

## spotlight europe

# 2008/08 – July 2008

# Prospects for a new EU-Russia Agreement

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The latest [EU-Russia-Summit](#) on 27<sup>th</sup> June 2008 marks a breakthrough in their relations. The planned negotiations on a new strategic partnership between the two actors were stalled for nearly two years. Now all member states have agreed on a broad negotiating mandate for the Commission. After the Irish 'No' to the Lisbon Treaty the talks with Russia become a test case for the EU's capacity to act as a global player.

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### THE VIEW FROM BRUSSELS

by Fraser Cameron

What are the options for the new Agreement? The Commission [view](#) is that the more issues on the table the easier it will be to reach a comprehensive deal. In contrast, the Russian attitude would seem to favour a political framework agreement followed by sectoral agreements. Supporters of this approach argue that it would avoid any one issue derailing the whole package. Opponents argue that it would weaken the bargaining power of the EU overall and especially weaken the conditionality many wish to see included regarding human rights and democracy.

Who will lead the negotiations? On the Russian side, ambassador Chizhov has been named chief negotiator. On the EU side Eneko Landaburu will lead assisted by the Presidency/Council on CFSP issues. Member states will be briefed before and after each negotiating round. The talks will result in a 'mixed agreement' which would then require ratification by the parliaments of all 27 member states plus the European Parliament. It is not difficult to imagine at least one member state holding the agreement up for some political purpose.

**Negotiating Issues:** No one doubts that any new agreement will involve tough negotiations. The Commission insists that any new agreement should include the present institutional framework including

the last updates such as the PPC in order to ensure that the provisions of the Agreement are observed and implemented and to create opportunities for regular political dialogue on all issues of common concern. In order to avoid rigidity and prolong the endurance of the new agreement the PPC should have a fully fledged decision making power as to be able to adopt legal binding decisions through which the relationship could be developed and effectively deepened. Another important issue to be addressed is that the institutional framework should be reorganised in view of bridging the gap between meetings at a high level and at experts' level.

The Agreement would also have to include the latest developments in the Northern Dimension as well as the Kaliningrad region, including the new transit provisions for Russians travelling outside the oblast. The European Neighbourhood Policy Instrument (ENPI) should be also specified as the funding mechanism for the accomplishment of the Common Spaces.

The economic elements to be included in the new agreement will directly depend on Russia's accession to the WTO. The prospective of WTO membership can influence the outcome of the new agreement in three possible ways. First, if Russia became a WTO member before the negotiation of the agreement there would be no need to include economic arrangements in the new legal framework, since the WTO would regulate trade relations of the parties. Secondly, if Russia became a WTO member at the same time or right after the automatic prolongation of the PCA economic provisions would exist in both legal instruments, but there would not necessarily create legal inconsistency. Since PCA rules are based on GATT/WTO principles they usually do not pose compatibility problems. And thirdly, if Russia was not to enter the WTO by the time the next agreement is negotiated, which is more likely, the agreement would have to include economic clauses based on WTO rules in order to regulate trade relations

between the partners until Russia would enter the trade organisation.

Further, the new agreement should, building on and going further than the existing PCA and WTO provisions, concentrate on tackling trade barriers between the EU and Russia and emphasize regulatory issues thus giving new momentum to economic reforms in Russia. Like the PCA it should also include the objectives of creating a Free Trade Area (FTA). However, contrary to the former agreement the new one should go beyond the 'evolutionary clause' and envisage practical steps to achieve a FTA such as liberalization of trade in goods and services through the abolition of tariffs and harmonisation of specific standards.

### **“Question of shared values is a major area of dispute.”**

Given EU dependence on Russian energy, this chapter will be a particularly contested area of the negotiations. The EU has tried in several ways to deal with the energy dependency problem. First, it is trying to persuade Russia to ratify the Energy Charter Treaty (ECT) which it has already signed and its Transit Protocol - a consequence being the opening up of access to Gazprom's pipelines. Secondly, it is pushing ahead with liberalisation and competition of the EU energy sector aiming at an EU common energy policy. In late 2007 the Commission also introduced a proposal to prevent any third country (viz Russia) buying into the downstream area without reciprocity, a move that triggered protests from Gazprom. A major achievement of the current energy dialogue that resulted from the Russian-Ukrainian energy crisis of 2006 is the creation of an 'early warning mechanism' in case any interruption of energy transport occurs. This mechanism is likely to be included in the new agreement.

