

The EU Common Foreign and Security Policy, of which a significant element is the EU-Russia dialogue, has a special place in the agenda of a Member of the European Parliament. With the recent tension surrounding energy supply and its inevitable consequences still clearly etched in everyone's mind, MEPs are about to tackle the serious task of assessing the new Partnership and Cooperation Agreement between the EU and Russia, currently being drafted by the European Commission, the Member States and Russia.

Ģirts Valdis Kristovskis  
*Member of the European Parliament*

# **THE EU COMMON FOREIGN AND SECURITY POLICY TOWARD RUSSIA: THE PARTNERSHIP AND COOPERATION AGREEMENT AS A TEST CASE**



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SECURITY POLICY TOWARD RUSSIA:  
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## Foreword

Ģirts Valdis Kristovskis, Member of the European Parliament

The EU Common Foreign and Security Policy, of which a significant element is the EU-Russia dialogue, has a special place in the agenda of a Member of the European Parliament. With the recent tension surrounding energy supply and its inevitable consequences still clearly etched in everyone's mind, MEPs are about to tackle the serious task of assessing the new Partnership and Cooperation Agreement between the EU and Russia, currently being drafted by the European Commission, the Member States and Russia. The EU itself is not an entity with policies that are always neatly identifiable, comprised as it is of 25 Member States, each retaining its own national sovereignty. At the same time, Russia is also in the process of defining for itself an identity other than by reference to energy resources, if only for the purposes of international relations. Given the importance of these events, and with a view to foreshadowing, and – to the extent possible for an MEP – influencing, the eventual outcome, I have asked the Director of the Latvian Institute of International Affairs, Dr. Atis Lejiņš, and research fellows Dr. Andris Sprūds, Dr. Dzintra Bungis, Russian expert Dr. Andrei Zagorski to prepare their views and assessment of the expected aims and results of the new framework for EU-Russia relations.

Now that the study has been completed, I am able to evaluate my political positions by reference to well-founded academic research. I am gratified that my initiative and its results will be accessible to others with similar interests.

Acquainting myself with the work of the authors, I find that the views expressed therein unequivocally substantiate the changes both in EU-Russia relations and on the political map of Europe during the time since the first EU-Russia Partnership and Cooperation Agreement came into force. The EU has undergone significant enlargement; Russia, in turn, has undergone significant political changes. These changes have, as a consequence, evoked debate regarding the suitability of the PCA itself, whether now or in the long term future. Recent history has shown that events occurring beyond the borders of the two parties can alter the significance of the parties themselves, as has been the case with the supply of energy, for instance.

Undoubtedly this period has seen the geopolitical evolution of the European Union, as well as the growing self-assurance by Russia as a consequence of its enhanced influence brought about by a number of global developments and increased reliance on energy. In circumstances such as these, EU-Russia relations assume a strategic significance, although it is a complex exercise to confine them to realistic, mutual interests in the areas of trade and economics, retaining at the same time due regard for the "common values" shared by

democratic societies. What goals, if any, have the parties in common? Which common values do both regard as important? Which respective regional interests might best be served by partnership and cooperation, concepts which both imply a common effort to attain a common goal?

So far this has proved to be an extremely difficult, if indeed not impossible, mission. A certain sense of *status quo* has set in. Quite logically, the authors have highlighted the dilution of democratic values resulting from the course pursued by Russia's leadership.

Any evaluation of this subject calls for an appraisal of whether the directions of the respective parties are converging, diverging or staying the same. Any comprehensive examination of the PCA – whether by reference to its original purpose, past efficacy, or prospects for the future inescapably requires an evaluation not only of the dynamics as between the parties, but also of the respective identities, policies and ambitions of the parties themselves – how each is evolving irrespective of the other.

It is too early to predict whether or not in the conditions of energy reliance described in the study, Russia is likely to be influenced by a more concerted and cohesive utilization of the Common Foreign and Security Policy. Nevertheless, the views of the Institute of International Affairs researchers will suggest that the CFSP should make such demands. It will not be long before it is possible to ascertain how well-balanced the proposed new Partnership and Cooperation Agreement will be, but the benefits each side – including Latvia – will reap once the agreement comes into force will only become apparent in the fullness of time.

I would like to thank the Director of the Latvian Institute of International Affairs, Dr. Atis Lejiņš, the researchers Dr. Dzintra Bungis and Dr. Andris Sprūds, and especially the Russian expert Dr. Andrei Zagorski.

Thanks, also, to the Union for Europe of the Nations Group for its support in the preparation of this publication.

Brussels, October 2006



## The CFSP and the PCA: Between *Realpolitik* and Values

Dr. Atis Lejiņš, Director, Latvian Institute of International Affairs

### Executive Summary

This paper argues that in order to feel more confident in dealing with Russia, including reassessing the Partnership and Cooperation Agreement, the EU needs to develop a stronger CFSP with the aim of becoming a global actor. The EU has the foundations in place despite claims to the contrary, but the demands of the new century and the international agenda are so pressing that the EU has little choice other than to find a common voice or suffer the consequences – diminished influence in a world where the West is rapidly shrinking. Russia is reasserting its influence lost after the fall of the Soviet empire and has a powerful geopolitical weapon – energy resources that, in combination with the provincial thinking in many EU states of putting parochial interests above the common good, can erode the very fabric of the EU and hence its ability to defend its interests. The crucible where decision-making in the EU must be rationalized is the Middle East, which has come to Europe irrespective of whether Turkey joins or does not join the EU.

The EU feeling more confident of itself, will not make agreements with Russia that are detrimental to her values and interests in the long-term. Of vital importance is to overcome the division among member states in how to forge a substantive policy toward the new “in-between” countries that are situated between the enlarged EU and a resurgent Russia. A first step would be to give substance to the position of a foreign minister without waiting for the outcome of the constitutional treaty who could then secure the confidentiality of documents which are otherwise leaked immediately to third parties for the benefit of promoting the individual member state agendas within the EU. Germany, as the lead nation of the EU today, has a special responsibility for taking decisive steps toward a CFSP next year.



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## Introduction

The aim of this study in this report is not to argue the obvious – that the EU needs to make real the second pillar upon which rests. Instead it is to argue that the pressing reality of the new century will compel the EU to reach a consensus that will make the CFSP a reality, as, indeed, the closing century attempted to do and has succeeded in some measure. The basics, despite arguments to the contrary, have been put in place. The alternative to a robust CFSP is that the other two legs on which the EU stands will begin to erode and eventually become what the second pillar is today, a rather wobbly construction slow in the making, which may yet give way and collapse. This would lead to a chain reaction and turn the EU into a crumbling edifice. Ancient Greek columns still standing after their days of glory is what comes to mind.

Needless to say, the first countries to pay the price for this would be those furthest away from “core Europe”, in other words those that are only now recovering from the division of Europe, which ended with the fall of the Berlin wall. These countries happen to be also closest to Russia, now re-emerged as a regional power and also “returning” to the Middle East. A weakened Europe in the new “Asian century” cannot be particularly inviting for “core Europe” either. “By 2020, the world’s population will have reached close to 8 billion. Some 56 out of every 100 people will be Asian. Only 5 will come from Western Europe and 4 from the USA. The West, if we can still call it that, suddenly will look a very small place.”<sup>1</sup>

The need of an agreement with Russia to replace the present Partnership and Cooperation Agreement next year will be a benchmark in strengthening efforts to build a CFSP. Russia today is very different from the Russia of the 1990’s, when most of the documents underlining present relations with Russia were conceived. With the rapid rise of China and India, faster than the pundits predicted, the challenge of energy security (or, rather, insecurity) the sharpened crisis in the Middle East, which underscored the limits of American power, obliges us to view our relations with Russia within the framework of the larger international context.

The model for the new agreement with Russia is the protocol to the PCA necessitated by EU enlargement shortly before ten new countries were admitted to the EU in May 2004. Russia was already projecting its power ambitions and did not want to treat all the new and old EU members in the same way, but the EU rejected such a differentiation. This was a success for the CFSP – the EU was able to overcome national differences among member states and find a common approach toward Russia for the benefit of all parties concerned.<sup>2</sup> The question today is whether the EU, recognizing that Russia has re-emerged as a strong, centralized state striving to re-assert its lost influence after the demise of the Soviet Union, can still safeguard its values and interests as a whole and those of peoples and states living between the EU and Russia in the so-called “in-between” countries that desire to reach out to the EU. A democratization of Russia on the part of the EU, or the USA for that matter, has retreated from the political agenda. Russia has stated that it has its own democratic model, and European leaders have little appetite to “lecture” Russia on this point. Whether Russia turns full circle and slips back into the “Eastern European Syndrome”, however, is on the agenda, as this will present major policy challenges for the EU.<sup>3</sup> The challenge is that the CFSP cannot turn its back to the promotion of democracy and human rights and this can hurt the material well-being and even security of the EU as can be seen in Uzbekistan today, where British and American gold mines are being replaced by Russian companies whose government is not worried about how demonstrations are quelled.

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1 Annual Conference of the Institute for Security Studies of the European Union, Speech by the European Union High Representative for the Common Foreign and Security Policy Javier Solano, Paris, September 26, 2005.

2 Dzintra Bungis, EU-Russia Relations: Challenges and Perspectives after the Orange Revolution in Ukraine, in Atis Leiņš (ed.), *The European Union’s Eastern neighbors after the Orange revolution*, Riga: Latvian Institute of International Affairs, 2006, p. 14.

3 The term Eastern European Syndrome (EES) is attributed to Richard Schwarz, a Swedish observer of East Europe, who used it in 1989 to warn of the seemingly never-ending cycles of oppression, liberation, freedom, and once again oppression in East Europe that occur regardless of ideology and type of regime. If so, the enlargement of the EU to the east taking in eight Baltic and Central Europe states is truly a CFSP achievement of historical proportions as this step wrenched these countries from the iron logic of the EES.

## The history and essence of the CFSP

The CFSP came into being in 1993 in the Treaty on European Union, known as the Maastricht Treaty, at the same time when the Single Market came into effect. That is when it was first mentioned but it took six years for the EU system to explain what it is and what it is supposed to do. We find the guidelines in the Amsterdam treaty, which was adopted in 1999, and which amended the previous Maastricht Treaty. The CFSP has five objectives, which, needless to say, are still in force:

- to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principle of the **United Nations Charter**;
- to strengthen the security of the Union in all ways;
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principle of the **Helsinki Final Act** and the objectives of the **Paris Charter**, including those on external borders;
- to promote international co-operation;
- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

Between 1993 and 1999 terrible things happened in the Balkans, among others, a war carried out by NATO for the first time in its history in Serbia and Kosovo. It is to be remembered that NATO's „Kosovo war“, which was expected to last only a few days, but instead lasted several long months, produced very strong strains within NATO. Greece held to a position that was very close to that of Russia, which opposed the war, and Italy experienced severe internal political tension. If the EU had launched the war under the auspices of the CFSP, the same situation would have applied. In fact, there may not have been a war, because of the absence of the USA in the EU, and Milosevic may have gotten away with his ethnic cleansing operation in Kosovo. What this would have meant for relations with the Islamic world remains in the realm of speculation. But we know that the way Russia chose to fight Chechen nationalists deteriorated into a war with Islam radicals and thus, after the loss of over 300 000 lives, has given what Russia regards as her major foreign policy and security challenge – relations with the Islam world, not to speak of moral morass in Chechnya itself. The moderate nationalists were eliminated.<sup>4</sup>

With reference to the present situation in the Middle East and the recent pessimistic statements about the future of Iraq, it is to be noted that there were also major differences between the Brits and the Americans over how to wage the Kosovo war. Tony Blair was talking about putting an army in the field while the American strategy was to bomb from a very high altitude. There was also a showdown about how to deal with the Russian surprise move in capturing the airfield in Kosovo before NATO forces came to the scene, while for every German fighter in the air the USA had to provide three planes to defend it because of obsolete electronic defense systems in the German air force. This major test of European capabilities and political unity in the NATO format demonstrated the weakness of the EU on both counts. But it was not only Europe that became very nervous, Washington, too was getting panicky. NATO celebrated its 50th anniversary in Washington in April but the end of the war was nowhere in sight.

How did the EU translate its CFSP ideals into reality against this background? Through a series of steps culminating in the adoption in 2003 of the Nice Treaty, the EU simply took over the crisis management functions and military operations developed by the Western European Union, which, with the coming enlargement of NATO and the EU, was fading out of the European defense and security landscape. These

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<sup>4</sup> Atis Lejiņš, *Russia's self-imposed calamities: the case of Chechnya today and Latvia in 1917*, in Žaneta Ozoliņa (ed.), *Expanding borders: communities and identities*, Conference proceedings, Riga: University of Latvia, 2006.

functions were the Petersberg Tasks, and, since the failure of the Constitutional Treaty, have not been formally expanded and are still humanitarian and rescue operations, peace-keeping and tasks of combat forces in crisis management, including peacemaking. However, it will be necessary to return later to the "expanded tasks" as had been proposed in the Constitutional Treaty.

This was the background in which ESDP was born. It was launched by the EU summit in Cologne in June 1999 a week before the war in Kosovo ended as a distinctive part of the CFSP. The aim was said to be to complete and thus strengthen the EU's external ability to act through the development of civilian and military capabilities for international conflict prevention and crisis management. ESDP sounds much better than the Petersberg Tasks, but it is the same animal. It is the operational means to help implement some of the CFSP goals listed above involving both the Commission and the Council. At the EU summit in Helsinki six months later in December the EU followed this up by adopting a concrete grand plan for implementing the ESDP, mainly the Headline Goal of 50 000-60 000 soldiers that would be able to fight for a year at sixty days notice. This was to be ready by 2003 but subsequently the EU was obliged to set a new target date of 2010.

This did not, however, stop the EU from declaring in 2001 at its Laeken summit that ESDP had operational capability in conducting – please note – some crisis management operations, and, two years later, in 2003, in confirming at the Thessaloniki summit in June that the ESDP was ready and operational across the full range of Petersberg Tasks, albeit – please note again – limited and constrained by recognized capability shortfalls.

Before we turn to the structural issues of the CFSP we must step back to 1998 and say a few words about a historical meeting of the British and French minds known as the St. Malo Declaration. We know the historical differences between the British and the French – they once fought a war that lasted 100 years. At the beginning of the Iraq war it seemed at times that they would start it all over again. Yet in 1998 the British gave the French what they, in large measure, wanted and it opened the way for the Helsinki Headline Goal and the green light for ESDP.

Ever since General de Gaulle ordered NATO to get out of Paris, France has wanted to build a European superpower with Paris as its capital city. The British have opposed this and France stopped Great Britain from joining the EU for a long time. Hence, when the British and French came up with the St. Malo Declaration it not only caught Europe – and America – by surprise, but also was the diplomatic turning point for ESDP.

France and Great Britain are the only European powers that can mount expeditionary forces outside of Europe and if these two countries cannot cooperate in the military field, nothing can happen in Europe. When Germany was moving its soldiers to Kabul to take over command of the „coalition of the willing“ forces after Turkey, thousands were stranded in Istanbul. There was no train to Kabul and it took a month before Germany could get the required transport planes from Ukraine to fly the soldiers to Afghanistan. Subsequently, even together with Holland, Germany was not able to take the strain in managing so many coalition forces and NATO was brought in to help in the form of ISAF. In the end, NATO had to replace the coalition of the willing forces running the peacekeeping forces in Afghanistan, as few countries have large enough armies to manage the logistics of commanding large military forces.

What the Brits did in the French town of St. Malo was to open up the possibility of giving the EU a "capacity for autonomous action." However, this was not to harm NATO and hence can be said to be a compromise between France and Great Britain. France conceded Atlantic legitimacy but European autonomy was asserted, which would improve European military capabilities about which the Americans were constantly complaining. But there was more than that. As a high-ranking British diplomat explained to a Latvian audience in Riga, the British gained influence in designing the European Security and Defense Identity (ESDI) through the ESDP, because they had the best military forces in Europe and hence the best levers to pull. It would be foolish for Great Britain not to exploit this asset, particularly because she is not part of the Euro zone.

At the height of the clash between the USA, Germany and France in April 2003 over the war in Iraq the latter two countries together with Belgium and Luxemburg launched the proposal of an EU planning capability, i.e. military HQ to be based in the Belgium town of Tervuren. The USA ambassador to NATO responded by calling this initiative the greatest threat to NATO. When Bagdad was captured the Brits agreed to a EU cell that would have planning capability, and today we have a EU military staff and a civilian and military planning cell with plans to have an operations centre ready by the end of 2006. This looks like the embryo of a HQ, not based in Tervuren, to be sure, but in SHAPE. When President Bush was asked about the British move, he replied that he trusted Tony Blair.

After the St. Malo Declaration, as we saw, events moved in quick succession: the Helsinki Headline Goal in 1999 and the Laeken and Thessaloniki European Council declaration and confirmation that ESDP was ready for action in 2001 and 2003 respectively. 2003 was also the year that the Nice Treaty came into force, which laid the legal basis for the present CFSP and ESDP. The Nice Treaty laid the basis for the development of permanent political and military structures in the EU, including the political and security committee (PSC, or COPS); a military committee (EUMC); and a military staff (EUMS). It formally transferred all WEU crisis management capabilities to the EU and removed the provision defining relations between the EU and WEU.

The WEU is now redundant as far as the EU is concerned, though it still exists, and can be found in the same building where the EU's Institute of Strategic Studies is housed in Paris. One is not quite sure what it is doing today apart from paying pensions to its former employees, but one remembers that Russia was very keen that the Baltic States join the WEU and not NATO.

This brief overview of the ESDP must be concluded with a sober assessment, which limits the use of force as a tool of the CFSP. The EU is not a military organization – it has to satisfy itself with a cataloguing process analysing European capabilities and commitments. But putting figures in a catalogue provides no guarantees regarding what assets, troops and resource are actually available or really operational. The forces available are only in theory and NATO is still required, even in support of possible larger EU missions.

Another event took place in 2003 that is an important milestone in the development of the CFSP and ESDP. For the first time the EU adopted a security strategy, *A secure Europe in a better world*. This is a short, eloquent piece of paper that states the main points of a foreign policy. It was written by Solana's staff – its main author is a former British diplomat – and adopted by the EU in December 2003. It is only 21 pages and very similar to the USA national security concept adopted by Washington a year earlier. The only significant difference is that the European strategy doesn't use the word **pre-emptive** it has another term – **pre-engagement**. The Europeans, split as they were over Iraq, suddenly came together and quickly agreed to this strategy. This included the signatures of the foreign ministers of the ten new member states who would join a year later.

The basic message of this strategy underlines the rationale for the CFSP ...“as a union of 25 states with 450 million people producing a quarter of the world's Gross National Product, and with a wide range of instruments at its disposal, the EU is inevitably a global player. The increasing convergence of European interests and strengthening of mutual solidarity of the EU makes us a more credible and effective actor. Europe should be ready to share in the responsibility for global security and in building a better world.”

Indeed, there has been impressive growth in the number of ESDP operations since 2003 (over a dozen already) but are all these missions vital and are they the essential building stones necessary for a CFSP? Unfortunately, the basic question posed by Simon Serfaty remains: “There is too much confusion from one EU body to the other, from the EU to its individual members. That no such voice can be articulated when its member states disagree is understood. **But that no such voice can be heard even when there is agreement is what needs to be corrected within the EU as well as between the EU and the USA.** Only if and when the EU succeeds in addressing the USA with a collective will and a common voice will the EU be able to play a role in the world that is commensurate with its power, interests, and saliency.”<sup>5</sup>

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5 Simon Serfaty, *Moment of Reflection, Commitment to Action*, Washington, D.C.: Center for Strategic and International Studies, August 1, 2006. See footnote 10 about the CSIS project on the new Transatlantic agreement.

The aim of this paper is not how the EU successfully addresses America, but rather Russia with regard to the new PCA. But the structural problems hampering the collective will of the EU are universal and apply to the EU in its dealings with the outside world be it the USA, Russia, China, India or Japan, to name the most important actors in international politics today.

Little reference will be made of the Constitutional Treaty, as, at present, this would be a fruitless academic exercise, since we don't know how it all will end. In addition, it would be fair to say that the Treaty in its present form is dead. Some elements, however, such as the expanded Petersberg Tasks, which have direct bearing on the CFSP and could be implemented on an intergovernmental basis, will be touched upon. This is also the position of the Commission, which will present a Concept Paper on external relations within the framework of the present treaties, in particular on how to improve coherence and coordination of the Commission's action with that of the other EU institutions and of the member states.<sup>6</sup>

Before the present ten new members of the EU became members in 2004 they had to adopt the volumes of rules and regulations of the EU called by the French name of *acquis communautaire*. This was subdivided into 31 chapters comprising some 80 000 pages of text beginning with the "Free movement of goods" (first chapter) and ending with "Others" (31st chapter). The 27th chapter was titled the Common Foreign and Security Policy, and this, unlike the chapters on tax policy and competition, for example, was the easiest chapter of all to adopt. Every country subscribed to it immediately – the new members agreed they would follow the old members in pursuing a European common foreign and security policy.

They also quickly agreed to adopt the Foreign Relations chapter without giving much thought as to how exactly this 26th chapter differed from chapter 27 and what was the point of having two chapters devoted to the same subject of foreign policy otherwise known as external relations.

Eventually it was discovered that the CFSP is a hybrid cooperative security model that brings together, wherever possible, the various decision-making levels of the EU. Three people personify these levels:

- The Commissioner on External Relations Benita Ferrero-Waldner, who is also responsible for the European Neighborhood Policy;
- The Commissioner on Enlargement Olli Rehn; and
- The High Representative for the Common Foreign and Security Policy Javier Solana.

The latter, of course, is subject to heavy influence from the national level, i.e. the 25 foreign or prime ministers of each member state in the form of the Council of the EU meetings, who also compete among themselves, especially the "Big Three" states, Germany, France, and Great Britain, not to mention the state presiding over the presidency at any given 6 month interval. The council, itself has a general secretariat in Brussels with departments and directors responsible for foreign affairs and one must not be surprised that various "turf wars" develop between the bureaucracies of each "power center".

A graphic illustration of this was the "photo opportunity" afforded by the opening of the ESDP Border Assistance Mission in Gaza at Rafa last year after the Israeli withdrawal. Condoleezza Rice stole the limelight because the media were confused over who represented the EU, Solana or Ferrero-Waldner? Eventually Solana managed to maneuver himself into the picture but the irony was not lost, since it was the EU setting up the border crossing, not the USA.

Another example was over the issue of whether or not accession talks should be started with Turkey. Here the interests of all three "foreign ministers" suddenly converged. Everybody was in agreement, the Commission, the Council of the EU, the EU Parliament, which is beginning to exert growing influence, all the member states, except one – Austria. And hence no agreement could be reached, because in matters of

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6 See *Communication from the Commission to the European Council: A Citizens' Agenda. Delivering Results for Europe*, Brussels, 10.5.2006. [http://ec.europa.eu/commission\\_barroso/president/pdf/com\\_2006\\_211\\_en.pdf](http://ec.europa.eu/commission_barroso/president/pdf/com_2006_211_en.pdf)

vital foreign and security policy unanimity is needed to reach a decision. Austria succumbed only after Condoleezza Rice talked on the phone with the Austrian Foreign Minister Ursula Plassnik, and because the EU offered Austria a last-minute deal, i.e. accession negotiations were to begin together with Turkey and Austria's protégé Croatia. Whatever the reason for Austria's sudden change of attitude, the CFSP was saved for the day. An epic international crisis was barely averted. Needless to say, there were other states hiding behind the back of Austria, even states much bigger than Austria, but for reasons of political correctness preferred to pretend to side with the majority and left Austria alone on the battlefield.

At this point an important observation, which will be addressed later, must be inserted. In the Austrian-Turkish standoff, some countries genuinely feared being isolated from the "mainstream" and hence find themselves facing charges that had nothing to do with the merits of the case. The practice of hiding behind other states, over time, can wreak havoc on European values and the internal fabric of the EU itself. It touches upon the very basis of freedom of expression. On the other hand, the Austrian-Turkish case can also highlight the positive side of EU's complicated decision making process that, after going through all the channels and levels, can give birth to a CFSP decision that is solidly grounded and expresses the interests of the EU as a global actor. This can safeguard the EU from the easy path the USA followed to take the decision to attack Iraq when all criticism and opposition was simply swept aside. Needless to say, Russia may also have been saved from starting and waging the second Chechen war if vital decision making was more complicated and involved more checks and balances.

This does not mean the EU countries cannot re-act quickly to a provocation that touches upon their vital interests. The decision to aid America in the NATO Council after the September 11 attack was swift and unanimous; not one European member state dissented. Indeed, this may have been the most glorious hour of the European Common Foreign and Security Policy, even though this was in the NATO, not EU format. Needless to say, when America chose to attack Iraq two years later the CFSP collapsed like the twin towers of the World Trade Center.

The confusion over the number of "foreign ministers" may be solved within the present institutional setting. If the Constitutional Treaty had been ratified by all member states, two of the present "foreign ministers" i.e. the two posts now occupied by the Commissioner for External Relations and the High Representative for the CFSP would have been combined into one post – that of a EU foreign minister. The question is – can the EU member states agree on creating one post on its own merits regardless of the future fate of the Constitutional Treaty?

There would also be a Foreign Affairs Council responsible for the whole of EU "external action", which would be made up of staff from the Commission, the General Secretariat of the Council, and from the national diplomatic services. The treaty also defined ESDP in new terms, calling it CSDP, a Common Security and Defense Policy – and stated that it should be an integral part of CFSP.

Without delving into how the new acronym CSDP would have differed from the honorable and well-established acronym ESDP, the new treaty foresaw the expansion of the Petersberg Tasks to include joint disarmament operations, military advice and assistance tasks, conflict prevention and post-conflict stabilization, and, furthermore, made provisions for the establishment of "coalitions of the willing" – to use an American term – groups of states that had the capabilities and will to carry out operations within the whole range of the expanded Petersberg Tasks. Theoretically, eventually, this may lead to the European version of a "pre-emptive" strike against perceived threats. As a matter of fact, however, EURFOR in Bosnia-Herzegovina is already a post-conflict stabilization mission and the EU new Battle Groups are basically coalitions of the willing. The logic of strengthening the CFSP through ESDP operations has happened without the benefit of the Constitutional Treaty.

Some similarities can be drawn with NATO. After the USA turned down NATO's offer to implement Article 5 in the immediate aftermath of the September 11 attack, NATO has taken over post-conflict stabilization in Afghanistan. Today NATO has its own ESDP program. It could be called the Transatlantic Security and Defense Policy – TASDP. The difference is scale and sequence. The EU takes over from NATO after the

heavy lifting is done, but NATO takes over from the USA and Great Britain after they have done the initial fighting. The problem, of course, is that the EU in either case has not decided on the most vital question of all – that of war or peace.

## The international agenda and the CFSP

Next year is the 50th Anniversary of the Rome Treaty (Treaty establishing the European Community), which laid the foundation for the European Union. This will give not only a powerful impulse to remember past achievements but also assess the juncture the EU has reached today both in terms of the failed Constitutional Treaty and the question of further enlargement. It cannot but be noted that in 1957 Great Britain was denied membership by France because of her “American connection”, a factor which may have left a permanent scar on the EU. Next year a re-united Germany will assume the EU presidency, however, she, as the obvious leader of Europe, is not particularly happy with this sudden leadership burden thrust upon her and is signaling that the expectations placed upon her are too high.<sup>7</sup> Needless to say, France and Great Britain would go to any lengths if they could put themselves in the same position.

Next year may also be the year a new European-Atlantic Partnership Agreement is reached. Leading USA and European think tanks chaired by the Center for Strategic and International Studies are conducting a series of seminars on the changing relationship of NATO-EU relations and transformation of the Alliance. One such seminar took place in Riga in September ahead of the NATO summit in November.<sup>8</sup> The summit itself will be a precursor of what we can expect from the new Transatlantic partnership.

The next G8 meeting will take place in June next year, a year before the Russian presidential elections and one year after the G8 meeting in St. Petersburg. The host country will be, Germany, and she will want it to be a success, just as she wanted the G8 meeting in Russia to be a success. Whether it was a success and whether the next G8 meeting will be a success is beyond the scope of this study, but the attitude of the leading three in Europe – Germany, France and Great Britain – who are also members of the G8, determines in large measure policy toward Russia and have a direct bearing on the negotiations between the Commission and the member-states over the contents of the new PCA with Russia.

Finally events in the Middle East, or rather Greater Middle East, if we include a pivotal country in the struggle against terrorism and organized crime (narcotics) Afghanistan, must push the EU member states closer together toward forging a CFSP and hastening the rapprochement of the EU and USA after the rupture in 2003. Neither “Old” nor “New” Europeans, nor the USA, wants a repeat of that situation. The possibility that NATO may follow in the footsteps of the British in the 19<sup>th</sup> Century and the Russians in the 20<sup>th</sup> Century in that unhappy, war-torn country cannot be entirely discounted. That would mean a return to the pre-September 11 situation.

Candid assessments of the situation in Iraq by high ranking diplomats and officers, indeed, “body language” by the USA president himself,<sup>9</sup> the inconclusive results of the second Israeli-Lebanese war, which led to claims that Hezbollah won a strategic battle against Israel for the first time in the Arab-Israeli history of wars, and the barely averted mass catastrophe that was planned mid-way in the air between the USA and

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7 „Allies may be expecting more from Merkel than she can deliver”, *Der Spiegel*, Nr. 22, June 2006.

8 *A Global Euro-Atlantic Dialogue about the U.S., the EU, and NATO in the 21st Century*, Washington, D.C.: Center for Strategic and International Studies. The two year project is chaired by Professor Simon Serfaty, Senior Advisor, Europe Program at the CSIS. For the results of the first meeting of the Think Tank Summit in April 2005 in the USA see <http://www.csis.org/>. The second Think Tank Summit will be held in Europe in June 2007.

9 Jamie Coomarasang, „Leaders’ uneasy over Iraq’s future,” *BBC News*, July 26, 2006. President George Bush and Prime Minister Noori Maliki at press conference were split over Lebanon, while the failure of Iraq was the subtext in their talks. A leaked confidential memo to Tony Blair written by the outgoing British ambassador to Iraq William Patey stated that a low intensity civil war and break-up of the country was more likely than democracy in Iraq. The situation, however, was not deemed hopeless by him, but, in any case, would remain messy and difficult for another 5-10 years. *BBC News*, August 3, 2006. Similar views were expressed by Gen. John Abizaid, the commander of U.S. forces in the Middle East to the U.S. Senate: Tom Shanker, „Civil war risk in Iraq rises, U.S. commander says,” *IHT*, August 3, 2006.



Europe in a number of airplanes – are seemingly unrelated to each other but, nevertheless, are common strands of one whole challenging Europe: global terrorism, relations with Islam, including the rise of the regional power Iran, poverty and illegal immigration and, increasingly, the inability of Europe to integrate ever growing numbers of immigrants from Africa and the Greater Middle East – the so-called disaffected European Muslims. There is no need to wait for Turkey – if and when she joins the EU – the Middle East has already come to Europe.

One vital factor was not listed – energy. Here the interests of the EU, the USA, Russia, the USA, and China intersect since Iran has the world's largest gas resources after Russia, badly needed by the EU in her efforts to diversify her sources of supply, but coveted also by China and India, which suits Russia. "The idea in Moscow is that Iran would concentrate on Eastern markets while Russia would maintain its grip on Western markets."<sup>10</sup> The EU finds itself thus in a situation where she is both competing with, and engaging Russia at the same. She is competing for Iran's energy, but engaging Russia to limit Iran's nuclear activities.

War and the constant threats of new wars in the EU's southern dimension of the European Neighborhood Policy (ENP), tempt even the most rational minds into wondering whether Samuel Huntington's theory of the inevitability of a clash of civilizations may not become a reality by default. Voices have been heard on various airwaves and newsprint that the Israeli-Hezbollah war in Lebanon is already a clash of civilizations and these voices come from both the Israeli and Muslim camps. For example, Shabtai Shavit, the former head of the Israeli secret service Mossad has stated as much, and the Organization of the Islamic Conference (OIC) in its emergency summit in Malaysia, which includes such key pro-western countries as Pakistan and Turkey, while not going as far as to make such a statement, did issue a warning that the war could lead to a clash of civilizations.<sup>11</sup>

The war in Lebanon may, indeed, be the "birth pangs of a new Middle East" to quote the American Secretary of State Condoleezza Rice, but it is uncertain what it will look like. It seems, however, that a basic notion has emerged which is "new", and that is that military force, however superior, has spent itself as a policy tool in achieving major foreign policy goals. Another development is the surprising departure of the USA in playing its traditional arbiter role between the Arabs and Israelis.<sup>12</sup> But this departure cannot be permanent. Both the USA and the EU see eye-to eye on the need to address the root causes of terrorism, and this is the need to put in place first and foremost the cornerstone of peace in the Middle East, the establishment of a viable Palestinian state, and to conclude a peace treaty between Israel and Syria. The differences lie in the means to achieve this goal. To repeat a well-known truth, the neo-conservatives influencing the present USA administration, prevailed over Tony Blair's argument that the road to Bagdad first led through Jerusalem, not the other way round. One can legitimately ask the question today how different things might look today if the Palestinian state had been established and the war against Iraq delayed. There may not be a need for NATO in Afghanistan today if only a fraction of the wealth expended in Iraq would have been spent in Afghanistan in rebuilding the country and aiding the farmers in making the transition from growing opium poppies to the traditional Afghan agricultural economy with elements of modernization.

