he predicted the collapse of the USSR: “... when Soviet power has run its course, or when its personalities and spirit begin to change (for the ultimate outcome could be one or the other), let us not hover nervously over the people who come after, applying litmus papers daily to their political complexions to find out whether they answer to our concept of “democratic”. Give them time; let them be Russians; let them work out their internal problems in their own manner. The ways by which peoples advance toward dignity and enlightenment in government are things that constitute the deepest and most intimate processes of national life. There is nothing less understandable to foreigners, nothing in which foreign interference can do less good. There are, as we shall see presently, certain features of the future Russian state that are of genuine concern to the outside world. But these do not include the form of government itself, provided only that it keep within certain well-defined limits, beyond which lies totalitarianism.”

Undoubtedly, 2007 will mark a moment of truth for the future of EU-Russia relations and there will be a strong temptation on both sides to avoid too much change. But only a new treaty based on a strategic vision can help Russia find her proper place in post Cold War Europe, and change her forever.

## Prospects For EU-Russia Foreign And Security Policy Cooperation

### **Arkady Moshes**

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EU-Russia cooperation in the foreign and security policy spheres is well established. In official documents this cooperation is often prioritised as a key component of the emerging partnership. The Russian *Mid-Term Strategy of Relations with the EU*, presented in 1999 and valid until 2010, set the ambitious task of building a system of collective security on the continent. At their summit in Paris in October 2000 the two sides agreed to develop security cooperation. This was extremely important since, at that moment, Russia-NATO relations were frozen following the NATO campaign against Yugoslavia.

The tragic events of September 11 further stimulated the security partnership between the EU and Russia. This was reflected in the results of the summit in Brussels in October 2001, when Russia and the EU reached an agreement to cooperate in fighting international terrorism. At St Petersburg in May 2003 it was agreed to create (along with three other common spaces) a common space on external security. Meanwhile, two years later, a "road map" focused on specific areas of cooperation including counter-terrorism, nuclear non-proliferation and export controls, crisis management and civil protection.

In principle, there should be close foreign and security policy cooperation between Russia and the EU, as they share many common interests and concerns. Both are threatened by newly emerging security risks such as terrorism. Both want a stable world order. Both can reinforce each other's positions in the dialogue with the Islamic world, enhance stability in the common neighbourhood and, where necessary, put some constraints on the actions of the US. Furthermore, Russia can treat cooperation in this sphere as a real priority, as its claim to equality in its relationship with the EU is nowhere more justified than here.

The reality, however, does not support this brief analysis. Most experts demonstrate a deep scepticism when speaking about the current state and the prospects of Russia-EU relations on foreign and security policy. Dov Lynch from the EU Institute for Security Studies has characterised it as a *dialogue des sourds (a conversation of deaf people)* that has produced "few, if any, meaningful joint positions" (The Washington Quarterly, Spring 2004). A Finnish researcher, Tuomas Forsberg, has asked why the opportunity to build an EU-Russian security partnership has been missed, treating the very fact that it has been missed as an axiom (European Foreign Affairs Review, Summer 2004). An authoritative Brussels-based scholar and former practitioner, Michael Emerson, when analysing specifically the crisis management aspect of the common space on external security, called the document "disappointing" and "empty" (CEPS Policy Brief, No. 71, May 2005).

The first year and a half of implementation of the “road map” did not do much to counter these definitions. There seems to be little evidence of any motivation to expand these areas of cooperation. This means that in the mid-term perspective, cooperation will be driven by bureaucratic and not strategic interests, and will be developed in an ad hoc rather than structural and systemic manner. Also, it could involve a huge body of bilateral dealings between Russia and EU member states, as opposed to a coherent position of the Union. Meanwhile, there will remain differences about the future of the common neighbourhood

### **Changing Russia**

There are four complicated and sometimes contradictory “baskets” of reasons, which help explain the above assessment. The first deals with the implications of Russia’s internal evolution for its foreign policy and foreign policy thinking. Contrary to oft-repeated ritual phrases about the adherence to common values, in reality Russia does not adopt the standards of the rule of law and democratic governance that are considered the norm in the EU. Russia continuously slides down most international ratings that measure political freedom and human rights. Convergence of values between Russia and EU therefore, cannot be realistically expected to come soon, but without it, building a strategic partnership will hardly be possible. EU policy is or at least is said to be aimed at the promotion of democracy – in its own periphery above all – while Russia, as events in Ukraine during the Orange revolution have demonstrated, is treating the prospect of democratisation of its neighbours with extreme concern.

Divergence of norms and values could, in principle, be put aside if the partners feel exposed to the same immediate security threat that would demand a common stance. For some time the threat of terrorism was viewed as a factor that could play the cementing role. Over time, however, different approaches to critical questions (how to define a terrorist, which organisations to include in respective lists, which means to use, etc.) gave grounds for mutual accusations of “double standards” and altogether weakened anti-terrorist solidarity.

### **Foreign Policy Doctrine**

Going back to the changes in Russia and their implications, it is important to realise that the so-called policy of “Russia’s European Choice”, strongly pronounced during the first presidential term of Vladimir Putin, was shelved after 2004 and its logic no longer determines Russian policy. If it had been assumed earlier that, at least for reasons of history and culture, if not for economic interdependence, it would be most natural for Russia to seek the *European* future, (the thinking that also drove external policy cooperation forward) the school of europeanisers is now a minority in the Russian debate. Even among liberals there is a strengthening trend to see Russia as a potentially Western but not necessarily European country (see, for example, Dmitri Trenin’s book “Integration and Identity: Russia as a “New West”, Carnegie Moscow Centre, 2006) that should adopt the best of “world” and not Europe’s experience. In the official discourse, Russia is portrayed as an independent player that should keep complete freedom of manoeuvre and should not build any permanent foreign policy alliances.

Russia is shifting its attention from Europe to Asia and the impact of this process on Russia-EU relations is not yet known. The end of Russia’s Europeanisation and the weakening of the integration/ approximation paradigm facilitates the resurgence of big power thinking, brings back the nineteenth century logic of the “concert of powers” and exclusive spheres of interest which, in turn, complicates the process of reaching understanding with the EU where such approaches are seen as obsolete.

Furthermore, after Vladimir Putin's address to the nation made in the aftermath of the tragedy in Beslan, (in which Russia's president directly called the forces in the West that do not like strong Russia a security threat to the country) Russia experienced a growth of anti-Western rhetoric. However, this is not to say that Russia is preparing for a return to confrontation with the West; much of this rhetoric is intended for domestic consumption. Yet, as a result, the dilemma of whether Russia wants to guarantee its security *together* with the West or *against* the West has only become more difficult to solve.

### **Impact of Enlargement**

The second set or 'basket' of reasons is linked to the evolution of Russian and EU mutual perceptions that took place after EU enlargement, which left Russia frustrated. Moscow's concerns on critical issues (Kaliningrad transit, the minority situation in Latvia and Estonia) were taken into account mostly on paper and Russia had to extend the Partnership and Cooperation Agreement to the new members without any real negotiations, while being offered cosmetic concessions and being put under pressure of losing the PCA altogether. The inclusion of a number of states that had problematic bilateral relations with Russia into the EU internal decision-making process further complicated the dialogue.

The most difficult thing to adapt to was the appearance of the de facto common neighbourhood, somewhat misleadingly called "adjacent areas" in the joint documents at Russia's insistence. Brussels cannot ignore a consolidated push of EU new members to be more active on the eastern periphery. As long as it denies membership perspective for its neighbours, the policy of Wider Europe that it pursues, (however palliative it may look) nevertheless stimulates their search for alternatives to staying within the same geopolitical and geo-economic space as Russia. Moscow, in this situation, starts viewing the EU not so much as a partner, but rather a systemic rival to its foreign policy goals in the Western NIS and the Caucasus; a revisionist power; and is instinctively inclined to get involved in a "zero-sum game" type of relationship with the EU.

The EU also cannot consider Russia a status quo power. Russian foreign policy in Putin's second term is based on the feeling of self-confidence, regained thanks to high world energy prices. Russia is no longer happy with the status quo in its relations with other post-Soviet states and is trying out different instruments, ranging from interfering in elections to withdrawing energy subsidies and banning imports of goods from certain countries. Today's major points of European concern - Russia's negative attitudes to EU involvement in the so-called "frozen conflicts" and Moscow's support for Alexander Lukashenko in Belarus - may stay within the limits of acceptable differences because they are traditional. But tomorrow one cannot exclude the possibility of an attempt to incorporate Belarus into Russia, which will be more difficult for the EU to ignore.