Another area of dispute is the question of shared values. As a minimum the EU will

seek to ensure that Russia maintains its commitments under the UN, OSCE and Council of Europe, including the European Court of Human Rights (ECHR). These elements would demonstrate that Russia and the EU have a common international legal basis for the protection of human rights. Secondly, the so-called 'conditionality clause' should be an essential element of the agreement, whereby if there is any material breach of the agreement each of the parties can suspend unilaterally the implementation of the agreement. Such links, already present in the current PCA, demonstrate the EU's interest in promoting and defending European democratic values in Russia.

### "Russia prefers a less ambitious document."

Justice and home affairs will be another difficult area. Judicial cooperation on extradition will be an important aspect of the new negotiations, a point raised by Lithuania and the UK. Both sides will also reaffirm their commitment to working towards the eventual abolition of visas. Research, education and culture should be one of the least contentious areas for the negotiations. Russia has acknowledged the importance of participating in EU programmes in these areas and the talks will explore ways to further maximize opportunities for both sides.

A comprehensive new agreement would, besides linking all the aspects of cooperation, reinvigorate economic integration - envisaging practical steps to establish a FTA -, improve cooperation on energy, and add legal weight to the four common spaces. Any new agreement should also have as a very minimum the same standards referring to European values as the old PCA. The EU has significant but limited leverage on Russia. Its powerful internal market and its consumption of Russian energy resources do give it important bargaining chips. Russia also wants visa free access to the EU and participation in EU scientific and education programmes.

## WHAT MOSCOW THINKS

by Andrei Zagorski

There could be no better opportunity for the new Russian President Dmitrii Medvedev to score his first foreign policy success and to boost relations with the European Union than the official launch of talks on a new Treaty with the EU. However, few people in Moscow believe that the new agreement could be much better than the current one. Many believe it can be only worse.

The Russian policy-makers have initially sought to design a strategic partnership with the EU to honour the upgraded status of the country and to go hand in hand with the strategic partnership Russia has developed with its close friends in Europe, such as Germany, France or Italy. The inner controversy within the EU over a common Russia-policy has taught them, however, that the opposite is likely to be true: the partnership with the EU would rather be no less difficult than relations with the most pronounced Russia-critics within the Union, such as the UK, Lithuania, Estonia, or Poland.

Moscow has repeatedly warned the EU not to allow particular interests and disputes of individual member states with Russia to overload the maturing partnership. By the time when the EU has reached final consensus on what it wants from the negotiations with the Russia, Moscow could only realize that the views of a new agreement in Brussels and Moscow have further diverged rather than converged over the past 18 months, so that disagreement is expected not only in details but in the definition of the nature and of the purpose of the treaty itself.

Over the past 18 months, Moscow has also failed to strengthen its position by finalizing its accession to the WTO - an important precondition for taking trade relations with the EU a step further. Though Russia has moved in the meantime a few steps

closer to that goal, the remaining unsettled issues keep the time for the accession uncertain.

All in all, by now Moscow seems no longer to believe that the idea of an enhanced strategic partnership with the EU can be still viewed as a realistic outcome from the opening talks. It considers a less ambitious document laying down the major principles of the Russia-EU partnership to be supported by sectoral agreements. But even this outcome appears uncertain.

**Plan A - short talks, short framework agreement:** The Russian government seeks a strategic partnership treaty with the EU to explicitly and boldly emphasize the equal status of the two partners leaving no room for conditionality or the alignment of Russian regulatory framework with the *aquis communautaire*. The treaty would include a preamble, four (or more) titles incorporating the main provisions agreed upon with the view to developing the four common spaces and, most importantly, a title establishing the mechanism for common decision-making.

While covering all relevant areas of cooperation, the new treaty would be a short framework document (about ten pages long) establishing major principles for cooperation. More detailed regulation should be left out for supplementary sectoral agreements to be negotiated at a later stage. While showing openness as regards the inclusion into the treaty of specific provisions addressing more controversial issues, such as energy cooperation, Moscow would still wish to limit the treaty to establishing the relevant principles.

**Major issues:** The particular Russian desiderata as regards the new treaty are limited but include a number of relevant issues which are likely to obtain high profile during the talks. Moscow looks forward to focus predominantly on the establishment of a mechanism for common decision-making including on external security and crisis management. This mechanism

should avoid the status of Russia as a partner of the EU which is allowed and welcome to join EU-led operations. Rather, common crisis management would require common decision-making and should be based on a clear legal agreement regulating relevant procedures and rules of engagement.