How did the EU respond to the most recent war in Lebanon? Do we see new elements that correspond to the needs of building a CFSP, or do we see the "same procedure as usual"?

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10 Stephen Boykewich, „Caspian complicates Iran-Russia relations“, *The Moscow Times*, May 25, 2006.

11 „It's a clash of civilizations“, *Herald Sun*, July 25, 2006; The Indonesian President Susilo Bambang Yudhoyono is quoted as saying: „This war must stop or it will radicalise the Muslim world, even those of us who are moderate today. From there it will be but one step away from that ultimate nightmare – a clash of civilizations“. „Muslim nations press UN for Lebanon ceasefire“, *Irish Examiner.com*, August 11, 2006.

12 For a short and succinct analysis of the sharp change in US policy toward the Arab world and Israel under the present administration see: Sheryl Gay Stolberg, „Bush and Israel: unlike his father“, *IHT*, August 2, 2006. For „shuttle diplomacy“ in the Middle East, i.e. talking to all parties, during the presidency of George Bush Sr. see James A. Baker, III, *The Politics of Diplomacy: Revolution, War and Peace, 1989-1992*, New York: G.P. Putnam's Sons, 1995. Baker was the Secretary of State at that time.

The EU under the presidency of Finland responded to the Israeli-Hezbollah war by calling for direct talks with Hezbollah, putting the Israeli-Palestinian track back on the agenda, pledging reconstruction aid to Lebanon, and participating in an enhanced international peacekeeping mission. No pure ESDP, of course, this was a UN task. In addition, since the involvement of Moslem countries for obvious reasons, was essential. Accordingly, the number of foreign ministers and senior EU officials shuttling between the relevant cities – Beirut, Jerusalem, Ramallah, Cairo and Damascus jumped.<sup>13</sup>

The position of the EU was succinctly summarized by the *Financial Times*: “Hezbollah is an organization brought to life by unresolved conflict, as are Hamas and its militant allies on Israel’s other front. The root cause of that conflict is land: principally the battle between Arab and Jew over how (or whether) to share the cramped and combustible Holy Land ... certainly what has given these organizations (Hamas and Hezbollah) power and prestige well beyond their natural constituency is a catalogue of failure in the Middle East that has, at its heart, the failure honestly to seek a comprehensive settlement based on land-for-peace.”<sup>14</sup>

Finland is pushing to put the Palestinian issue back on the agenda, and two conferences have already taken place in Stockholm pledging aid to both Lebanon and the Palestinian Authority. There is no problem with various EU countries each working according to its acquired experience and talents, but will the sum result produce the desired effect or will nation states begin to work at cross purposes, even confuse the capital cities in the Middle East with the comings and goings of their senior diplomats?

Javier Solana, the unofficial EU foreign minister, has made a turnabout since 2003. Then he went “underground”, i.e. made himself unavailable until the war blew over, but today he has stepped forth as the honest broker and is everywhere in the Middle East. Has the perceived weakened American position given the EU “room for maneuver”? Solana’s staff has grown to 300 since 2003. Is this an embryonic EU foreign ministry? But Solana had to bully his way to the EU-3 negotiating table with Iran; the big three did not have a change of heart after initially ignoring him. Nevertheless, the question that arises is will “soft power” as represented by the EU become a viable alternative to the military might of the USA?<sup>15</sup>

If Solana is now the “good cop” and Condoleeza Rice the “bad cop” is this not a formula for success since both are needed to reach the desired result? “Soft power” is enshrined in the European security strategy. Basically both the European and the National Security Strategy of the USA are the same but for two terms – **pre-emption** and **pre-engagement**. As noted previously in the comments on the expanded Petersberg Tasks, however, the Europeans may be moving a little closer to the American interpretation of self-defense while the Americans may be shifting further away from it following their experience in the Middle East. Henry Kissinger points out that preemption must be used only very rarely and not become the norm that can upset the international system.<sup>16</sup>

It must be noted that despite their support of the USA and Great Britain in the war against Iraq, the eight central European and Baltic States embraced without any hesitation the European Security Strategy. The spirit and the substance of the strategy reflected the world outlook of the new EU countries that had learned bitter lessons from history and hence not for one moment departed from the basic principle of fighting the Soviet empire only through peaceful means.

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13 Judey Dempsey, „EU urges talks with Hezbollah to resolve crisis,” *IHT*, August 10, 2006.

14 Editorial, *Financial Times*, August 3, 2006. The editorial cites such former US policy makers such as Brent Scowcroft and James Baker to contrast the present policies of the Bush administration. The paper stresses that no Arab or Muslim would accept leaving the Palestinians about a tenth of what was Palestine, in three discontinuous Bantustans.

15 Dan Bilefsky, „Solana, EU’s „good cop”, takes stage,” *IHT*, August 17, 2006.

16 Henry A. Kissinger, „American strategy and preemptive war,” *IHT*, April 13, 2006. Kissinger stresses that preemption should be the rare exception, not the basic rule of American strategy, thus positioning himself closer to the spirit of the European strategy.

Yet, in addition to the EU-3 (it is to be noted that Germany, unlike France and Great Britain, is not a permanent member of the Security Council, but carries as much weight, if not more, because she has no colonial past in the Middle East) Italy, which came forth with 3000 men for peacekeeping in Lebanon, has suddenly emerged as challenger to Germany as the honest broker. Italy claims that she is unique in that it has no colonial history, no historic enemies, has strong ties to Muslim countries, and doesn't have Germany's legacy with the Jewish state. The USA, in addition, understands that, as an honest arbiter, she can be useful.<sup>17</sup> Yet Germany thinks that precisely because of her history and Israel, i.e. high sensitivity to the security of Israel and her strong ties to Muslim states, that she is the best suited for this role. And Bush had consecrated her as the "offshore middleman on Iran". In addition, the American president supports Merkel as his point-women in Europe.<sup>18</sup> When the chancellor visited Washington, Bush "bent over backwards to play the gracious host". More than any other foreign leader, she has urged Bush to negotiate directly with Iran.<sup>19</sup>

One wonders how many honest arbiters there can be for the EU in the Middle East. One hopes that the only new element in the EU's CFSP would not be revolving doors in the rooms leading to the dignitaries in the Middle East capitals to accommodate the influx of dignitaries from Europe coming and going. If the informal EU foreign ministers meeting in Lappeenranta, Finland on the first two days of September devoted to the Middle East and Russia can serve as an indicator, cautious conclusions can be drawn that a greater consensus in bringing coherence to the CFSP may be evolving. The ministers gave full support to Solana to clarify Iran's response on its nuclear activities and the Latvian Foreign Minister Mr. Artis Pabriks came away from the meeting expressing optimism that the EU through its actions in the Middle East had assumed an active global role.<sup>20</sup>

The EU, however, may have to prepare itself for a new challenge if predictions about the "Iraq Syndrome" come true. "Maladies that could have been halted before Iraq now multiply instead." Similar to the situation after the loss of Vietnam, the USA can become an equivocal superpower materially strong but politically weak and reluctant to defend its interests. After the Vietnam debacle, the Soviet Union responded with a major increase in adventurism in the developing world, and expanded its influence from the Horn of Africa to Central America.<sup>21</sup>

## Russia and the CFSP

Many lofty words have been heard from the highest EU "federal" levels down to the highest "national" levels about strategic relations between Russia and the EU. The most recent were surprise statements by Jose Manuel Barroso, the Commission's president, about forming a huge free trade area encompassing Europe and Russia. Later it was qualified that such an agreement was more distant and could be implemented only after Russia acceded to the WTO. Yet the Finnish Prime Minister Matti Vanhanen, said he would like to see talks open this autumn, i.e. during the Finnish presidency. Negotiations could be done during 2007.<sup>22</sup>

These heady statements signal Russia's success in leveraging its energy resources to win wider economic and political concessions from Europe. "It's part of the negotiations. Europe wants an energy deal with Russia. It's keeping the carrot dangling. It's the positive spin on negotiations. We won't see a free trade deal with Europe that quick. But it's a possibility if Russia's economy continues to improve."<sup>23</sup>

There are several basic problems with this line of thinking, which need to be corrected, if the EU does not wish to wake up being more dependent on Russia than Russia on the EU. If Russia indeed becomes the fifth

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17 Ian Fisher, „Italy shifts back to the camp of Europe“, *The New York Times*, August 29, 2006.

18 John Vinocur, „Bush, Merkel and Iran: Germans get the idea“, *The New York Times*, May 16, 2006.

19 See note 7.

20 Latvian news agency LETA, September 2, 2006.

21 Stephen Biddle and Ray Takeyh, „Limits of force: the Iraq Syndrome will haunt America“, *IHT*, August 15, 2006.

22 Andrew E. Kramer, „For energy, EU offers Russia a „carrot“, *IHT*, July 4, 2006.

23 Chris Weafer, chief analyst at Alfa Bank. See note 16.

largest economy in the world by 2025 as predicted by Goldman Sachs then there will be only two European powers, the EU and Russia, a country based on a different value system than the EU. Is there any citizen in the EU who would be comfortable with that? The relationship would be determined by the logic of *Realpolitik*, and it would be only a question of time before the fabric of the EU, based precisely on democracy and human rights, begins to erode. One then is not surprised to learn from the EU foreign ministers meeting in Lappeenranta that no consensus could be reached on Russia and that a further exchange of information between the EU member states was necessary.

It is not only a question of the EU and Russia dominating the European continent, there are a number of countries that find themselves between these two power centers, the so-called *zwischen-raum laender* to borrow a term from pre-Second World War Europe. There are six of these states: Belarus, Ukraine, Moldova, Georgia, Armenia, and Azerbaijan and for conceptual purposes they can be called the ENP 6 (European Neighborhood Policy). Would they suffer the same fate as the old *zwischen-raum laender*, which found themselves in a grey zone between Nazi Germany and Communist Russia? The original in-between states are now in the EU and have, as mentioned earlier, escaped from the fatal logic of the East European Syndrome.

The EU, in contrast to its Russia project, has had very little to show towards these countries other than hastily including them in the same category of states which belong to the Barcelona process and are located on the southern shore of the Mediterranean and in the Middle East. While these states are offered associative agreements with the EU the new states to the east of the EU are offered Action plans to help them come closer to the standards and norms of the EU countries.

The shortsightedness of this approach was apparent during the Orange revolution in Ukraine, when a crisis was averted with the intervention of Poland and Lithuania with the power of the USA looming in the background. The provinciality of some nation states in "Old Europe" at the expense of a common approach to these countries and Russia was subsequently demonstrated at the 750<sup>th</sup> and 60<sup>th</sup> anniversaries of Königsberg and Kaliningrad respectively that soon followed. Putin snubbed the presidents of neighboring Poland and Lithuania by not inviting them to Königsberg/Kaliningrad and the French president and German chancellor who were invited and did come did not seem to mind at all the snub to their fellow EU and NATO brethren.<sup>24</sup>

However, there is a mounting recognition of the deficiencies in the EU's eastern dimension of the ENP and Germany, the traditional leader toward shaping the eastern policy of the EU, is planning to come forth with substantive proposals during its presidency next year. Two challenges intersect. The problem of how to turn the ENP 6 into the what could be called the EEA 4 (the European Economic Area is made up of Norway, Switzerland, Iceland, Lichtenstein), i.e. achieve the same level of democracy and well-being without the promise of membership and, if long-term membership is offered in order to achieve this goal, how to escape the "395 factor".

The "395 factor" may have arrived for the EU as it did for the Roman empire, when Theodosius the Great was obliged to divide his empire in two parts for reasons which today are dubbed "empire overstretch". Obviously Turkey, intensely courted by Moscow, comes into the picture as a key element in this challenge, and is too important an ally to ignore the possibility that she may not be able to join simply because of the "395 factor". It would serve nobody's interests, least of all Turkey's, if the EU collapsed under the weight of "empire overstretch", and therefore alternative strategies in a spirit of mutual trust and dependence should not be discounted.

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24 Atis Lejiņš, A short essay into the EU's and Russia's policies toward the 'in-between' countries: are they diverging or converging?, *Cyprus Yearbook of International Relations 2006*, Nicosia: Cyprus Institute of Mediterranean, European and International Studies, 2006. Javier Solana played only a marginal role in reaching the political compromise between the Orange and Blue camps. See also note 19. After the war, about half of the former German East Prussian province was given to Poland. A Polish anecdote says that the greatest strategic mistake ever made by Poland was inviting the Teutonic knights to subdue the unruly Old Prussians (akin to Latvians and Lithuanians) who foraged deep into Poland. After the Teutonic conquest the Old Prussians were assimilated into the German nation, but left a lasting imprint not only with their name but also military culture.

The key problem for the ENP 6 is that of overlapping EU and Russia integration spaces and in overcoming the previous legacy of the Schröder administration in putting "Russia first" in Germany's *Ostpolitik*. This would mean closer cooperation with the new EU member states such as Poland, Lithuania, Slovakia, who hitherto have been the driving forces toward the ENP 6.<sup>25</sup> However, how will Berlin engage Russia in this endeavor, as it hopes to do, if Russia has the very opposite agenda of pulling these states back into her sphere of influence? How do you tell Russia not to create another Kaliningrad from the statelet called Transnistria, cut off from Moldova, by methods that are the very antithesis of the Copenhagen criteria? By applying its main geopolitical lever gas over Ukraine, Russia is telling the new Ukrainian government that it must join its Single Economic Space (SES) (consisting of Russia, Belarus and Kazakhstan) and upgrade its status from observer to full member in the Eurasian Economic Community (EurAsEc) consisting of Russia, Belarus, Kazakhstan, Kyrgyzstan, Uzbekistan and Tajikistan.

Germany's strength or weakness is her "mediator role" between East and West. She no longer acts as a nation-state, but as Europe's leading power, and it is claimed to be appreciated equally in Washington, Brussels and Moscow.<sup>26</sup> The weakness is that if you no longer put Russia first, how do you defend your European interests if you are only a mediator between two poles? To which pole does Germany belong?

The EU does not have much influence on Russia due to her lack of strategic levers. The EU and Russia are moving in absolutely opposite directions, if quite not so (yet) in the interpretation of democracy and human rights, then certainly in the energy sphere, the number one issue for this century. As Andris Sprūds details in his study *EU-Russia energy dialogue in the context of the prospective Partnership and Cooperation Agreement*, the EU is liberalizing its market, Russia is centralizing its market and, in addition, is penetrating the West with its gas monopoly *Gazprom*.

**The EU missed a huge opportunity in not denying entrance to the WTO until Russia demopolitized *Gazprom*. After all, the PCA stipulated that Russia was to become a market economy. Can the new PCA correct this structural flaw? As a state monopoly *Gazprom* might well become the main challenge to the EU's planned policy of diversification of gas transit corridors and supplies.**

The EU and its member states are reluctant to face a conflictual relationship with Russia and prefer a cooperative one instead. The EU wants, as stated in the Brussels think-tank Centre for European Policy Studies (CEPS) report, to gain the maximum practical engagement with Russia to ensure its strategic economic, political and security interests and hopes on the "socialization effect" on Russia within the ever closer EU-Russia cooperative framework, i.e. the EU hopes that Russia will converge with the EU in adopting its standards and values.<sup>27</sup> The ENP 6 (for now, minus Belarus), are eager to do this, but is Russia? If there are about 40 EU-Russia bilateral groups working in Brussels and Russia's biggest embassy is also in Brussels, what socialization can take place if a good number of the Russian staff are well-paid FSB (KGB) operatives? "The twice-yearly consultations on human rights have not resulted to date in any significant improvements and EU citizens should be concerned that, in several regards, Russia is a less democratic country today than five years ago".<sup>28</sup>

What levers does the EU have in its talks with Russia to safeguard its interests and values, including the interests of the ENP 6, who aspire to become members of the EU some time in the future? The answer should be in a common foreign and security policy, but here at once we run into the EU's Achilles' heel. According to the views of more than 100 opinion formers on EU-Russia relations most think the EU member states put their national interests first in dealing with Russia, rather than supporting a consistent EU position.<sup>29</sup> And

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25 Iris Kempe, *From a European neighborhood policy toward a new Ostpolitik*, Center for Applied Policy Analysis, Nr. 3, 2006.

26 See note 7.

27 Michael Emerson, Fabrizio Tassinari, Marius Vahl, „A new agreement between the EU and Russia: why, what and when?“ Center for European Policy Studies (CEPS) Policy Brief, Nr. 103/May, 2006.

28 *EurAsianews*, Nr. 1/July, 2006. [www.eu-russiacentre.org](http://www.eu-russiacentre.org)

29 *Ibid.*

despite calls for a new EU energy strategy as issued by the Austrian presidency not many analysts are betting that the EU can forge a common energy strategy let alone make it a central part of the CFSP. The Baltic States appear to be alone in their call to integrate the EU's energy policy in the CFSP.<sup>30</sup>

The EU is divided into the "have's" and "have not's" with regard to energy production and consumption and it is unlikely those countries with their "national champions" that produce vast quantities of oil and gas inside or "upstream" outside Europe will give up their privileged decision-making with those who have not such "champions". States that own or partly own or control foreign exploration/production companies like *Total, BP, Shell, Repsol, Gaz Natural, MWV, Statoil, ENI*, have divergent interests with states that do not have such companies. Even Germany with its biggest energy company *E.ON* is a dwarf compared to those mentioned, and on foreign policy terms just a simple importer, not a producer. This puts Germany theoretically in the same camp as all the Baltic and Central European states.<sup>31</sup>

Yet, as the Commission knows only too well, the name of the game in this century is energy security (or until gas and oil reserves are depleted, or when new technologies increasingly replace fossil fuels) "as it has always been in diversification of supplies and sources", as well as investing in new technologies.<sup>32</sup> It is for this reason that the EU energy commissioner Andris Piebalgs has given his blessing to the *Nabucco* gas pipeline project, which would link the EU with Turkey, Bulgaria, Rumania, Hungary, Austria and – eventually with Iraq and Iran – if the political problems involved can be resolved.<sup>33</sup>

The main political problem, of course, is the longer-term struggle for Iran.<sup>34</sup> This is why Germany, dependent as she is, as noted above, on imported gas, is playing the role of a world power in the UN Security Council in the 5+1 format. Iran is closer to Europe than Siberia, where the underdeveloped and hugely expensive gas fields lie. And Frau Merkel may be having a stronger impact on Mr. Bush than Mr. Tony Blair both in moderating America's policy toward Iran (ruling out the bombing option) and help advance the "faltering process" of democratization in Eastern Europe.<sup>35</sup> It is rather clear that if the USA were not engaged countries like Georgia would very quickly succumb to Russian pressure and a new conflict zone would be created since the majority of Georgians hardly would accept Georgia becoming a client state of Russia again. If Germany today is endeavoring to be an "honest broker" between Moscow, Brussels, and Washington, she will also need to develop skills in defending the ENP 6.

This is not going to be easy since there are already states in the EU which regard good cooperative relations with Russia more beneficial than developing supportive policies for the ENP 6 to aid them in overcoming their Soviet past and achieving the European way of life. Policy makers in Georgia, for instance, find it difficult to differentiate France's policy toward Georgia from that of Russia, and Baltic NGOs, who are assisting in helping to develop a civil society in Georgia, do not find favor in Paris.<sup>36</sup>

Germany will need to put her considerable weight behind the forging of a robust CFSP if she is to succeed. This means that while pursuing a policy of engagement conflictual situations with Russia cannot be avoided and the citizens of Europe should know about it and not be fed on a constant diet of rosy statements and a bright new future in European-Russian relations. This can backfire and the EU can find itself in a situation similar to that of the Soviet Union when it constantly repeated pathetic phrases about the coming of communism despite mounting evidence to the contrary.

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30 Declaration and Communiqué signed by the Prime Ministers of the Baltic States in Trakai, Lithuania, February 27, 2006.

31 Private communication from Enno Harks, energy specialist at the Stiftung Wissenschaft und Politik (SWP) in Berlin, August 12, 2006.

32 „Energy security will be one of the main challenges of foreign policy”, interview with US oil expert Daniel Yergin, *Der Spiegel*, July 18, 2006.

33 Stefan Wagstyl, „EU gives blessing to gas pipeline”, *FT*, June 27, 2006.

34 Flynt Leverett, „The race for Iran”, *The New York Times*, June 20, 2006.

35 See note 7. On the USA front the main voice against bombing Iran has been the geopolitical strategist Zbigniew Brzezinski.

36 An Estonian think-tank was told "not to annoy Russia in Georgia" during high-level French delegation visit to Estonia at a reception in 2005.

Looking specifically at the PCA the question must be asked – what is the end goal after a new agreement? What is it that the EU really wants from Russia? Russia knows what it wants from the EU and is developing her relations with the EU with this goal in mind. Is it a strategic union or partnership to be consumed in a treaty to that effect as proposed by the Brussels Centre for European Policy Studies? The proposal advocates that the EU and Russia should follow the French and German model after the war. In the meantime agreements must be reached that are modeled on those of the EU and Switzerland, one of the EEA 6 countries enjoying full relations with the EU except one – voting rights.<sup>37</sup> Switzerland has “everything but institutions” to paraphrase Romano Prodi, the former head of the Commission when he outlined his views about the future of the ENP 6. Three questions need clarification if, indeed, this is the end station for the EU in its policy toward Russia:

1. Can a small *status-quo* country like Switzerland be compared to a continental power that is reasserting its lost power?
2. Can post-war Germany be compared to post-Soviet Union Russia?
3. Does the EU mean to have a strategic union with the USA and Canada (including a free trade area) and also with China and Japan?

The CEPS think-tank itself answers in the negative saying Russia will need to return to building real democracy and redefine its security doctrine. In the meantime a series of practical steps with less lofty goals in sight must be taken that allow the “cohabitation” of the two poles of power in Europe. This, is indeed, the riddle to be solved by the Commission and the member states but it cannot be done if member states curry favor with Moscow for their individual benefit and throwing hurdles on the road to the forging of a CFSP.

Indeed, this is what the Brussels think-tank advocates – the EU needs to build its capacity as a strategic international actor in order to be taken seriously by Russia. How is she to do this? This will be answered in the conclusion.

## Conclusion

The EU must rise to the occasion and build a CFSP in the Middle East. This is in its vital interests since the suicide bombers now are indigenous to the EU, and bear a grievance of such nature that to wreck havoc on the West is the only perceived way to alleviate it. The grievance stems from the Middle East, and it is the one theme that all in Europe will agree – the establishment of a Palestinian state. Furthermore, sending troops to Lebanon is curing the symptoms and not the cause. Syria will supply arms (Russian, as claimed by Israel) to Hezbollah as long as Israel occupies the Golan Heights. After a peace treaty is reached between Israel and Syria on a parallel track that establishes a viable Palestinian state an ESDP mission on the Golan Heights with the logistic support of NATO and participation of significant troop numbers from Moslem countries will secure the safety of Israel in return for giving back territory to Syria. Hezbollah will become what the IRA is today in Northern Ireland, or, indeed, what the Likud was yesterday to what it is today – a responsible political force. Iran, a regional power which supported the USA against its two main enemies the Taliban and Saddam, and which has a strong pro-American base in her population, can be granted security guarantees by the USA.

Can the EU do this? Not without the USA, but it can take the lead because it has no hidden agenda other than justice and peace, especially if it can overcome old-fashioned ambitions of the old European countries that have contributed so much to the troubled Middle East past. But can one really claim that the EU has no hidden agenda? How is it that secret documents in Brussels almost immediately after they are issued appear in the capital cities of Israel, Cuba, Turkey, Washington – and Moscow? According to the Finnish foreign minister the different member state diplomats come to meetings in Brussels as if they were preparing to negotiate with potential enemies, as if leaking information to third parties could strengthen their positions.<sup>38</sup> Nobody feels responsibility for EU policy, since there is no foreign minister, not even guidelines for

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<sup>37</sup> See note 20.

<sup>38</sup> Anna Slojevska, „Leaks in Brussels”, *Rzeczpospolita*, August 10, 2006. The Polish paper quoted the Finnish foreign minister's comment in the Swedish language Finnish paper *Hufudstabladet*.

a common diplomatic service. Solana is struggling in vain against the leaks. Perhaps this is where the first beginning must be made?

The EU as a global actor will be much more confident in dealing with Russia but for this to happen, an Old Roman injunction must become the cornerstone in the quarrels and squabbles between the different power centers in the EU and between the member states: if we don't hang together we will hang separately. Especially now, when, as the deputy director of the Carnegie Moscow Center Dmitri Trenin has stated: "We're at the beginning of a new period in relations between Russia and the West – especially the United States. Now, it's going to be about competition".<sup>39</sup> We must ask ourselves the question why is the USA especially singled out? Is it because she is not as dependent on Russian gas and oil? But if there is to be a confrontation with the USA, will it still remain just competition with the EU?

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39 Stephen Boykewich, „Iranian crisis a 'winwin situation'“, *The Moscow Times*, May 18, 2006.







# Toward a New EU-Russia Partnership and Cooperation Agreement?

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## Executive Summary

After a cursory survey of the relations between the European Union and the Russian Federation since the dissolution of the USSR and a closer look at the developments both in the European Union and Russia and their interaction after 1997, when the Partnership and Cooperation Agreement (PCA) between the European Communities and the Russian Federation came into effect, we conclude that cooperation and interaction between the two sides has increased enormously and that both sides now know each other better, sometimes at the expense of shattered illusions. While some observers claim that EU-Russia relations are currently at loggerheads, this study argues that a sense of realism has set in. Both realize that they are fundamentally different entities that are bound to cooperate.

After assessing the effectiveness – it has been a partial success – of the PCA, we evaluate various options that have been proposed by independent scholars and the European Commission on how to proceed after it expires on 30 November 2007. In light of this, the decision of both the EU and Russia in favor of a new agreement is well justified. The content of the new agreement is still to be hammered out. Nonetheless, it appears that there is agreement on discarding what did not work in the PCA, incorporating the successful elements of the PCA and subsequent agreements on cooperation, such as the Northern Dimension initiative and the concept of the Four Common Spaces, and making other changes as necessary. In charting the future, greater attention will certainly have to be paid to energy and trade issues which are now recognized as playing a central role in EU-Russia relations. However, since a major shortcoming of the PCA was devoting too much attention to economic issues, the new agreement should reflect more equitably all the facets of the EU's relations with Russia, reiterate that at the basis of these relations are common values, and focus on specific aspects of cooperation and how to develop them.

For Latvia the drafting of a new EU-Russia framework agreement offers both challenges and opportunities. In order to participate effectively in this process Latvia must change its public image of being perceived as an unrelenting hardliner *vis-à-vis* Russia to one of the countries that truly supports a cooperative and pragmatic relationship with Russia. Then Latvia's suggestions – they must be constructive and motivated by the common good – will be considered for their worth and not shunted aside because someone feels that the author is biased. Thus, Latvia could turn the challenge into an opportunity for enhancing its standing in the EU and improving its relations with Russia.

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## Introduction

After the collapse of the Soviet Union in December 1991, relations between the European Union and the Russian Federation<sup>1</sup> have developed and expanded enormously, both in scope and depth. In the intervening years, both the European Union and the Russia have undergone profound changes. What is more, considerable rapprochement has taken place. Nonetheless, they remain fundamentally different entities. Though emphasizing that they are strategic partners, in many respects they are actually competitors.

The principal document governing their relations is the Partnership and Cooperation Agreement or PCA, which was drafted in 1992-1994. Signed by the European leaders and Russian President Boris Yeltsin on 24 June 1994 in Corfu, the PCA was the first agreement of this kind between the European Communities – at that time consisting of 12 member states – and a country not aspiring to EU membership.<sup>2</sup> The purpose of the agreement is stated at the outset: in recognition of “the importance of the historical links existing between the Community, its Member States and Russia and the common values they share” and their “wish to strengthen these links”, both sides are establishing cooperation and a partnership which, in turn, would serve to “deepen and widen the relations” on the basis of mutual commitment to common ideals and goals.<sup>3</sup> The introductory paragraphs, in particular, reveal the hopeful mood of the signatories.

Ratification by all the European signatory states and Russia took more than three years. The treaty, valid for ten years, came into effect only in 1997. Since the official expiration date is 30 November 2007, a reconsideration of the treaty has begun. While termination of the PCA is distinctly possible in November 2007, it is neither certain, nor inevitable. According to Article 106 of the PCA,

This Agreement is concluded for an initial period of 10 years. The Agreement shall be automatically renewed year by year provided that neither Party gives the other Party written notice of denunciation of the Agreement at least six months before it expires.<sup>4</sup>

Thus, the occasional, dire warnings of chaotic and disastrous EU-Russia relations setting in on 1 December 2007 if nothing is done about the PCA are out of place.

Nonetheless, whatever happens in 2007, it is high time for the EU to have a clear idea of what it wants and what its 25 members want. Some basic questions should be raised and answered: How effective has been the existing PCA? What have the two partners been doing about the PCA? What are the options for the future? How do they compare? What appears to be the likely outcome? In order to shed light on these fundamental issues, this paper will first take a cursory and selective look at EU-Russia relations and assess briefly the PCA and three follow-up documents: *EU Common Strategy on Russia* and *The Russian Federation Middle Term Strategy towards the European Union (2000-2010)* from the year 1999 and the Concept of the Four Common Spaces approved by the EU and Russia in 2003. The paper will then proceed to consider possible courses of action in 2007, their potential impact and outcome. The issues will be examined mainly from an EU perspective, since the Russian perspective will be discussed in the study by Andrei Zagorski. Throughout this paper attention will be drawn to aspects of particular relevance to Latvia, which, as one of the EU countries that shares a border with the Russian Federation, has special

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1 In this study, we shall not stress the distinction between the European Union and the earlier European Communities and in general we shall be talking about the European Union and refer to it either by its full name, its abbreviation EU or simply as the Union. The Russian Federation will also be referred to simply as Russia.

2 In order to avoid confusion, let us recall that the EU was established in 1992 by the Treaty on European Union, also known as the Maastricht Treaty. However, the Union's predecessors – the European Coal and Steel Community (ECSC), the European Economic Community (EEC) and the European Atomic Energy Community (Euratom) which were all founded in the 1950s – did not cease to exist as legal entities. This accounts for the cumbersome wording of the introductory sentence of the Partnership and Cooperation Agreement with Russia: “Contracting Parties to the Treaty establishing the European Community, the Treaty establishing the European Coal and Steel Community, and the Treaty establishing the European Atomic Energy Community, hereinafter referred to as “Member States”, and The European Community, the European Coal and Steel Community and the European Atomic Energy Community, hereinafter referred to as “the Community”, of the one part, ...” (see [http://ec.europa.eu/comm/external\\_relations/ceeca/pca/pca\\_russia.pdf](http://ec.europa.eu/comm/external_relations/ceeca/pca/pca_russia.pdf)). For a graphic overview of the evolution of the European Union, see [http://en.wikipedia.org/wiki/European\\_Union](http://en.wikipedia.org/wiki/European_Union)

3 For the full text of the EU-Russia PCA, see [http://ec.europa.eu/comm/external\\_relations/ceeca/pca/pca\\_russia.pdf](http://ec.europa.eu/comm/external_relations/ceeca/pca/pca_russia.pdf)

4 Ibid.

interest in the development of good EU-Russia relations and could make useful contributions toward achieving this goal. The concluding section argues that the drafting of a new agreement<sup>5</sup> between the EU and Russia opens up opportunities for Latvia to enhance its image in the Union and improve its relations with Russia.

## EU-Russia relations: a selective overview<sup>6</sup>

Since 1997, when the EU-Russia Partnership and Cooperation Agreement came into force, the relations between the two sides have fluctuated.<sup>7</sup> Many, diverse factors have contributed to the fluctuations. Some are by nature unpredictable or only partially predictable, such as internal and external developments and their consequences. Others can be anticipated because they have been, for the most part, constant over a considerable period of time.