### **The Usefulness of Cooperation**

The third "basket" of arguments is related to a general assumption that the significance and practical usefulness of Russia-EU foreign policy cooperation in the whole complex of security relationships that both partners have with other countries is likely to remain limited. This assumption draws partly upon past experiences. Russia-EU military-technical cooperation has never gone beyond small steps (like the EU Satellite Centre occasionally purchasing Russian satellite images or Russia sending several police officers to the EU-led mission in Bosnia and Herzegovina). After 2002, when the EU decided not to use Russian strategic airlift capability and to develop its own, the only potential big common project was buried. Brussels has never considered providing Russia with a voice in European Security and Defence Policy (ESDP), which would have satisfied Russia's desire for a relationship of equals.



The reason is, in part, the lack of belief in Russia that the EU can become an influential foreign policy maker. From the Russian point of view, the dynamics of CFSP/ESDP have been very slow, while the capability to fulfil the St Petersburg tasks will not be a central element in the system of defence against new security threats. After the failure of the Dutch and French referenda on the EU Constitution, scepticism around the EU common policy grew much stronger in Russia, where analysts even now admit the possibility of the re-nationalisation of European foreign policy. It is worth noting in a different context, that Russia can no longer even hope to use relations with the EU to balance US actions, as after the last enlargement, the Atlanticist wing inside the Union has become stronger.

Most importantly, however, Russia has an alternative within the West. In the last five years the NATO-Russia Council has proved to be a more convenient and more flexible forum for developing security cooperation between Russia and the West than Russia-EU mechanisms. Russia-NATO relations may again take a turn for the worse, if another wave of expansion took place that included Ukraine, but at the moment this scenario does not cause immediate concern.

#### **Where Can there be Cooperation?**

Finally, in the fourth 'basket' it is rather difficult to find topics and areas, where plans for cooperation would not provoke second thoughts. The common neighbourhood is a region more likely to generate conflict than to engender cooperation. Although low-key cooperation, in managing daily issues in the zones of "frozen conflicts" and in guaranteeing the security of energy transit, is possible.

Moscow apparently has nothing against the EU taking responsibility for the situation in areas which Russia has abandoned in the strategic sense. Africa and the Balkans would be the first candidates. At the same time, it would be difficult to imagine why Russia would be interested in actively and physically supporting EU actions in those areas. On the contrary, Moscow may have a reserved attitude to the possible success of EU missions in Africa as this could establish a precedent which could increase EU willingness and its capability to undertake peace-keeping operations in Transdniestria and the Caucasus. As for the Balkans, Kosovo may set a different kind of a precedent. It has been indicated many times that non-recognised entities in the territory of the former Soviet Union could follow Kosovo's suit, which promises another round of Russia-EU controversy.

The situation regarding Iran and the Middle East more generally represents a rare case which could become a success story. Russian motivation to prevent nuclear proliferation in the region looks strong enough. The issues that are at stake in the region have global effects, which make participation in their resolution imperative for any country that aspires to be a major player. Russia has much to contribute and its voice will not disappear in the negotiations. The practice of coordinating positions between Russia and countries representing Europe has been in place for some time and often the members of this group have been closer to each other than each of them was to the United States. At the same time, Russia's interests are not identical to those of Europe. Uncertainty around Iran drives up energy prices, with Russia enjoying the benefits. Therefore, Russia is interested in keeping the situation under control but not necessarily in seeking a comprehensive solution. Sending peace-keepers to Lebanon will hardly be popular domestically.

## **Conclusion**

In view of this analysis, the words of President Putin from his address to the meeting of Russian ambassadors on June 27, 2006 do not appear surprising or accidental. When speaking about cooperation in fighting terrorism, drug-trafficking, in peace-keeping and in emergencies, Putin named bilateral formats, NATO and the Collective Security Treaty Organisation (formerly the Tashkent Treaty). The EU did not get a special mention. In another passage, Putin said that, through its dialogue with the EU and its member states, Russia expects to develop mutually beneficial economic ties, to extend academic and cultural links and to lift the barriers that impede human contacts. The foreign and security policy sphere was again omitted.

In the short-to-medium term perspective, it is likely that Russia-EU foreign policy and security cooperation will proceed in a rather bureaucratic way, not significantly affecting the security policies of Russia and EU member states. Provisions for the “road map” may be partially or fully incorporated into the text of a new comprehensive document that is supposed to replace the current PCA. New documents of a declaratory character may be produced. Working dialogue will continue, sometimes producing results.

But a major task of the dialogue will be to prevent the worsening of Russia-EU relations if things suddenly go wrong in the common neighbourhood (another Russian-Ukrainian gas war; the Lukashenko regime starting massive repressions or Russia going ahead with integrating its neighbour; an outbreak of war between the Georgian government and the breakaway entities of Abkhazia and/or South Ossetia etc.). In each case, it would be extremely important for the EU to prepare for such situations and transparently convey this contingency planning to Moscow.

Foreign and security policy cooperation is unlikely to be a key element in Russia-EU relations. Priority attention will be given to energy and, possibly, some elements of the justice and home affairs dossier. Bilateral relations are likely to leave relations between Moscow and Brussels in the shadows. On one hand, Moscow will deliberately aim to strengthen cooperation with traditional partners from ‘Old Europe’ with Germany playing the lead. On the other hand, Russian-Polish and Russian-Baltic relations are likely to stay strained, not only because negative stereotypes are permanently reproduced on both sides, but also because these new members of the EU are the most active advocates of greater EU involvement in the NIS.

In the longer term, the situation may change for the better. The list of shared EU and Russian interests in world affairs is long. But this positive turn will largely depend on Russia’s ability to give a new impulse to internal democratic evolution and to reassess the usefulness of standing political alliances with like-minded nations. The EU, in turn, would have to develop the capability of operating as a single foreign policy maker - globally and on its eastern periphery in particular.

## **EU-Russia Energy Cooperation**

### **Dr. Andrew Monaghan**

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### **Introduction**

The EU-Russia energy relationship is key for both parties. EU states import significant quantities of Russian energy, and the EU is Russia's largest energy market – a market which sustains broader Russian economic growth. The long-term background is positive. Both sides officially note that Russia has been a reliable energy supplier both during the Cold War confrontation (as part of the Soviet Union) and since 1991, even during times of severe domestic crisis. Nonetheless, as commentators on both sides note, mutual confidence is currently low.

### **Background**

During the UK presidency of the EU in 2005, concerns were raised that EU dependence on Russian energy would reduce its ability to conduct its diplomacy with Russia. The EU, some argued, would need to temper its criticism of Russian action in Chechnya, lack of media independence, and new legislation in Russia about the registration and funding of NGOs so as not to provoke a reaction from Russia which might include withholding energy supplies.

Also, there were growing concerns that an increasingly authoritarian Russia might begin to use its position as a key supplier of EU energy to make its own demands and use this power as a diplomatic lever against the EU. This view gained strength during the gas predicament of January 2006, when Russia cut off gas supplies to Ukraine, which had a knock-on impact on the supplies of some EU member states. This action had a big impact in many quarters of the EU, seriously undermining confidence in Russia's reliability as a supplier, even in states which do not rely heavily on Russian energy supplies.

These concerns were again reinforced during the first half of 2006, when senior Russian executives seemed to threaten the stability of Russian supplies to the EU. Semyon Vainshtok stated that Russia had 'overfed Europe with crude' and repeated his suggestion that Russia should diversify its oil flows by building pipeline capacity to the Far East. Similarly, Alexei Miller, CEO of Gazprom, stated on 20<sup>th</sup> April that if the EU does not allow Gazprom to directly own distribution and retail natural gas infrastructure, they would face retaliation that could include a diversion of Gazprom's gas to other markets, particularly the USA or China. This appeared to be a reaction to talk in Brussels about applying EU anti-monopoly regulations to it, and to reports of the UK government considering changes to its merger rules to prevent Gazprom taking over Centrica, the UK's major gas supplier.