Moscow is keen to further pursue the goal of a visa free travel between Russia and the EU to be boldly spelled out in a new agreement. While seeking to protect its state owned energy companies and strategically important sectors from any encroachment or takeover by foreign competition, Moscow seeks to remove any obstacles for them to invest in the European markets and, particularly, into the downstream in the energy sector. It is open, however, to what extent Moscow wants to address those issues in the treaty itself except establishing the relevant basic principle.

## “Political support for free trade with the EU is low.”

Moscow is obviously reluctant to embrace the idea of a further institutionalization of its cooperation with the EU on issues related to human rights and the rule of law and to make it more result oriented. It insists, however, that the principle of reciprocity shall apply in this area as well granting the Russian Federation similar rights to investigate human rights issues within the EU.

As far as longer term goals in economic cooperation are concerned, Moscow seems not to have made up its mind yet. In any case, the political support for the idea of establishing free trade with the EU seems to remain very low for the time being.

**Plan B - a protracted negotiation with indefinite outcome:** While seeking to win the French presidency for the option of a fast negotiation of a concise framework agreement, Moscow realizes that this goal is difficult to obtain. It can't ignore that

the outcome of the talks has to be ratified by all EU member states and that a short declaration of principles not responding to the concerns raised over the past months would be difficult to defend. Any bargaining over the appropriate level of detail in the new treaty, sorting out those details and getting them ratified, on the other side, would inevitably be time consuming and would mean protracted talks with an open outcome. The process may well reach beyond the Russian political horizon which is limited to 2012 at latest when the Medvedev's first term in the office expires.

## "Warsaw is still concerned about Russian energy policy."

The prospect for a difficult and protracted negotiation tends to consolidate the hesitant policy of Moscow which would neither believe it can get a better agreement out of it, nor would have real political stakes in the outcome. This would imply a very conservative bargaining strategy by Moscow which, from the Summer 2007, has avoided any sign of being ready to compromise on its interest and to concede to demands of individual EU member states. It enters the talks with the EU sending a clear message that no one should presume Moscow needs the new treaty more than the EU does, so that no one should expect Moscow to be ready to make concessions without being appropriately rewarded for doing so.

### POLAND: STRONG INTERESTS, LESS STRIDENT TONE

by Piotr Buras

After giving up its opposition to the commencement of negotiations with Russia, which had lasted for many months, the Tusk government has sent out two important political signals. First, it wanted to underline Poland's reliability and ability to cooperate in the EU, which during the time of the Kaczynski government was often

called into question by its European partners. Second, ending the deadlock was conceived as part of a change of direction in Polish policy on the countries to the east, which if possible now seeks to avoid or minimize a confrontation with Russia. Moscow will become increasingly important for Polish diplomacy, which hitherto has been concentrated one-sidedly on Ukraine.

However, in fundamental terms the Polish negotiating position has hardly changed. Polish interests are currently being defined no differently than they have been for years. Right at the top of the list of priorities in Warsaw is cooperation in the energy sector. Poland insists that agreement must first be reached on basic principles before there can be a fruitful dialogue with Russia on energy concerns. Warsaw believes that the EU should not deviate from the internal European consensus on energy policy as determined in the provisions of the Energy Charter Treaty and the Transit Protocol.

Poland views the Europe-wide expansion of Gazprom with some scepticism. It serves as proof of the fact that, on account of the EU's weak foreign energy policy, the initiative in the area of energy cooperation has been handed over to Russia lock, stock and barrel. The Baltic pipeline is not the only example of this. Above all the fact that the Russian energy market has been largely closed for foreign investors is criticized as being the expression of an unacceptable inequality in the EU-Russia relationship.

Poland is also rather cautious when it comes to closer EU-Russia cooperation on security and defence issues. In the context of the post-Soviet area, to which Polish foreign policy pays a great deal of attention, Russia tends to be seen as the cause of conflicts and not as a partner helping to resolve them. Prospects for a partnership with Russia, Warsaw believes, can more easily be discerned with regard to global issues such as the proliferation of weapons

of mass destruction, terrorism, and climate change. A role for Russia within the framework of the ESDP or institutionalized cooperation with Moscow in order to resolve the “frozen conflicts” in the CIS area (e.g., subjects which might be discussed at the forthcoming PCA negotiations) do not receive the support of the Polish government.