### Key factors affecting the relations

Some of the most obvious examples of the nearly omnipresent factors affecting the relations are **history**, **geography** and their influence on the perception of Russia by individual EU member states and vice versa. Here it is relevant to recall that those EU member states, which have direct borders with Russia and/or were once part of the Warsaw Pact or the Soviet Union tend to look at Russia differently and more critically than the members who do not have these experiences. The former happen to be the younger EU members states and the latter – the older members. For its part, Russia tends to treat the older EU members more respectfully than the younger ones. Another constant factor over the years has been a pragmatic necessity to maintain some form of political and economic relations between Russia and other European countries. Two other factors will be discussed as subtopics of this section because they are particularly relevant to the current EU-Russia relations:

- their growing **economic interdependence**<sup>8</sup>
- and the fact that they are **profoundly dissimilar entities** – each one approaches the relationship from a fundamentally different base and with different aims and expectations.

### EU and Russia: fundamentally different entities, which try to cooperate

As Dov Lynch, Research Fellow at the European Institute for Security Studies in Paris, aptly summarizes, Russia is a sovereign state, with a consolidating political, economic, and military system; an elected leadership dedicated to advancing the state's interests; and institutions that coordinate means to reach desired ends.

The EU is nothing of the sort. It has divided institutions, unclear sovereignty, a weak sense of common interests, and few institutions in the political area that are able independently to achieve the EU's declared ends.

Although it is useful, the [EU-Russia] dialogue merely brings together a state that is strongly defensive about its sovereignty and territoriality with an association where sovereignty is pooled

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<sup>5</sup> An Annex on the legal form of the documents that are discussed in this study will be attached the end.

<sup>6</sup> In view of the vastness of the subject matter this section will not attempt to be all-encompassing, but try to focus on political and economic developments relevant to the PCA. Furthermore, the international aspects of EU-Russia relations and energy issues will be accorded unduly short treatment because this study is part of a larger project where in-depth analysis of these topics is provided, respectively, by Atis Lejiņš and Andris Sprūds.

<sup>7</sup> For a more extensive survey of EU-Russia relations, see the study by Dzintra Bungs, *EU-Russia Relations: Challenges and Perspectives after the Orange Revolution in Ukraine*, in Atis Lejiņš (ed.), *The European Union's Eastern neighbors after the Orange revolution*, Riga: Latvian Institute of International Affairs, 2006, pp. 9-29. See also the homepage of the Latvian Institute of International Affairs, <http://www.lai.lv/>. Subsequent references to this text will be made using only the author's last name.

<sup>8</sup> This topic will be briefly discussed later.

and territoriality diluted. Europe is as much a union of interests as a community of shared values. Moscow sees the blending of values and interests in EU policy and rhetoric as interference in Russian affairs. EU statements about Russian policy in the Chechen conflict have only provoked irritation, as have European declarations about the need for the fair application of the rule of law during the *Yukos* affair. In these circumstances, the scope for misunderstanding and wasted time is substantial. On many questions, Brussels and Moscow simply talk past each other.<sup>9</sup>

## Chronological survey

Although EU-Russia relations can be traced back to the late 1980s, they really began to develop after the collapse of the USSR in December 1991 and after Russia became the successor state of the Soviet Union. Negotiations over a Partnership and Cooperation Agreement began in the following year and were completed in 1994. Since the PCA took effect only three years later, let us focus here on the course of developments after 1997 and start with a cursory look at some of the most important events that have subsequently taken place in the European Union and the Russian Federation.

### Important developments in the European Union

Since 1997, both the European Union and the Russian Federation have continued to undergo significant changes, which, in turn, have affected their relations. Regarding the EU, key policies in the realm of external relations were developed: most notably the **Common Foreign and Security Policy** (CFSP) and the **European Neighborhood Policy** (ENP). Although the CFSP was established as the second of the three pillars of the European Union in the Maastricht Treaty of 1992, it was defined and broadened in the Amsterdam Treaty of 1997 and it is this version that has served as the conceptual document of the Union's foreign and security relations.<sup>10</sup>

For the EU, the most important single event by far has been **enlargement**. In May 2004, ten countries, including Latvia, joined the Union to bring the total membership up to 25. The process of securing the smooth functioning of and providing the appropriate legal underpinnings for an organization whose membership may soon exceed 25 has not been completed; to illustrate, the fate of the Constitutional Treaty after the French and the Dutch rejection is in limbo; an equitable and functioning decision-making system is still not in place. At the same time, the Common Foreign and Security Policy and the European Security and Defense Policy await refining and full implementation; and a common energy policy is being developed. Despite the enormity of the task of integrating 10 new members into the fabric of the Union, on the whole, the EU is meeting the challenge rather well. What is more, enlargement has increased substantially not only the Union's territory and population, but also its political and economic clout and potential. It has become more than a regional organization. Now the EU can justifiably work toward its ambitions of establishing itself as a global player.<sup>11</sup>

The launching of the European Neighborhood Policy took place almost at the same time as the enlargement – May 2004. Aiming to ensure that the enlarged Union is surrounded by a friendly circle of neighbors, the ENP wishes to assist the neighboring countries, which opt for this program to make democratic reforms and create a functioning market economy; the ENP, however, does not envisage EU membership as the ultimate goal of the policy. Many of the countries which the EU wishes to address via the ENP and for which this policy has an appeal are the former Soviet republics, which are also close neighbors of Russia. Two

9 Dov Lynch, „Russia's Strategic Partnership with Europe,” *The Washington Quarterly*, Spring 2004, pp. 99-118.

10 The CFSP, as well as the foreign and security policy issues are examined in the study of Atis Lejiņš.

11 See the freshly developed EU website devoted to the topic of „European Union as a Global Actor” [http://ec.europa.eu/comm/external\\_relations/euw\\_global/index.htm](http://ec.europa.eu/comm/external_relations/euw_global/index.htm). A statement on the EU's global role appears on the website of the European Commission's Delegation to Russia; see [http://www.delrus.ec.europa.eu/en/p\\_344.htm](http://www.delrus.ec.europa.eu/en/p_344.htm)

scholars, Iris Kempe and Hanna Smith, call the geographic area between Russia and the West „an overlapping integration space.“<sup>12</sup>

In the preparatory stages of the ENP, the authors considered inviting Russia to participate, but Moscow sputtered at the very idea of being considered by the EU together with countries, which it considers to be its inferiors. Though Moscow has not openly criticized the ENP, it has not been pleased with it because it wants these countries to be active in the organizations where Russia plays the leading role, such as the Commonwealth of Independent States. Thus, some Russian officials have indicated that they see the ENP as an excuse for the European Union to encroach on what has traditionally been Russia's sphere of influence. Marc Franco, Head of the European Commission Delegation to Russia, has responded by explaining to journalists in Moscow that the EU acknowledges Russia's legitimate interests in the territory of the Commonwealth of Independent States and that the EU is willing to cooperate with various associations of countries in that region. Franco then pointed out that since the former Soviet republics are EU neighbors as well, the Union is also interested in developing good and neighborly relations with them.<sup>13</sup> Thus, there is competition between Moscow and Brussels for influence in some of the former Soviet republics.

### Significant changes in Russia

As observed from Brussels, since 1997 the Russian Federation has also experienced significant changes. The election of Vladimir Putin in 2000 to succeed Boris Yeltsin as the country's president brought Russia a younger and more energetic leader, who values the stability, power and prosperity of the state more than European values, such as democracy, rule of law, and human rights. Under Putin, the predominantly European-oriented and pro-reform vision of the Yeltsin years was gradually replaced by a broader, Eurasian vision, tinged with respectful, even nostalgic recollections of the might of the Soviet Union and Imperial Russia. This has been accompanied by systematic efforts to bring together the former Soviet republics into various economic and security networks, such as the Commonwealth of Independent States (CIS) and the Eurasian Economic Community (EurAsEC), and Collective Security Treaty Organization, where Moscow plays the leading role. All this, in turn, is intended to strengthen Russia's role not only as a regional but especially as a global player.

During the **last years of President Yeltsin's leadership** Russia was still muddling through decentralization and the dismantling of vestiges of various Soviet establishments while attempting to institute democratic reforms, assimilate European values and create a market economy. All the while, during these "Klondike years"<sup>14</sup>, a serious economic crisis was brewing; the slump hit Russia in 1998. Though recovery started already in 1999, it was not yet clear in which direction Russia would develop. The unstable situation in Russia could not help but deflate the hopefulness in the democratization of Russia and the future of EU-Russia relations that existed when the PCA was drafted and signed. To the outside observer Russia resembled a ship without a rudder. Yeltsin appointed Vladimir Putin as prime minister, stepped down as president and then endorsed Putin as candidate for president.

Economic recovery was completed only after **Vladimir Putin** was elected president. Therefore, Putin tends to be credited both for the current period of economic growth and the recovery, which preceded it. Putin accorded high priority to both economic growth and political stability. Aware of Russia's size and history, he wanted to secure for his country the international stature that he believes it merits: **Russia should be recognized as a global power**. He advocated, therefore, changes to achieve a return to the traditional top-down federal system (i.e. the "power vertical") that prevailed in Russia during the

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12 Iris Kempe and Hanna Smith, "A Decade of Partnership and Cooperation in Russia-EU relations: Perceptions, Perspectives and Progress – Possibilities for the Next Decade," paper produced for the conference of the same name which took place in Helsinki, 28-29 April 2006. See [http://www.cap.lmu.de/download/2006/2006\\_Kempe\\_Smith.pdf](http://www.cap.lmu.de/download/2006/2006_Kempe_Smith.pdf). In this study only the authors' last names will be given in subsequent references to their paper.

13 *Interfax*, 5 January 2006.

14 Fraser Cameron in his Policy Brief „Russia on the Eve of the G8 Summit“, July 2006, European Commission European Policy Centre; see <http://www.theepc.be>

Soviet era. This meant a reversal of the trends of the Yeltsin years toward reforms fostering more democracy and a free market economy. Under Putin, there has been a determined effort to develop certain sectors of the economy while reasserting government control over them (i.e. "the power ministries"). This has been most evident in the energy sector. The case of *Yukos* and the fate of its president Mikhail Khodorkovsky illustrate well how far the government is willing to go in order to get what it wants. In the process, Russia has profited handsomely from the expanding export of gas and oil, but damaged its reputation both at home and abroad. Former Prime Minister Mikhail Kasyanov and now Putin's political opponent sums up the president's vision of Russia with the words: "petro-dollar sovereignty".<sup>15</sup> Such a vision has brought Russia much greater economic and political clout, but it has also inspired such uncomplimentary epithets as "energy bully."<sup>16</sup> Understandably, President Putin's intermittent declarations to the effect that Russia is a democracy with a friendly business climate tend to be taken at best as pure hyperbole.

## EU-Russia relations

### Political developments since 2000

When Putin came to the helm of Russia, not only did Russians become more confident about their country's development, the Europeans also became more hopeful about the future of their relations with Russia. Despite Putin's previous career in the KGB, he received much goodwill from his countrymen for seeking to put Russia on a positive track. Putin's ability to convey the impression that he advocated the rule of law and democratic reforms for his country reinforced his positive public image both at home and abroad. As Dov Lynch, Research Fellow at the European Institute for Security Studies in Paris, has observed, the Russia-EU relations reached an all-time high point in Putin's first year of presidency.<sup>17</sup> Subsequently, there has been a gradual and steady decline in these relations.

The initial enthusiasm of Russian and most Western European leaders – notable exceptions were German Chancellor Gerhard Schröder and Italian Prime Minister Silvio Berlusconi – for each other did not last long because it was based on wishful thinking and overly optimistic expectations. As Putin started to implement his policies, many Europeans began to doubt their earlier perception of the new Russian president as a democratic reformer. At the same time, many Russian politicians were coming to the realization that the EU takes its values seriously: democracy, rule of law and a free market economy are not mere words but a way of life. European efforts to foster these values in Russia were interpreted as meddling in the country's internal affairs. All the while, both sides could not help but see that their relations under the PCA needed a boost. They endorsed, therefore, the **Concept of the Four Common Spaces** at their summit in May 2003 in Saint Petersburg. At the summit in Moscow in May 2005, they adopted the so-called Road Maps, which set specific objectives and envisage specific actions so that the common spaces can eventually become a reality. The two years between the endorsement of the Concept and the first Road Maps suggest that after May 2003, each side accorded greater priority to topics other than EU-Russia relations.

In Brussels the main concern was the Union's enlargement in 2004. **In Moscow, the EU enlargement was considered with reservations.** Although Russia, as the successor state of the USSR, had never been happy with the idea that former Soviet republics, which many Russians still considered as their "Near Abroad", join the European Union, it had never protested openly against such an eventuality. Instead, Moscow had stressed that enlargement should in no way be detrimental to Russia (including the enclave of Kaliningrad Oblast) and should not create new borders in Europe.

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15 See Mikhail Kasyanov's article "Imperiya svobody" in *Kommersant*, 29 August 2006.

16 See the editorial in *The Washington Post*, 23 August 2006.

17 Dov Lynch, "Russia's Strategic Partnership with Europe," *The Washington Quarterly*, Spring 2004, pp. 99-118.



In 2003, for all appearances, the general impression in Europe was that Russia had reconciled itself to the idea that soon the EU would increase its membership by 10 countries. That impression turned out to be misleading. In early spring 2004, when the time had come for both the EU and Russia to sign a protocol to the PCA related to the EU's upcoming enlargement, Moscow balked. The main source of contention was Russia's unwillingness to treat all the new members as full-fledged EU members. It was displeased with the imminent EU membership of Estonia, Latvia and Lithuania, which had regained their independence from the USSR in 1991.

Moscow's objections should not have come entirely unexpected. Section 5.2 of Russia's Strategy towards the European Union, elaborated in 1999, states that before the next EU enlargement Russia intends to conduct consultations with the EU and individual EU member states so as to secure its interests, including "the rights of the Russian-speaking population in the Baltic States"; furthermore, Russia will "secure that the EU fully follow the high standards established by it as to the admittance of new members" and consider as a reserve option, "a refusal to extend the PCA to cover those candidate-countries that, in spite of the existing agreements, do not ensure fulfillment of the generally recognized norms."<sup>18</sup> Brussels rejected Moscow's arguments and insisted that the EU-Russia PCA and the Protocol apply fully and equally to Russia and to all EU member states, whether old or new. To the relief of the ten candidate members, Brussels prevailed. After intense negotiations, the protocol was signed by EU and Russian representatives on 28 April 2004.

The accession of Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia to the Union could proceed as planned on 1 May 2004. A final period to the contretemps was placed on 21 October 2004 when the Russian Duma endorsed the Protocol.

#### Asymmetric economic relations

In the meanwhile, Russia was reaping the benefits of vastly expanding trade with the EU countries and taking full advantage of its most-favored-nation status in trade with the Union. Since 1995, the trade volume between the Union and Russia more than doubled. In 2005 the EU countries as a whole were Russia's principal trade partners and about 50% of Russia's total exports and imports went to the EU. For the Union, in 2005 Russia ranked as its third most important trade partner, both for exports and imports; the first two were the United States and China.<sup>19</sup>

Although these figures might be construed as suggesting that complementarity exists in EU-Russia economic relations, this is definitely not the case. The overall trade figures between EU and Russia in 2004 and 2005 reveal both interdependence and imbalance. In 2005 the EU's imports from Russia amounted to EUR 106.7 billion while exports added up to only EUR 56.4 billion. Thus, the EU incurred a trade deficit of about EUR 50.3 billion. Nearly 65% of the Union's imports from Russia consisted of gas and oil, while most (47%) of the Union's exports to Russia were machinery and transport equipment.<sup>20</sup> In fact, Russia provides about 50% of the total gas imported by the EU or 25% of total EU gas consumption, and over 30% of total crude oil and oil product imports or over 25% of total EU oil consumption.<sup>21</sup> In October 2005 the EU reported that Russia had become its single most important external supplier of natural gas and oil. It is relevant to note that these trends were already in the making before the Union's membership rose to 25.

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18 *The Russian Federation Middle Term Strategy towards the European Union (2000-2010)*. See [http://europa.eu.int/comm/external\\_relations/russia/russian\\_medium\\_term\\_strategy/index.htm](http://europa.eu.int/comm/external_relations/russia/russian_medium_term_strategy/index.htm). The Strategy is examined more closely later in this study, in the section on the PCA.

19 Unless otherwise noted, these and the subsequent figures cited in this section come from the Eurostat trade statistics available via the EU Bilateral Trade relations home page for Russia [http://europa.eu.int/comm/trade/issues/bilateral/countries/russia/index\\_en.htm](http://europa.eu.int/comm/trade/issues/bilateral/countries/russia/index_en.htm)

20 *Ibid.*

21 See <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1238&format=HTML&aged=0&language=EN&guiLanguage=en>

What is more, acting upon the suggestion of President Putin, the EU Commission withdrew in 2002 its earlier guideline that each member state should not import from any single, non-EU country more than 30% of any energy source that it consumes.<sup>22</sup>

Aware of these potentially disturbing trends, the subsequent EU authorities, with the new EU Commissioner on Energy Andris Piebalgs in the lead, have started to tackle the problems.<sup>23</sup> Other factors – some of them will be discussed forthwith – have also prompted the Union to reconsider its trade relations with Russia, work toward a more effective energy policy, activate the EU-Russia energy dialogue, as well as launch new initiatives concerning both free trade and the Energy Charter.<sup>24</sup>

Two events in 2005 served to prod the Union to act more resolutely: the North European Gas pipeline project and the so-called “Ukraine-Russia gas war” and its aftermath. The first one was the accord on 8 September 2005 to construct the North European Gas Pipeline extending through the Baltic Sea from Vyborg in Russia to Greifswald in Germany. It was signed by representatives of Russia’s gas monopoly *Gazprom* and the German companies *E.ON Ruhrgas* and *Wintershall* in the smiling presence of Chancellor Schröder and President Putin. Although the project has direct impact on many European countries, particularly those around the Baltic Sea, the decision was taken by Russia and Germany without consulting the others.<sup>25</sup> The first to object were the leaders of the Baltic States and Poland who protested that the construction of a gas pipeline through the Baltic Sea was excessively costly; endangered the environment; ignored the existing pipelines through Latvia, Lithuania and Poland which would have been an environmentally safe and a more economical means of sending gas westward; jeopardized Baltic and Polish access to the gas they needed; and made the four countries an easy prey for Russian machinations.<sup>26</sup>

The Polish and Baltic concerns elicited only polite reception after the signing of the accord on the North European Gas Pipeline, but with passing time the response has become more positive.<sup>27</sup> What is more, they have helped draw the attention of all EU member states to some fundamental issues in the realms of foreign policy, energy and competences that have not been resolved, namely:

- What are the responsibilities of the Union and what are the responsibilities of the individual member state?
- Where is convergence indispensable and where is divergence possible?

Concerning the three realms noted above, the larger and older EU members tend to keep as many decision-making options in their own hands and favour bilateral accords with other countries over EU accords; in contrast, the smaller and newer members tend to prefer all-Union policies. Hence, most of the smaller EU countries support a common EU policy on Russia. Considering these factors, how the EU handles the questions related to the Partnership and Cooperation Agreement with Russia could have broader implications for the EU as an organization and how it shapes its foreign relations in the future.

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22 The decision was formulated after consultation with member states on 27 September 2002; see [http://www.europa.eu.int/comm/energy/russia/issues/hydrocarbons\\_en.htm](http://www.europa.eu.int/comm/energy/russia/issues/hydrocarbons_en.htm)

23 For more detailed information, see [http://ec.europa.eu/energy/index\\_en.html](http://ec.europa.eu/energy/index_en.html), on external energy policy [http://ec.europa.eu/comm/external\\_relations/energy/index.htm](http://ec.europa.eu/comm/external_relations/energy/index.htm), the home page of Commissioner Piebalgs at [http://ec.europa.eu/commission\\_barroso/piebalgs/index\\_en.htm](http://ec.europa.eu/commission_barroso/piebalgs/index_en.htm), the EU *Green Paper “Energy”* at [http://ec.europa.eu/energy/green-paper-energy/index\\_en.htm](http://ec.europa.eu/energy/green-paper-energy/index_en.htm) and the EU-Russia Energy Dialogue, [http://ec.europa.eu/energy/russia/issues/trade\\_en.htm](http://ec.europa.eu/energy/russia/issues/trade_en.htm)

24 These initiatives will be discussed later in this study.

25 A broader discussion of the North European Gas Pipeline is provided by Dzintra Bungis, ibid.

26 Since the start of their drive for impendence, Latvia and Lithuania have had plenty of direct experience of Russia using the shutoff of the flow of oil and gas to exert pressure and obtain political and economic concessions. Currently Russia has been cutting off for longer periods of time the flow of oil to Lithuania’s Mazeikiiai Oil Refinery. The official explanation is the urgent need to repairs pipelines. Most Lithuanians, however, believe that the interruptions are intended to force Lithuania to reconsider the sale of the controlling interest of the Mazeikiiai refinery to a Polish company and accept the offer of a Russian company. Consequently, some Lithuanians are even contemplating retaliation by way of starting repairs on the railroad track running from Kaliningrad, through Lithuania, to Russia.

27 In August 2006 both the Swedish and Danish prime ministers expressed their concern about the environmental consequences on the Baltic Sea from the construction and the gas pipeline. Russia’s Foreign Ministry spokesman Konstantin Kosachev responded by upbraiding the Baltic States for their criticism of the Baltic gas pipeline project (BNS, 19 and 27 August 2006, *Interfax*, 28 August 2006).

The Ukrainian-Russian gas dispute, which turned tense in December 2005 and erupted in January 2006, has been frequently described as a sobering warning for much of Europe. Suddenly Central and Southern Europeans were confronted with a gas shortage and many related issues, which had not been adequately resolved. On 1 January 2006 Russia's *Gazprom* shut off the flow of gas to Ukraine; this resulted in substantially less gas going to Western European countries at different times throughout the month of January.<sup>28</sup> The response in the affected EU countries was swift and unequivocal. They blamed Russia for these problems and demanded a reassessment of the Union's energy policies and its reliance on Russia for energy resources; and they wanted a common European energy policy drafted whereby Europeans speak with one voice when dealing with energy-supplying countries. Clearly Moscow had miscalculated: by punishing Ukraine in this way for not bowing to *Gazprom's* demands of control over Ukrainian pipelines and alleged arrears in the payment of bills, Russia ruined its reputation elsewhere in Europe as a reliable supplier of gas and oil. Even the most Russophile European leaders had to admit that Russia does use gas and oil to pressure other countries so as to further its political and economic ambitions.

Although such realizations on the part of Europeans have dampened EU-Russia relations, they have not paralyzed them. All the while there has been considerable interaction in trying to solve various international problems. Indeed, such interaction increased and became more systematic after the PCA took effect. Interaction has been more effective in regions farther from rather than closer to Russia proper or the EU. Currently there is considerable cooperation in the efforts intended to bring a complete end to the war launched by Israel against the Hezbollah in Lebanon and Gaza and to prevent Iran from constructing nuclear weapons.

#### EU-Russia relations in 2006: toward more realism?

This cursory and selective overview of EU-Russia relations since 1997 has shown both upward and downward fluctuations. Kempe and Smith emphasize the role of energy issues and the growing gap in values and conclude that "The Russian Federation and the European Union are at loggerheads."<sup>29</sup>

Considered from a broader perspective, the relations now appear to be in a mixed phase that may lead to more realism in the efforts to chart future relations. Clearly, since 1997 both the political and economic interaction has expanded enormously. A direct and positive result is that both sides know each other better. But this does not mean that now the EU has a better opinion of or feels closer to Russia and vice versa. In fact, over the years, many illusions have crumbled. In the early 1990s the EU placed high hopes on the idea of rapprochement through shared values. It was accepted by President Yeltsin who endorsed democratic reforms in his country even if he found it difficult to implement them. Under President Putin such reforms have been largely forgotten and common values have been accorded only lip service. In fact, many Russian politicians now take pride in pointing out that their country is different from the European Union's members in that Russia is a "sovereign democracy."<sup>30</sup> All this has led to a sense of realism settling in. Both the Union and Russia seem to understand that they are fundamentally different and will probably remain different for some time to come. They also seem to understand – even if they are not ready to admit it

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28 The following countries reported an immediate drop (indicated in % after the country's name) in the gas coming from *Gazprom*: Austria 33%, France 30%, Germany – decline reported but amount not specified, Italy 24%, Poland 38.5%, Croatia 33%, Hungary 33%, Slovakia 30%, Romania 25% (AFP, 3 January 2006). Reduced gas flows were registered later that month in Austria, Hungary, Italy and Croatia. Subsequently, the Russian authorities blamed Ukraine for this: allegedly Ukraine had diverted some of the gas intended for transmission abroad for its own needs. The Ukrainian authorities denied these accusations (*Interfax*, 3 January 2006), but later they admitted to the diversions. On 23 August 2006 Ukraine's Prime Minister Viktor Yanukovich said: "Europe must know this and it must feel safe – we will not be siphoning the European gas from the pipeline in winter" (*Interfax*, 23 August 2006). This admission, however, does not change the validity of folk wisdom that one should not be overly dependent on any single supplier and should aim for a diversity of suppliers of an essential resource.

29 Kempe and Smith, *ibid.*

30 At a recent conference in Moscow, some of the participants criticized the notion of sovereign democracy. It is noteworthy that Vladislav Surkov, deputy head of the Kremlin administration, admitted that this notion appeals to the dignity of Russians; but he also cautioned against allowing the debate about democracy to obscure "key democratic principles: human rights and liberties." See *Interfax*, 30 August 2006.

publicly – that **calling themselves strategic partners in the agreements that they make does not transform the reality that in many respects they are actually competitors.** Yet, understanding this does not eliminate or diminish the necessity to cooperate. As the EU Commissioner of External Relations, Benita Ferrero-Waldner recently remarked, "Russia is a strategic partner. Russia is a very important neighbor and Russia sometimes is also an ally, but it is also a more and more assertive player on the world stage, so we have to get this relationship right."<sup>31</sup>

## The current EU-Russia PCA

The principal document governing the relations between the European Union and the Russian Federation is the EU-Russia Partnership and Cooperation Agreement; it can be briefly described as a rather idealistic umbrella agreement between the two sides.<sup>32</sup> The PCA with Russia and the PCAs that have been subsequently signed with other countries were modeled after the Europe Agreement (EA). Conceived in response to the desire for EU membership by post-communist Central and East European countries, the Europe Agreement was intended to promote a special relationship with the aspiring member countries. The EA is based on respect for human rights, democracy, the rule of law and the market economy – notions that underpin the Union and notions that were affirmed as essential elements of the EU membership criteria enunciated at the EU Copenhagen summit in June 1993. The importance of these notions has also been emphasized in the Partnership and Cooperation Agreements. Thus, the introduction and the first two articles of the PCA with Russia emphasize that the partnership is based on common values; according to Article 2:

Respect for democratic principles and human rights as defined in particular in the Helsinki Final Act and the Charter of Paris for a New Europe, underpins the internal and external policies of the Parties and constitutes an essential element of partnership and of this Agreement.<sup>33</sup>

While a PCA does not insist that the partner country be a functioning free market economy, the economic components of the Agreement have been drafted with a view of fostering a market economy in the partner country. The goal of a PCA is simply to deepen and widen the political and economic relations between the two partners. Unlike the Europe Agreement, the PCA has not been envisaged as a preparatory step toward EU accession. Consequently, questions have been raised about the practical wisdom of placing so much importance on notions, such as democratic reforms, that are a basic component of the membership criteria.

In the introduction of the PCA with Russia both sides express their commitment to the following goals and agreements: strengthening of the political and economic freedoms, promotion of international peace and security, full implementation of the CSCE Final Act and follow-up documents, European Energy Charter of 17 December 1991 and the Declaration of the Lucerne Conference [on Environment] of April 1993, rule of law, respect for human rights, democratic elections, market economy, liberalization of trade, regional cooperation, and the accomplishment of Russia's economic and political reforms. The EU also affirms its willingness to provide technical assistance for carrying out reforms.

The objectives of the partnership are: provide a framework for political dialogue between the parties; promote trade and investment and harmonious economic relations between the parties; strengthen political and economic freedoms; support Russian efforts to consolidate its democracy, to develop its economy and to complete the transformation into a market economy; provide a basis for economic, social, financial and

<sup>31</sup> *The EU Observer*, 4 September 2006; see <http://euobserver.com/9/22325>

<sup>32</sup> As an umbrella document, PCA seeks to provide the institutional framework and guidelines for broadly based cooperation and deals with many specific areas, including political dialogue; trade in goods and services; business and investment; financial and legislative cooperation; science and technology; education and training; energy, nuclear and space cooperation; environment; transport; culture; and cooperation on the prevention of illegal activities. By far the largest portion of the agreement is devoted to economic topics. Despite the wide range of topics that it covers, the PCA does not aim to be specific or practical, in terms of implementation. Subsequently, this has been assessed as a major shortcoming of the agreement. Other documents intended to shape EU-Russia relations have also been adopted. These fall into four categories and have been surveyed in the monograph by Rolfe Schuette, *EU-Russia Relations: Interests and Values – A European Perspective*, Washington D.C.: Carnegie Endowment for International Peace, 2004 and the study by Dzintra Bungs, *ibid.*

<sup>33</sup> See [http://europa.eu.int/comm/external\\_relations/ceeca/pca/pca\\_russia.pdf](http://europa.eu.int/comm/external_relations/ceeca/pca/pca_russia.pdf)

cultural cooperation; promote activities of joint interest; provide an appropriate framework for the gradual integration of Russia in a wider area of cooperation in Europe; and create the necessary conditions for the future establishment of a free trade area between the Community and Russia.

Over the years, the PCA has become a sprawling and confusing array of documents. The basic agreement consists of 112 articles of varying length, nearly as many appended annexes and accompanying texts. The agreement has been augmented by scores of additional documents that were agreed upon later and published separately. Illustrative of the latter are the two protocols necessitated by EU enlargement. The first protocol took account of Sweden's, Finland's and Austria's joining the EU. Moscow raised no objections in this regard and it entered into force in 2000.<sup>34</sup> The second protocol dealt with the accession of the ten new member states in 2004.<sup>35</sup>

## Assessment of the PCA with Russia: partial success

The EU-Russia PCA can only be described as a partial success.<sup>36</sup> The agreement has provided a framework for interaction, set in motion various mechanisms for regular dialogue and cooperation on the numerous issues of concern to both sides, as well as opened up broad possibilities for their further development. However, while having laid the foundations for a closer partnership, the PCA has not met the sundry expectations of both sides in terms of more specific ways and means of achieving commonly affirmed larger goals. The most telling evidence to substantiate such an assessment comes from subsequent events:

- 1) Each of the two parties to the treaty issued a position and strategy paper less than two years after the PCA took effect;
- 2) At the same time and without a clear explanation, the EU-Russia relationship was renamed a strategic partnership.
- 3) Six years after the treaty came into effect, both sides agreed to shape their relations along the lines of an additional accord, generally known as the Four Common Spaces.
- 4) All the while additional agreements were drafted to supplement the original.

These factors tend to strengthen the currently prevailing impression that over the years the relevance of the original document had shrunk and the PCA no longer reflects adequately the existing situation and the priorities. Similarly, the original PCA had been drawn up at a time when there was little awareness of the Union's energy dependency on Russia, when the EU itself had less power in justice and home affairs and when Russia had no prospect of becoming a member of the WTO.

## Other documents

As we have already noted, much of the PCA tends to be general rather than specific. This characteristic has turned out to be both an advantage and a detriment: it facilitated agreement – albeit at the lowest possible common denominator – while increasing the possibility of mere lip service to lofty goals and open interpretation of what the accords actually mean. An awareness that all this could result in frustration, finger-wagging over non-observation of points in the PCA, and eventual neglect of the agreement prompted each of the sides to take unilateral action. Thus, the *EU Common Strategy on Russia*<sup>37</sup> was adopted in Brussels on 4 June 1999. Unlike the PCA, it is a straightforward and relatively compact document

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34 See [http://europa.eu.int/comm/external\\_relations/russia/intro/index.htm](http://europa.eu.int/comm/external_relations/russia/intro/index.htm)

35 It is discussed in the context of EU-Russia relations in the preceding section.

36 This is the opinion of the author. It seems that so far the EU has not published (or has not made available to the general public) an overall assessment of the implementation of the treaty, although such an assessment would be useful in the process of drafting a new PCA. In the same vein, it would be useful to see a cost-effectiveness study of the financial assistance that the EU has provided for Russia.