However, even amid the heightened concerns of the last few months, it does not seem that energy dependence is affecting the EU's ability to raise uncomfortable questions with Russia. Chechnya was discussed at some length during the summit in London. The EU has also criticised Russia's new NGO legislation. In fact, if the EU continues to dominate Russian oil and gas export quotas – or increases them – it will be in a

stronger position to apply more effective sanctions or boycotts against Russia in any major disagreement.

Moreover, there has been some progress in reinvigorating the energy dialogue established in 2000. The energy Permanent Partnership Council (PPC) held by the UK in 2005 provided the background for an improvement in the relationship by establishing a framework for greater interaction and introducing a wider range of actors in the dialogue, including businesses.

### **State of Play**

The state of play therefore reflects a certain tension between a slow improvement in the bureaucratic relationship and the tensions in the political situation. The EU-Russia summit of May 2006 highlighted the ongoing political tension in the relationship. While underlining the strategic importance of the energy relationship and the need to enhance it, both sides stated their concerns about it following the summit. President Putin reaffirmed the Russian position that for 40 years, Russia had reliably supplied Europe's energy, and should continue to be considered reliable. Moreover, he reaffirmed that he did not see China as an alternative to the European market, but that Russia sought to build partnerships on the world market. However, he noted the disagreements over the Energy Charter Treaty, of which more below, and many commentators in Russia noted that Russia was adopting an increasingly hard-line stance towards the EU in energy negotiations.

Mr. Barroso mentioned the sensitivity of the issue of Russia cutting supplies to Ukraine and restated the inter-dependent nature of the relationship – Russia needs the European market, and should beware of alienating it. He also re-stated the EU's concerns about the need to intensify the energy dialogue and deepen mutual understanding on the basis of the common principles of openness, transparency, reciprocity and market economy principles – many of which are not considered to be “common” by experts on the EU side, who are critical of the lack of transparency and openness of Russia's energy sector. The clearest example of this, many on the EU side argue, is the Yukos case.

Yukos was Russia's largest company in terms of its market assets and second biggest in terms of profits, and many considered it to be one of the leading Russian companies in the move towards international business standards of transparency. The Yukos case has been analysed in depth elsewhere. But the break-up of the company for a variety of reasons – claims by the government of tax evasion, counter claims that it was a politically motivated attack on company CEO Mikhail Khodorkovsky, and the evident desire of the state to retain control over an important share of Russian oil production among them – seriously undermined investor (particularly foreign investor) confidence in Russia.

The lack of transparency and real competition in the subsequent sale of former Yukos assets to state-dominated companies has strengthened the impression that the state is seeking to control the exploitation of Russian energy reserves by re-nationalisation of the energy industry. President Putin has rejected such accusations – at the EU-Russia summit in May 2006, he asserted that Russia's energy production and transportation sector is “considerably more liberal than in many other energy producing countries”, and “with the exception of two companies, practically all our oil companies are fully privately-owned and almost all of them have foreign participation”. He also noted that Russia had a “large number of independent producers of natural gas”. Nonetheless, the Russian government has made clear in official statements its belief that Russia's energy reserves are the key to Russia's revival as a great power, and the consequent need to remain in control of a significant part of those reserves.

The concern in Europe about the sustainability of Russian hydrocarbon production is the key issue in the energy relationship. Leading officials and experts have questioned Russia's continuing ability to supply gas past 2010 (despite its large reserves), and the efficiency of a state-dominated energy sector, and emphasise the need for major investment in exploration, production and infrastructure development in Russia.

However, the continuing lack of clarity about property laws, licensing and tax legislation mean that the investment climate has remained unfavourable, especially for foreign firms. Concerns have again emerged recently with the threats by the Russian government to cancel the licences of Shell and ExxonMobil for their Sakhalin projects, and Total for its Kharyaginsk oil field development project. Indeed on September 18<sup>th</sup>, the Russian Natural Resources Ministry announced that it had decided to annul the approval of the Sakhalin II oil and gas project, citing environmental and management problems. EU energy commissioner Andris Piebalgs strongly criticised the announcement and stated that without a predictable investment climate in Russia, uncertainty about the potential of future supplies would remain.

The role that state gas monopoly Gazprom plays in the energy sector in Russia is illustrative of the current problems. Gazprom itself faces a number of troubles – perhaps the most significant of which are its unclear production capabilities in the short-to-medium term and its high dependency on international markets. In comparison to Russian oil production, which rose from the mid-to-late 1990s, Gazprom's production fell, and although it rose in the early part of this decade, it is reliant on a small number of mature fields. Moreover, the domestic market, which Gazprom has to supply as a priority, is financially unattractive because of the low domestic prices – so in 2004, nearly 75% of its total income came from sales outside Russia.

Nonetheless, as a monopoly, it clearly wields enormous influence in Russia through its control of pipeline networks (of which more below) and it has become increasingly active inside and outside Russia, both in terms of discussing acquisitions and in preparing agreements with other companies – including Algerian gas giant Sonatrach. This has given rise to concerns about the growth of a gas producer's cartel.

Gazprom's role in the Russian energy sector is growing significantly with its acquisition of Sibneft for \$13.1 billion, which will increase its oil production to 1.17 million barrels per day (bpd). (Rosneft, which acquired the Yukos production asset Yuganskneftegaz, produces 1.5 million bpd.) Although the annulment of Shell's licence in Sakhalin on environmental grounds has some basis (earlier in 2006 the EBRD withheld a loan for a pipeline for similar reasons), some suggest that the announcement is a form of pressure on Shell to conclude an asset exchange deal with Gazprom (the basics of a deal were agreed in June). Gazprom has also considered buying out Rosneft which holds a 20% share in the Sakhalin I project.

Second, and linked to this, the Russian state effectively controls Central Asian reserves because of its dominance of the transit routes through the Transneft and Gazprom monopolies which control access to export pipelines. One of the (many) suggested reasons for the attack on Yukos was because of its plans to construct additional but private pipeline infrastructure, both to China and to Murmansk – projects which would have reduced state control over exports.

Moreover, if it is true that there are several important independent natural gas producers operating in Russia, and that they are becoming increasingly important to Russian gas production, it remains the case that they depend on favourable relations with Gazprom for access to pipelines. The Russian parliament passed legislation this

summer confirming Gazprom's control of foreign export pipelines. Therefore Gazprom essentially controls their growth and production development.

The EU therefore seeks to improve conditions for trade in energy through non-discriminatory transit and access to export pipeline infrastructure. However, it is unclear that this will provide a significant strategic improvement, since reserves in states such as Turkmenistan are uncertain and may also not be sustainable in the medium to long term.

Some progress was made in this direction at the G8 conference in July, with agreement to invest in "all stages of energy supply" and "transparency and good governance in the energy sector". The G8 leaders – including President Putin – pledged to "create and maintain the conditions to attract the funds into the energy sector through competitive, open, equitable and transparent markets". However, if some officials on the EU side consider this gives them something to hold Russia to in subsequent negotiations, other experts consider the language to be that of the lowest common denominator and only a very small step forward.

### **Prospects**

The short-term prospects are that there will be more of the same. The slow improvement in the framework and bureaucratic structure of the energy dialogue seems set to continue. Finland will seek to support this dialogue with another PPC during its presidency, and during its presidency in 2007, Germany is likely to continue to prioritise this dimension of the relationship, given the importance of Russian energy supplies to Germany.

The interdependent nature of the relationship means that it does not seem likely that Russia will interrupt supply to the EU for political reasons. The importance of the European hydrocarbon market to the Russian economy is simply too great. Furthermore, discussions or statements in Moscow about the possibilities of diversifying away from the European market are unlikely to be fulfilled in the short term for three reasons. First, there is a lack of infrastructure to supply these markets. Currently, exports to China are by rail, which is an expensive and inefficient method of transport. Second, there are concerns in Moscow about the possibility of an export market dominated by China. Although Russia currently has good relations with China, there are concerns that Chinese growth might pose a threat to Russian interests in the Far East. Dominating Russia's energy market would give China a potential lever against Russia itself. Finally, it seems unlikely that China will be as profitable for Russia – the Chinese market will not pay as much as the European.