This position must be seen against the broader background of Polish policy towards its eastern neighbour. As Prime Minister Donald Tusk wrote in the Frankfurter Allgemeine Zeitung on 18 February 2008, “the general partnership between the EU and Russia must not constitute an obstacle for the development of our relations with other neighbours in eastern Europe.” Thus he rejects far-reaching Russian involvement in EU policy in the region, since this is deemed to be potentially dangerous. Poland welcomes the current approach in which relations with Russia and the other eastern neighbours of the EU are being maintained and deepened simultaneously. However, the recent Polish-Swedish proposals for an “Eastern Partnership” also envisage the inclusion of Russia. The idea is to provide an impetus for regional cooperation between the EU’s eastern neighbours and to promote deeper sector-based cooperation between specific countries and the EU.

### “German economy supports bilateral approach.”

In the forthcoming negotiations with Russia Warsaw wishes to increase the number of social contacts. The 2007 agreement on simplified visa regulations is seen in a positive light. The new EU-Russia agreement could enshrine the long-term goal of abolishing visa requirements altogether. It is also to be expected that Poland will place great importance on the significance of human rights and democratic values as pillars of the new treaty. The conditionality clause, on the basis of which the implementation of the treaty can be suspended if one of the treaty partners re-

fuses to comply with its provisions, will also receive staunch support from the Polish government.

All in all Warsaw will favour a relatively detailed and legally binding regulation of the sensitive issues (energy policy, human rights). A more general framework agreement would probably be insufficient from a Polish point of view, since it would exclude what the Poles consider to be the most important points. The question of the institutionalization of security cooperation could turn out to be particularly problematic for Poland, especially since it is high on the Russian agenda.

## AN OPTIMISTIC VIEW FROM BERLIN

by Cornelius Ochmann

In several speeches Frank-Walter Steinmeier has attempted to define the German position concerning the future of European-Russian relations. It is based on the notion that the EU, acting on the basis of a “[European Ostpolitik](#),” should adopt a common approach towards Russia.

In the course of his visit to Russia in June 2008, Steinmeier proclaimed the start of a modernization partnership. In essence this is all about cooperation in areas which are of crucial importance for the future: climate and energy policy, the common striving for energy efficiency, healthcare policy, dealing with the consequences of an ageing society, the areas of education and science, and questions relating to the rule of law.

This bilateral approach is supported in particular by the German economic elite. In recent years the export-based German economy has witnessed an enormous upsurge in trade with Russia.

On the one hand Germany, like the rest of the EU, is dependent on energy supplies from Russia. On the other hand, Russia itself needs investment inflows and above

all know-how in order to modernize its economy and reduce its dependence on energy. Investors are very often critical of the opaque legal framework. Hitherto European energy dependence on Russia has not been perceived to be a threat – Germany certainly has a positive attitude to greater cooperation in the energy sector.

The German position finds expression in the Petersburg dialogue, which unites Germany's political, economic and social interests in its dealings with Russia under one roof. Noteworthy is the [internationalized character](#) of these relations, which is reflected in the motto of the next meeting: "Russia and Germany in the globalized world – Partners in Modernization."

On the agenda are important European topics such as demographics, migration, the provision of healthcare, and the rule of law.

It remains to be seen whether the German side will be able to have an influence on the EU position. Freedom of travel in particular is right at the top of the agenda as far as the Russians are concerned. The EU's restrictive visa policy applies above all to young people, who, ever since the expansion of the Schengen area in December 2007, have been unable to travel in the EU as a result of numerous bureaucratic obstacles.

German-Russian Exchange (Deutsch-Russischer Austausch), like other German and Russian human rights organizations,

has called for the inclusion of human and civil rights and the rule of law in a separate section of the forthcoming PCA. They are of the opinion that it is not enough to merely mention them in the preamble, as in the currently valid agreement concluded in 1997.

## The shape of things to come

Whereas it is true that the EU Commission has a mandate to conduct the negotiations, the interests of the member states are very diverse, as a comparison of the Polish and German positions demonstrates. It is highly unlikely that the negotiations will produce results in the immediate future. The heads of the EU negotiators will have to bear in mind that any compromise will be viewed in terms of the domestic policies being pursued by the various governments. The Russian side does not have to worry about such internal tensions. Yet it would be wrong to underestimate the strength of anti-western sentiments. Whereas it is true that these are primarily directed against the foreign policy of the United States, such emotions could easily turn against the EU at a moment's notice. The Irish rejection of the Treaty of Lisbon has also tended to reinforce the negative attitude towards the EU among the Russian elite. It was never convinced that the EU would be able to take action in the sphere of foreign policy, and now its prejudices seem to have been confirmed.

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