37 For the full text of the Russian document, see [http://europa.eu.int/comm/external\\_relations/russia/russian\\_medium\\_term\\_strategy/index.htm](http://europa.eu.int/comm/external_relations/russia/russian_medium_term_strategy/index.htm). For the full text of the EU document, see [http://www.europa.eu.int/comm/external\\_relations/ceeca/com\\_strat/index.htm](http://www.europa.eu.int/comm/external_relations/ceeca/com_strat/index.htm)

intended to clarify the Union's position on Russia and what specific steps it intends to take in order to fulfill the PCA. This document is not something unique in the context of how the EU wishes to relate to individual countries. The idea of drafting common strategies to ensure coordination of relations with individual countries is an innovation of the Amsterdam Treaty. The common strategies

are decided by the European Council, on a recommendation from the Council, in areas where the Member States have important interests. Each strategy specifies its objectives, its duration and the resources that will have to be provided by the EU and the Member States. The Council implements them by adopting joint actions and common positions.<sup>38</sup>

Soon thereafter Moscow responded with *The Russian Federation Middle Term Strategy towards the European Union (2000 - 2010)*,<sup>39</sup> Vladimir Putin, in his capacity as Russia's prime minister, contributed significantly toward the drafting of this document and presented it in Brussels in October 1999.

**The EU Common Strategy on Russia** presents the Union's vision of its partnership with Russia already in the introduction:

A stable, democratic and prosperous Russia, firmly anchored in a united Europe free of new dividing lines, is essential to lasting peace on the continent. The issues, which the whole continent faces can be resolved only through ever closer cooperation between Russia and the European Union. The European Union welcomes Russia's return to its rightful place in the European family in a spirit of friendship, cooperation, fair accommodation of interests and on the foundations of shared values enshrined in the common heritage of European civilization.<sup>40</sup>

Part I of the document includes the Union's strategic goals and main objectives, as well as a survey of the instruments and means at its disposal to achieve them. Part II presents the areas of action upon which the EU intends to focus and Part III – the specific initiatives of the Union in order to implement this strategy. Part IV fixes the duration of the strategy (four years with the possibility of renewal and modification) and the formalities of adopting the document.

According to the Common Strategy, the Union has two sets of strategic goals:

- a stable, open and pluralistic democracy in Russia, governed by the rule of law and underpinning a prosperous market economy benefiting alike all the people of Russia and of the European Union;
- maintaining European stability, promoting global security and responding to the common challenges of the continent through intensified cooperation with Russia.

By way of explanation the document asserts that

The offer of a reinforced relationship, based on shared democratic values, will help Russia to assert its European identity and bring new opportunities to all the peoples of the continent. The enlargement of the Union will further increase these benefits and opportunities.

Thus, early on it is clear how highly the EU values democratic reforms. It is also clear that the EU wishes to allay Moscow's misgivings about the potentially negative effects of the Union's anticipated enlargement on Russia. The simple assertion, however, that EU enlargement will bring benefits to Russia is not sufficiently convincing. Moreover, considered from a broader perspective, enlargement has, in effect, added new challenges to the further development EU-Russia relations.

Emanating from the strategic goals is a brief discussion of the Union's four principal objectives:

1. Consolidation of democracy, the rule of law and transparent public institutions in Russia;
2. Integration of Russia into a common European and social area;

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38 See [http://www.europa.eu.int/comm/external\\_relations/ceeca/com\\_strat/index.htm](http://www.europa.eu.int/comm/external_relations/ceeca/com_strat/index.htm)

39 For the full text, see [http://europa.eu.int/comm/external\\_relations/russia/russian\\_medium\\_term\\_strategy/index.htm](http://europa.eu.int/comm/external_relations/russia/russian_medium_term_strategy/index.htm)

40 See [http://www.europa.eu.int/comm/external\\_relations/ceeca/com\\_strat/index.htm](http://www.europa.eu.int/comm/external_relations/ceeca/com_strat/index.htm). In this section, subsequent quotations from this document will not be separately footnoted.

3. Cooperation to strengthen stability and security in Europe and beyond;
4. Common challenges on the European continent.

Since the first point is rather self-explanatory, let us take a quick look at the others. The second point continues by affirming that „in the first instance, an operational market economy needs to be put in place“ and that the establishment of rule of law is „a prerequisite for the development of a market economy.“ The Union offers its support for „developing and adopting economic policies needed to strengthen the confidence necessary to increase domestic and foreign investment and to meet the requirements of international lenders“ and „Russia’s efforts in meeting the requirements of WTO membership“, as well as expertise on how to cope with the social aspects of economic transition. What is more, the Union will „examine how to create the necessary conditions, in addition to WTO accession, for the future establishment of an EU-Russia Free Trade Area.“ Thus, rather than making blank promises of outright assistance and investments, the Union is committing itself to helping Russia reform itself.

The third point corrects the unintended inferences that might be drawn from the previous point: it reaffirms that Russia is an essential partner in the strengthening of stability and security in Europe and beyond and the Union’s determination to cooperate with Russia. It also proposes that the EU-Russia „strategic partnership develop within the framework of a permanent policy and security dialogue“ through the enhancement and upgrading of the numerous opportunities for dialogue provided by the PCA. The upgrading of the Cooperation Council, created under the PCA, to a Permanent Cooperation Council at the EU-Russia summit in St. Petersburg in 2003, illustrates that the proposal has not been ignored.

Concerning the common challenges of the European continent, point 4 draws attention to sundry specific topics, ranging from the development of energy policies and nuclear safety; environment; cooperation in the fighting of organized crime, money-laundering, illegal trafficking in human beings, drug trafficking and illegal immigration; to regional cooperation. It is noteworthy that this point also comprises several sub-points that are now priorities in the current discussions between Brussels and Moscow, namely Russia’s ratification of the Energy Charter Treaty and continuing the Multilateral Transit Framework „which will enhance cooperation between Russia and its neighbors over access to the Russian pipeline system.“

Unlike the PCA, of which the lion’s share is devoted to economic topics, the Common Strategy reflects much more equitably all the Union’s main priorities and states rather specifically what the Union is willing to do so that they can be achieved. Although the Common Strategy was allowed to expire in 2004, this cursory examination of its content reveals that most of it, from the point of view of the Union, has not lost its relevance and may be worth reissuing in an updated version.

### ***The Russian Federation Middle Term Strategy towards the European Union (2000-2010)***<sup>41</sup>

was drafted as an indirect reply to the EU common strategy. Unlike the EU common strategy, it is still valid and clearly merits a closer look here. On the whole, it argues Russia’s case dispassionately and reasonably while taking into consideration the basic premises of the EU-Russia relations as covered in the PCA. It states Russia’s expectations and positions as well as its obligations. Like the PCA, most of it is devoted to economic matters: a leitmotiv throughout the entire document is Russia’s desire for foreign investments so as to develop its economy. In contrast with the EU Common Strategy, minimal attention is devoted to democratic reforms and the establishment of rule of law, even if these topics are not ignored.

Unlike the EU’s Common Strategy, the Russian Strategy reveals hardly a trace of idealism; it is primarily aimed at insuring national interests and enhancing the role and image of Russia in Europe and in the world through establishing the reliable pan-European system of collective security, and at mobilizing the economic potential and managerial experience of the European

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<sup>41</sup> For the full text, see [http://europa.eu.int/comm/external\\_relations/russia/russian\\_medium\\_term\\_strategy/index.htm](http://europa.eu.int/comm/external_relations/russia/russian_medium_term_strategy/index.htm). Subsequent references in this section to the content of Russian strategy or quotations from it will not be separately footnoted.

Union to promote the development of a socially oriented market economy of Russia based on the fair competition principles and further construction of a democratic rule-of-law State. In the transition period of reform, however, the protection of national production in certain sectors of economy is justified, subject to international law and experience.

The Strategy also seeks to develop and strengthen the strategic partnership between Russia and the EU in the European and world affairs and prevention and settlement, through common efforts, of local conflicts in Europe with an emphasis on supremacy of international law and non-use of force. It provides for the construction of a united Europe without dividing lines and the interrelated and balanced strengthening of the positions of Russia and the EU within an international community of the 21st century.

The Strategy states that the EU-Russia partnership will be based on treaty relations "without an officially stated objective of Russia's accession to or 'association' with the EU." By way of explanation, the document adds that

As a world power situated on two continents, Russia should retain its freedom to determine and implement its domestic and foreign policies, its status and advantages of an Euro-Asian state and the largest country of the CIS, independence of its position and activities at international organizations. From this point of view, partnership with the EU can manifest itself in joint efforts to establish an effective system of collective security in Europe on the basis of equality without dividing lines, including through the development and implementation of the Charter on European Security, in progress towards the creation of the Russia-European Union free trade zone, as well as in a high level of mutual confidence and cooperation in politics and economy.

Having explained in Section 1 Russia's idea of a strategic partnership with the Union, the subsequent 11 sections of the Strategy focus on specific areas of cooperation with the EU to which Russia intends to devote particular attention. In order to provide a quick overview of Russia's priorities, the titles of all 12 sections are listed below:

1. Strategic character of Russia-EU partnership.
2. Enlarging the format and improving the efficiency of the political dialogue.
3. Development of Mutual Trade and Investments.
4. Cooperation in the financial field.
5. Securing the Russian interests in an expanded European Union.
6. Development of the pan-European cooperation infrastructure.
7. Cooperation in the field of science and technologies, protection of the intellectual property rights.
8. Trans-boundary co-operation.
9. Development of the legal basis for cooperation. Approximation of the economic legislation and technical standards.
10. Cooperation in the law enforcement sphere.
11. The role of business circles in cooperation development.
12. Ensuring the implementation of the Strategy inside Russia.

After the decidedly self-assertive beginning, the tone of most of the rest of the document is matter-of-fact. In terms of content, the emphasis of the Russian strategy is on possibilities of cooperation. Occasionally the strategy also pays a compliment to the EU; for example, in Section 1.7 it is stated that Russia wishes

To use the positive experience of integration within the EU with a view to consolidating and developing integration processes in the CIS area. To strive for the coordination of activities with the member countries of the Customs Union and other CIS member states in the field of trade, political, economic, financial, humanitarian and other relations with the European Union.

After considering the Russian strategy in its entirety, Dov Lynch points out the similarities in content between it and the subsequent EU-Russia agreement on the Four Common Spaces. He considers the Strategy to be



a kind of precursor of the latter.<sup>42</sup> It would seem, therefore, that an awareness of the similarities could be useful when the content of the next PCA is negotiated between the EU and Russian representatives. Moreover, the entire Russian Strategy should be re-examined in Brussels for points of possible convergence with the current thinking in Europe.

**The Four Common Spaces.** Though initially it was no more than a nebulous initiative, the concept of the *Four Common Spaces*<sup>43</sup> was endorsed by the EU and Russian leaders at their 15<sup>th</sup> summit on 31 May 2003 in St. Petersburg. Its *raison d'être* was to foster and reinforce cooperation under the existing Partnership and Cooperation Agreement. Like the PCA, the concept of the *Four Spaces* is intended as a conceptual framework rather than an action plan. Unlike the PCA, where so much of the document is devoted to elements of economic cooperation, the concept accords great importance to the various practical ways of promoting and implementing European values. The *Four Common Spaces* are

- A common European economic space;
- A common space of freedom, security, and justice;
- A common space on external security;
- A common space for research and education.

Dov Lynch drew our attention to similarities in content between the Russian Strategy and the *Four Spaces*. What is more, he argued that "In line with the 1999 strategy's premise of engaging the EU without joining it, Russia now seeks to achieve a united Europe by creating four common spaces with the EU, to which Brussels officially agreed at the May 2003 EU-Russian summit in St. Petersburg."<sup>44</sup> While his observation about the similarities is valid, his other remark is debatable. For the sake of objectivity, we should note that the *Four Spaces* recall key points in the three pillars buttressing the European Union. It seems, therefore, that the authors of the concept wished to incorporate elements that are important to both the Union and Russia.

In St. Petersburg, the *Four Spaces* were envisaged as developing gradually. The Joint Statement issued at the conclusion of the summit explains that their refinement and implementation are to be achieved through Road Maps, which specify more definite objectives and determine the actions necessary to make them a reality. Conceivably, the Road Maps may serve as an agenda for specific cooperation between the EU and Russia in the medium-term. In May 2005 the summit in Moscow approved a single package of four Road Maps<sup>45</sup> to serve as the short and medium-term instruments for the creation of the *Four Common Spaces*. The following summits (London, October 2005 and Sochi, May 2006) dealt with the practical implementation of the Road Maps.

All four Road Maps are based on the premise of achieving progress through small, specific steps. Of the *Four Spaces*, the one devoted to a *Common European Economic Space* is the most fleshed out. In a nutshell, it seeks to develop a more open and integrated market between Russia and the EU. More specifically, efforts are to be devoted to bringing down barriers to trade and investment and fostering reforms and competitiveness, based on the principles of non-discrimination, transparency and good governance. Most of the steps – including dialogues – that have been taken have been relatively small; yet they have led to a number of very specific agreements on specific topics. In view of the broad range of topics<sup>46</sup> that the *Common Economic Space* includes, this would seem to be a sensible approach. Nonetheless,

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42 Lynch, *ibid*.

43 The concept of the *Four Common Spaces* will also be referred to in this study simply as the *Four Common Spaces* or just *Four Spaces*. For more information, see [http://ec.europa.eu/comm/external\\_relations/russia/intro/index.htm#com](http://ec.europa.eu/comm/external_relations/russia/intro/index.htm#com)

44 Lynch, *ibid*.

45 For the full text of the Road Maps, see [http://www.delrus.ec.europa.eu/en/p\\_494.htm](http://www.delrus.ec.europa.eu/en/p_494.htm)

46 Among the topics are the following: regulatory policy, investment issues, competition, financial services, telecommunications, transport, energy, space activities and space launching, regulatory policy, investment issues, competition, financial services, telecommunications, transport, energy, space activities and space launching. Also relevant are issues related to the environment, nuclear safety and the implementation of the Kyoto Protocol. See [http://ec.europa.eu/comm/external\\_relations/russia/intro/index.htm#com](http://ec.europa.eu/comm/external_relations/russia/intro/index.htm#com)

bigger steps are also envisaged. It is, therefore, relevant to note the EU's proposal to Russia in July 2006 concerning free trade.<sup>47</sup>

The *Road Map for the Common Space of Freedom, Security and Justice*, though reiterating the various common values and repeatedly stressing the commitment of both sides to them, does not actually deal with ways to ensure adherence to them. This Road Map focuses on topics of a cross-border nature, such as border management, migration issues, facilitating travel between all Europeans, the drafting of a readmission agreement, the common threat of organized crime, terrorism and other illegal activities. In this context, much attention has been devoted to the long-term project of visa-free travel. Initial agreements on the facilitation of the issuance of visas and on readmission were reached earlier in 2006.<sup>48</sup> Some progress has been made in other areas. In order to facilitate cooperation in the fight against terrorism and other forms of crime, it was decided to organize clusters of conferences and seminars to bring together the appropriate experts and practitioners, develop greater cooperation between the European Border Agency FRONTEX and Russia's Federal Border Security Service of Russia, as well explore the possibilities of an accord between EUROJUST and the Prosecutor General's Office of Russia.

The Road Map concerning the *Common Space on External Security* emphasizes "the shared responsibility of the parties for an international order based on effective multilateralism, their support for the central role of the UN, and for the effectiveness of, in particular, the OSCE and the Council of Europe."<sup>49</sup> Currently further cooperation is being developed in the five priority areas selected in the Road Map: strengthening dialogue and cooperation on the international scene; fight against terrorism<sup>50</sup>; non-proliferation of weapons of mass destruction (WMD); crisis management; and civil protection. Particular attention is being devoted to securing stability in the regions adjacent to Russian and EU borders and to the so-called frozen conflicts in Transnistria, Abkhazia, South Ossetia, and Nagorno-Karabakh; these issues are dealt with in the context of the first priority.<sup>51</sup> Here again we observe interaction between the different spaces and Road Maps.

The *Common Space on Research, Education and Culture* is being developed by building on the rather extensive, already existing agreements and programs of cooperation in scientific research (such as the EC–Russia Scientific and Technological Cooperation Agreement), education (such as the TEMPUS program and the Bologna process) and in the realm of culture. It is relevant to recall that both the EU and Russia affirm that the basis for cultural cooperation is their shared cultural and intellectual heritage. Furthermore, one of the three objectives of cooperation in the realm of culture is to

strengthen and enhance the European identity on the basis of common values, including freedom of expression, democratic functioning of the media, respect for human rights including the rights of persons belonging to minorities, and promotion of cultural and linguistic diversity as a basis for vitality of civil society in Europe without dividing lines.<sup>52</sup>

## The future of the PCA: options, conditions and caveats

In order to assess more realistically the future of the PCA with Russia, let us survey briefly the possibilities available under the current PCA. Then we shall discuss two of the options that have been recently

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47 George Parker and Andrew Bounds, "Europe Tries to Persuade Russia to Open Energy Market with Trade Deal", *The Financial Times*, 4 July 2006. See <https://registration.ft.com/registration/barrier?referer=&location=http%3A//www.ft.com/cms/s/cef64182-0af8-11db-b595-0000779e2340.html>. The EU proposal will be discussed later in this study.

48 For the full text of the agreements on readmission and the facilitation of the issuance of visas, see [http://www.delrus.ec.europa.eu/en/p\\_509.htm](http://www.delrus.ec.europa.eu/en/p_509.htm) and [http://www.delrus.ec.europa.eu/en/p\\_494.htm](http://www.delrus.ec.europa.eu/en/p_494.htm)

49 See [http://ec.europa.eu/comm/external\\_relations/russia/intro/index.htm#comm](http://ec.europa.eu/comm/external_relations/russia/intro/index.htm#comm)

50 This topic is also included in the *Road Map for the Common Space of External Security*.

51 Since the focus of this study is on the PCA, the complicated situation in these areas is not elucidated here.

52 See [http://ec.europa.eu/comm/external\\_relations/russia/intro/index.htm#comm](http://ec.europa.eu/comm/external_relations/russia/intro/index.htm#comm)

considered or are under consideration by scholars and by the European Commission. From the point of view of Latvia, both of the options have their merits.

The current PCA allows for basically three courses of action in connection with its expiry in November 2007. These are: 1. maintain the *status quo*; 2. allow the PCA to expire and thus terminate the agreement; 3. draft a new PCA. These options are rather self-explanatory. What are not so readily visible are the variations that are possible and the consequences that are implicit in each choice. Furthermore, the three courses of action or choices are not altogether mutually exclusive; for example, elements of one may resurface in another one. In this subsection, we shall, therefore, examine each of the three basic options and consider a few of the many possible variations and the implications of choosing one or the other possibility.

### Three basic choices and some of the possible variations:

#### 1. **Maintain the status quo.**

As we have already noted, in order to maintain the status quo, there is the possibility of automatic renewal of the PCA for a period of one year if neither side expresses opposition to the idea at least six months beforehand. Automatic renewal could be

- a. a temporary solution in order to revise the existing PCA;
- b. or a temporary solution in order to win more time either to complete the formalities of the preparation for a new PCA coming into force or to actively seek a new mutually acceptable agreement – either another PCA or something else.
- c. or a semi-permanent solution because the time is not ripe for making revisions or actively seeking other solutions.

#### 2. **Allow the PCA to terminate.**

a. Expiration and termination of the PCA is possible if one party decides not to renew the existing PCA. Although in theory such a **unilateral decision** should affect only the fate of the treaty, rather than the bilateral relationship as a whole, in reality it would strongly suggest that one side is dissatisfied with the current state of relations in general. The consequences of such a signal cannot be forecast, but they are likely to be negative for the most part.

b. After jointly concluding that the current PCA has become essentially irrelevant or so behind the times that nothing would be lost if it were no longer in effect, make a **joint decision** to let it expire and continue the relations on the basis of other existing agreements. In theory, such a step would result in a kind of **tabula rasa situation** unencumbered by old agreements and would facilitate a reassessment of EU-Russia relations from a fresh point of view. In all likelihood, however, the absence of a PCA in EU-Russia relations would hardly be noticeable on 1 December 2007 or for some time thereafter because most of the accustomed modes of cooperation would still be functioning. What would have to be done as quickly as possible is to sort out and assess the value and validity of other EU-Russia agreements when there no longer is a PCA. If something essential is missing, a solution would have to be found. Only after a thorough reflection, draft the agreements that are necessary.

#### 3. **Draft a new agreement.** There are two different ways to implement this option:

- a. draft a **fundamentally new treaty** with fresh ideas that would differ significantly from the current PCA and call it by another name.
- b. draft a **new PCA**, incorporating "the best practices" of the past (i.e. adapt those ideas of the current PCA or other agreements, such as the concept of the Four Common Spaces, that have proven to be useful) to better meet the needs and requirements in the foreseeable future.

Since both of the choices above mandate ratification of the treaty by all parties affected, several additional tasks will have to be undertaken; among these are:

**a. Concrete provisions for a period of transition** are needed because the ratification process involves all 25 EU member countries and the Russian Federation and it will inevitably require several years.

**b. “Worst case” response** must be formulated because, as the unsuccessful effort to ratify the Constitutional Treaty shows, the results of the ratification process cannot be predicted. There should be a supplementary draft accord on the steps to be taken if the treaty is not ratified by everyone; in addition, a list of the agreements that are in force regardless of the outcome of the ratification process should be made. The draft accord must accompany the final draft of the treaty when it is presented for signature to the EU and Russian leaders and when it is sent to each country for ratification.

Each of the choices comes with concomitant **legal “strings”** attached. They have to be taken into consideration in the decision-making process. There is, for example, an appropriate legal form and procedures for implementing the one or the other choice and these cannot be ignored. Since the focus of this study is not on the complicated legal personality of the European Union but primarily on the political and, to a lesser extent, the economic aspects of the future of the Partnership and Cooperation Agreement with Russia, we shall continue our discussion along those lines. However, given the crucial importance of the legal aspects of treaty drafting, these will be summarized in the **Annex** attached to this study.

## Choices under consideration

A number of independent scholars and experts, as well as the EU Commission, have analyzed the three basic choices and made a number of very different conclusions and proposals. Below we shall examine and compare different sets of concrete proposals. What is noteworthy is that despite their differences, all of them either state or clearly imply that current PCA is obsolete and, therefore, unacceptable as a document for the medium or the longer term. Renewal of the PCA might be considered only for a limited period of time if this is necessary to bridge the gap in time until a new agreement takes effect. The option of simply revising and updating the current PCA is seen as wasted effort and therefore also dismissed. Likewise, apparently rejected is a strict *tabula rasa* situation where there is no joint legal document attesting to the fact of the ongoing, multi-faceted relations between the EU and Russia. These views are also shared by the author of this study. The choices that remain under consideration are therefore essentially two:

- seeking a new and different approach EU-Russia relations, or
- drafting a new and better agreement as quickly as is feasible because it is preferable that EU-Russia relations are guided by a framework treaty rather than allowed to just happen.

The most radical of these is the first one and we shall call it henceforth *Option 1*. It is proposed by Michael Emerson, Senior Research Fellow at the Centre for European Policy Studies (CEPS) in Brussels and former Ambassador of the EU to Russia and his two colleagues at CEPS: Research Fellows Fabrizio Tassinari and Marius Vahl.<sup>53</sup> The choice of drafting a new agreement is favored by the European Commission, as well as the German scholar Iris Kempe and the Finnish scholar Hanna Smith.<sup>54</sup> It will be examined as *Option 2*.

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53 See the study by Michael Emerson, Fabrizio Tassinari, and Marius Vahl, “A New Agreement between the EU and Russia: Why, what and when?” which is published by the Centre for European Policy Studies in Brussels in May 2006; see [http://shop.ceps.be/BookDetail.php?item\\_id=1331](http://shop.ceps.be/BookDetail.php?item_id=1331) and <http://www.ceps.be>. Since this subsection excerpts and summarises their ideas, the subsequent quotations will not be individually footnoted. In later references to their work, only the authors’ last names will be used.

54 Kempe and Smith, *ibid*.

### **Option 1**

In arriving at their proposal, Emerson, Tassinari and Vahl analyzed the following scenarios:

1. Retire the PCA without replacement
2. Extend the *status quo*
3. Extend the *status quo*, adding a Political Declaration on Strategic Partnership
4. Replace the PCA with a short Treaty on Strategic Partnership
5. Replace the PCA with a comprehensive Treaty on Strategic Partnership
6. Negotiate a Treaty of Strategic Union

After noting that the current model of the PCA, a comprehensive multi-sectoral treaty, is a weaker derivative of the treaties signed with countries aspiring to EU membership, they argue against replicating this model in a new treaty with Russia, because it "is not suited to the case of Russia, which is not an applicant for membership" and the result would be "long-winded and pretentious texts that are thin or devoid of legally-binding substance." Instead of a treaty, they propose for the foreseeable future concrete, sector-specific agreements that are in harmony with the new conceptual approach. Interestingly, their approach includes variations of some of the mechanisms that have been successfully used by the EU in shaping its relations with India, considered an emerging global power. More specifically, the authors

advocate a three-stage concept, starting with an extended *status quo* in the short-run (scenario 2), trying to give useful effect to the four Common Spaces agreed in May 2005 and various sector-specific agreements. This could lead on in the medium-term to a Political Declaration on Strategic Partnership (scenario 3) to revise and update priorities after Russia's WTO accession [and Russia's ratification of the Energy Charter] and more experience with the four Common Spaces. [This would also be the time to retire the PCA.] In the long term, we would like to see a Treaty of Strategic Union (scenario 6), as and when there is a greater convergence and mutual trust on matters of political values.

The principal advantages to this concept is that it combines a longer-term, idealistic vision with the possibility of a step-by-step, goal-oriented approach that allows for flexibility and avoids the potential risks and disadvantages associated with a new treaty. They advise against attempting to draft a new treaty at this time on the grounds that the overall result would be vulnerable to "inflexibility and rapid obsolescence of the substance," as well as "risks of rejection of ratification in some member state."

At the same time, the authors concede readily that today, when the Union and Russia seem to be moving farther apart rather than coming closer, the Treaty of Strategic Union, which they propose, can be no more than a "mental exercise." Their treaty presupposes the creation of a kind of ideal Europe; it would affirm a partnership of equals, a determination to replace old enmities with a totally new paradigm of common purpose, the building of complete trust on fundamental matters, and search for full agreement in as many domains of common interest as possible.

The authors realize that in order to lay the groundwork for preparing such a treaty, both sides would have to meet certain prerequisites. The EU would have to

build up its capacity as strategic international actor, for example with at least implantation of the draft Constitution's proposal for a foreign minister and enhanced security and defense capabilities, and perhaps also a single seat in the UN Security Council.

The prerequisites for the Russian Federation are even more ambitious: it would have to become a genuine democracy, redefine its current security doctrine, change the prevailing mind-set of the governing class and the "power ministries" and then attempt to resolve the "frozen conflicts" in which it is involved.

### **Option 2**

The idea of drafting a new and better agreement with Russia, rather than simply extending the current PCA or retiring it altogether enjoys wide support. It is, for example, favored by the top EU officials, the European Commission, and a number of European scholars, including Iris Kempe and Hanna Smith, as

well as the Russian government and many Russian scholars. As Javier Solana, EU High Representative for Common Foreign and Security Policy, has said,

A great deal has changed both in the EU and in Russia since the Partnership and Cooperation Agreement came into force nearly ten years ago. Russia is now a different country and is, for example, in the process of joining the WTO. The EU has grown in size and has developed its common foreign and security policy. We need to update our contractual relationship [with Russia] to better reflect these changes and allow us to deepen our relationship further.<sup>55</sup>

This idea was endorsed by the 17<sup>th</sup> EU-Russia summit, which took place on 25 May 2006 in Sochi:

The leaders discussed the future EU-Russia relations after the expiry of the first period of validity of the Partnership and Co-operation Agreement (PCA) in 2007. They looked forward to the start of negotiations for a new agreement, which should provide a comprehensive and durable framework for the EU-Russia strategic partnership and agreed to allow the PCA remain valid until a new agreement enters into force.<sup>56</sup>

Clearly, such references to a new agreement are vague and could be misinterpreted; as Kempe and Smith observe, „The thought of a fully new, legally binding agreement between Russia and the EU horrifies most of the officials in the foreign policy establishment.“ In general, what seems to be meant is a legally binding agreement, which, though differing significantly from the current PCA, maintains a certain amount of continuity with the PCA. Kempe and Smith, therefore, refer to it as PCA II while others suggest different names so as to accentuate the differences rather than the similarities with the PCA. At this stage, the European Commission prefers to skirt the issue by simply talking about the new agreement with Russia.

An often heard wish is that the new agreement should be bolder, more innovative and more specific about how cooperation could be both broader and deeper, but how this is to be achieved is not clear. As for the content, there seems to be a consensus that the new agreement should be better balanced in its coverage of the wide range of areas of cooperation between the Union and Russia. Furthermore, all the successful initiatives that began after the PCA took effect, most notably the Four Common Spaces and the Northern Dimension, should be brought under the umbrella of the new comprehensive framework agreement. Heretofore, the relationship to the PCA of these initiatives was necessarily somewhat vague in that the initiatives affirmed that they were conceived in the spirit of the aims of the PCA, whereas no official recognition of this appeared in the PCA.

There are even suggestions that the table of contents reflect the Four Common Spaces and be supplemented with other topics. This seems to be the case in the documents circulated by the European Commission in Brussels. As if foreseeing such a trend, Kempe and Smith advise against according the Four Common Spaces so much importance because they are sectoral agreements and do not reflect „the architecture of the future of Europe or create opportunities to bring Russia closer to Euro-Atlantic structures,<sup>57</sup> elements, which they believe to be essential in the new agreement.

The European Commission approved on 3 July 2006 draft negotiating directives for a new EU-Russia Agreement. These include an overview of the content of the new agreement, which is envisaged as legally binding and providing an updated and more ambitious framework for the relationship. The draft directives are being circulated only among EU officials. Though the full texts of these documents are not yet available to the general public, they are not considered to be top secret. Enough information has become available to gain an overall impression of the thinking in the Commission about the new agreement with Russia. In a nutshell,

The Commission is proposing an agreement, which covers the whole range of EU-Russia cooperation, with a particular focus on progressive deepening and development of trade relations and fair and open development of the energy relationship between the EU and Russia. The

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55 See *Interfax*, 24 May 2006.

56 See [http://www.delrus.ec.europa.eu/en/news\\_802.htm](http://www.delrus.ec.europa.eu/en/news_802.htm)

57 Kempe and Smith, *ibid*.

Commission will work with the Finnish Presidency to seek the agreement of the Council on the negotiating directives before the end of the year, and negotiations with the Russians can start as soon as possible thereafter.<sup>58</sup>

In fact, according to Finland's Minister of Foreign Affairs, Erkki Tuomioja, the EU is hoping to start negotiations covering future strategic relations with Russia in November 2006 after a bilateral summit.<sup>59</sup> He believes that the EU negotiating mandate can be finalized by then because no substantial differences over the draft mandate had surfaced among the EU ministers at their meeting in early September.<sup>60</sup> All these plans and preparations suggest that of the two options that we have considered, **Option 2 is clearly the top runner in Brussels.**

Regarding the new agreement, the Commission wants it to be based on the recognition of common values such as democracy, human rights and the rule of law. This should be reaffirmed already in the Objectives of the new Agreement. In addition, the Commission would like the agreement to express "ambitious objectives on political and external security cooperation, effective multilateralism, provisions on the fight against organized crime, [weapons of mass destruction], migration and asylum, and counter-terrorism."<sup>61</sup> Two points that both the Commissioner on External Relations and Neighborhood Policy Benita Ferrero-Waldner and the Commission emphasize in particular are

- the consolidation of the EU-Russia energy relationship which must be based on reciprocity, fair and equal access and a level playing field,
- and further development of EU-Russia trade relations.<sup>62</sup>

## **Key components of current and future EU-Russia relations: trade and energy**

Just how important the interrelated components of energy and trade are in the relations between the Union and Russia is well illustrated not only by statistical information and the emphasis that is placed on them in the context of drafting a new agreement on bilateral relations, but also by the initiatives in this regard that the EU proposed in summer 2006. The latter show that Brussels wants the outstanding issues resolved as quickly as possible and that it does not want to wait until these issues are clarified and to some extent also resolved by other agreements that are anticipated: Russia's admission into the World Trade Organization (WTO) and the new EU-Russia framework agreement.