These points do not mean, however, that the energy relationship is cloudless or even that prospects are positive, for several reasons. First, Russia-Ukraine relations remain tense and the deal which resolved the predicament in January is murky – underlying reasons for the problems have not been resolved. Indeed, the potential also exists for another disagreement between Russia and Belarus, with similar ramifications for energy supplies to EU member states, since Belarus is also an important transit state. Moscow has stated that it will seek to raise prices for Belarus to European levels in 2007. A clear policy needs to be developed as to how the EU intends to address this issue.

There are also a number of principle differences between the EU and Russia. Although President Putin stated after the EU-Russia summit in May 2006 that there are 'no problems which cannot be settled' regarding the Energy Charter Treaty (ECT), the two sides view the Treaty very differently, as discussed in Review 1 of this series: Russian experts also argue that the ECT highlights the inequality of the relationship, being

illustrative of “European egotism”: it is one-sided and unfair since it forces Russia to implement EU internal rules. The EU has been pushing Russia to ratify the treaty, and had hoped to do so before the summer.

Andris Piebalgs remains optimistic that a deal is possible before the end of 2006, but a number of senior Russian officials, including Viktor Khristenko, Russia’s Energy Minister, and President Putin, have stated that ratifying the charter is out of the question, since it was signed in different circumstances by a different Russian government. Additionally, although Russia has signed up to the Kyoto protocol, and officially remains committed to it, there are many in Russia who remain unconvinced of the science behind it.

Prospects for a positive evolution in the relationship are also limited because the EU is itself divided. If the various constituents realise the problems, and agree on the need to develop a coherent policy, the difficulty remains in converting such consensus into practice – and bringing it together in a meaningful policy towards Russia. There are, for instance, clear differences in approaches between member states themselves: some states adopt more liberal approaches, while others support national energy champions; and member states and the Commission, as reflected in Mr. Barroso’s recent statements that more legislation was needed to guarantee increased access to Europe’s energy market and facilitate competition. Mr. Barroso also wants to strengthen the power of European energy regulation.

Moreover, although the EU is attempting to develop a coherent and focused policy, it accepts that the member states themselves protect their rights to pursue their own external relations for ensuring the security of their energy supplies and to choose their own internal energy mix. This serves to undermine a coherent EU policy as member states seek to make their own arrangements with Russia, despite efforts to develop a coherent policy and the realisation that this weakens the EU’s negotiating position with Russia. In fact, it also weakens the position of member states vis-à-vis Russia, since individually, they do not carry as much weight in negotiations as the EU does. Both Germany and Italy have made separate deals with Russia. Indeed, there is clearly a growing lack of trust between some member states – exemplified by Polish concerns that the deal between Russia and Germany to build the Baltic Sea pipeline reflects a new Molotov-Ribbentrop Pact and will allow the Russians to use energy as a lever against Poland and the Baltic States.

Finally, there is no coherent *joint* policy on the EU side. Even if states or the EU itself begin to develop a coherent political strategy, this is currently being undermined by other actors, particularly in business. The flotation of Rosneft in London and Russia in the summer (and the capitalisation of Gazprom in January) showed the willingness of Western banks to invest great sums in Russian companies which strengthens the positions of these companies in the face of EU policies.

As a result of these concerns, some have suggested that there should be a wider range of actors involved, including NATO. Introducing a military alliance into the equation would take energy security in Europe in a new direction. Furthermore, it would provide a forum to bring two key global energy actors more actively into the European energy discussion – the USA and Turkey. However, if it would bring US diplomatic weight to bear in negotiations, it remains unclear what NATO could bring to the issues of improving the prospects for Russian energy production. Moreover, if energy security became entwined with the debate about NATO enlargement to include Ukraine, the political situation would likely become less stable.

**Conclusions**

Prospects are therefore mixed. It is unlikely that there will be a serious confrontation over energy, since it is too important for either side. It is also positive that Finland and Germany will head the Council during the next 12 months, therefore ensuring that Russia and energy security remain high on the EU's agenda. However, only the first steps have been made in developing the relationship, and the PPCs and agreements at the G8 in the summer must be built on. Furthermore, the list of problems, both real and potential, is lengthy, and progress on resolving them is likely to be difficult. The two most significant problems for the EU in the medium term remain the sustainability of Russian gas reserves and the lack of clarity about a strategy for the development of the Russian energy sector.



## **EU-Russia: The Common Space of Science, Education And Culture**

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### **Introduction**

The record of cooperation between the EU and Russia in the field of science, education and culture is mixed, but the prospects for the future are good. The negotiations on the four common spaces and the road map (described elsewhere) were not particularly difficult compared to those covering political, security and economic aspects. Most observers consider that this may be the first space to come 'alive.' Both the EU and Russia have an interest in developing closer cooperation in this area, as there are clear mutual advantages.

### **Mutual interests**

Russia inherited a strong scientific base from the Soviet Union, which was a world leader in research, space exploration, missile engineering, nuclear power and a number of other areas. Although the scientific sector was badly affected by the half-baked reforms and the economic crisis of the 1990s, it nevertheless maintained a considerable capacity that is now sought after by EU partners. Cooperation in this area is less vulnerable to political and ideological disagreements, with both sides seeming to recognise that it is a win-win situation.

There is a similar attitude with regard to culture and education. Russia is the original European cultural superpower: Dostoevsky, Tolstoy, Chekhov, Tchaikovsky and a great multitude of other talents belong not only to Russia but also to Europe and the whole world. The Cold War inhibited cooperation, but now there is enormous potential to make up for lost time. Moreover, it can help foster a better and deeper understanding, and pave the way to further economic and political rapprochement.

Finally, as for the field of education, the starting positions for the establishment of a common space between Russia and EU are generally favourable, particularly as Russia is a participant in the Bologna process. Russian higher educational institutions seek the same transformations as elsewhere in Europe regarding mutual recognition of diplomas and standards of educational quality, with the ultimate aim of creating a common market for educational services.

### **The road map as motor**

The road map for education, culture and science is a rather vague document with no legal binding, or explicit indication of actions to be undertaken in the various areas. It should not be entirely under-estimated, however. In fact, the road map reflects the common viewpoint of Moscow and Brussels on how and what has to be done, and sets a number of milestones for future rapprochement between them in these areas.

Compact and readable, the road map is divided into three parts. The first part is dedicated to cooperation in research, science and technology. In the second part a number of issues concerning construction of a common educational space are considered, while the third part dwells upon cooperation in the field of culture.

All three chapters are prefaced with a general preamble, which recalls the rich intellectual heritage of Russia and the EU, as well as their accumulated knowledge that can assist economic growth and economic competitiveness. The second goal of the preamble is more specific: it concerns activation of ties and exchanges. The road map is by no means exhaustive and reflects the 'package' nature of the agreements.

The inner structures of each chapter of the road map are similar to a certain degree. The goals of interaction become more specific with the definition of certain priorities and spheres of cooperation. Organisational forms, mechanisms, procedures and concrete events are set down without any sense of priority, with the assumption that the work will be carried out simultaneously in many directions and within different frameworks. It is, however, evident that the establishment of appropriate bodies and structures within which cooperation can take place will need to precede other forms of activity.

### **Science, research and technology**

The goal of constructing a common space for research, science and technology is to extend cooperation between Russia and the EU in mutually agreed priority fields, and to create more favourable conditions for the resolution of common tasks. Such tasks include education and training to improve competitiveness and economic growth, the protection of intellectual property, support of venture capital, and an increase in the quality of research. Predictably, the priority spheres comprise those fields where the Russian scientific and intellectual community is especially strong. These include research and use of outer space, new materials and nanotechnology, information technology, pure and renewable energy.

As regards organisational structures, The Permanent Partnership Council (PPC) is the supreme body responsible for coordination and decision-making. At the operating level, there is a Russia-EU joint committee based on the Science and Technology Cooperation Treaty. This agreement was extended at the Rome summit in November 2003. The road map describes its functions in detail, including support for all forms of activity, performance control, preparation of new proposals, and for the assessment of the effectiveness of cooperation. A network of expert workshops is to engage in practical work on development and realisation of concrete projects.

At the same time, the chapter stresses more effective use of already-functioning national, regional and international research programmes. It is assumed that the common space of scientific research between Russia and the EU could evolve from them. EU Framework Programmes, the International Association for the Promotion of Co-operation with Scientists from the New Independent States (NIS) of the Former Soviet Union (INTAS), Inter-University Scientific and Technology and Innovative Programmes (ISTC), the TACIS funding initiative, the 'EUREKA' educational programme and Russian federal research programmes are mentioned separately. The development path offered by the road map suggests mutual participation in programmes and projects, the lifting of restrictions and any discrimination that obstructs tendering processes, and network unification of scientific research structures and individual scientists. Naturally, simplification of exchanges, encouragement of mobility, etc. are also mentioned.

To summarise, the chapter encourages the lifting of present administrative barriers that hinder cooperation between scientists, research and engineering organisations.

### **Education**

The goals of the second chapter of the road map are dedicated to education and are basically orientated towards the Bologna process. The required parameters include the

three level system of higher education, academic loans, European Credit Transfer and Accumulation System (ECTS) academic mobility for all who work in universities, European recognition of diplomas, quality control of higher education and, finally, the creation of a single European research space. Some proposals include a unified European marking system, active student involvement, social support of poor students and lifelong education. The Bologna process also has facultative parameters – there is harmonisation of education content on training directions, non-linear path of students' education, optional courses and module systems, distance learning, e-learning courses, and academic ratings of students and professors.

The core of the Bologna process is to erase the borders between European states concerning access to education and the provision of educational services. With time, a common education market is to emerge on the continent, which will have all the necessary attributes: demand oriented educational services, focus on quality, growth, competition. The aims include eventual mutual recognition of education quality in certified universities and other higher institutions; the possibility for everyone to receive education in any European country; and therefore equal opportunities for entering the pan-European labour market. The increased educational opportunities should also have an impact on competitiveness and the growth of the European economy. The success of the Bologna process is extremely important for all non-English speaking countries of the EU. It is also vital for the younger generation of Russians to have their national higher education diplomas acknowledged abroad.

The road map identifies a number of procedures, tools, mechanisms and concrete events to achieve these goals. Specifically, the document does not suggest the creation of a multilevel management of cooperation. Rather, the negotiators decided to rely only on the organisational mechanism of the Bologna process itself. That is why they included in the document a provision about the use of regular ministerial meetings of the Bologna group as a practical mechanism for Russia-EU cooperation. This seems a logical step, as there is no special need to create duplicate bodies. The road map also mentions the possibility of Russia's participation in other large-scale EU educational projects. Great importance is attached to the effective support of Russian language studies on the continent, and the study of EU member state languages in Russia. It is clear that without it, cooperation will always be hampered. Among the prospective spheres of cooperation mentioned are training and retraining of personnel in Russia to familiarise themselves with the EU, and to be able to work with it in a professional manner.

### **Culture**

The section of the road map devoted to 'Culture' is somewhat brief but this is not due to lack of cooperation, rather the opposite. One of the shortcomings of this section concerns the refusal to create specific government bodies. While efforts have been made to ensure efficient working of the Bologna process, little has been done for cooperation in the general cultural space. In 2006, the Russians therefore proposed broadening PPC powers and extending them to the cultural sphere, or the creation of another joint body for culture. The proposal is still under consideration and will probably be adopted, although not immediately. Regrettably the parties have failed to capitalise on the opportunities of the last few years.

One of the goals of Russia-EU cultural cooperation is improving mutual knowledge and understanding of each other's culture, with a special focus on strengthening the European identity and opportunities for synergy.

**Interim results**

While outside observers view the results as modest, the official reaction in Moscow and Brussels is that the road map has achieved considerable practical results and the common space for science, education and culture is one of the most dynamically developing branches of cooperation between Russia and the EU. The road map has successfully built on earlier cooperation, particularly in the scientific-technical fields. It is worth remembering that Russia and the EU signed the first intergovernmental Science and Technology Cooperation Treaty some six years ago (extended in 2003), and that there was a 2002 action plan for cooperation in the same areas.

In the area of education, the Bologna process has provided the necessary impetus for all European countries, including Russia, to adopt common standards for a higher education.

Traditionally, there has been close cooperation between Russia and EU member states on cultural issues.

In concrete terms, achievements include the launching of the Joint Scientific and Technological Cooperation Committee (JSTC), set up by the Science and Technology Cooperation Treaty of 2000. The first meeting took place on 23 May 2006 in Moscow. This year has also seen workshops on, inter alia, nanotechnology, food safety science, public health technology, etc. There are good prospects for workshops on non-nuclear energy and some other issues. EU-Russia cooperation on outer-space was taken to a whole new level in March 2006 with the launch of a tripartite dialogue that included the Russian Federal Space Agency, the European Commission and the European Space Agency (ESA). Within this framework, workshops will deal with major topics, including work already underway, such as the Soyuz Kourou project to launch European navigational satellites that bring together Russian and French commercial organisations and state structures. It also provides a forum for discussion of EU participation in the project to develop and exploit the 'Clipper' reusable spacecraft.

Russia-EU scientific-technological cooperation also has great potential in the field of aircraft engineering. In April 2006, the heads of the Federal industry agency (Rosprom) and the State Air Traffic Control body (Rosaeronavigatsia) visited Brussels to discuss research of mutual interest such as EU participation in Russian projects on the development and modernisation of the aircraft industry. The parties agreed to explore further cooperation on projects related to the creation of the Russian regional jet (SuperJet) and Airbus. Russian and French companies have already developed a new generation engine for the Russian regional jet for which international certification is already underway. These projects have good prospects but do, however, require appropriate and long-term funding, which is why there has primarily been a focus on establishing financial security. They will, in all probability, need to turn to the European Investment Bank for assistance.

Participation of Russian scientific and academic teams in the sixth EU Framework Programme for Research and Technological development also continues. Currently, they are involved in over 60 projects that mainly concern outer space, aircraft, information society technologies, conservation, biotechnologies and nuclear safety. The participation of Russian scientists and academic teams in the seventh EU Framework programme (2007-2013) is still in its initial phase.

Many in Russia believe that this is not enough. In the field of science and technology, Russia and the EU have many common priorities and it would be advantageous for the EU to focus on helping Russia create and develop research parks. Russian participation

in EU scientific tenders, as well as access to funding for joint projects, could form an important part of future cooperation.

This kind of cooperation in the field of research and technology could help create a common space that responds more closely to the needs of both parties. Creating a common space for education does not face the same problems as those associated with science and technology where the parties have to find ways to bring together completely different infrastructures. The European space for higher education is clearly defined and participants know what is required. An important aspect is that all European countries, EU members and third countries are on equal terms, and progress depends entirely on individual efforts.

With the introduction of Bologna standards in Russia, the processes are exactly the same as those taking place in other European countries. Like other European countries, Russia is adjusting to the requirements of the Bologna process within the context of national traditions and needs. It is therefore gradually introducing a two level bachelor degree and a system of academic credits. This is not an easy process and has met opposition from those who believe that it will lead to a dumbing down of academic standards and that it is inferior to the old Soviet system. But Moscow made its choice in favour of full acceptance and equal participation in the creation of the European space for higher education, and there is no reason to assume that it will reverse this decision.

It would be a mistake, however, to view the creation of a common education space only by means of the Bologna process. Russia and the EU are very different, not least in their administrative structure, and both have an inclination to insularity. Building a common space in the field of education is grandiose. Help that could be expected from such short-run programmes like 'Tempus', 'Erasmus Mundus' or 'Youth' is welcome, but is in no way sufficient to meet the volume of need. These programmes can only provide short-term assistance and more resources will be needed to ensure an improvement in the overall situation of higher education.

The collapse of the Soviet Union has meant that Russia's cultural influence has been dramatically reduced. The Russian language, as a subject and a medium of instruction, is now much less in demand than before. Russian higher educational institutions are not generally able to offer programmes in other languages. Changing course content is a slow process and suffers from a lack of funding. Funding for academic chairs is hard to come by, while in the country itself, specialists graduating from prestigious Western universities are in great demand. Russia has a negative image in the rest of Europe and this has reduced the flow of people travelling to get an education there. Adjustment to the Bologna process would seem to be a one-way street for Moscow.

For Russia to receive the same benefits from participation in the Bologna process as other European countries, serious additional supportive measures will be necessary. So far they have been insufficient. What is needed is funding to support student and teacher mobility, partnerships with the private sector to modernise the system, and programmes to demonstrate how to participate in EU tenders for inter-university educational, technical and research projects.