The EU is currently focusing on two specific goals: it would like to persuade Russia to ratify the Energy Charter Treaty, which came into force in 1998 and which has been signed by 51 countries, including Russia and ratified by 46. This has been a long-sought aim of the Union because, as Solana told a Russian reporter on the eve of the EU-Russia Summit in May 2006, the Energy Charter Treaty

establishes principles and mechanisms that ensure that international energy cooperation is fair, effective, transparent and predictable. If Russia had already ratified this Treaty, I am convinced it would have been easier to find a good and fair solution to the dispute with Ukraine at the beginning of this year. Russia has everything to gain from ratifying the Treaty.<sup>63</sup>

The Commission would like to be able to address this issue during the upcoming EU-Russia energy conference in October and be able to report genuine progress afterwards. One of the main stumbling blocks is the Transit Protocol, which has been added to the Treaty and which Russia sees as disadvantageous. Under the Treaty, Russia would have to open its oil and gas pipelines to third party

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58 See the press release issued by the Commission, <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/06/910&format=HTML&aged=0&language=EN&guiLanguage=en>

59 Since Poland has refused to endorse these discussions on account of Russia's trade policies toward Poland, the earlier timetable will necessarily undergo changes.

60 See *EU Observer*, 4 September 2006, <http://euobserver.com/9/22325>

61 See the press release issued by the Commission, <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/06/910&format=HTML&aged=0&language=EN&guiLanguage=en>

62 *Ibid.*

63 *Interfax*, 24 May 2004.

traffic and allow greater competition in energy – something that it does not want to do. Consequently, President Putin's reaction is blunt: "The question is what will we get in return? We ask where your deposits and pipelines are. If [Europe] does not have any, then we have to look for other areas of cooperation."<sup>64</sup>

The EU has responded directly by negotiating on the contentious points and indirectly by offering something that Russia would like: the chance to conclude a preferential trade agreement and the possibility of better access to Europe's lucrative internal market provided Moscow agrees to ease the EU's growing concern about energy security.<sup>65</sup>

Although a Free Trade Agreement with Russia was already mentioned in the PCA and the EU recognizes that it would also benefit from such an accord, Russia has to fulfill certain prerequisites, which happen to be also preconditions for membership of World Trade Organization (WTO). Understandably, the EU is making the offer of a Free Trade Agreement with Russia conditional upon Russia's accession to the WTO. Russia has been trying to join the WTO since 1994. While the Union has supported Russia in these efforts, it cannot and does not want to alter the WTO membership requirements. Besides, Russia's membership of the WTO would have a positive effect on the new EU-Russia framework agreement in that many of points regarding economic cooperation, which the EU upholds and which must be included in the bilateral agreement, would have become redundant once Russia joins the WTO. The offer, however, is not contingent upon the new EU-Russia framework agreement and could, therefore, come into effect when Russia is welcomed into the WTO. This could conceivably happen before the EU-Russia bilateral agreement is ratified.

All this raises the question of the necessity of a free trade agreement with a country that belongs to the WTO. A direct answer comes from the aides of EU Trade Commissioner Peter Mandelson: while the EU remains fully committed to the WTO as the "engine room" of the global economy, the Commissioner is also convinced that bilateral and regional accords can add value to the multilateral approach that the EU is currently pursuing.<sup>66</sup> Furthermore, acting upon the Lisbon Agenda of 2000, in recent years the EU has been trying to improve its economic competitiveness in the world. Believing that one of the ways to boost competitiveness is through bilateral trade agreements, the Commission intends to issue in September or October 2006 two Communications outlining "a strategy for promoting competitiveness through trade and trade policies and a renewed European strategy for improved market access."<sup>67</sup>

## Concluding remarks: implications, challenges and opportunities for Latvia

Since both the EU and Russia have stated that they want to shape their future relations by a new framework treaty to be negotiated in the foreseeable future, Latvia should strive to contribute to the drafting process by offering well-considered and practical suggestions to the Commission. These suggestions should be formulated and offered in the spirit of the common good, rather than merely as a reflection of Latvia's national interests.

Having shared a border and interacted with Russia for several centuries, it is essential for Latvia to have good, cooperative relations with its biggest neighbour in the future. A well-drafted, comprehensive multi-sectoral treaty between the European Union and the Russian Federation is in Latvia's best interests in that many of the bilateral aspects of Latvian-Russian relations could be better dealt with in the framework

64 LETA, 26 May 2006; see also <http://www.euractiv.com/en/energy/eu-russia-energy-charter-deal-autumn/article-156253>

65 For additional information, read George Parker and Andrew Bounds, "Europe Tries to Persuade Russia to Open Energy Market with Trade Deal", *The Financial Times*, 4 July 2006, see <https://registration.ft.com/registration/barrier?referer=&location=http%3A//www.ft.com/cms/s/cef64182-0af8-11db-b595-0000779e2340.html>. Read Andrew E. Kramer, "For energy, EU offers Russia a 'carrot'", *The International Herald Tribune*, 3 July 2006, see <http://www.iht.com/articles/2006/07/03/business/trade.php>

66 See <http://www.euractiv.com/en/trade/eu-boost-competitiveness-bilateral-trade-agreements/article-157120>. See also Mandelson's speech on external trade and competitiveness, [http://ec.europa.eu/comm/commission\\_barroso/mandelson/speeches\\_articles/mandelson\\_sptemplate.cfm?LangId=EN&temp=spmm015\\_en](http://ec.europa.eu/comm/commission_barroso/mandelson/speeches_articles/mandelson_sptemplate.cfm?LangId=EN&temp=spmm015_en)

67 See <http://www.euractiv.com/en/trade/eu-boost-competitiveness-bilateral-trade-agreements/article-157120>



of EU-Russia relations. Besides, a good EU-Russia agreement would serve to advance the formulation of a common EU policy toward Russia, something, which Latvia believes in. It should also clarify and better define what areas of interaction are to be considered as issues belonging to the realm of bilateral relations and which ones belong to the realm of all-Union relations; this is also an aspect of high relevance for Latvia.

Clearly, Latvia should follow carefully and try to make a maximum contribution in the formulation of EU-Russia accords on energy and trade, since these are distinct priority areas for Latvia. In the discussions with other EU member states, Latvia should present dispassionately and objectively its experiences with Russia as a supplier of gas and oil and as a partner in the transit of goods and natural resources. Besides informing the EU partners about the situation of the port of Ventspils, the discriminatory transit tariffs, and other problems, Latvia should also recount the positive experiences with Russia and explain how it intends to meet the current challenges.

How can Latvia make its contributions effectively? How can it better promote its own interests? While there is no magic recipe to achieve this, there is something that Latvia should attend to as quickly as possible. In order to be heard and preclude the possibility of being misunderstood, Latvia must correct the prevalent impression among many European countries that it is an unrelenting hardliner in all matters that concern the Russian Federation and would actually prefer to turn its back on Russia. This is clearly not true, but too many Europeans do not understand this. The observation by Kempe and Smith is a telling example:

the Baltic states are almost deliberately neglecting relations [with Russia], as a result of their conception of the Russian enemy that related to legacies of the past Soviet occupation. These national differences demonstrate that an EU with 25 member states is challenged to find a consensus on Russian relations, combining countries conducting a Russia-first approach with other countries opting for maximum strategic distance.

Such a public image is detrimental if Latvia wants to enhance its standing in the EU and develop constructively its relations with Russia and it needs to be corrected. **Latvia should try to position itself somewhere in the centre of the spectrum of EU member states.** Consequently, Latvia should strive to persuade the other EU member states that, like Finland, it wants to have relations with Russia that are cooperative and pragmatic. Here the recent visits to Latvia by Patriarch Alexei II of the Russian Orthodox Church and former President Boris Yeltsin illustrate well Latvia's hospitality and openness to normal, good-neighbourly relations with Russia.

Latvia might also consider **initiating a movement to adopt a new EU Strategy on Russia** that is compact and goal-oriented, particularly in the realms of democratic reforms and rule of law, which are areas where the Road Maps are not particularly strong. Knowing the many EU leaders are reluctant to take on drafting another treaty, and risk failure as a consequence of the draft document not obtaining full endorsement through ratification, a strategy document has the advantage of simpler adoption procedure and not needing the consent of Russia at a time when it may be electing a new president, i.e. in 2008. The Strategy could adapt many points in the one that was formulated and endorsed by the 15 – now senior – members of the EU in 1999 and functioned until 2004. It could also refer to points of convergence with the Russian Strategy, which is valid until 2010.

Looking at all these considerations related to a new EU-Russia framework agreement and potentially also new agreements on trade and energy from a more distant perspective, it is clear that they represent great challenges for Latvia. At the same time, Latvia has every reason to meet those challenges successfully and turn them into **opportunities for raising its standing in the European Union and improving its relations with Russia.**

## ANNEX

Concomitant with a comparison of agreements such as the PCA on the one hand, and the Four Common Spaces agreements, action plans and strategies is the issue of legal form. Agreements such as the PCA are

treaties, which have the highest status in international law and are binding in their content. The Four Common Spaces and Action Plan documents are agreements signed by the two parties, but are not subject to ratification, which would give them the status of treaties. The strategies are unilateral documents.

The best capsule overview of the legal aspects appears in the joint study by Michael Emerson, Fabrizio Tassinari, and Marius Vahl and it is reproduced below:

On the EU side, the legal issues are particularly complex for comprehensive agreements that mix issues where the European Community has exclusive competence such as for trade policy, others areas such as energy where the competences are shared between the European Community and member states, and other areas such as foreign and security policy where the formal competence lies mainly with the Union as such and the member states.

If the EU and Russia were to embark upon the negotiation of a comprehensive agreement covering roughly the policy areas covered in the Four Common Spaces, it would be a first example for the EU of a 'multi-pillar' agreement. There are different procedures for the conclusion of Community and Union agreements, set out in Art. 300 EC and Art. 24 TEU, respectively. The Treaties provide no clear guidelines as to how such a 'cross-pillar' agreement should be concluded. There are for instance no provisions in the Treaties on how the negotiations should be conducted. In order to comply with the Treaties, it would have to be negotiated by both the Commission (the normal practice for mixed association agreements) and the Presidency (which concludes Union agreements on CFSP and JHA).

*Box 2. Legal aspects of an upgraded agreement between the EU and Russia*

**A European Community agreement?**

While treaty revisions in recent decades have added to the number of provisions providing for international agreements, the two original provisions – for **trade and tariff agreements** (Art. 133 EC) and **association agreements** (Art. 310 EC) – remain the dominant types of Community agreements concluded by the EU, with many sector-specific agreements also concluded on the basis of Art. 310). The PCA is a trade and tariff agreement (i.e. based on Art. 133 EC).

Comprehensive agreements with third countries are increasingly concluded as association agreements. This is the case not just with accession candidates but also with Southern Mediterranean partners, and not just with neighbors but also with countries as far away Chile. There are mainly two reasons for this. First, association agreements are not limited to any particular policy area, as are trade and tariff agreements and other sector-specific agreements provided for in the treaties. Secondly, it is preferred by the member states, as it requires unanimity in the Council. Trade and tariff agreements by contrast (as well as some other sector-specific agreements), are adopted in the Council by qualified majority vote.

The assent of the European Parliament is required for association agreements, but not for agreements concluded on the basis of Art. 133 EC. Such assent is also required when an agreement establishes "a specific institutional framework by organizing cooperation procedures" and/ or have budgetary implications for the Community.

**A mixed agreement?**

Most agreements between the EU and third countries, including the PCA, are concluded by both the Community and the Member States acting jointly, even if there are no specific provisions in the treaties for such 'mixed agreements'. The principal reason is to enable the EU to conduct political dialogue – which the Community as such does not have the competence to conduct – within the framework of the agreement. Mixed agreements are mostly negotiated under the Community method, although there is no formally established practice for negotiation of mixed agreements, and in practice they are ratified by the national parliaments of all member states. The PCA is a mixed agreement, and a new supposedly more ambitious agreement would surely also be a mixed agreement.

**A European Union agreement?**

Art. 24 of the Treaty on European Union provides for international agreements to be concluded by the Union as such in areas covered by the **Common Foreign and Security Policy** and **police and judicial cooperation in criminal matters** (the aspects of justice and home affairs covered by the third pillar of the EU). Two of the four Road Maps are dedicated to these two policy areas, and these topics would presumably be included in a new agreement. Such an agreement would likely be concluded between Russia and the Union as such, i.e. based also on Art. 24 TEU. However, an alternative would be to leave these areas out of the new 'comprehensive' agreement and conclude separate agreements in these policy areas in parallel.

This also affects the ratification process, since with 'mixed' agreements there has to be ratification by all 25 member states, both the governments represented in the Council, national, and in some cases sub-national parliaments, as well as the assent of the European Parliament. This heavy ratification procedure in any case means considerable delay, and therefore rigidity. The EU now with 25 and soon 27 member states also faces increased risks of one or other national parliaments failing to ratify, and thus negating years of negotiation work. This risk seems especially pertinent in the case of a future agreement with Russia, given the wide dispersion of political sentiments towards Russia in the enlarged EU.

Source: Michael Emerson, Fabrizio Tassinari, and Marius Vahl, "A New Agreement between the EU and Russia: Why, what and when?", published by the Centre for European Policy Studies in Brussels in May 2006, ([http://shop.ceps.be/BookDetail.php?item\\_id=1331](http://shop.ceps.be/BookDetail.php?item_id=1331)).



# Negotiating a New EU–Russia Agreement

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## Executive Summary

The Partnership and Cooperation Agreement (PCA) between the EU and Russia was signed on 24<sup>th</sup> of June 1994, and entered into force on 1<sup>st</sup> of December 1997. It expires by 1<sup>st</sup> of December 2007 although it can be renewed year by year provided that neither Party withdraws from the agreement. Approaching this date, the issue became the subject of political consultations between the Commission and the government of Russia. At the summit meeting in Sochi in May 2006, Russia and the EU reconfirmed that they intended to negotiate a new agreement, which should provide a comprehensive and durable framework for the EU–Russia strategic partnership and agreed to allow the PCA to remain valid until a new agreement enters into force.

On the 3<sup>rd</sup> of July, 2006, the Commission agreed on draft negotiating directives seeking a new legally binding agreement with Russia to be based on the recognition of common values, to adopt ambitious objectives on political and external security cooperation, effective multilateralism, provisions on the fight against organized crime, weapons of mass destruction, migration and asylum, and counter-terrorism. In particular, the Commission seeks to consolidate the EU–Russia energy relationship and to promote trade relations with Russia. It is expected that the European Council will agree on the negotiating directives later in 2006, and the negotiations would start soon thereafter.

Over the past years, the PCA was most instrumental in taking the EU–Russia cooperation to a new level. The parties largely granted each other the most-favored-nation treatment without waiting for Russia's accession to the WTO. It has also established a mechanism for political dialogue to address issues of common interest. In 2005, Russia became the third largest trade partner of the European Union. Cooperation between the partners has expanded to other fields, such as external security, justice and home affairs, education and culture.

At the same time, the partnership went through an ongoing redefinition. The regress in anchoring the rule of law under President Putin has concern in Europe as to whether the partnership with Russia can any longer be founded on shared values. In Russia, the relative economic well being and the rediscovery of great power aspirations eroded the acceptance of the conditionality between progress in economic and political reforms and the evolving partnership established by the PCA. Since 1999, both sides defined their relationship in terms of a "strategic partnership". More recently, they started to define it rather in terms of mutual interdependence.

**The rationale of a new agreement** is supported by a number of arguments. Both, Russia and the European Union have changed profoundly over the past years making many of the PCA provisions obsolete. The EU–Russia cooperation has expanded to new areas that were not covered by the PCA. Most of the trade related provisions of the PCA will become obsolete after Russia’s accession to the WTO. The mechanism for political dialogue has undergone a profound evolution, and the new agreement shall bring the respective provisions up to date and improve them.

Although these arguments speak for an adapted, updated or modernized EU–Russia agreement, the 2007 deadline does not appear critical. Economically, negotiating a new agreement before Russia’s accession to the WTO is premature. Concluding a profoundly new agreement soon thereafter appears unnecessary and unrealistic. The PCA has not yet outlived its purpose. It has not been, and it is unlikely to become an obstacle for progress and expansion of cooperation between the EU and Russia any time soon. Its expiration in 2007 has rather provided a convenient excuse for a predominantly politically motivated desire to renegotiate the legal grounds of this cooperation.

Several **options** for proceeding in 2007 were raised during the Russian debate over that deadline. They included, inter alia: extending the agreement; replacing the legally binding agreement by a political declaration complemented by a number of sectoral agreements; negotiating a new legally binding instrument; updating the PCA by amending it. Already at the early stages of the debate, the modernization option received the support of the majority of Russian experts and of the government. It has evolved as the mutually acceptable ground for both parties. By the time of this writing, there is a consensus that: the PCA shall be adapted (modernized); the new agreement shall be legally binding; the parties will take their time to negotiate it thoroughly, and the PCA will be extended annually until the new agreement is in place.

In April 2006, the Russian government has formulated its initial approach to the **substance of the new agreement**. It shall include a preamble, four parts on the relevant areas of EU–Russia cooperation (common economic space; external security; security and justice; research, education and culture), and improved provisions on the mechanism for political dialogue and decision-making. While being flexible on most parts of the envisaged agreement, Moscow gives special importance to the formulation of procedures for binding joint decision-making similar to those established for the NATO–Russia Council and emphasizing the role of both the EU and Russia as global actors.

The draft directives of the European Commission also indicate that it wants to go beyond a pure update of the PCA by seeking to consolidate the EU–Russia energy relationship. Although controversial, this initiative may help to sort out the stalemated discussion over Russia’s pending ratification of the European Energy Charter Treaty by negotiating a new complex balance of interests.

The debate on a new agreement with the European Union has been most helpful in revitalizing a debate on the objectives and purposes of the Russian policy including those of an association with and even membership in the EU. It was extremely valuable against the background of the concentration of the Russian political class on Asia, particularly on China, and of the rising nationalism. Revisiting the question of where Russia belongs was extremely helpful for balancing the evolving foreign policy discourse in Russia.

The negotiation over the new agreement between the EU and Russia is likely to seek its profound modernization going beyond a simple update of the PCA. The partial rearrangement of the relations is going to be shaped by the desire of Moscow to significantly upgrade the status of political dialogue and joint decision-making procedures, and the declared intention of the European Commission to sort out open issues in the energy cooperation.

## **Policy recommendations**

1. Opt for the negotiation of the new agreement through amending the existing PCA.
2. Be ambitious but not too much. The more complex negotiation can only be envisaged after Russia's accession to the WTO.
3. Initiate a thorough joint review of the PCA provisions in order to establish which of them need to be amended and which have become obsolete. Identify the bottom line of the PCA aquis that must be kept in order to prevent any regress in EU–Russia relations.
4. Don't compromise on the values relevant provisions of the PCA. Assess the instruments available to strengthen the mutual commitment to the enshrined values.
5. The European Union shall launch a thorough review of the lessons it has learned in the twelve years that have passed since the finalization of the PCA actively involving research institutions, civil society and the European Parliament.
6. Seek an elaborate agreement between the European Union and Russia in the energy sector. However, instead of using the negotiations as a tool to persuade Moscow to ratify the European Energy Charter Treaty and of the Transit Protocol thereto, seek a negotiated solution of the controversial issues.

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## Introduction: the 2007 deadline

The Agreement on Partnership and Cooperation (Partnership and Cooperation Agreement – PCA) between the European Communities and its Member States and the Russian Federation was signed on 24<sup>th</sup> of June, 1994, and entered into force on 1<sup>st</sup> of December, 1997 following the ratification by all parties. It replaced the 1989 Agreement between the European Communities and the former Soviet Union on trade and economic and commercial cooperation that had governed relations between the EU and the Soviet successor states pending the negotiation of individual PCAs.

The Agreement was concluded “for an initial period of ten years” (Article 106). This period terminates by 1<sup>st</sup> of December 2007. However, the same Article foresees that the Agreement “shall be automatically renewed year by year provided that neither Party gives the other Party written notice of denunciation of the Agreement at least six months before it expires”.

Envisaging the expiration of the PCA, the Russian Federation authorities, from 2003 on, initiated the discussion on the need to conclude another agreement to replace the PCA. Moscow was increasingly pushing on the issue since 2005.

The European Commission and most of the member states initially met the proposal rather skeptically. They did not see any pressing need to replace the PCA and favored the option of simply renewing it. However, from 2005 on, the Commission was becoming increasingly receptive to the idea of negotiating a new agreement with Russia by the end of 2007 or soon thereafter.

The first exchange on the issue between President of Russia Vladimir Putin and the President of the European Commission Jose Manuel Barroso took place in April 2005 when the latter paid a working visit to Moscow. It was subject to consultations all summer in 2005, and at the semi-annual summit meeting between Russia and the European Union in London on the 4<sup>th</sup> of October 2005. On the 2<sup>nd</sup> of December 2005, it was put on the agenda of conversations between the Chancellor of Austria Wolfgang Schüssel (the then incoming EU-Presidency) with President Putin and the Russian Prime Minister Mikhail Fradkov.

Since late 2005, it became the subject of informal consultations including numerous rounds with experts. The first experts’ round took place near Moscow on October 22 and 23, and was organized by the “Russia in the United Europe” Committee (RUE) which, later on, circulated the most comprehensive proposal for the modernization of the PCA<sup>1</sup>. At another meeting in Moscow on 14<sup>th</sup> of December 2005, an informal discussion on options to meet the 2007 deadline took place. It was the first event organized by the British Presidency on the subject. Both meetings have significantly contributed to the discussion of reducing the number of available options.

Since late in 2005, the issue also became the subject of intense political dialogue mainly involving the Commission and its Delegation in Moscow as well as their counterparts both in Moscow and in the Russian Mission in Brussels. The Commission and the Delegation, as well as the Presidency in the European Council were given a lead in steering this process.

The interim outcome of those consultations was summarized at the Russia–EU summit meeting in Sochi (Russian Federation) on 25<sup>th</sup> of May 2006. Although no joint statement on the issue was released, the agreement reached was reflected in the statement of the Austrian Presidency: Russia and the EU “looked forward to the start of negotiations for a new agreement which should provide a comprehensive and durable framework for the EU-Russia strategic partnership and agreed to allow the PCA remain valid until a new agreement enters into force”<sup>2</sup>.

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1 See: Concept of modernization of the Partnership and Cooperation Agreement between Russia and the EU and conclusion of a cohesion partnership agreement establishing an association. Available in Russian at <http://www.rue.ru/main.shtml>.

2 Statement by the Austrian Presidency: 17th EU-Russia Summit in Sochi, see [http://www.delrus.ec.europa.eu/en/news\\_802.htm](http://www.delrus.ec.europa.eu/en/news_802.htm)



The Commission agreed on the 3<sup>rd</sup> of July 2006, on the draft negotiating directives for a new agreement. It is intended to provide an updated and more ambitious framework for the EU-Russia relationship. It shall be legally binding and will replace the PCA. The Commission wants the new agreement to be based on recognition of common values such as democracy, human rights and the rule of law. It hopes the agreement will adopt ambitious objectives on political and external security cooperation, effective multilateralism, provisions on the fight against organized crime, weapons of mass destruction, migration and asylum, and counter-terrorism. In particular, the Commission seeks to consolidate the EU–Russia energy relationship based on reciprocity, fair and equal access and a level playing field, and to promote further development of EU–Russia trade relations<sup>3</sup>. It is expected that the European Council will agree on the negotiating directives during the Finnish Presidency by the end of 2006 and that negotiations would begin early in 2007.

This piece summarizes, firstly, the record of the cooperation between Russia and the European Union in the nine years that have passed after the PCA's entry into force. It secondly tests the rationale of a new agreement as discussed in Russia. Thirdly, it reviews the options to meet the 2007 deadline raised during this debate. Fourthly, in the conclusions, it summarizes the state of the discussion over a new agreement and contains a number of policy recommendations.

## The PCA and Russia–EU relations

### The importance of the PCA

Despite the critical voices that have been mounted more recently during the debate on the need for a new agreement, the PCA has served well EU-Russia relations. The objectives it has pursued aimed at putting cooperation between them to a new level and included, in particular:

- to provide an appropriate framework for the political dialogue between the parties allowing the development of close relations between them in this field;
- to promote trade and investment and harmonious economic relations between the parties based on the principles of market economy and so to foster sustainable development in the parties;
- to strengthen political and economic freedoms;
- to support Russian efforts to consolidate its democracy and to develop its economy and to complete the transition into a market economy;
- to provide a basis for economic, social, financial and cultural cooperation founded on the principles of mutual advantage, mutual responsibility and mutual support;
- to promote activities of joint interest;
- to provide an appropriate framework for the gradual integration between Russia and a wider area of cooperation in Europe;
- to create the necessary conditions for the future establishment of a free trade area between the EU and Russia covering substantially all trade in goods between them, as well as conditions for bringing about freedom of establishment of companies, of cross-border trade in services and of capital movements.

It is hardly arguable that all those objectives have been attained over the past twelve years. However, the PCA has proved to be most instrumental in taking the EU–Russia cooperation far beyond the 1989 trade and cooperation agreement. This accomplishment deserves to be appropriately acknowledged and should not be ignored while discussing the future of the agreement. The PCA has become a **most important legal tool for the development of trade, commercial, economic cooperation and political dialogue between the parties**. It established a new trade and cooperation regime, and a mechanism for political dialogue as a flexible tool for addressing issues of mutual concern.

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3 <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/06/910&format=HTML&aged=0&language=EN&guiLanguage=en>

The EU and Russia extended to each other, with a few exemptions, the most-favored-nation treatment. They have largely, although not fully, extended to each other the WTO terms of trade without waiting for Russia's accession to the WTO. In a number of sectors, the PCA regime falls short of the WTO terms. In a few others, it goes beyond them. The agreement contains specific provisions concerning business activities and investment, payments and capital, competition, intellectual, industrial and commercial property protection, legislative cooperation. In Article 55, it emphasizes the approximation of legislation as an important condition for strengthening economic links between Russia and the EU. It stipulates that "Russia shall endeavor to ensure that its legislation will be gradually made compatible with that of the Community".

The PCA has established a legal framework for expanding cooperation in such areas as industrial cooperation, investment promotion and protection, public procurement, standards and conformity assessment; consumer protection, mining and raw materials, science and technology, education and training, agriculture and the agro-industrial sector, energy, nuclear sector, space, construction, environment, transport, postal services and telecommunications, financial services, regional development, social cooperation, tourism, small and medium-sized enterprises, communication, informatics and information infrastructure, customs, statistical cooperation, economics, money laundering, drugs, regulation of capital movements and payments in Russia, prevention of illegal activities, cultural cooperation, financial cooperation.

According to the assessment of the relevant Russian authorities, **the PCA has played a crucial role in facilitating economic cooperation between the Russian Federation and the European Union**<sup>4</sup>. From 1995 through 2005, the trade turnover between Russia and the EU of 25 nations has grown by a factor of 3<sup>5</sup>. This data certainly reflects the significant growth of prices for the Russian export commodities, first and foremost energy. This is why Russian exports have been growing faster (by a factor of 3.6). Nevertheless, the EU exports to Russia have also doubled over the past ten years. **In 2005, Russia became the third largest trade partner of the European Union**<sup>6</sup> after the U.S. and China having left behind Switzerland, Japan and Norway. Back in 1999, Russia was the sixth largest EU trade partner.

The PCA has also enabled the Russian Federation and the European Union to actively engage each other in political dialogue on a wide range of issues reaching far beyond trade and economic cooperation. The core element of this dialogue have been the semi-annual summit meetings attended by the President of Russia, the Presidents of the Council and of the European Commission. From 2001, those meetings are also attended by the Secretary General of the Council and the CFSP High Representative. This dialogue has become increasingly dense, especially over the past seven years, and takes place at various levels.

It is also important to note that, based on the PCA provisions, the approximation of legislation of Russia and of the European Union has progressed fast especially in this decade although, at the same time, the enforcement of the legislation introduced remains rather poor.

At the same time, it has to be acknowledged that the implicit conditionality of further development of the EU–Russia partnership and of the progress in economic and political reform in Russia has not worked. The PCA has not provided the European Union with the leverage to have any significant systemic impact on the domestic Russian developments. The EU has demonstrated neither the ability, nor sufficient will to react to the devolution of democratic institutions in Russia during this decade.

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4 Check, in particular, the statement by the Deputy Head of the trade negotiations desk of the Ministry for Economic Development and Trade, Victor Kalmykov in a discussion round in March 2006 organized by the Undercommittee for European Cooperation of the Committee for International Affairs of the Russian State Duma, the Diplomatic Academy, the Interregional Foundation for Political Initiatives and technologies (PIT-Foundation), and the Open Club "International Dialogue". See: Rossiya – Evrosoyuz: Perspektivy Soglasheniya o partnerstve i sotrudnichestve. Mezhdunarodnaya konferentsiya (International conference "Russia – European Union: Perspectives of the Agreement on Partnership and Cooperation"), Moscow, 16th March, 2006. – Moscow, 2006, p. 35.

5 According to the Russian customs statistics. Data from the Russian Statistic Agency (Rosstat), see [http://www.gks.ru/free\\_doc/2006/b06\\_11/25-05.htm](http://www.gks.ru/free_doc/2006/b06_11/25-05.htm).

6 [http://www.epp.eurostat.ec.europa.eu/portal/page?\\_pageid=1996,39140985&dad=portal&s...](http://www.epp.eurostat.ec.europa.eu/portal/page?_pageid=1996,39140985&dad=portal&s...)

The PCA was designed to be **open for further improvements**. It stipulates, in Article 4, that parties to the agreement would **examine “amendments** which it may be appropriate to make to any part of the Agreement in view of changes in circumstances, and in particular of the situation **arising from Russia’s accession to the GATT/WTO”** (emphasis added). In Article 5, it encourages the parties to consider further development of the mutual terms of trade, “as circumstances allow, **with a view to the establishment of a free trade area between them”**.

## Complements to the PCA

The Agreement on Partnership and Cooperation provides for several **exemptions from the trade regime** established by the agreement. Trade in *textiles* is regulated by a special agreement of 1998. Trade in *steel* was regulated by a 1997 agreement that was replaced by another one in 2002. The latter was amended in 2004 acknowledging the impact of the enlargement of the European Union on Russian steel exports. The general terms of trade set out by the PCA don’t apply to the trade in *nuclear materials* either. The Russian Federation largely exempted the *financial sector* (banking and insurance) from reciprocity. Several other sectors of services, such as *transportation, space launches and mobile communications* are either largely or fully exempted from the regime established by the PCA and are supposed to be governed by special agreements.

In a number of areas, the EU and Russia concluded bilateral **agreements that have further expanded the normative basis** of their cooperation. This is exemplified, in particular, in the 1999 agreement on cooperation in science and technology renewed in 2003, the 2003 agreement on co-operation between the Russian Federation and the European Police Office, or the 2006 agreements on readmission and visa facilitation (the latter two pending ratification).

The legal framework of EU–Russia cooperation is complemented by political commitments included into **Joint Declarations** adopted at the summit meetings or at the ministerial level. In particular, at the summit meeting in Paris on the 30<sup>th</sup> of October, 2000, Russia and the EU adopted a Joint Declaration on strengthening *dialogue and cooperation on political and security matters in Europe* with the aim to institute specific consultations on security and defense matters, to develop strategic dialogue in regard to security, and to promote cooperation in operational crisis management. At the same meeting, they decided to institute an *energy dialogue*.

On the 11<sup>th</sup> of April 2002, a joint EU–Russia statement on transit between the *Kaliningrad* region and the rest of Russia was adopted in Brussels. On 27<sup>th</sup> of April, 2004, the ministers of foreign affairs of Russia and of the 25 EU member states signed in Luxembourg a Joint Statement on EU Enlargement and EU-Russia Relations summing up the outcome of the negotiations addressing relevant aspects of the impact of the enlargement on the Russian Federation. The approval of the Joint Statement paved the way for the ratification by Russia of the 2004 protocol to the PCA extending the agreement to the new member states of the European Union.

Most importantly, further to a decision of the St. Petersburg summit on 31<sup>st</sup> of May, 2003, to create, in the long term, a Common Economic Space, a Common Space of Freedom, Security and Justice, a Common Space of External Security, as well as a Common Space of Research, Education and Culture, in the framework of the PCA, the Moscow summit meeting on 10<sup>th</sup> of May, 2005, adopted a package of **road maps for the creation of the four common spaces**. These road maps set out shared objectives for EU–Russia relations as well as the actions necessary to make these objectives a reality, and determine the agenda for cooperation for the medium-term. The special dialogues designed to turn the declarations of intent into reality were launched in late 2005 and early in 2006.