There have, however, been some joint educational programmes with foreign partners that have included traineeships abroad, the granting of double diplomas, gaining of foreign experience, and support from foreign charity funds and state structures, and they are becoming more common. These programmes should be of interest to partners in EU countries and could form the basis of future long-term cooperation.

### **The European Institute**

A major achievement of the road map is the European Studies Institute at the Moscow State Institute of International Relations (MGIMO) - University, commonly known as the 'Russian College of Europe'. It was established by the government of the Russian Federation and the European Commission on a parity basis as a kind of third College of Europe, with the task of preparing a new generation of Russian civil servants familiar with the EU. It is hoped that this joint financing model can be used for similar projects.

At the end of 2005 and the beginning of 2006, the Institute held its first joint short-term courses with the College of Europe for Russian civil servants, and later that year, commenced a Masters programme. The first meeting of the joint supervisory board took place in September 2006, and the official opening ceremony with senior Russian and EU officials took place on October 23.

Beginning in 2007, the Institute will retrain several hundred young Russian civil servants for work with EU partners. The Institute will also be open to citizens of other countries who are either public servants or from the private sector or non-profit organisations and who are interested in acquiring professional knowledge about EU law, economy and politics and how they are assessed in Russia. The fact that Moscow and Brussels regard this as a priority is a demonstration of their desire for a long-term strategic partnership. Cooperation between Russia and the EU in the field of culture also has a bright future. It will not only complement Russia's cultural ties with all other European countries but also encourage their expansion. Given that the necessary administrative base is now in place, one can begin to speak more optimistically about future progress in this area. Some of the prerequisites for establishing a Permanent Council of Partnership are in place. In Spring 2006, an agreement was reached on the creation of a number of workshops to cover modern art, cinematography, archiving, design, fashion and style, etc. The parties also agreed to a series of round table discussions, seminars and festivals that would bring together diverse populations in the area of culture.

### **Conclusion**

There is a mixed picture regarding cooperation in the common space for science, education and culture. There have been some achievements and some setbacks. But the prospects are good and that is something both sides can agree on.

## **EU-Russia - Cooperation In Justice And Home Affairs**

### **Olga Potemkina**

Olga Potemkina is currently Head of the European Integration division at the Institute of Europe. She joined the Institute in 1994 as a researcher, and afterwards she worked as a Head of the Regional studies sector. She lectures on EU issues, mainly JHA and EU enlargement, at the Moscow State Institute on International Relations (MGIMO). Ms Potemkina used to be Executive Director, and currently she is a Member of the Board of the Association of European studies, Russia. Her research activities currently focus on JHA: immigration policy; visa policy; fight against organised crime; EU Enlargement and Russia; EU-Russia relations, subjects on which she has published articles and booklets.

In 2005 the European Union (EU) adopted the Hague programme which marked the beginning of the second stage of construction for the 'Common Space' of Freedom, Security and Justice. One of the key conditions for the success of the Hague programme is intensifying cooperation with third parties, including Russia. An example of this is the idea of moving to a visa-free regime with Europe which emerged during the negotiations on the Kaliningrad transition. This has become a powerful incentive for Russia to create conditions for visa-free travel for their own citizens. The formation of a common internal security space would meet the interests of Russia and the EU. However, many experts doubted whether success in this sensitive area would be feasible given the discrepancy between the parties' ideas of common values and human rights, and in their respective approaches to terrorism.

Recent developments, however, reveal quite intense activity within the framework of the common space after the adoption of the corresponding road map in May, 2005. This chapter seeks to assess not only the concrete results of cooperation but also looks ahead to the future prospects for building the common space. It is interesting to note that international criminal organisations have already developed their common space - the EU and Russia's cooperation in fighting organised crime should be regarded among top priorities in their relations.

### **The Action Plan**

The EU has cooperated with Russia in building the EU space of freedom, security and justice since the mid 1990s . In creating the internal security road map the parties drew on the existing political and legal base. Article 84 (title VIII, "Cooperation On Prevention Of Illegal Activities") of the Partnership and Cooperation Agreement provides for the parties to cooperate in fighting illegal migration, economic crime, drug trafficking, counterfeiting, and other illegal transactions. The need for joint efforts in the internal security sphere was justified in a number of strategic documents including the Russia-EU plan on combating organised crime (1997); EU Common strategy on Russia (1999); Strategy on the development of relations between Russia and EU (2000-2001).

Additionally, the EU-Russia Action plan on combating organised crime, adopted at the EU summit in Helsinki in 1999 and approved by the EU-Russia Cooperation Council in 2000, was based upon these preceding common initiatives. The plan implied ratification and implementation of international agreements on combating crime, including European conventions against money laundering and drug trafficking. It also identified another sphere of common interest – the cooperation of law enforcement organisations, including information exchange and personnel training.

The Partnership and Cooperation Agreement allotted cooperation in this field to Subcommittee 6 which is in charge of competition issues, intellectual property

protection, and approximation of legislation. The responsibilities of the subcommittee are extensive and that is why experts have been raising the question of the usefulness of creating a special subcommittee on cooperation in the law enforcement sphere. Regular meetings between the EU and Russia take place with the participation of justice and internal affairs ministers, while ministers also meet within the framework of the EU-Russia Permanent Partnership Council.

In 2001 and 2003 Russia and the EU adopted joint statements on international terrorism. They agreed to create conditions for exchanging information about the activity of individuals and terrorist groups, forged documents, and arms supplies. They also declared their determination to strengthen cooperation for prevention and suppression of terrorist acts, in particular through full implementation of corresponding international conventions and resolutions of the UN Security Council. During the EU-Russia summit, in November 2003, an agreement with Europol was signed which defined the tools of cooperation in strategic and technical information sharing.

### **Road map**

The road map was built on the model of the Helsinki Plan for common action for combating organised crime. It determines goals and spheres of cooperation, based upon the parties' achievements in combating organised crime both at the bilateral level (police and legal cooperation with EU countries) and on an international scale.

The goal of building this common space is to create a pan-European mechanism for combating international crime, an area which has been less developed so far than inter-governmental cooperation. One has to remember, however, that police cooperation, combating crime and terrorism in the EU are under the authority of national states, while Europol's role as an intergovernmental body is limited to information sharing and analysis. Russia and the European Union have recognised the need to form an internal security space alongside prospective changes to a visa-free regime.

The road map fixes the common principles of the internal security space: adherence of the parties to common values: democracy, rule of law and an independent judiciary; equality of partners and mutual respect for interests and human rights. Both sides are keen to provide a balance between security, on the one hand, and justice and freedom on the other hand.

The first field of that cooperation – 'freedom' – seeks to 'promote personal contacts and travel' and to counteract illegal migration. Prospects for a visa-free regime are rather vague: the document only says that opportunities for moving towards it in the longer term will be explored. The parties expect to reach concrete results through signing agreements on the facilitation of visa and readmission procedures for certain groups of citizens.

The main goal of the second area – 'security' – is the fight against terrorism and all forms of organised crime; as well as defining priorities for cooperation between police bodies. The key priority also manifested by the external security common space road map is the fight against terrorism based on Russia and EU joint statements and within the limits of the UN. For instance, the parties expect to complete the work on the UN comprehensive draft convention on international terrorism in 2007. Meanwhile, the road map does not mention a common EU-Russia definition of terrorism or an agreed list of terrorist organisations. It is clear that lack of common understanding of what terrorism is and who can be called a terrorist is hampering practical cooperation in fighting this threat.



The second priority of the 'Security' chapter for Russia and the EU is counteracting trans-border criminality: money laundering, trafficking in drugs or people, corruption, stolen vehicles, etc. One of the recognised counter measures to combat criminality is a need to enhance the security of citizens' documents and identity cards. It is suggested that cooperation on this matter would be helped through interaction with Europol (based on the current and proposed new Agreements) as well as with other European and international organisations.

Finally, the third area of focus – 'justice' seeks to 'help increase the effectiveness of judicial systems and promote the independence courts in Russia and EU member states as well as the development of judicial cooperation'. The priority areas concern cooperation on judicial reform and improving cooperation on criminal and civil cases. To achieve these goals the parties intend to explore the possibility of making further agreements, as well as improving work experience exchanges and additional training of coordinators, judges, prosecutors and law enforcement officials.