The relations between the European Union and Russia are also affected by **unilateral decisions, instruments** and actions of both sides. The single most important such coordinated unilateral decision

introducing a change into the PCA provisions was the 1998 regulation by the European Union to grant Russia the status of a market economy while the Partnership and Cooperation Agreement recognizes Russia as a country with an economy in transition.

## **A strategic partnership lacking a strategic vision**

Parallel to the implementation of the PCA, the EU–Russia partnership went through an ongoing process of **redefinition**. In the early 1990s, the PCA negotiation was based on the typical *transition paradigm* that shaped Partnership and Cooperation Agreements the European Union was concluding with most of the Soviet successor states. It presumed that the European Union would render Russia assistance on its way to democracy and market economy, which would constitute the most solid foundation for, and be an important condition of the evolving partnership.

The PCA is based on the mutual commitment of the EU, its member states and of Russia “to *strengthening the political and economic freedoms which constitute the very basis of the partnership*”, and emphasizes “the paramount importance of the rule of law and respect for human rights, particularly those of minorities, the establishment of a multiparty system with free and democratic elections and economic liberalization aimed at setting up a market economy”. At another place, the agreement reiterates that “*respect for democratic principles and human rights as defined in particular in the Helsinki Final Act and the Charter of Paris for a New Europe, underpins the internal and external policies of the Parties and constitutes an essential element of partnership and of this Agreement*”. The **principle of conditionality** implicit in the PCA found its manifestation in the stipulation that “*the full implementation of partnership presupposes the continuation and accomplishment of Russia’s political and economic reforms*” (emphasis in this paragraph added).

Since the agreement had been signed and had entered into force, **both sides went through a rethinking of the underlying basis of their cooperation**. The implicit conditionality has never worked well in EU–Russia relations. From the beginning of this decade, it was rather the devolution of the democratic institutions, the increasingly authoritarian rule and the regress in anchoring the rule of law in Russia that has served for mounting concerns in the European Union. Although the assessment of Russian developments differs from one country to another, the 2007 deadline is approached against the background of the **debate in the European Union on whether partnership and cooperation with Moscow can any longer be based on shared values**.

The relative well doing of the Russia economy after the financial collapse in 1998, the invention of the slogan of “sovereign democracy”, and the revival of great power aspirations and the application of an increasingly assertive policy – all these developments contributed to the erosion of the acceptance by the Russian political class of any conditionality imposed by either the European Union or any other power. From Moscow’s perspective, any forward looking partnership with the European Union only makes sense if based on the recognition of full equality and excluding any conditionality. **It is primarily the political rather than the economic developments that made Moscow increasingly unhappy with the underlying philosophy of the PCA**.

Since 1999, both sides started defining their relationship rather in terms of a “**strategic partnership**” that, early in this decade, resulted in launching of a number of dialogues on issues of long term interest, such as energy, security and defense, justice and home affairs. The outcome of this endeavor is mixed but, in any case, it does not live up to the expectations of the partners either.

The *energy dialogue* resulted in arrangements, which are supposed to increase the energy supply from Russia to Europe (gas, in the first instance). But it also was overshadowed by the controversy over the accession of Russia to the 1991 Energy Charter. In the PCA, both sides have confirmed their “attachment” to the aims and principles set out in the European Energy Charter and in the Declaration of the Lucerne Conference of April 1993, and have agreed (Article 65) that cooperation between them “shall take place within

the principles” of the European Energy Charter. However, Moscow has failed to ratify the Energy Charter Treaty and the Transit Protocol thereto, and it is highly unlikely to do so any time soon<sup>7</sup>.

Most recently, the energy dialogue was overshadowed by the concerns with regard to the excessively increasing dependence of the European Union on Russian supplies and on the risks that flow from the manifested determination of Moscow to define energy supply as a means of obtaining policy objectives. For her part, Russia believes to find itself in the midst of a competition of current (Europe) and potential (Asia and particularly China) recipients of its energy resources and hopes to benefit there by both economically (lowering its dependence on European markets) and geopolitically (increasingly refocusing its political engagement from the Euro-Atlantic region towards the “rising” global powers – China and India). Thus the EU and Russia have entered a period of rethinking their energy policies including those *vis-à-vis* each other.

The *CFSP/ESDP dialogue* did not go much beyond the political consultation and the discussion of the prospects for the European Union to make use of Russian assets, such as transport aviation. It did not bring about a more significant Russian participation in any CFSP/ESDP operation with the minor exception of a short and symbolic participation of a few officers in the EU police mission in Bosnia. Moscow was disappointed with the basic approach of the European Union to the participation of the partner states in the EU-led operations and lacked the recognition of its status as an equal partner to be reflected in the appropriate procedures for joint decision making, oversight, command and control over the operations.

More recently, both sides made another try seeking to identify their relationship in terms of **mutual interdependence**. It is yet open whether this approach would yield more practical results and whether it would be relevant to shape a new foundation for the EU–Russia cooperation.

This review indicates that ***it has been rather the rethinking process than the attaining of the PCA objectives that triggered the debate over the need for a new agreement. The whole discussion was predominantly driven by policy rather than economic considerations.***

## The rationale of a new agreement

When launching the discussion on a new agreement to replace the PCA, Russian authorities referred to a number of changes that expected to take place by the 2007 deadline and would justify the need to adapt the legal ground for EU–Russia partnership and cooperation. The changes mentioned in this context included<sup>8</sup>:

- the expiration of the PCA itself;
- the expected accession of Bulgaria and Romania, probably of Croatia to the European Union;
- the expected accession of the Russian Federation to the WTO, and
- the introduction of structural reforms within the European Union, which would flow from the Constitutional Act.

Although at least half of the envisaged changes could not be taken for granted, the debate over the 2007 deadline raised a number of arguments worth considering. Those include:

- both, Russia and the European Union have changed profoundly over the years that have passed after the conclusion of the PCA, so that the latter is no longer up to date while many of its provisions have become obsolete;

7 For the Russian perspective on the issue see, inter alia: *Economicheskoe obozrenie* (Economic Review, published by the Institute of Energy and Finance, Moscow), July 2006, No 4, pp. 14–24.

8 Overview of the Russia–EU relations prepared by the Ministry of Foreign Affairs of Russia (17th of May, 2006) available at <http://www.mid.ru/ns-dos.nsf/162979df2beb9880432569e70041fd1e/f5640df6878bd7ea43256d9600340a64?OpenDocument>

- the EU–Russia cooperation has expanded to new areas that are not covered by the PCA, and the new agreement shall take account of this development;
- most of the current trade related provisions of the PCA will become obsolete after Russia’s accession to the WTO;
- The EU–Russia mechanism for political dialogue has undergone a profound evolution so that the respective provisions of the PCA no longer reflect its real status, thus the new agreement shall improve on the mechanism as well.

## The 1994 PCA no longer meets the requirements of the new situation

Most of the participants in the debate both in Russia and in the European Union almost unanimously take note of profound developments that have taken place on both sides. **The EU** has enlarged from 12 to 25 member states. The Euro has been introduced as a single currency of a large group of member states. Most notably, the areas of common action of the member states have significantly expanded as well. By the time the PCA was negotiated, the EU did not have any instruments in the fields of Justice and Home Affairs. There was no CFSP or ESDP. This is why the PCA hardly expands on the cooperation in those fields, which are becoming of increasing importance for EU–Russia cooperation.

Although the **developments in Russia**, especially the political trends, are subject to controversial evaluation, the underlying assessment is that progress has been achieved in the development of a market economy which has enabled the Russian economy to deeper integrate into the global economy. As compared to 1994, progress has been achieved in conducting economic reforms. The macroeconomic situation has been stabilized. The Russian economy has started to grow. Foreign investment in Russian has increased. All this made many provisions of the PCA obsolete<sup>9</sup>.

Indeed, Russia and the European Union went through constant change for the last decade and a half. However, the year 2007 will not mark the end of those changes, they will continue. Therefore, the ongoing change *per se* does not provide the rationale for the renegotiation of the PCA. It would only provide a convincing reason for doing so if these changes would have exhausted the purpose the PCA was supposed to serve.

This is exactly what is stipulated by many in Russia. Mark Entine, Director of the Institute of European Law, points out that, by the time of the PCA negotiation, the European Union was in the early stages of its formation while Russia was taking her first steps as an independent state. Both were confronted with a different set of problems then and now. This is why the PCA needs profound modernization and why the parties started to adapt to it by political declarations, joint and unilateral decisions<sup>10</sup>.

It is true that many PCA provisions have become outdated. An update of its text makes sense. Indeed, **the agreement was drafted on the basis of the assumption that forthcoming developments would make adjustments and amendment of its provisions necessary long before it would expire**. Those adjustments, however, would not necessarily demand the conclusion of a new agreement before the basic PCA purpose was exhausted.

In particular, in Article 4, “the Parties undertake to examine together, by mutual consent, amendments which it may be appropriate to make to any part of the Agreement in view of changes in circumstances, and in particular of the situation arising from *Russia’s accession to the GATT/WTO*” (emphasis added). The first such examination was supposed to take place “three years after the entry into force of the Agreement or when Russia accedes to the GATT/WTO, whichever is earlier”. This implies that a serious examination of necessary amendments to the PCA was supposed to take place no later than 2000, long before the PCA would expire.

<sup>9</sup> See, inter alia: International Conference “Russia – European Union: Perspectives of the Agreement on Partnership and Cooperation”, Moscow, 16th March, 2006, p. 13.

<sup>10</sup> Mark Entin, *V poiskakh partnerskikh otnosheniy: Rossiya i Evropeyskii Soyuz v 2004–2005 godakh* [In search of a Partnership: Russia and the European Union in 2004–2005], St. Petersburg: Rossiya–Neva, 2006, p. 351.

In Article 3, "the Parties undertake to consider development of the relevant Titles of this Agreement, in particular Title III [trade in goods] and Article 53 [competition], as circumstances allow, with a view to the *establishment of a free trade area between them*" (emphasis added). The PCA foresaw that the EU and Russia could examine already in 1998 whether circumstances allowed the beginning of negotiations on the establishment of a free trade area. As the European Union made the beginning of such an examination dependent on the accession of Russia to the WTO, such consultations haven't taken place yet. Indeed, there is no unanimous position of all relevant Russian agencies as to whether at all a free trade arrangement with the EU would benefit Moscow, although this objective has never been removed from a mid-term political agenda of the Russian Federation.

Under Article 5, the most-favored-nation treatment granted by Russia under the PCA would not apply during a transitional period expiring five years after the entry into force of this agreement (2002) in relation to *advantages granted by Russia to other countries of the former USSR*. This period could be extended for specific sectors by mutual consent albeit, in the case of the most-favored-nation treatment granted under Title III (trade in goods), the transitional period would expire three years after the entry into force of the PCA (2000) or when Russia accedes to the GATT/WTO, whichever is earlier. The indicative list of those advantages (Annex 1 to the PCA<sup>11</sup>) granted by Russia to the Newly Independent States in areas covered by the PCA, compiled in January 1994, certainly needs to be updated, too. However, this issue has never been addressed appropriately although it maintains its relevance especially in the context of the prospective accession of Russia to the WTO.

*Trade in nuclear materials* (Article 22) is not fully covered by the PCA provisions and was supposed to be regulated by an arrangement by 1<sup>st</sup> of January 1997. Parties also agreed (Article 41) to promote the negotiation and implementation of multilateral rules regarding *international trade in space launching and transportation services*. They took time until 2000 to agree upon the conditions for the supply of space launch services. The parties also called for recommendations from the Cooperation Council for the *further liberalization of trade in services*, taking into account the development of the services sectors in the parties and the other international commitments, in particular in the light of the final results of the negotiations of the General Agreement on Trade in Services (GATS). The party, which has assumed obligations under the GATS was supposed (Article 51) to inform the other of the appropriate provisions and the adaptations resulting there of for the PCA. The second Party could thereafter make adjustments to its obligations, which should lead to the re-establishment of a balance of obligations between the Parties.

This non-exhaustive list of adjustments and amendments built into the PCA text indicates that both sides were aware of the fact that forthcoming developments would make adjustments of the relevant provisions of the agreement necessary. They also expected adjustments to take place through amending the respective PCA Titles and/or through concluding special agreements. Those adjustments would not necessarily require negotiating a totally new agreement. Moreover, all envisaged changes were supposed to take place in the

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11. Advantages were granted bilaterally by respective agreements or by established practice. They provided for, inter alia:
1. *Import/Export taxation*: no import duties were applied; no export duties were applied with respect to goods delivered under annual bilateral interstate trade and cooperation arrangements within the nomenclature and volumes, stipulated therein, considered as "exportation for federal state needs" as defined by corresponding Russian law; no VAT is applied on import; no excise duties were applied on import.
  2. *Allocation of quotas and licensing procedures*: export quotas for deliveries of Russian products under annual bilateral interstate trade and cooperation agreements were opened in the same way as for "deliveries for state needs".
  3. *Special conditions for all kinds of activities in banking and the financial sector* (including establishment, operation), movement of capital and current payments, access to securities, etc.
  4. *Price system regarding Russian export of some kinds of raw materials and semi finished products* (coal, crude oil, natural gas, refined oil products). Prices are determined on the basis of corresponding average world prices converted in roubles or respective national currency at a rate quoted by the Central Bank of Russia as of the 15th day of the month previous to the month of exportation.
  5. *Conditions of transportation and transit*. As regards countries of the Commonwealth of Independent States, that are Parties to the Multilateral Agreement "on the principles and conditions of relations in the field of transport" and/or on the basis of bilateral arrangements on transportation and transit, no taxes or fees are applied on a reciprocal basis for the transportation and customs clearing of goods (including goods in transit) and transit of vehicles.
  6. *Communications services*, including postal, courier, telecommunications, audiovisual and other services.
  7. *Access to information systems and databases*.

period from 1998 through 2003, i.e. long before the PCA would have expired. Even more important is the recognition of the fact that almost neither of the changes that would require a deeper adjustment of the PCA provisions have really taken place. Russia is not yet in the WTO. Nor is there any talk of any free trade arrangement with the European Union. Before those two benchmarks have been reached, **there is no reason to believe that the mission of the PCA is accomplished.**

This brings to the conclusion that **the reference to the changes that would require the negotiation of a new agreement instead of the expiring PCA is driven by political rather than economic considerations.** This is certainly true with regard to the Russian debate, as revealed by the arguments of the Russian critics of the agreement<sup>12</sup>. When the PCA was drafted, Russia was weak and had no will. It was in a deep systemic crisis. The industrial output was down. The economy was falling apart. Foreign indebtedness was rising dramatically. The country was at the very beginning of a long and painful way to the formation of sustainable state institutions, of a market economy, and of a functioning legal system. With regard to many foreign and domestic policy issues it performed as being “guided” from outside. The state of affairs has changed dramatically by now both politically and economically. “There is no longer any place for the emphasis on the assistance of Russian reforms or of the democratization policy that is implicit in the PCA. Allegedly, what is needed by now is just the opposite – this is the legal foundation for both an equal partnership and of the cooperation in the process of resolving the whole spectrum of international and internal problems relevant for both sides”.

This analysis suggests that **the argument of the changes that would require the negotiation of a new agreement, whenever brought up by Russian officials, mainly implies that Moscow is no longer happy with the philosophy of transition on which the PCA rests, and wants another agreement that would, politically, manifest the status of Russia as an equal (strategic) partner of the European Union.** This conclusion is supported by the analysis of other arguments, too.

### **The 1994 PCA no longer reflects the scope of the EU–Russia cooperation**

This argument suggests that, in 1994, the PCA could not envisage closer cooperation between the European Union and Russia particularly in such areas as Justice and Home Affairs or external security as those areas did not belong to the competences of the European Union.

Eventual cooperation in *Home and Justice Affairs* related areas is briefly touched upon in Article 84, which calls on the parties to establish cooperation aimed at preventing illegal activities such as

- illegal immigration and illegal presence of physical persons of their nationality on their respective territories, taking into account the principle and practice of readmission;
- illegal activities in the sphere of economics, including corruption;
- illegal transactions of various goods, including industrial waste;
- counterfeiting;
- the illicit traffic of narcotic drugs and psychotropic substances.

Cooperation in those areas would be based on mutual consultations and close interactions and would provide technical and administrative assistance including: drafting of national legislation in the sphere of preventing illegal activities; creation of information centers; increasing the efficiency of institutions engaged in preventing illegal activities; training of personnel and development of research infrastructures; elaboration of mutually acceptable measures impeding illegal activities.

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<sup>12</sup> Mark Entin, *In search of a Partnership: Russia and the European Union in 2004–2005*, St. Petersburg: Rossiya-Neva, 2006, pp. 365–366.



Article 6 of the PCA dealt with the objectives of a regular political dialogue. It proceeded on the assumption that the economic convergence achieved through the agreement would lead to more intense political relations between the parties, and would bring about an increasing convergence of positions on international issues of mutual concern thus increasing *security and stability*.

Those provisions fall short as compared with the current intensity of the EU–Russia consultations and cooperation in both areas, even though there still is a long way to go to appropriately consolidate it. This cooperation was largely developing on the basis of joint political decisions approved at summit meetings since 2000, and/or special agreements. It is addressed in two of the four road maps approved in 2005, those on a Common Space of Freedom, Security and Justice, and on a Common Space of External Security. The dialogue on Justice and Home Affairs particularly is gaining in importance in mutual relations since the enlargement of the European Union. The opening of the dialogue on issues of the respective common space in Spring, 2006, was particularly promising.

One of the intentions on the Russian side is to incorporate respective chapters into the new agreement in order to provide for a basic legal instrument, which regulates cooperation in the two areas. This argument deserves serious consideration. However, for several reasons, it would hardly suffice to justify a renegotiation of the PCA if it would be just about incorporating those new areas of cooperation.

Firstly, the 1994 Agreement on Partnership and Cooperation was and is not hindering the progress in either of the above-mentioned areas. On the contrary, it is one of the objectives of the PCA that the political dialogue brings about the expansion of such cooperation by either joint political decision of special agreements. Indeed, the four road maps have been drafted and approved “on the basis” of the PCA.

Secondly, the European Union and Russia are at the early stages of initiating and further developing cooperation in those fields. It is to be expected that such cooperation not only progresses but further expands to new areas. Therefore, any instrument on which the EU–Russia cooperation is founded shall be flexible enough in order to permit its further growth. Such progress should not be a reason to renegotiate or even just to update the new agreement. It shall not provide a strong rationale to renegotiate or update the PCA either which is flexible enough to allow further development of cooperation.

Thirdly, shall the relevant changes in the PCA become necessary in order to provide appropriate legal basis for closer cooperation in respective areas, nothing shall prevent the parties from introducing them by amending the agreement through additional protocols without renegotiating the whole agreement. This would fully fit into the logic of the PCA.

To sum up: ***including more elaborate and appropriate provisions into a new agreement between the European Union and Russia reflecting on their cooperation in Justice and Home Affairs as well as in external security areas is a worthwhile initiative. However, this issue can be addressed in another way and, in particular, by amending the PCA.***

### **Russia’s accession to the WTO would outdate most of the trade related PCA provisions**

The eventual accession of Russia to the WTO represents the most powerful but, at the same time, also the weakest argument in favor of the conclusion of a new agreement.

The accession to the WTO would outdate most of the trade relevant provisions, which constitute the bulk of the PCA. This was also a clear understanding of the authors of the PCA reflected in Article 4. However, Russia has not yet acceded to the WTO, and there is no reason to believe that it will do so by the end of 2007. In 1992, the Russian Federation took over from the former Soviet Union the observer status in the GATT granted in 1990. In June 1993, Moscow submitted an official application for admission. On June 16, 1993, a working group for the negotiation of the terms of accession was established. In 1995, the relevant negotiation structures were transferred into the WTO framework.

The working group convened for the first time in July 1995. In about 30 meetings that have taken place since then, negotiations have progressed significantly, so that only a limited number of positions (albeit the most difficult ones) still remain open. Parallel to the working group negotiations, bilateral negotiations started from 1998 addressing specific sectors, such as trade tariffs (a major breakthrough was achieved here in 2004 after fixing relevant agreements with the European Union and China), market access and trade in services, agriculture policy, structural issues (adaptation of the Russian legislation, “WTO-plus” provisions).

Despite substantial progress in most of the areas, the complex negotiation of Russia’s accession to the WTO is not yet completed. Moscow pursues a tough strategy and takes its time in order not to make concessions, which it deems unnecessary. Several publicly announced deadlines for the accession have passed. Periods of rising optimism were followed by periods of skepticism. In 2006, especially after failing to reach an agreement with the U.S. in July, Moscow again appears hesitant as far as the accession timetable is concerned. Therefore, Russia’s accession to the WTO by the end of 2007 appears anything but secured.

This uncertainty makes the WTO accession argument less convincing. In any case, this argument has nothing to do with the 2007 deadline. Indeed, the authors of the PCA expected this to happen much earlier. While Russia’s WTO accession certainly would require changes to be introduced into the PCA regime, parties would be able to negotiate those changes only after the accession process has been completed. This is unlikely to happen by the end of 2007.

Russian trade experts point out that, since most terms of accession, with the exception of a few open positions, is already known, Moscow and the European Union could start discussing necessary amendments in the relevant titles of the PCA without waiting for the formal accession. This notwithstanding, the formal negotiation could only start after the accession protocol has been fixed.

Furthermore, the next logical step in improving the legal basis of trade, economic and commercial cooperation with the European Union envisaged by Russian experts would be to seek an agreement on trade preferences<sup>13</sup>. Regardless of if and when Russia and the EU start negotiations to this effect, this negotiation is expected to be time consuming and certainly would not fit into the time line until the end of 2007 or soon thereafter. For the time being, the trade experts proceed on the basis of understanding that the regime established by the PCA, adjusted (amended) as appropriate after Russia’s accession to the WTO, sufficiently serves the Russian interest. As for the next stages, there is no clear idea yet in Moscow whether at all free trade shall be a target and whether Russia would seek to negotiate sectoral preferences or a comprehensive agreement.

In sum, Russian trade experts don’t see any urgent economic need to seek a new agreement with the European Union. Thus, **from the economic perspective, negotiating a new agreement before Russia’s accession to the WTO and even soon thereafter does not make much sense**. On the contrary, experts raise concerns that negotiating a new agreement with the EU without significantly improving on the current trade regime may do harm by hurting some of the PCA provisions, which they would want to save. They therefore even raise the idea not to replace the PCA but to further extend its provisions insofar they would not contradict the provisions of the new agreement.

### **The 1994 PCA provisions on the mechanism for political dialogue no longer reflect realities and need a serious revision**

The mechanism for political dialogue set up under the PCA provided for *semi annual summit meetings* between the President of the Council of the European Union and the President of the Commission of the European Communities on the one side and the President of Russia on the other. At ministerial level, the *Cooperation Council* was designed to meet once a year and when circumstances require. The

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<sup>13</sup> See, for instance: International Conference “Russia – European Union: Perspectives of the Agreement on Partnership and Cooperation”, Moscow, 16th March 2006, p. 37.

Cooperation Council was to be assisted by and could delegate its powers to the *Cooperation Committee* of senior officials. The Cooperation Council could also decide to set up *special committees or bodies* to assist it in carrying out its duties. Political dialogue at parliamentary level was supposed to take place within the framework of the *Parliamentary Cooperation Committee*.

In the assessment of Russian experts and government officials, this mechanism has performed relatively well in the 1990s as long as the competence of the European Union was limited to the areas spelled out in the PCA, and as long as Russia went through a period of disarray. They also insist that, from the year 2000, this mechanism was no longer sufficient to address new issues coming on the EU–Russia agenda. Soon thereafter, the partners started to adjust the dialogue mechanism in order to meet the new challenges. This has resulted in two relevant developments:

Firstly, ***the mechanism established by the PCA entered a process of modification***. In particular, at the St. Petersburg summit meeting on 31<sup>st</sup> of May 2003, the parties decided to enhance its efficiency by setting up strong and efficient bodies dealing with all areas of partnership. To this end, they decided to replace the Cooperation Council with a *Permanent Partnership Council* (PPC), which was supposed to act as a clearinghouse for all issues of cooperation. Other than the Cooperation Council, which was supposed to hold annual meetings, the PPC was to meet more frequently and in different formats, backed up by thorough preparation and policy coordination on both sides. The political dialogue structures were to be streamlined.

Meanwhile, the PPC is evolving as a standard forum for discussing EU–Russia affairs. It consists of Ministers from Russia, the EU Presidency, the incoming EU Presidency and a European Commissioner. It is a small forum, facilitating decision-making, which can be called by the EU, or Russia. Through 2004–2006, the PPC meetings have focused on foreign affairs, justice and home affairs, and energy issues.

Secondly, Russian government officials draw attention to the fact that the process of ***joint decision-making and consultation in the past years passed by the structures for political dialogue set up under the PCA***, even the modified ones. In particular, this goes for the evolving dialogue on the CFSP/ESDP issues, the energy dialogue, the new dialogue mechanisms within the four common spaces (road maps). Negotiations on the transit between Kaliningrad and the rest of Russia, Russia's accession to the WTO, and on visa facilitation were conducted within ad hoc groups outside the framework of the PCA mechanism<sup>14</sup>.

This all supports the suggestion to further streamline the political dialogue between the European Union and the Russian Federation in order to enhance its efficiency. Most particularly, ***Moscow wants to provide for a EU–Russia body which, like the NATO–Russia Council, would be authorized to take final binding decisions***. This is especially desired in the CFSP/ESDP area. Last but not least, Moscow would welcome if such a body would provide for a joint decision making by Russia and the member states of the European Union acting in their individual capacity. The 27<sup>th</sup> of April 2004 PPC meeting attended by 26 Ministers for Foreign Affairs is usually given as a (single) example for such a format. However, this is not the only possible way to go. Moscow puts the emphasis on the need for a joint decision-making body which would manifest the equal nature of the EU–Russia partnership. It is flexible with regard to the format – whether it is a meeting “at 27 plus”<sup>15</sup>, or a meeting with the EU Troika, or any other format.

Again, the PCA was and is not a hindrance for the joint decision making by the parties whenever they dealt with any relevant issue, shall it be modernized, ***the provisions on the mechanism for political dialogue in the new agreement would look differently from those designed in 1994***.

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14 See, for instance: International Conference “Russia – European Union: Perspectives of the Agreement on Partnership and Cooperation”, Moscow, 16th March, 2006, pp. 17–18.

15 Russia, 25 EU member states and the European Commission. The “plus” means further new member states of the European Union.

However, if this was a single reason to raise the question of a new agreement, the argument would not be strong enough as, at every stage, the parties were able to adapt the mechanism for political dialogue without leaving the PCA ground. It is also obvious that the need for further modifications will occur in the future but would not necessarily imply that each time the respective agreement would have to be renegotiated. The agreement and the parties shall be flexible enough, as the PCA provisions are.

The real problem related to the political dialogue, however, appears to be different from the institutional debate. Both **parties appreciate the density and the complexity of the ongoing dialogue but, at the same time, complain about the low efficiency of the joint decision-making**. Some would even argue that the **high politicization of many issues subject to this dialogue** – in particular, of such issues like the Kaliningrad transit, or energy, or even the fate of the 1994 PCA – has a tremendously negative effect on the work of the respective institutions and damages their efficiency more than any deficiencies in the mechanism itself. In such circumstances the very important job done at the working level by experts is getting decoupled from the senior government level thus stopping many helpful initiatives short of political decision-making. Any forthcoming decisions on enhancing the efficiency of this mechanism shall **address the problem of recoupling the working and the political levels of the EU-Russia dialogue**.

## Conclusions

Setting the goal of negotiating a new agreement by the December 2007 deadline or soon thereafter appears largely artificial. **The year 2007 is not a critical moment in the EU-Russia relations**<sup>16</sup>. Shall a new agreement not be in place by that deadline, no dramatic developments shall be expected. Unless any party denounces the PCA by the end of May 2007, a mechanism for its automatic renewal year by year would prevent the occurrence of a legal vacuum.

**From the economic perspective, starting the negotiation before Russia has acceded to the WTO appears premature**. Negotiating a meaningful agreement soon thereafter seems unnecessary and unrealistic. It will take time to identify a complex balance of interest of both parties.

**The argument implying that the new agreement shall be negotiated to take into account the evolution that Russia and the European Union, their expanded cooperation and the mechanism for political dialogue have gone through is not overwhelming**. While the relevant PCA provisions certainly should be updated, this evolution has not gone as far as to make the underlying PCA philosophy. Its mission is not yet accomplished. And the agreement itself is not an obstacle for further progress in the EU–Russia cooperation. It is flexible enough to be adjusted by joint political decisions and/or amendment.

**No single reason above suffices to justify the negotiation of a new agreement to replace the PCA. However, the expiration of the PCA in 2007 has provided a convenient excuse for a predominantly politically motivated decision to do so.**

## Options considered

Neither party has, at any time, publicly considered denouncing the PCA, although this possibility has been part of the experts' debate in Russia. No party wanted a legal vacuum to occur. In the official language, both parties have been discussing merely two options: either renewing the existing agreement, or

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<sup>16</sup> This conclusion basically is shared on both sides, in the EU and Russia. See, for instance: International Conference "Russia – European Union: Perspectives of the Agreement on Partnership and Cooperation", Moscow, 16th March, 2006, pp. 12 and 17.

concluding a new one. The latter option could imply a diverse range of ways to proceed. Those options were discussed at length during the debate in Russia from autumn of 2005 through spring of 2006. Concluding a new agreement could mean negotiating a fully new instrument, or modernizing the previous one. There also could be different options of its modernization. Eventually, the agreement could be simply updated (adapted). It could be more substantially renegotiated and, in this sense, “deeply and profoundly” modernized. There was also the concept of “improving” the PCA that occurred in this debate.

The discussion in Russia largely concentrated on four options although, in fact, more have been thrown into the debate. Those options included:

- extending the agreement in conformity with the Article 106; this would only require that no party denounces it;
- replacing the legally binding agreement by a political declaration complemented by a number of sectoral agreements, i.e. by the four road maps;
- negotiating a new legally binding instrument based;
- substantially amending the existing PCA taking account of the evolution that has occurred since 1994/1997 and reflecting the prospects for future evolution of the EU–Russia cooperation; this option would stand for the “modernization” of the PCA, or for the elaboration of an “updated” or “improved” PCA-2;
- not renewing the PCA but neither concluding a new agreement while cooperation would go on, in particular, based on the four road maps;
- concluding a new agreement without denouncing the PCA while parties would declare that the provisions of the latter apply insofar as they don’t contradict the new agreement.

The option of simply renewing the PCA was not given serious consideration. This is largely because by the time of this debate the discussion had progressed as far as this option was not perceived desirable. Experts were putting forward their proposals already after the 2005 London summit meeting where the new agreement was already included on the agenda. Politically, after Moscow had publicly advocated this idea, purely extending the expiring agreement was considered politically unacceptable as it would be interpreted as a sign of inability of the European Union and Russia to find to a new agreement. Besides, this solution was largely seen as a short-term option lacking a strategic outlook.

The option of replacing the PCA by a political declaration complemented by a number of sectoral agreements and the road maps was put forward by the Centre for applied Russia–EU research of the Institute for European Studies of the Russian Academy of Sciences, Council on Foreign and Defense Policy as well as the Journal “Russia in Global Affairs”. This proposal did not find support in the discussion although its advantage was seen largely in the flexibility it would provide. It also was supposed to be easier to negotiate.

The main reason to dismiss this option was the recognition of its eventual effect on EU–Russia relations. It would result in their major de-juridisation. This was widely considered a step back in EU–Russia cooperation. Especially the lawyers among Russian experts argued that the new agreement should not only be legally binding but also should contain as many as possible direct norms in order to make it an instrument not only for bureaucracies but also for citizens and businesses on both sides. Cooperation based on a political declaration would make it hostage to politics and thus produce the opposite result as compared to the desired one.

Negotiating a new legally binding instrument was considered by some as a promising option, which would enable the parties to incorporate a longer-term strategic vision of EU–Russia relations. At the same time, it was considered by many as rather unrealistic, if not “mission impossible”. In any case it would take much time. This would rather correspond to the option of negotiating with the European Union of terms of preferential trade – to start after Russia’s accession to the WTO. This was certainly not the option to meet the political demand to link a new agreement as close as possible to the 2007 deadline. It did not find much support either.

The option of a substantial modernization of the PCA by amending it in a complex way was put forward and most comprehensively elaborated by "Russia in the United Europe" Committee (RUE)<sup>17</sup>. The essence of this proposal implied that parties, **instead of denouncing or replacing the PCA with a totally new agreement, would amend the former** by removing or revising the outdated 1994 provisions, and by introducing new parts addressing issues that have not been covered by the existing agreement. This work would be preceded by a thorough review of the 1994 PCA in order to identify what of its provisions would need revision.

The main advantages of this approach were seen in the easier and time saving handling of the task. Instead of drafting and negotiating a new text parties would discuss amendments to the existing one. It also would allow to keep the most valuable provisions of the PCA thus avoiding their eventual erosion. Most importantly, however, it would ensure the legal continuity of the regime established by the PCA. It is mainly for the latter reason why a proposal was put forward suggesting that the European Union and Russia may renew the PCA even if they concluded the new agreement.

Depending on how far the process of modernization would go, there would be room for different approaches. The PCA could be simply **updated** by amending its relevant provisions for them to conform with the past developments in EU–Russia cooperation. It could be **modernized** more seriously if, at the same time, the European Union and Russia would seek an agreement on issues, which remain controversial and have not been regulated by the PCA or a special agreement. The debate over the new agreement and recent developments indicate that both parties are likely to grab the opportunity offered by the 2007 deadline to raise issues they are concerned with. Moscow, apparently, is keen to upgrade the status and the mechanism for political dialogue with the European Union while the EU seems to sort out the pending agreement with Russia on energy cooperation.

In any case, even the "easier" task of the modernization of the PCA shall not be that easy. While it might be relatively simple to jointly identify which provisions of the 1994 agreement shall not be touched upon, there certainly would be a controversy over numerous provisions which the one or another party would seek to remove or amend. Here, as always, the devil is in detail. Further on, parties would be confronted with a difficult task of bargaining over what new elements shall be included into the agreement. Therefore, **even though the modernization option is considered by many as a fast track to produce a new agreement by the end of 2007 or soon thereafter, it will also take time leaving almost no room for having a modernized agreement ready by that deadline.**

The logic of modernization would imply that the EU and Russia **would not seek now a new agreement encompassing free trade and/or the establishment of a Common Economic Space based on the four freedoms** (it is seen as premature by both sides) **but, rather, would address the current business in their mutual cooperation.** Issues on which they would not come to agreement would be postponed to future phases.

While already at the early stages of the discussions late in 2005 the modernization option received strong support of the majority of Russian experts (and of the EU representatives who participated in this debate), different conceptions of modernization were put forward, which went beyond the emerging conventional consensus on the issue.

In particular the RUE proposal, while injecting the idea of modernization (amendment) of the PCA went as far as to suggest a long-term strategic vision of **a closer association of Russia with the European Union.** On different occasions, the authors of the RUE proposal were suggesting that the PCA modernization should result in concluding an agreement on "enhanced partnership establishing an association between Russia and the EU which would take the form of amending and complementing the currently effective PCA"<sup>18</sup>. While acknowledging that the term "association" may have different meanings, they clarified

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<sup>17</sup> See footnote 1.

<sup>18</sup> Mark Entin, *In search of a Partnership: Russia and the European Union in 2004–2005*, St. Petersburg: Rossiya-Neva, 2006, p. 349. See also p. 352.

in the discussion that they did not mean either the European Economic Area (EEA) type of association (the Norwegian or the Swiss models), or the European agreements type of association opening a membership perspective, or the association of the sort the Mediterranean countries have with the European Union not envisaging membership. They would rather explore the EU Stabilization and Association type of agreements with the South Eastern European countries which concentrate on a closer integration within the European economic space while, at the same time, neither excluding the membership goal, nor encompassing it in a near term. They would expect the added value of an association to be produced in the security area, rather than in the economic one<sup>19</sup>.

Although many experts in Russia would support the idea of including a far reaching strategic vision of further development of relations with the European Union, neither the membership, nor the association option were given serious consideration during the PCA modernization debate. At no moment were those options subject to a consideration by the Russian government, or the European Commission.

While the Russian government representatives did not engage actively in the discussion differentiating the options for negotiating a new agreement (at the same time, the approaches of different agencies within this debate did differ), they have been open to the modernization option. They would admit that this concept widely reflected what they wanted as the outcome from the negotiation, and would realize that both a new and an amended agreement would have to go through ratification. The difference would be in the scope of the negotiation and in the drafting technique.

In March 2006, this discussion resulted in the ***informal decision of the Russian government to opt for a new legally binding agreement with the European Union, which tacitly implied the logic of the PCA modernization.***

The representatives of the European Commission and of the member states tended to move in that direction as well. At the same time, as the language of the Commission indicates, it also continues to use the concept of a "new agreement" without differentiating it.

## Conclusions

The discussion late in 2005 and early in 2006 was most helpful to begin reducing the options under consideration. It has allowed to formulate several important criteria for future talks. Those included:

- the PCA needs to be adapted (modernized);
- the new agreement shall be legally binding;
- shall parties fail to meet the end of 2007 deadline, they shall take their time;
- in order to avoid the emergence of a legal vacuum, for the time of negotiations the PCA will be renewed annually in accordance with Article 106;
- the task now is to "fill the empty spaces", to thoroughly review the PCA provisions in order to identify where adaptation is needed

## The substance of the new agreement

The initial formulation of the Russian government's approaches was finalized in Spring 2006 as the understanding of the objective of a new agreement with the European Union matured. On 21<sup>st</sup> of April, the inter-agency commission under the presidency of the Prime Minister Mikhail Fradkov approved its vision of the draft structure for the new agreement. The Russian Federation would aim at ***including 6 blocks into the agreement:***

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<sup>19</sup> So in particular Nadezhda Arbatova in: International Conference "Russia – European Union: Perspectives of the Agreement on Partnership and Cooperation", Moscow, 16th March, 2006, pp. 20–21.

- a preamble;
- 4 parts dealing thematically with the 4 road maps (Common Economic Space, Freedom, Security and Justice, External Security, Research, Education and Culture), and
- a section on the mechanism for cooperation and decision-making.

Moscow thinks of a **Framework Agreement on Strategic Partnership** between the European Union and the Russian Federation<sup>20</sup> (the concept of a framework agreement was often raised during the Russian discussion on the issue as the most appropriate one, however, it was opposed by many lawyers arguing that a framework agreement would not meet the criteria of spelling out direct norms and thus would fall short even of the provisions of the PCA). Nevertheless, the position on the title of the document remains flexible, as the commission has only approved a working one.

The Russian government appears to be pretty flexible also with regard to the final number of blocks in the new agreement provided its core interest in the political areas is appropriately reflected.

## The six blocks

Filling those six blocks with the substance is at an early stage. While proceeding on the basis of understanding that *the preamble* shall reflect on the status and formulate the objectives of the EU–Russia cooperation, there is a wide consensus that it also shall elaborate on the common values binding Russia and the European Union member states together.

With respect to the *economic Titles*, the predominant tendency is to build as much as possible on the PCA provisions while incorporating elements from the road map on the Common Economic Space. The Ministry for Economic Development and Trade appears to have a detailed assessment of what articles of the PCA it wants to keep and what shall be amended.

The negotiation of the economic Titles is, however, the most uncertain element in the Russian position as a thorough discussion of their provisions could only begin after Russia's accession to the WTO. The Ministry for economic development and trade proceeds on the basis of understanding that, since most terms of Russia's accession with the exception of the few open positions have been already negotiated, a discussion can start already now. Nevertheless, the Russian government is aware of the fact that the proper negotiation would begin only after the accession protocol has been fixed. This date remains uncertain, however.

For that reason, the early discussion of updating the economic Titles would be reduced to a joint review of the PCA provisions with the objective of identifying the positions of the parties as to what provisions they consider outdated, what they would like to amend, and what provisions they would like to add. The mainstream thinking is to restrict the negotiation to the pragmatic minimum, i.e. to keep it within the conceptual approach of the PCA and not to pursue the ambitious goal of identifying the sequence of further steps including **free trade, common economic space, and, finally, the introduction of the four economic freedoms**. This task is left for further negotiations.

The Russian government is also aware that any discussion of a deeper integration within the European economic space would bear a controversy over the "integration initiatives" pursued by Moscow with a number of Newly Independent States (integration with Belarus, the Eurasian Economic Community and the Single Economic Space projects). Both the WTO accession as well as an eventual discussion of free trade with the European Union would activate the discussion of the "sleeping" provisions of the PCA allowing Russia, within a certain period, to exclude trade preferences it grants to those states from the reciprocal most-favored-nation treatment.

20 Interview by *Interfax* with the Head of the Russian mission in the European Commission Vladimir Chizhov on 25th of May, 2006. See: <http://www.mid.ru/ns-dos.nsf/162979df2beb9880432569e70041fd1e/432569d800223f34c3257179002c7881?OpenDocument>. See also his interview with the Russian *Vryemya Novostey* on the same day available at: <http://www.mid.ru/ns-dos.nsf/162979df2beb9880432569e70041fd1e/432569d800223f34c325717a002085c?OpenDocument>



There is a general understanding that the *three other blocks* on Freedom, Security and Justice, External Security as well as Research, Education and Culture shall be largely shaped on the basis of the respective road maps. There is no clear idea yet, however, whether the road maps shall be entirely incorporated into the agreement or shall be reflected in a concise form of respective declarations of intentions. It is also considered to incorporate, in some way, the arrangements the EU and Russia have achieved with regard to the transit to/from Kaliningrad, as well as the intention to further proceed with visa facilitation.

The **block on the mechanism for political dialogue is perceived as the most important part of the new agreement**. Moscow seeks after an operational mechanism of "approving final and binding decisions" on such issues, as launching joint peace support operations. While the capability of the Partnership and Cooperation Council to perform this function is seen rather critically, the idea of establishing either an EU–Russia Security Council "at 27 plus" is not yet abandoned although Moscow sees it flexibly and does not exclude other options as, for instance, to task the meetings with the EU Troika (i.e. in Brussels) dealing with those external security issues.

## The goals of the European Union

The initial phase of informal consultations between the European Commission and the Russian Federation from late in 2005 through summer 2006 went on relatively smoothly. Both parties moved in a similar direction while discussing the options for the new agreement. The intention of the Commission to envisage a new legally binding instrument, as well as not to hurry with the negotiation did not run contrary to the Russian interest either.

Although Moscow wanted the negotiation to start as early as possible in order to have the agreement ready by the end of 2007, it realized that the drafting of the economic Titles could not be finished, or even properly started before Russia's accession to the WTO. The more uncertain the latter was becoming in the course of 2006, the more flexible Moscow was becoming on the timetable. It also realized that any attempt to accelerate the negotiation could turn Moscow into the role of a demander thus forcing it to make unnecessary concessions. It was not interested in the occurrence of any legal vacuum in cooperation with the European Union after the expiration of the PCA with the new agreement not in place.

This enabled the parties to agree, in May 2006, on the formula of a legally binding agreement to replace the PCA, and to take their time for the negotiation by renewing the PCA beyond 2007. Moscow looked forward for the Commission to request a mandate for the negotiation soon after the summit meeting in Sochi, so that the mandate could be approved by the Helsinki Council meeting for the talks to begin soon thereafter. On the 3<sup>rd</sup> of July 2006, the Commission met this objective and agreed on the terms negotiating the new agreement.

The approval of the mandate by the member states, and the opening of negotiations seem to promise, however, a more complex phase. The Commission revealed that it would seek the new agreement to be based on recognition of common values such as democracy, human rights and the rule of law. It expressed the hope that the agreement would adopt ambitious objectives on political and external security cooperation, effective multilateralism, provisions on the fight against organized crime, WMDs, migration and asylum, and counter-terrorism. Most importantly, however, **the Commission wants to consolidate the EU–Russia energy relationship based on reciprocity, fair and equal access and a level playing field**<sup>21</sup>.

As noted above, the unwillingness of Moscow to ratify the European Energy Charter Treaty and the Transit Protocol thereto, for a longer time has served for an ongoing controversy approaching no happy end any time soon. The intention of the Commission to include the energy issue into the new agreement (the PCA provisions in that regard are scarce and mainly refer to the Energy Charter pending ratification by Russia)

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21 <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/06/910&format=HTML&aged=0&language=EN&language=en>

was widely met with skepticism by many in the Russian foreign policy establishment expecting nothing else than the continuation of the debate over the European Energy Charter. However, this proposal may prove productive in the end if parties transcend their rigid positions on that issue and seek an agreement on a set of rules governing their cooperation in the energy sector based on reciprocity. This can help to find a way out of the stalemated discussion over the European Energy Charter.

However, it should be also clear that particularly ***the desire of the Commission to include an elaborate a set of regulations in the energy sector further consolidates the trend towards moving the target of the forthcoming negotiation beyond a pure update of the PCA.*** This is a helpful initiative as it can assist both parties to identify a new balance of interest. At the same time, it would not make the negotiation easier.

## **A bank of proposals raised during the Russian discussion**

The debate on a new agreement with the European Union has been most helpful in revitalizing the discussion over the objectives of the Russian policy towards Europe. Raising provocative questions of what the finality of the EU–Russia partnership shall be as well as where Russia sees itself in the evolving global environment can hardly be overestimated. It is extremely valuable against the background of the strengthening concentration of the Russian political class on Asia and particularly on “rising” China and India, and the increasing neglect of “decadent” Europe. This debate also was conducted against the background of the rising popular nationalism and xenophobia in Russia<sup>22</sup>. Revisiting the question of common democratic values with the European nations contrasted the mainstream trend towards seeing Russia as a “sovereign democracy” looking for its peculiar way of governance and joining neither West, nor the Orient in the mounting international disorder. Thus ***revisiting the question of where Russia belongs was extremely helpful for balancing the evolving foreign policy discourse in Russia.***

This debate shall, hopefully, bring the European Union and its member states a step further in discussing not only the common interest and objectives of their policy towards Russia but also in learning from the failures of the past, assessing the challenges, the chances and the limits of the EU–Russia cooperation. It was most helpful in keeping Russia on the EU radar screen against the background of internal and external challenges that urge the European Union to increasingly pay attention to.

The debate has provoked raising many ideas, which have little chance to be embraced by the parties in the forthcoming negotiations because they are either idealistic or premature. This goes, for the first instance, for such ideas as association or even prospective membership for the Russian Federation in the European Union. This also goes for the repeated appeals to both sides to formulate a clear long-term vision including a vision of the Russian future with and in Europe. Not only does this demand exceed the more salient purpose of an even profoundly modernized PCA. Neither side is prepared to give a clear response to this demand. A common strategic vision of the finality of the EU–Russia relations is not only hardly possible between the two parties who find themselves on rather diverging political paths for the time being. It is also highly unlikely that those who call for the formulation of such a vision would be satisfied with the outcome which, at this moment in time, would find consensus both within the Russian political class, the European Union, and in negotiations between the two.

This debate has also stimulated the formulation of numerous forward-looking proposals, which don't fit into the mainstream thinking as regards the new agreement. They are, nevertheless, worthwhile to be acknowl-

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<sup>22</sup> This point boldly spelled out in the RUE report: Concept of modernization of the Partnership and Cooperation Agreement between Russia and the EU and conclusion of a cohesion partnership agreement establishing an association.

edged and kept for further discussions of the evolution of the EU–Russia relations. Those proposals include, inter alia, the following<sup>23</sup>:

1. The legal instrument governing EU–Russia relations shall provide for **direct norms** that regulate the legal status of individuals, citizens of the Russian Federation and of the European Union, and define the scope of their reciprocally recognized rights and freedoms. Those would include freedom of movement, including the freedom to choose the place of residence; right to employment free of discrimination; right to participate in local elections, access to education, cultural and linguistic diversity. Direct norms shall also regulate the conditions affecting the establishment of and taking up activities by companies; fair competition on a commercial basis; merger and taking over of companies; public procurement, intellectual, industrial and commercial property protection etc.

2. The **program norms** shall establish the timetable and the road maps for the gradual elimination of restrictions limiting the freedom of movement of goods, labour, services and capital including the prohibition of the introduction of equivalent measures, of the limitation of transit connections, as well as of a partial closure of specific markets. Those norms shall regulate a gradual transition from the application of the most-favoured-nation treatment through extending to each other of the national regime to, as the ultimate goal, the establishment of a single legal space extended to all economic operators regardless of their nationality. The gradual formation of common spaces and of a common market would be reflected in a system of exemptions from a single legal regime to be gradually lifted pending measurable progress in the EU–Russia cooperation.

3. The mechanism for political dialogue shall be complemented by a special **mechanism for the harmonization of legislation and law enforcement**. Such a system would provide for a systematic mutual exchange of information on the prospective legislation under consideration, exchange of the experts conclusions on draft laws of mutual interest, and the participation of experts from both sides in the drafting of respective laws.

4. The relevant Russian government agencies, as the **Russian representatives in the broader sense, shall be more actively involved in the EU structures of intergovernmental cooperation as observers**. A similar status should be granted to EU observers to be involved in the work of the relevant Russian governmental agencies.

5. The Russian Federation shall be granted the right to **remedy** regulations and executive decisions issued by the EU institutions in the European Court of Justice. The mechanism for cooperation shall be complemented by the establishment of an **international judicial body** similar to the one set up in accordance with the EEA Treaty.

This road map, even if imperfect, reflects the vision of developing closer integration and association between the European Union and the Russian Federation of the sort of the EEA. Although, politically, the idea of an association sounds premature from the official perspectives of both the Russian government and the European Commission, this conception reflects deeper trends in the evolution of Russian thinking on the future of relations with the EU. It is also practical as it can be operationalized in form of specific commitments that can be introduced at different stages of the Russia–EU development with the new agreement to replace the PCA not being the final station on this road.

While the new agreement between the European Union and the Russian Federation is going to pursue more modest objectives, thus reflecting both the objective stage of their cooperation and the current mainstream thinking on both sides, it shall remain flexible and leave the door open for further improvements, as the 1994 PCA did.

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<sup>23</sup> For a systematic discussion of this issue see: Mark Entin, *In search of a Partnership: Russia and the European Union in 2004–2005*, St. Petersburg: Rossiya-Neva, 2006, pp. 354–356.

## Conclusions: the way ahead

The expiration of the 1994 Agreement on Partnership and Cooperation between the European Union and the Russian Federation by the 1<sup>st</sup> of December 2007 does not represent a dramatic moment in the development of these relations. Although the agreement can really be adapted to the new developments that have taken place since it was signed and entered into force, its purpose has not yet been accomplished. Russia has not yet acceded to the WTO, and neither side is yet prepared to make the next step foreseen by the PCA, that is, to examine the possibility of negotiating a free trade arrangement, not to speak of a more forthcoming and complex arrangement on the Common Economic Space that would go beyond the PCA provisions. As the new agreement is unlikely to be in place by the end of 2007, no party has the intention to withdraw from the PCA which thus will be renewed year by year.

The primarily policy driven discussion over the 2007 deadline has resulted in a decision on both sides to move towards negotiating a new agreement. The mandate for the Commission is expected to be approved by the Helsinki Council Meeting later in 2006, so that the negotiation can assume early in 2007. Meanwhile, an informal agreement has emerged indicating that the parties would

- seek a substantial adaptation (modernization) of the PCA to reflect on the progress in EU–Russia relations;
- seek to negotiate a new legally binding instrument governing their cooperation;
- take their time for that negotiation shall the new agreement not be in place by the end of 2007.

The evolution of the policy of both Russia and the European Union with regard to the new agreement indicates, however, that both sides go beyond a pure update of the PCA. Mainly for political reasons, Moscow seeks to depart from the philosophy of the EU-guided assistance to a systemic transformation in Russia both in the political and the economic fields. It rather seeks to replace this logic with a bolder manifestation of an equal partnership between two relevant actors in the world politics. This is especially to be reflected in the new arrangements with regard to the mechanism for political dialogue, which, in the Russian perspective, shall provide for a procedure of joint and binding decision making on policy issues similar to the one that has been shaped within the NATO–Russia Council.

The desire of the European Union, as reflected in the draft terms for the negotiations as of the 3<sup>rd</sup> of July 2006 and pending approval by the Council, is to maintain the democratic discourse as a basis of a new agreement and to reach an agreement on the rules regulating cooperation and business activities in the energy sector.

The two desires that go beyond a simple update of the PCA are likely to shape the bargaining ground for a partial rearrangement of the partnership and cooperation between the EU and Russia. It can provide the ground for reaching a complex agreement on a more profound modernization of the PCA as initially had been expected, and has the potential to bring the EU–Russia relations to a new level, although this progress shall be expected to be limited, as a more profound rearrangement of these relations appears premature.

The revision of the legal ground for partnership and cooperation between the EU and Russia will take more time than a simple update of the PCA. After the parties have agreed to take their time for this, the crucial question is how much time they are prepared to take. The more ambitious the task, the more time consuming the negotiations could be.

### Policy recommendations

1. Opt for the negotiation of the new agreement through amending the existing PCA. This would allow to keep the maximum of its valid provisions and, at the same time, would not hinder the parties from introducing deeper changes they deem appropriate. This approach neither excludes changing the title of the agreement.

2. Be ambitious but not too much. Neither the envisaged timetable, nor the purpose of the modernization of the PCA leave much room for a very ambitious project. The more complex negotiation can only be envisaged after Russia's accession to the WTO and after Moscow has decided it wants to examine the free trade option.
3. Initiate a thorough joint review of the PCA provisions in order to establish which of them need to be amended and which have become obsolete. Identify the bottom line of the PCA *acquis* that must be kept in order to prevent any regress in EU–Russia relations, even if some of those provisions might fall into the category of the “sleeping” ones.
4. Don't compromise on the values relevant in the PCA provisions. However, assess the instruments available to strengthen the mutual commitment to the enshrined values. However, both sides shall be aware of the fact that the current stage in EU–Russia relations is not conducive to apply the principle of conditionality.
5. The European Union would be best advised to launch a thorough review of the lessons it has learned in the twelve years that have passed since the finalization of the PCA. This review shall not be limited to the internal Commission procedures but shall involve research institutions, civil society and the European Parliament.
6. Seek an elaborate agreement between the European Union and Russia ensuring, on the basis of reciprocity, fair and equal access and a level playing field in the energy sector. However, the acceptance by Russia of all provisions of the European Energy Charter Treaty, and of the Transit Protocol thereto, including the most controversial ones, shall be seen as a rather unrealistic goal. Instead of taking the opportunity of the negotiation in order to persuade Moscow to ratify those documents, seek a negotiated solution of the controversial issues.



# EU-Russia Energy Dialogue in the Context of the Prospective Partnership and Cooperation Agreement

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## Executive Summary

The EU-Russia Partnership and Cooperation Agreement expires in 2007 and the character of the prospective agreement must be defined. The energy dialogue is becoming one of the central elements of the whole debate.

Russian leadership increasingly perceives the country as an “indispensable nation” in global economy and “great energy power.” It has consciously pursued the domestic policy of turning the Russian state into a major player within the energy sector. Consequently, Russia is increasingly in a position to develop “gas and oil diplomacy” as a central pillar and tool of Russian foreign policy, including in its relations with the European Union.

The EU finds it difficult to arrive at common and comprehensive stances with respect to energy issues, such as the internal energy market and security of supplies. During the last two decades, the EU has experienced a “paradigm shift” with respect to the internal energy market. The gradual transformation from the fully state controlled sector to a sector with an increasing presence and domination of market forces has taken place. However, the EU countries differ in their scale of liberalization and deregulation. The diverging positions are even more clearly manifested with regard to the issue of security of supply. The national governments have considered the ensuring security of energy supplies as part of their national security considerations and, consequently, been rather reluctant to delegate these functions to any supranational institution. Hence, the common position on security of supplies is just in the making, including in relations with Russia.

Russia is a principal energy supplier to the EU. The EU and Russia acknowledged the significance of mutual dependency in the energy sector by launching a bilateral energy dialogue at the Paris summit in October 2000. The basic idea behind the dialogue was an understanding and realization of mutual interests: the Russians need more European investment to develop their energy resources, while the Europeans need a secure, long-term access to Russian oil and gas. The EU-Russian energy dialogue has been intensified recently due to growing importance of energy supplies, EU enlargement, prospects of extensive joint projects and complicated relations with transit countries. The Road Map for the Common Economic Space adopted in May 2005 emphasized necessity to enhance cooperation in the energy sector and address the

issues related to optimization of energy security, efficiency, infrastructure and trade. Although some progress was achieved in the framework of the EU-Russia energy dialogue and prospective intensification of interaction was envisaged in the form of either an energy treaty or strategic partnership, success has been rather limited on major issues, first of all setting a level playing field in the energy sector and providing a comprehensive framework for stable and secure energy deliveries. The energy dialogue has also become one of the central issues in the context of the EU-Russia PCA discussions.

A considerable modification of the EU-Russian PCA would provide a “window of opportunity” to both demonstrate mutual interest in cooperation and enhance the formal framework and mechanisms for the interaction. The “association” dimension of the transformed PCA may include prospective liberalization of goods, services and capital movement (aspired by the Russian side) and establishing a common regulatory space, which would follow the parameters sought by European countries. In the energy sector, it would require a certain de-monopolization of Russia’s gas sector and ratification of the Energy Charter Treaty. The future modified EU-Russia PCA would also set a backdrop for an extended discussion forum and eventual formulation of “one voice”, including in the energy sector, within the EU. The EU must consider the overall position in the whole post-Soviet space. At the same time, the EU must strengthen its negotiating positions and increase manoeuvre capacity through optimization of energy utilization and diversification of routes and resources.

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## Introduction

The EU-Russia Partnership and Cooperation Agreement expires in 2007 and the character of the prospective agreement is increasingly under discussion. The agreement provides direction of interaction for an extensive range of domains. Some of these areas are apparently more important and central to the potential PCA, in particular, and the EU-Russia relations, in general. The ongoing debate on the PCA and character of the EU-Russia recent relationship reveals important aspects of agreement and contention. This also sets a psychological and political milieu for the further discussions on the character of the PCA. Apparently, the energy dialogue has become one of the central elements of the whole debate. In the context of increasing global energy demand, Russia's activities in the energy sector, energy conflicts between Russia and its East European neighbors and political and economic circumstances for launching the North European Gas Pipeline project resonated strongly among European policy makers and experts and placed the issue of the EU-Russia energy relations high on the political agenda.

This paper identifies the recent developments, existing major trends and character of the EU-Russia interaction in the energy sector, especially in the context of the prospective EU-Russia PCA. The article focuses on the transformation of and tendencies within Russian and EU energy sectors and domains of the EU-Russia dialogue. It also endeavors to outline the prospective alternatives of the EU-Russia energy relationship in the context of the PCA and provide recommendations from Latvia's perspective.

## Russia: towards a "great energy power"

Russian leadership increasingly perceives the country as an "indispensable nation" in global economy and "great energy power."<sup>1</sup> According to Vladimir Putin, it is necessary to effectively exploit these Russia's advantages both domestically and internationally: "Energy has become today the key factor for global economic development. Russia's present and prospective well being directly depends on the place we take in the global energy context. Aspiration for leadership in the world's energy sector is an ambitious task."<sup>2</sup> This approach is, to a certain extent, justified as Russia possesses the resources to contribute to stabilization of the global energy markets. The country produces 12% of the world's primary energy resources, owns 13% of the known global oil reserves and, particularly impressive, 34% of the known gas reserves.<sup>3</sup> The depletion of developed extraction sites and the need for considerable financial investments and modernization of infrastructure notwithstanding, the natural resources provide Russia with attributes of a comparative advantage in global economic and political affairs. There is a gradual and apparent shift in the Russian international orientation towards deliberately turning itself into an important energy player in the global economy. It is also becoming increasingly apparent what means and strategy is envisaged by Russia's leadership in order to lead Russia to the status of a "great energy power".

The Russian government evidently regards economic growth and potency as the precondition for becoming an influential international actor. The energy resources and companies have become the major instrument in achieving this. Hence, the Kremlin has consciously pursued the domestic policy of turning the Russian state into the major player within the energy sector. The aim has already been considerably achieved by Putin's second presidential term. The state strengthened its monopoly over the gas sector and established a substantial presence in the oil industry. The Khodorkovski case clearly demonstrated the determination on the Kremlin's side to dominate the energy sector.<sup>4</sup> Second, Russia's leadership has embarked on supporting the socially and politically "responsible" Russian companies on a domestic and, especially, international scene. As a result, the gas monopoly *Gazprom* has apparently been advanced to become a global

1 Dmitri Trenin, "Postimperskiy proyekt", *Nezavisimaya Gazeta*, 30 January 2006.

2 Putin's address to Russia's Security Council, 22 December 2005; quoted in Vladimir Milov, "Mozhet li Rossiya stat nefyanyam rayem?", *Pro et Contra*, Vol. 10, No. 2-3 (2006), p. 13.

3 Alexander Arbatov, Maria Belova, Vladimir Feysin, "Russian Hydrocarbons and World Markets", *Russia in Global Affairs*, No. 1 (January-March 2006). Russia controls around 47 trillion cubic meters of proven natural gas reserves. In comparison, the largest European gas producers Norway and the Netherlands own 4 and 1.5 trillion cubic meters, respectively.

4 Marta Olkot, *Vladimir Putin i nefyanyaya politika Rossii*, Carnegie Working Paper, No. 1 (2005), p. 4.



energy player. In this regard, one must only paraphrase the popular thesis to discern the contours of the embraced strategic calculations and to grasp the influence of Russia's gas monopoly – what is in the interests of *Gazprom* is in the interests of Russia and vice versa. This also pinpoints to the tendency that *Gazprom* business activities become a major instrument of Russia's external energy policy. What is more, Russia's gas diplomacy is deliberately and increasingly developed into the central pillar of Russian foreign policy.<sup>5</sup>

The diversification of strategic routes of Russian energy resources to Western and, prospectively, non-Western consumers have apparently become an important and integral part of Russia's "gas and oil diplomacy". This objective has been advocated by political, business and expert communities.<sup>6</sup> It was further facilitated by the increasing global demand and rising prices on energy resources at the turn of the centuries, having simultaneously contributed to Russia's motivation and financial capacity.<sup>7</sup> The diversification of supply routes would undoubtedly strengthen the maneuvering and bargaining potential for the Russian companies and Russia, in general. Hence, the diversification policy contains both economic and political dimensions on the international and domestic levels.

Russia began the implementation of the diversification strategy in the oil sector by constructing the Baltic Pipeline System and effectively bypassing the Baltic countries, first of all, the Ventspils port in Latvia, which was essential in Russia's oil exports to West European countries in the 1990s. This reduced considerably the transit costs. Moreover, the diversification turns the previously existing asymmetric relations upside down. Prior to the construction of the Baltic Pipeline System, the Baltics were indispensable transit countries for the exported Russian oil. Now, in the context of the diversification of Russian energy export routes, instead of setting prices for transit, these countries primarily aspire, though largely without success, not to lose their previously important role in the transit sector.

In the gas sector, having implemented the Blue Stream project to Turkey, Russia actively embarked on implementation of the extensive North European Gas Pipeline project. It must be clearly viewed in the context of the transforming priorities of Russia's domestic and foreign policy. The construction of the North European Gas Pipeline obviously corresponds with the endeavors to turn Russia into a potential European and global "energy superpower." Actually, the project itself invokes serious doubts about its economic feasibility. Notwithstanding the prospectively growing scope of consumption in Western Europe, the inevitability of the substantial increase of Russian gas import is debatable. Considerable competition already exists in terms of gas supplies for West European countries. Evidently, the implementation of the project also will be expensive. Enormous expenditures must be envisaged in the process of developing extraction places in the Barents Sea and building the necessary infrastructure to transport gas to Vyborg. The costly North European Pipeline project has been launched despite the fact that *Gazprom* had already experienced the negative consequences of the economically questionable Blue Stream project providing gas to Turkey.<sup>8</sup>

Apparently, Russian leadership and *Gazprom* have calculated primarily the potential strategic economic and political benefits rather than pending costs and prospects of financial sustainability of the project. The pursued gains of the prospectively strengthened presence in the West European energy sector and increased political maneuvering in Central and East European countries outweighed considerations over economic feasibility of the project itself. The Russian gas monopoly has already established itself as a major energy player in Central and East European countries and partly monopolized their gas markets. *Gazprom* increasingly dominates the whole vertical from extraction to distribution to individual consumers there.

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5 Keith C. Smith, *Russian Energy Politics in the Baltics, Poland and Ukraine: A New Stealth Imperialism?* CSIS Report, December 2004.

6 Vladimir Milov, Ivan Selivahin, *Problemy energeticheskoy politiki*. Carnegie Moscow Center Working Paper, No. 4 (2005), pp. 6, 17-22.