The Permanent Partnership Council monitors progress of the road map and helps organise meetings between foreign and justice ministers and other experts. In addition, there is informal dialogue between the coordinator of Russia's internal security space and their counterpart in the EU commission.

### **Prospects**

At the 21 March, 2006 meeting of the Permanent Partnership Council, Russia and the EU agreed the next steps for the implementation of the road map. A number of priority areas were identified, including:

- **Fight against terrorism:** protection of infrastructures, readiness for counteraction (including training of special units), planning for emergency situations and information exchange; measures to counter the financing of terrorism.
- **Countering cybercrime,**
- **Document security assistance,** including a step-by-step approach to introduce biometric data in a number of identity documents.
- **Frontier cooperation:** development of cooperation between European agency FRONTEX and the Federal Frontier Service of the Russian Federation.
- **Fight against money laundering**
- **Judicial cooperation on civil cases.**

On May 25, 2006 at the Russia-EU summit in Sochi, agreement was reached on the simplification of the visa issue for Russian citizens and on readmissions. Since these are the first documents that lead towards the objectives of the road map it is worth taking a closer look at them.

The first agreement suggests a simplified visa requirement (in terms of a written statement from the recipient) for business travellers; participants in scientific, cultural and sports exchanges; journalists, students and teachers, as well as people who work in international transportation/deliveries. Close relatives of individuals residing in Russia or the EU would also be included. In accordance with the Agreement, these categories of citizens will be able to use multiple visas with validity of up to five years. Diplomatic passports holders already have the right to stay on the territory of EU member states without a visa for up to 90 days in every six month period. The preamble of the Agreement announces the intention to provide visa-free travelling for citizens in the longer term.

Within the Agreement on readmission, Russia and the EU have agreed to re-admit any individual who resides illegally on the other's territory. The Agreement is coming into force step by step: first, readmission only covers citizens illegally living on the other's

territory. However, Russia is not likely to face difficulties with this category: there are few Russian citizens who illegally enter EU countries. Besides, the legality of this requirement is unquestionable: international law dictates that a country must re-admit its own citizens.

However, it will be much more difficult to conform to another requirement of the Agreement: as soon as the corresponding bilateral arrangements on readmission with third countries are signed, or after a three year period, the EU-Russia readmission agreement will affect the third countries' nationals. Moscow believes that these negotiations will be successful but there are no guarantees that during this period Russia will be able to reach agreements on readmission with its southern neighbours, although negotiations are underway. Where such agreements are made, Russia will still face the financial burden of deporting illegal immigrants. So will Russia be able to stop the flow of illegal immigrants to the EU? The answer seems quite definite: Russia can never do it on its own, however secure its frontier.

Illegal frontier crossing has long been a very large and profitable business for international criminal groups in both Russia and the EU. Strengthening frontier regimes will not pose an obstacle to their activity. The methods used by Frontier Services are already outdated; it is necessary to use new technologies, navigation systems that monitor the movement of humans through transportation channels from country of origin to the final destination. It is the final stage of their journey, as they travel through the territory of the destination country, that is illegal. As long as there is a demand for illegal labour, prostitution, child pornography in EU countries and in Russia, and as long as there is a huge supply of "the human commodity" at the East-Southern regions and within Russia, international criminals will exploit Russia's transit position to their best advantage.

Under such conditions, Russia's law against human trafficking is unlikely to succeed. Often the export of women for prostitution from Russia and neighbouring countries is conducted legally. In order to stop illegal immigration it is necessary to tackle the supply in Russia's southern neighbouring countries, transit through Russia and demand in Russia and EU countries, where many potential victims of human trafficking who legally pass the frontier are subsequently deprived of their passports, have their contracts conditions altered and take on illegal immigrant status.

Cooperating in the exchange of information and intelligence data is a top priority to counteract illegal immigration and drug trafficking. This could be combined with operations at the level of national states under the auspices of international organisations. That's why cooperation with Europol on exchange of not only strategic (analytical), but also personal, information is vital for Russia.

This very agreement on protecting personal data is discussed within the framework of the dialogue conducted by Russia's Interior Ministry with Europol. This agreement will allow states an opportunity to exchange personal information necessary for the identification of criminal groups and their structures. It became possible to sign such an agreement after the State Duma in July 2006 adopted a federal law which sought to set out Russia's international responsibilities under the Council of Europe's Convention for the protection of personal data in 1981 (Data Protection).

An important event in the implementation of 'the road map' is the adoption of the federal law and the 'ratification of the Council of Europe Convention on the prevention of terrorism' by the State Duma of the Russian Federation. Russia has insisted on the development of a single international legal document covering the fight against

terrorism, which could help avoid the gaps and uncertainties related to the regulation of certain aspects of the problem in different international agreements.

In addition, Russia and the EU have also conducted a number of dialogues intended to be completed by signing sectoral agreements. In the framework of the dialogue with the Frontex Agency, the rules for cooperation between the Agency and the Russian border security service are set down. In the course of the dialogue about countering the drug threat, the Russian Federal Drug Control Agency (FSKN), on the one hand, and the European drugs and drug addiction monitoring centre and Europol, on the other, agreed to develop their cooperation further. The dialogue also contributes to FSKN and Europol's consultations in the Hague on combating the movement synthetic drugs.

Within the framework of a special dialogue, conditions have been laid down to prepare an agreement between Russia and Eurojust, as well as with the European judicial network in civil and commercial matters. So far, cooperation in the justice sphere has been the least developed part of the Russia-EU relationship. Contact between Russia and Eurojust only started at the end of 2003 and, until recently, only took place in single specific cases. Russia has taken certain steps to fulfil its responsibilities as a member of the Council of Europe; such as the transfer of the management of penitentiary institutions and supervision for executions from the Interior Ministry to the Justice Ministry and the conformity of the criminal-executive system to European standards.

The mechanism of permanent consultations of Russia and the EU on human rights issues is also in place but hasn't yielded any tangible results so far. The main achievement in this sphere is the mere fact that the dialogue is taking place, in the course of which not only problems inside Russia and the EU are discussed, but global issues as well - for example, through the creation of the UN Human Rights Council (Russia was elected as a member in May 2006).

By cooperating with the EU and the Council of Europe within the framework of 'the road map' as well as with other international organisations, and by signing dozens of international human rights conventions and agreements, Russia has admitted that human rights violations are not solely an internal matter.

As Vladimir Lukin, Human Rights Commissioner of the Russian Federation, fairly pointed out 'in order to defend yourself from human rights pressure from 'sly' neighbours you should fully abide by the responsibilities taken in human rights and fundamental freedoms observance. This is, first and foremost, in our own interests'. At the same time, in his report on the human rights situation in Russia for 2005, he conceded that the situation in this sphere is 'unsatisfactory', despite 'some positive changes'. Lukin also pointed out that the Russian court system is expensive and exclusive due to the high costs of lawyers.

The Public Chamber, under the President of the Russian Federation, agrees with the opinion of the Russian ombudsman, that it is especially concerned with law enforcement practice. Complaints of bad quality legal proceedings or delays in the implementation of rulings are cited in most of the Russians' requests received by the European Court of Human Rights. Yet ten years ago the possibility of taking legal action wasn't even considered by Russian citizens.

At present, in spite of the existing problems with judicial proceedings, Russians have started appealing more actively, not only to national courts but to the European Court of Human Rights. In turn, commenting on the European court's ruling in the 'Bazorkina against Russia' case, the Russian Foreign Ministry expressed its hope that 'all the

decisions of the European Court of Human Rights will be taken without any politicisation and on the grounds of an objective and unbiased approach.'

In 2005 over 10,500 complaints from Russia were received by the European court – 23% of the total number of appeals, and the flow of complaints from Russia grew by 40% for the previous year. The appeals of Russians are serious and diverse:

- There is still evidence of violations of the rights of the residents of Chechnya; for example, the above mentioned 'Bazorkina against Russia' case which a Chechen woman citizen won in July 2006.
- There are also complaints of beatings and tortures carried out by the police in the 'Mikheev case,' lodged by a Nizhny Novgorod resident.
- There are appeals against violations of the set down procedure of judicial proceedings. For example, Platon Lebedev's appeal against being held in custody without court sanction for a week in 2004.
- There are complaints about federal and municipal authorities, like the one, sent to the European Court by the Plotnikov family who were unhappy about delay in pension entitlements and failure of the local authorities to fulfil the court's ruling.
- Five residents of the city of Khabarovsk appealed to the European Court demanding compensation entitlements for those who helped during the Chernobyl atomic energy station emergency and the resulting damage to their health. They accused federal and local authorities of inaction. 'The Ecological case' was won by a resident of Cherepovets City, a metallurgical centre, who demanded to be relocated from the contaminated region of the city.