7 During the period between 1992 and 1999, the average price for the barrel of Brent crude oil was \$ 17.6, whereas in 2000-2005 it was \$ 35.4. The high oil and gas prices contributed considerably to Russia's ability to pay off foreign debts and, moreover, to increase its bank reserves and gradually approach a hundred billion dollar accumulation in the Stabilization fund.

8 Oleg Reut, "Severo-evropeyskiy gazopro vod i ekonomika gosudarstv Baltiyskogo regiona," published on Baltic Research Center site, 14 September 2005, available at <http://www.brcinfo.ru/publics/public.php?id=2200>

*Gazprom* holds considerable shares in national gas companies in Central and East European countries. Although in the presence of established players similar influence would be impossible to achieve in the West European energy sector, *Gazprom* seeks to intensify its connections with large European energy companies by signing long-term supply agreements, establishing joint extraction and transportation ventures, and implementing joint investment projects in other countries. If in Central and East European countries Russia aims to increase their dependence, then the objective in Western Europe is an increased mutual interdependence.

Moreover, Russia has apparently aspired to reduce its dependence on the Ukrainian transit route. Ukraine has dominated the Russian gas exports to Europe. Although Ukraine will continue to serve as a dominant Russian gas export corridor after the new pipeline starts to operate, Russia's dependence on the former would be lessened from almost 80% to approximately 65% of natural gas exports.<sup>9</sup> As a result, political dividends are also obvious. Russia has effectively obtained additional instruments for both economic and political "carrot and stick" policy with respect to the transit countries, above all Ukraine, and extended its scope of political and economic maneuvering.

The diversification policy also possesses a considerable domestic dimension. The Kremlin and *Gazprom* by launching, firstly, the Baltic Pipeline project and more recently, the North European Pipeline project have demonstrated political, economic and social responsibility to the domestic audiences. Russians have enthusiastically supported an increased "economic and political security" from the countries, which have been perceived in Russia as "unreliable nations". Economically, the project has provided opportunities to attract additional domestic and foreign investments to Russia, in general, and some of its regions, in particular. Unsurprisingly, the authorities of Russia's northern regions and especially Leningrad Oblast have been among the staunchest advocates of the diversification policy and infrastructure construction on their territory. In the case of the construction of the North European Gas Pipeline, the subcontractors participating in the project will have to establish local subsidiaries and pay taxes to the regional budget of Leningrad Oblast.<sup>10</sup> Alongside the regional lobbies particular Russia's economic interest groups are also interested in the development of the project.<sup>11</sup>

Russian leadership has not limited its options only to the diversification policy in the European direction. In 2006, Russia signed a contract with China on the construction of a gas pipeline, whose first stage would be accomplished by 2010. Eventually, the implementation of the whole project may lead to the export of 60-80 billion cubic meters of natural gas from Russia to energy resources eager China. The prospective natural gas pipeline alongside a similar crude oil route towards Asia and plans to develop liquefied natural gas (LNG) production would naturally extend Russia's global economic presence and political clout, as well as strengthen its bargaining powers *vis-à-vis* Europe.

## EU in search for a common energy policy

Although the EU has largely its roots in energy cooperation frameworks in the 1950s, the process of arriving at common stances regarding energy issues has been slow and complicated. In the complex web of the intertwining strategic, political, economic, social, and environmental issues, the positions of the member states and the Commission have frequently diverged. Particularly, two major issues stand out in the internal debate: creation of the internal energy market (IEM) through privatization and deregulation and agreeing on security of supplies as one of the central elements in the common energy policy (CEP). These issues are directly relevant for the formal framework of the EU energy dialogue with Russia.

<sup>9</sup> According to the Renaissance Capital Group estimates, the distribution of annual output capacity of export pipelines in 2010 (altogether 257 billion cubic meters as compared to 190 in 2004) will be the following: Ukrainian transit - 170 (145 in 2004), Yamal-Europe (through Belarus) - 33 (23), NEGP - 30 (0); Blue Stream - 16 (16) and Nordic (Finland's) direction - 8 (6); see, "Situaciya na evropeiskom gazovom rinke", *Biuleten instituta energetiki i finansov*, No. 2 (2006), p. 15.

<sup>10</sup> Yekaterina Dranitsyna, "Gas Pipeline To Supply Oblast With Taxpayers", *The St. Petersburg Times*, 13 September 2005.

<sup>11</sup> For instance, a major Russian producer of pipelines, which is a daughter enterprise of *Gazprom*, would participate in the project.

## Towards internal energy market

During the last two decades, the EU has experienced a “paradigm shift” regarding managing the internal energy market. The gradual transformation from the fully state controlled sector to a sector with an increasing presence and domination of market forces has taken place. In the late 1980s and 1990s most of the EU countries liberalized and deregulated their energy markets.<sup>12</sup> In the 1990s, the electricity sector was partly liberalized and third party accession principle was gradually introduced. The electricity and gas directives of 2003 called for further liberalization of the European electricity and gas markets. It stipulated the necessity to create conditions under which both industrial and private consumers could choose their electricity and gas provider. According to the directives, from July 2007, every European consumer will have the right to purchase gas and electricity from any supplier in the EU. However, as problems remain with interconnectivity, the complete implementation of the directives will become a litmus test for the internal energy market efficiency. Such countries as Ireland and Malta as well as the Baltic states have remained “energy islands” largely cut off from the EU energy networks.<sup>13</sup>

The energy policy in the EU is formed as the result of a multilayered policy process. The Commission has gradually assumed a leading role in the process. Although national governments may considerably influence the character and direction of final negotiations over the energy policy issues, the Commission is instrumental and rather powerful at agenda-setting and “brokering” stage. Moreover, the Commission may employ such tools as competition policy, agreed by the member states, to promote liberalization within the energy sector. However, considerable obstacles remain. Notwithstanding the general agreement on the necessity to liberalize the European energy market, eclecticism remains as various governments have diverging interests and respectively pursue not infrequently diverging policies. It must be taken into account that by its very nature, the energy policy is an integral part of economic, social, environmental, and most importantly, security policy. As the result, the progress has been mixed. The countries differ in their scale of liberalization and deregulation. The British government followed its general liberal economy philosophy and consequently liberalized also its energy markets. Germany has demonstrated a mixture of state presence and regulation in the socially sensitive coal as well as nuclear sector and liberal market approach in other energy sectors. Liberalization and deregulation has been only partial in traditionally interventionist France and Italy. Moreover, in contrast to Russia, large European companies represent strong interest groups within the EU internal decision-making process and have an impact on the community’s energy policy. They have formed industry associations, such as *Eurelectric* (electricity), *Eurogas* (gas), *Europia* (oil), *Foratom* (nuclear energy), *CEPCEO* (coal), with a permanent presence in Brussels. Their approaches, similarly to those of national governments, have followed their own interests.<sup>14</sup>

## Security of supply

The imported energy resources account for 50% of the EU requirements and will increase up to 70% in the next few decades.<sup>15</sup> The issue of ensuring both natural gas and oil supplies is increasingly becoming urgent and imperative. The imports account for almost 80% of the EU oil consumption. Yet, as natural gas can be transported mainly through pipelines, the access to the latter has become an increasingly imperative issue to solve. The share of natural gas in the EU energy balance has risen from 2% in 1960 to 25% in 2003. The European gas market has been steadily growing. According to the International Energy Agency and other estimations, in 2005 the EU countries consumed almost 500 billion cubic meters of natural gas and it is estimated that consumption would reach 610-640 billion cubic meters by 2010. Eventually the EU dependence on the import of the natural gas would increase from presently more than 50% to around 70 to 80% by 2020.<sup>16</sup>

12 Janne Haaland Matlary, *Energy Policy in the European Union*, London, 1997, pp. 6-7.

13 EC Green Paper “A European Strategy for Sustainable, Competitive and Secure Energy”, 8 March 2006, p. 6; available from [http://europa.eu.int/comm/energy/green-paper-energy/doc/2006\\_03\\_08\\_gp\\_document\\_en.pdf](http://europa.eu.int/comm/energy/green-paper-energy/doc/2006_03_08_gp_document_en.pdf)

14 Matlary, *Energy Policy*.

15 Green Paper, 2006, p. 3.

16 Apart from deliveries from Russia (around 150 bcm), the natural gas has been imported by pipelines from Norway and Algeria (around 100 bcm) and as LNG from Algeria, Nigeria, Qatar (40 bcm).

Security of supply has been on the community's political agenda for long. After the 1973 crisis, the Commission coordinated the creation of 90-day emergency oil stocks in the member states. However, further activities have been slow in making and were clearly influenced by the "lowest common denominator" principle. The national governments have considered ensuring security of energy supplies as a part of their national security concerns and, consequently, been rather reluctant to delegate these functions to any supra-national institution. Hence, there is a certain tension between policy of liberalization and deregulation on the one hand, and ensuring security of supply on the other. Some governments and interest groups have argued that deregulation and competition in the energy field would be detrimental to security of supply and vice versa. The majority of states are eager to control security of supply themselves. Moreover, there have been structurally determined diverging interpretations of supply security and, respectively, political and economic interests between the energy-producing and energy-importing countries. Naturally, the former tend to demonstrate reservations on creating common policies at the EU level. Simultaneously, there is an increasing realization that it is becoming more difficult to secure the needed energy resources unilaterally or bilaterally. The majority of the EU countries are net importers. This means that due to the mounting needs in the context of economic growth and transforming global political and economic environment there is a window of opportunity in terms of political will on the side of national states towards shaping a common energy policy. At the end of 2005, the EU Heads of States and Governments called for a common energy policy and "integrated approach" to energy. The Green Paper already indicated the necessity for the European Union to "speak with one voice" and establish coordinating mechanisms on the external energy matters: "The EU has no formal instrument dealing with external energy supplies. This could be addressed by a new more formal, targeted instrument to deal with emergency external supply events. This might involve, for example, a monitoring mechanism to provide early warning and to enhance response capabilities in the event of an external energy crisis."<sup>17</sup> This was certainly influenced also by the recent complications in the EU-Russia energy interaction.

## EU-Russia energy dialogue

The 1994 EU-Russia Partnership and Cooperation Agreement recognized the energy sector as one of the areas of mutual cooperation. The importance of this cooperation was discerned by an increasing mutual interaction, above all, in terms of the trade volumes. Russia became a principal energy supplier to the EU, whereas the latter provided most of Russia's foreign currency earnings. The EU and Russia acknowledged the significance of mutual dependency in the energy sector by launching a bilateral energy dialogue at Paris summit in October 2000 with an aim "to raise all issues of common interest relating to the [energy] sector, including the introduction of cooperation on energy saving, rationalization of production and transportation infrastructures, European investment possibilities, and relations between producer and consumer countries."<sup>18</sup> The basic idea behind the dialogue was an understanding and realization of mutual interests: the Russians need more European investment to develop their energy resources, while the Europeans need a secure, long-term access to the Russian oil and gas. The EU-Russian energy dialogue has been intensified recently due to the growing importance of energy supplies, EU enlargement, prospects of extensive joint projects and complicated relations with transit countries. The Road Map for the Common Economic Space adopted in May 2005 emphasized the necessity to enhance cooperation in the energy sector and address the issues related to the optimization of energy security, efficiency, infrastructure and trade.<sup>19</sup> At the end of 2005, the first session was held by the EU-Russia Permanent Energy Partnership Council. Although some progress was achieved in the framework of the EU-Russia energy dialogue and prospective intensification of interaction was envisaged in the form of either a energy treaty or strategic partnership, success has been rather limited on major issues, first off all setting a level playing field in the energy sector and providing a comprehensive framework for stable and secure energy deliveries.

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<sup>17</sup> Green Paper, 2006, p. 17.

<sup>18</sup> EU-Russia Paris Summit Communiqué, October 2000.

<sup>19</sup> Sixth Progress Report on EU-Russia Energy Dialogue, October 2005, p. 2; available from [http://ec.europa.eu/energy/russia/joint\\_progress/doc/progress6\\_en.pdf](http://ec.europa.eu/energy/russia/joint_progress/doc/progress6_en.pdf)

## Level playing field: common declarations and diverging policies

Mutual understanding is obviously important between the partners declaring their willingness to intensify and formalize their relations. The existing PCA indicates that “cooperation shall take place within the principles of the market economy and the European Energy Charter, against the background of the progressive integration of the energy markets in Europe.”<sup>20</sup> The PCA underlines the adherence to market economy principles in management and regulation of energy sector and necessity to introduce “the range of institutional, legal, fiscal and other conditions necessary to encourage increased energy trade and investment.”<sup>21</sup> The need for equal access conditions, investment security and de-monopolization of Russia’s energy sector was invited in the framework of the EU-Russia energy dialogue. The European Commission reported in April 2003 that the Russian side “underlined that they take as a reference some elements of the EU model for the reform of their own energy market, notably the separation of the transportation function from production.”<sup>22</sup>

Notwithstanding the expression of good will from both sides, apparently the EU and Russia are moving in absolutely opposite directions regarding a range of aspects in the energy sector. The EU is gradually moving towards liberalization and deregulation of its energy markets, whereas the Russian energy sector is increasingly being dominated by the state. The Russian government withdrew from its initial commitments to de-monopolize electricity and, especially, the gas sector and, moreover, strengthened its presence in the oil sector. With regard to the investment environment, accessibility and protection are clearly asymmetric. While Russia attempts to penetrate Western markets by acquiring supply, transportation and distribution assets, Western companies face political, legal and bureaucratic hurdles to invest and develop business in Russia.

One of the major permanent and complicated issues in the EU-Russia energy dialogue has been adherence to the Energy Charter principles and ratification of the Energy Charter Treaty by Russia. This largely overlaps with objectives set in the EU-Russia PCA and Energy dialogue documents. The treaty, strongly promoted by the European Commission, aimed at establishing a legal framework in order to promote the long-term cooperation in the energy field based on complementarities and mutual benefits between the EU and neighboring countries. It stipulates investment promotion and protection and a non-discriminatory regime among the EU member and non-member states in the sphere of energy trade according to the WTO principles. Taking into account different visions of the national energy sectors, the ECT simultaneously confirms the principle of national sovereignty over domestic markets, legal structure of energy companies and third party access.<sup>23</sup>

Although the Russian government was actively involved in consultations during the ECT drafting process and it signed the Treaty, its parliament never ratified the document. Apparently, Putin’s second presidency marked Russia’s position, which has become increasingly incongruent with the ECT principles and previous stances of Russian governments. This has been clearly manifested by the Duma decision to adopt a bill, which approved *Gazprom* as the only company to export Russian natural gas. This has made the ECT ratification politically and legally almost impossible. Unfortunately, the EU has not used fully its opportunities in the process and defending its interests. The ECT ratification may have been identified as an intermediary step towards WTO membership, yet dropped by the EU in the negotiation process.

Having pointed towards the gradual divergence of energy policies of the two sides largely due to Russia’s reservations and different vision, the EU itself has not always been consistent and cooperative in its energy interaction with Russia. This can be referred to such issues as cooperation in the domains of nuclear fuel supply and, especially, electricity. The EU-Russia PCA indicated the objective of interconnecting electricity

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20 EU-Russia Partnership and Cooperation Agreement, 1994, article 65.1.

21 EU-Russia PCA, article 65.2.

22 Quoted in Charles Grant and Katinka Barysch, “The EU-Russia Energy Dialogue”, Centre for European Reform briefing note, May 2003, p. 2.

23 Energy Charter Treaty, 1994, article 18.

networks.<sup>24</sup> Russia, which has synchronous connection with the EU Baltic members, has strongly advocated at technical and political levels establishing synchronous interconnection with the EU as a whole. The EU has adopted the “step-by-step approach” due to number of technical and commercial issues.<sup>25</sup> Notwithstanding the importance of the latter issues, apparently there also exist strong interest groups in Europe, which are rather reluctant to intensify the cooperation in this domain and eventually to rival prospectively competitive prices of Russian electricity.

## The issue of energy supply

Russia has become a key supplier of natural gas and oil for the EU. Russia provides approximately 50% of the EU gas imports or 25% of total gas consumption, and for over 30% of total crude oil and oil product imports or over 25% of the total EU oil consumption.<sup>26</sup> The issue of stable natural gas supplies, transit routes and infrastructural projects has recently moved to the forefront of the EU-Russia Energy Dialogue. Now Russia supplies around 150 billion cubic meters of natural gas annually, which, as mentioned, constitutes more than a quarter of the EU gas consumption.<sup>27</sup> In the context of rising energy consumption, Russia becomes an increasingly important partner for West European nations. Objectively, Russia provides an opportunity for these countries to diversify their energy supplies and lessen dependence on the oil and gas deliveries from Norway and, especially the Middle East region. Moreover, strengthening interdependence between Russia and Western Europe has been for long perceived in the latter as an means for Russia’s “normalization”.

The recently launched North European Gas Pipeline is a manifestation of both Russia’s determination to strengthen its relative position in relations with European countries and Europe’s rather contradictory stance. The North European Gas Pipeline project in the context of the recent Russian gas conflict with its neighbors has elucidated the European political and economic dilemmas in the energy sector, especially in terms of interpretation and interests between the old and new member of the organization. Germany has become the major player in Europe’s energy dialogue with Russia. With regard to the joint construction of the North European Gas Pipeline, the German ambassador to Russia Walter Schmidt indicated that the project would ensure power supplies to European countries and not infringe upon anyone’s interests. The North European Gas Pipeline found support not only in Germany but also in the European Union structures. The EU Commissioner for Foreign Relations and European Neighborhood Policy Benita Ferrero-Waldner pointed out that “speaking of laying of the gas pipeline across the Baltic Sea floor, we should realize that the Project will contribute significantly to secure and environmentally safe gas deliveries in the EU.”<sup>28</sup>

The Central and East European nations have diverged in their definition of diversification and potential for Russia’s “normalization” in general, and implementation of the North European Gas Pipeline in particular. Poland and the Baltic countries perceived the Russian-German agreement in the general context of intensification of economic cooperation between Russia and Germany as a “Putin-Schröder pact” implicitly drawing parallels with the Molotov-Ribbentrop pact of 1939. The North European Pipeline has invoked in these countries the traditionally fearsome notion of “love and hate” relationship between Germany and Russia at the expense of their interests.<sup>29</sup> Moreover, the project has been considered in Central and East Europe countries to contribute to their energy insecurity as Poland, Latvia and Lithuania, in particular, would be unable to compensate the extensive dependence on the gas provider with control over its gas transit.<sup>30</sup>

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24 EU-Russia PCA, article 65.2.

25 The EU Commission’s Communication “On the Development of Energy Policy for the Enlarged European Union, Its Neighbours and Partner Countries”, 13 May 2003, p. 20.

26 EC Press Release, 7 October 2005, available from <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1238&format=HTML&aged=0&language=EN&guiLanguage=en>

27 International Energy Agency (<http://www.iea.org>) and *Gazprom* (<http://www.gazprom.com>). Russia is the by far the largest supplier for East and Central European countries, including Germany and considerable provider for France and Italy (more than 30%).

28 *Interfax News*, 3 October 2005.

29 Jerzy Marek Nowakowski, Piotr Wozniak, “Gazowe okrazenie Polski”, *Wprost*, 10 July 2005, pp. 84-91.

30 Agata Loskot, *Bezpieczenstwo dostaw rosyjskiego gazu do UE – kwestia polaczen infrastrukturalnych*. Polish Centre for Eastern Studies paper, February 2005, p. 11.

A frequently overlooked aspect, which contributes to the complexity of formulating a common European energy approach, is the fact that *Gazprom* has succeeded in reaching agreements and establishing close partnerships with many European companies, both in Western and Central Europe.<sup>31</sup> Although it would be an exaggeration to identify all *Gazprom's* partners as business and political lobbies of parochial Russian interests in Europe, the companies are naturally interested in keeping their obtained comparative business advantages, which are perceived predominantly in economic terms. As the German ambassador noted, the North European Gas Pipeline is "a private business project, and it initiates, constructs, and ensures its functioning. It is therefore the business of entrepreneurs to promote this project, as this is not a mission of the state."<sup>32</sup> However, if the energy cooperation with Russia for Western Europeans might be primarily about economics, for *Gazprom* and its owner, the Kremlin, it apparently has more to do with geo-economic and geopolitical considerations. Yet, even for the Europeans it is clearly manifestation of commercial relationships through a high-level bilateral political agreement.

In the context of the Russian-Ukrainian gas conflict and disrupted Russian gas supplies to European countries, Europe's policy makers began to raise concerns about its energy security. The EU Energy Commissioner Andris Piebalgs indicated that "it is clear that Europe needs a clearer and more collective and cohesive policy on security of energy supply. To date, the issue of security of energy supply is only really considered at national Member State level; but in reality we need a much greater European-wide approach on this issue."<sup>33</sup> Poland came forward with the idea of the European Energy Security Treaty, which would envisage closer cooperation between member states in the energy sector. However, eventually the proposal was perceived reservedly in European countries.<sup>34</sup> The long-standing state of affairs in the European energy sector was effectively revealed in the German Chancellor Angela Merkel's appeal to draft the "national energy strategy."<sup>35</sup> This demonstrated the lack of a common and comprehensive approach even on the national level and pinpointed clearly to the considerable obstacles on the way to a common European energy policy. However, paradoxically, this clear realization of the structural differences and unequivocal demonstration of problems existing in the European energy policy in the context of growing demand for energy supplies has legitimized the European Commission efforts to coordinate energy policy and contributed to drafting appropriate policy documents. Hence, although the continuation of these efforts must yet be seen, significant steps towards further advancing a common European energy policy, including towards Russia, have been made.<sup>36</sup> The document stated that "the EU as Russia's largest energy buyer, is an essential and equal partner in this relationship...A true partnership would offer security and predictability for both sides, paving the way for the necessary long-term investments in new capacity. It would also mean fair and reciprocal access to markets and infrastructure including in particular third party access to pipelines. Work should start on an energy initiative based on these principles. Subsequently the results could be integrated into the framework of EU-Russia relations due to replace the current EU-Russia Partnership and Cooperation agreement in 2007. In addition, efforts should be intensified in the G8 to secure rapid ratification by Russia of the Energy Charter Treaty and conclusion of the negotiations on the Transit Protocol."<sup>37</sup>

The Russian factor certainly plays a role when the EU attempts to define a comprehensive approach and elaborate position with respect to the non-EU transit countries. In the situation, when Europeans have been frequently divided over the vision of the union's energy policy with Russia, it has proved to be a difficult task. Yet, Russia's relations with third parties are frequently causing a growing unease influenced by the Russian-Ukrainian gas conflict at the beginning of 2006. As mentioned, the EU has regularly invited Russia

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31 Judy Dempsey, "For many countries, nowhere else to go", *International Herald Tribune*, 5 January 2006; Roman Kupchinsky, "Russia: Does Gazprom Have A Master Pipeline Plan?", *RFE/RL*, 30 January 2006.

32 RosBusinessConsulting News, 29 September 2005.

33 Andris Piebalgs, Speaking Notes Welcoming the agreement between Gazprom and Naftogaz, 4 January 2006; available from <http://europa.eu.int/rapid/presReleasesAction.do?reference=SPEECH/06/1&format=HTML&aged=0&language=EN&guiLanguage=en>

34 "Nie będzie jednej polityki energetycznej", *Rzeczpospolita*, 6 February 2006.

35 "Merkel to plot energy strategy for Germany", *The Financial Times*, 7-8 January 2006.

36 On March 8, 2006, European Commission adopted the Green Paper "European Strategy for Sustainable, Competitive and Secure Energy".

37 Green Paper, 2006, p. 15.

to ratify the Energy Charter Treaty and its Transit protocol in order to establish a transparent transit regime.<sup>38</sup> In the meantime, the EU has advanced the idea of creating “a pan-European energy Community” together with the neighborhood countries as well as attempted to diversify its import routes in Russia’s neighborhood. This has experienced mixed success. In the gas sector the *Nabucco* project is envisaged to be implemented to transport natural gas from Central Asia and Middle East through Turkey to Europe. The EU has contributed to the launching of Baku-Ceyhan crude oil pipeline transporting Azeri and, prospectively, Kazakh oil to Europe through Turkey. However, the difficulties the EU faces in its diversification strategy in traditionally Russian gas and oil transit countries have been epitomized by the crude oil flow through the Odessa-Brody pipeline. Already in the 2003 communication on energy strategy of enlarged Europe, the European Commission indicated the Odessa-Brody pipeline as part of the diversification attempts. However, due to currently insufficient oil deliveries from the Caspian basin, which requires not only Azeri but also Kazakh participation (at least 4 million tons a year to ensure profitability of the pipeline), the Polish side has been reserved to prolong the project from Brody to Plotsk. Russians have played an active part in keeping their own influence and dealing with Kazakhs and Ukrainians bilaterally and eventually achieving the contract signed by TNK-BP to use the Ukrainian pipeline in reverse mode, transporting Russian oil to the Russian Black Sea ports.

## **Recommendations in the context of the PCA discussions: Latvian perspective**

The Russian-German agreement on the construction of the North European Gas Pipeline in combination with more recent gas conflicts between Russian and its neighbors have clearly indicated that relations in the energy sector embrace energy, economics and politics. These developments have provided a strong impetus for policy makers and experts to launch discussions on the national, regional and European energy security issues and relevant policies. Paradoxically, the short-term negative repercussions in terms of increased political tension notwithstanding, the disagreements over the pipeline construction and gas disputes in the post-Soviet area, though rather inadvertently, may have actually created preconditions for a more stable energy dialogue environment in the long run. In this regard two important and linked issues are prominent. First, whether the European Union countries will be able to overcome the structural constraints and motivations to act unilaterally and eventually define a common policy stance in the energy sector? Second, whether Russia would be willing to moderate its gas and oil diplomacy and to ensure its “indispensability” in the energy sector through a partnership and cooperation rather than manipulation? In fact, the answer to the second question considerably depends on Europe’s ability to achieve a shared understanding regarding the matters of the energy needs and risks, available policy options, regulations of energy sector in the EU member countries and their non-EU partners, including Russia. This also refers directly to the discussions on the prospective character of the EU-Russia Partnership and Cooperation Agreement.

There are several alternatives regarding the prospective formal framework, above all the Partnership and Cooperation Agreement, for the EU and Russia interaction, and the place of the energy issues. These involve, first, an extension of the current framework; second, its considerable modification; or, third, a replacement with a completely transformed one. The latter alternative or a “breakthrough approach” is both rather unrealistic and unnecessary not least because the relations between the EU and Russia, especially after the enlargement of the community, reveal a wide spectrum of diverging values and interests, including energy. Hence, a completely transformed and qualitative enhanced PCA would become more of a demonstration of good will rather than an effective and realistic “road map” for intensification of cooperation.

A completely opposite alternative would be an extension of the current PCA and strengthening the sectoral interaction through relevant formal frameworks. According to some experts, the sectoral cooperation has been the way forward, as the PCA has “proven more of a millstone hanging around the neck than a

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38 Interim Report on the EU-Russia Energy Dialogue, May 2006, p. 2; available from [http://ec.europa.eu/energy/russia/joint\\_progress/doc/2006\\_05\\_25\\_interim\\_report\\_en.pdf](http://ec.europa.eu/energy/russia/joint_progress/doc/2006_05_25_interim_report_en.pdf)



cornerstone of the relationship.<sup>39</sup> Yet, this somewhat “muddling through approach” would clearly pinpoint to the uneasy EU-Russia interaction and certain stalemate in searching for channels of enhancing the relationship. Simultaneously, the dialogues at different domains at different pace provide certain flexibility in the relationship and achieved success and failures could be compartmentalized. The interaction would primarily take place within the established frameworks of Common Spaces. Apparently, the energy dialogue, as a part of Economic Common Space, would become one of the most intensive and complicated.

Apparently, the third alternative or a considerable modification of the EU-Russian PCA provides the “window of opportunity” to both demonstrate mutual interest in cooperation and enhance the formal framework and mechanisms for the interaction. The PCA discussion and formulation process apparently becomes a certain indicator of the EU-Russia prospective state of affairs. The Russian side has expressed an interest in a modified and enhanced PCA, which would include references to a strategic partnership or association.<sup>40</sup> Russia’s willingness to deepen the character of the formal relationship pinpoints to two aspects. First, the EU remains a partner of a key importance for Russia, notwithstanding occasionally contradicting statements. Second, there is an element of “entrapment” in Russia’s aspiration to reach a more “strategic” document. In other words, the form of the dialogue and the process of the document elaboration may be perceived in Russia as testing ground and reflection of Europe’s determination to deepen constructive relationships with Russia. One may argue that disappointment in Russia *vis-à-vis* the EU could increase if the latter demonstrates a reserved attitude towards a considerably renegotiated document. However, the EU must be interested itself in the transformed PCA. This would reflect realities of the EU-Russia bilateral relations and post-enlargement situation, and provide a momentum and channels for advancing common interests and discussing disagreements.

The modification alternative, at the same time, clearly creates several challenges for the EU. Notwithstanding the difficulties present, certain solutions exist with respect to all of them.

- First, it would be complicated to define and agree upon the scope and character of the modification, including issues related to the energy sector. In the latter domain, as in the whole formal framework, there are structural differences (in the energy sector, the EU is an importing entity whereas Russia – an exporting country), diverging political and economic developments, and above all state-market relations (the EU is increasing liberalization whereas Russia shows growing state intervention), frequently incongruent global and regional strategic considerations. However, this also provides advantages. Russia obviously accepts bargaining logics and the EU also should not shy away from engaging in bargaining interaction, also with respect to the prospective PCA. In the energy sector, the EU has been rather timid, apparently due to economic interests and reluctance to engage in a conflict pattern with an important energy supplier. The “association” dimension of the transformed PCA may include both prospective liberalization of goods, services and capital movements (aspired by the Russian side) and establishing a common regulatory space, which would follow the parameters sought by European countries. In the energy sector, the latter would require certain de-monopolization of Russia’s gas sector and ratification of Energy Charter Treaty.
- Second, the EU-Russia relations have a wider context than the PCA. Yet, this again provides a certain opportunity to clarify other complex issues, which touch upon the interests of both the EU and Russia. Hence, while negotiating the PCA, the EU may invite Russia to avoid any discriminatory measures against the EU associated and neighborhood partners. In the energy sector above all Russia could be invited to sign the Energy Charter’s Transit Protocol. In search of this, the EU may still simultaneously link the PCA discussions with Russia’s WTO aspirations. Moreover, as some of

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39 Hanna Smith, Introduction: Russia’s Policy Towards the European Union, in Hanna Smith (ed.), *The Two Level Game: Russia’s Relations with Great Britain, Finland and the European Union*, Helsinki, 2006, p. 14.

40 Nadezhda Arbatova, „Russia-EU Quandary 2007”, *Russia in Global Affairs*, Vol. 4, No.2 (April-June 2006), pp. 100-110.

the neighborhood countries, such as Moldova and Ukraine, also look for enhanced (associated) partnership with the EU, the latter must consider the comprehensive position in the whole post-Soviet space, including with respect to the formal bilateral frameworks. Simultaneously, in the energy sector, the EU would strengthen its negotiating position and increase the maneuvering capacity through the optimization of the energy utilization and diversification of routes and resources.

- Third, the EU itself internally faces the problem of diverging interests. And there is a concern, especially on the side of the less influential new members, that Russia may take advantage of the diversity of the EU interests and voices. Yet, the future modified EU-Russia PCA sets the backdrop for an extended discussion forum and eventual formulation of “one voice”, especially in the energy sector. The attempt per se to define a concerted approach is important for the EU itself in a search for the enhanced global role and more transparent and predictable interaction with Russia. The considerable modification may also require ratification. This could raise questions regarding the prospective position of the EU new members. For instance, for the Baltic States, several somewhat occasionally contradictory considerations co-exist. This is the result of both an existing interest in developing closer relations with Russia in the economic domain and generally complicated character of the political relationship between the Baltic countries and Russia. Paradoxically, however, both those components may provide stimulus for the Baltic countries to advocate a more elaborated and deepened formal legal framework of the EU-Russia interaction. Economically, the Baltics would certainly support inclusion of the conditions that would lead to a more intensive economic cooperation and avoidance of discriminatory measures in taxation, transportation, and energy sector interaction. The Baltic countries would welcome Russia ratifying the Energy Charter Treaty and related documents on transit. Ratification process would also provide certain “soft” levers in their bilateral relations with Russia and prospectively could contribute eventually to signing and ratification of already elaborated agreements on the bilateral level, which has been prevented by a complicated character of the political relationship. Hence, a renegotiated PCA may provide momentum for an enhanced EU-Russia dialogue and contribute to “normalization” and “economization” of relationships between Russia and the new members, such as the Baltic countries, especially in the energy sector.



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