Besides, Russians understand that the European Court of Human Rights is capable of protecting their interests abroad. Thus, the Court's ruling in favour of Russian football player, Igor Simutenkov, who asserted his right to work on the same terms as EU citizens under the provisions of the Partnership and Cooperation Agreement between EU and Russia, is very popular in Russia.

The subject and quality of Russians' complaints to the European Court creates an obstacle in itself. 95% of all the appeals get sifted out at the very first stage. Russians' lack of legal culture and a lack of specialist qualified lawyers complicate the problem. The human rights problem in Russia has to do with improvement in the legal education and awareness of the people. In Spring 2006 the project's second stage began, suggesting the education of Russian judges, legal administrators and court officers in five regions of Russia about European standards. However, as is the case in many educational initiatives in Russia there is a need to understand how that new knowledge can be applied to Russian reality and how to allow the harmonisation of judicial practices to happen. The conditions of that harmonisation are being discussed between the Russian Justice Ministry and Eurojust.

### **Conclusion**

A series of sectoral agreements on concrete issues of interaction in the sphere of internal security could be the basis of a special section of the new agreement between Russia and the EU which may replace the current Partnership and Cooperation Agreement. It is clear that the new agreement will require a much greater focus on the cooperation in the field of internal security - the need for which has intensified in recent years.

One of the priorities for internal security remains the establishment of a visa-free regime between Russia and the EU. Only a few years ago this idea seemed utopian but now the agenda contains consultations on the conditions of visa-free travel for citizens. However, it seems that, the visa-free regime is not the most valuable element of the

internal security space. Consolidation of cooperation with the EU in the fight against organised crime, especially with drug trafficking that has become a threat to national security, is vital for Russia. It is necessary to establish international responsibilities – signing, ratifying and implementing a number of conventions which are also provided by the ‘road map’ in order to create a civil society in Russia. The fight against corruption is of primary importance as it is a serious obstacle to democratic development.

Of course, the notion ‘common space’ already suggests a certain degree of harmonisation of the legislative and practical actions of the partners. This is a very lengthy process, dialogues may be protracted and results are unlikely to be achieved soon. It should be borne in mind that the EU space of freedom, security and justice was itself created with great difficulty especially after its enlargement. The drive to coordinate efforts to counter security threats will be contained in concrete agreements and steps are being taken to move this forward.

The most important common interest of the EU and Russia is security – this is the main theme in the development of their relationship. The most important condition for the space to function is the equal responsibility of both partners to provide security for the citizens of Russia and the EU.

## Russia's Institutional Regression and its Consequences on Foreign Policy

### Marie Mendras

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Russia's ruling system is organised around small groups of individuals directly related to Vladimir Putin or to one of his very close aides and friends. Institutions and institutional mechanisms have become less and less relevant because authority is determined by the financial and political power of a few who are accountable to no one but their own patrons. Who in Russia today talks of ministers or governors or Constitutional Court judges as significant, responsible actors in the government of their country? Their effective role largely depends on the personal and financial ties that each has secured with the Putin leadership.

The gas crisis of the winter 2005-2006 bluntly illustrates this point. Behind the obvious desire on the part of the Kremlin to weaken "post-orange" Ukraine, the financial interests of various Russian and Ukrainian actors fuelled the dispute. And the crisis is not over.

Another clear symptom of the de-institutionalisation and democratic regression in Russian politics is the 2008 deadline when Vladimir Putin's second term ends (the 1993 Constitution permits no third term but a revision would very easily be adopted by the loyal Parliament). Will Vladimir Putin stay in power, one way or another, or will he choose and sponsor a "successor", and whom? These are the primitive terms in which the next electoral cycle is discussed and analysed. Kremlin officials and "polittekhnologi" (spin doctors, heads of "think tanks" and Kremlin-supported public opinion centres) talk and write feverishly about "the succession" (preemstvennost') but hardly mention elections. The choice of the next President is not expected to be arbitrated by the 107 million-odd Russian voters but by deals negotiated behind closed doors.

The authoritarian and clannish nature of the Russian regime today raises much concern. Not only do the ruling groups undermine fundamental liberties and rights, they operate a power system that is opaque with no clear, transparent rules. Contrary to the conventional speech about his presidency, Vladimir Putin has not consolidated state institutions but personal and corporatist interests and networks. Society is not an actor but rather an impediment to the perpetuity of the unaccountable power system, hence the growing control over media and information, and the limitations on free economic competition. The Russian people are not expected to choose between several serious candidates in a pluralistic election, but to rubberstamp the leadership's decision with their ballots. This creates more instability than stability since the decision lies in the hands of a few men whose interests may clash.

Russian officials and "semi-officials" keep on defending their regime by claiming the "specificity" of Russia. "Our democracy is in Russian colours," said Sergey Yastrzhembsky at a European Union-Russia Forum in Vilnius on 23 March, 2006. He

stressed that western democracy is not above Russian democracy, and that Lukashenko won a third term in a free and fair election in Belarus on 19 March.

If we in Europe, in the West, accept this slippery paradigm of Russia's specificity – with its cohort of leitmotifs: “sovereign democracy,” “managed democracy,” “democracy for the people” - we accept that we no longer have any interest in promoting more openness, more pluralism, more respect for the rule of law in Russia. Consequently, we abandon the ambition of forging a constructive, secure and long-lasting relationship with Russia. And we let the Russian government close itself up in a system of its own, with its own logic, and convince their population that the world is hostile, even neighbouring Europe, and that they should go their “Russian way”, disregarding the advantages of free exchanges, active cooperation and common security.

Globalisation is accepted in the West as an inevitable process that may challenge national policies but cannot be stopped. One has to adapt to it. The enlargement of the European Union, that has set no geographical or cultural limit to future extension, is another historical process that some would like to halt but that no one seriously considers to be reversible.

In Russia, both phenomena are seen as challenging, even threatening and hostile, to the national interest and the future of the country. The leading political elite build their domestic rhetoric on the illegitimate and dangerous pursuit of those processes. They participate in neither of these historical developments. Europe has been extending eastwards, has three new member states that are former Soviet republics (the Baltic states) and has a border with the Russian Federation. Other former Soviet territories are engaged in a close partnership with the EU and may join in the medium term. To many Russians, Europe's “conquest” is Russia's “loss.” “The Kremlin's hostile and counterproductive reaction to the “orange revolution” and the anti-Georgian crusade in the fall of 2006 illustrate this policy of denial in the relationship with the former Soviet republics that fight for their full sovereignty.”

The Russian leadership seems to be often at odds with general trends in Europe but continues to be supported by most West European governments. Why? There are a number of well-known explanations: energy dependence on Russian hydrocarbons; cooperation with Moscow on non-proliferation issues; Western fears of the unknown after Putin (if the President quits in 2008); a form of counterweight to the US dominant position and “unilateralism”.

There is another reason for the EU's inability to forge a common foreign policy toward Russia. It is the lack of commitment, the lack of energy and invention devoted to the relationship with Russia in major EU countries, like France and Britain. Russia is almost like a frozen issue that only the gas crisis, in the first days of 2006, thawed, but only to a limited extent. The governments of the main old European states do not have a clear forward strategy of their own. They are defensive towards Putin's administration and are not ready to take risks to promote a more interactive relationship with the Kremlin. They do not engage in the relationship. Consequently, the tools for understanding are rudimentary and the modes of action are often obsolete or inadequate. Long-term strategic planning is absent.

For their part, the Russian leadership remain defensive too. They hardly ever make any serious proposals to the EU and no momentum seems to be coming from them. Hence, any new dynamics in the EU-Russia partnership will have to come from the enlarged Europe, with a key role played by the new member states which are more outspoken, sometimes very critical, of the Russian behaviour but at least express real concerns and put issues on the table. Engaging Russia is better than leaving it on the other side of the

fence, wrapped up in its own contradictions. The stakes, for our societies and for the Russian society, are too high.





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