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#### **Problems and Perspectives of Modernizing the Legal Backgrounds for the EU-Russia Strategic Partnership**

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# **PROBLEMS AND PERSPECTIVES OF MODERNIZING THE LEGAL BACKGROUNDS FOR THE EU-RUSSIA STRATEGIC PARTNERSHIP**

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### **1. Introductory remarks**

This paper is prepared for the International workshop “Integration without EU membership in Europe: models, experience, perspectives” at the European University Institute in Florence which to be held on the 23—24 May, 2008. The purpose of this paper is to analyze existing normative achievements between Russia and the European Union (EU) in a context of proposals for conceptual grounds of the future Treaty between Russia and European Union, which will replace the Partnership and Cooperation Agreement between Russia and the EU.

This paper looks at a current legal basis of the relations between Russia and the European Union, brings light on main legal difficulties in working out of the new agreement between Russia and the EU, analyzes initiatives concerning a content and a form of the new agreement, contributes proposals on main objective of the future agreement.

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## 2. What is the EU-Russia Strategic Partnership?

As is well known, Russia is culturally and historically belongs to the European cultural-civilizational type, forming common cultural-civilizational system with other countries of Europe.

Although the Russian Federation is not a member of the European Union, Russia is an integral part of Europe. Economies of European countries and Russia are interdependent and complementary. The European Union is the main trade partner for Russia. Russia occupies a significant position in external aspects of the EU's economy, and the principal position in such important area, as energy supply. Certainly, political and legal traditions of the Europe also define the Russian reality.

The relations between Russia and European Communities have passed the way from state of "useless indifference" through relations of "partnership and cooperation" to modern relations of "strategic partnership" during two last decades. There is no doubt that is a practical achievement in mutual relations. Existing relations of strategic partnership mean a high level of the relations between Russia and the EU.

The Paradox consists in that the term "strategic partnership" is not defined legally. It is not clear what type of the legal regulation should cover these relations in the future.

The partnership, as a form of the relations between Russia and the EU, is defined legally by the objectives and principles of the Partnership and Cooperation Agreement between Russia and the EU 1994 (PCA)<sup>2</sup>.

Analyzing the relations of the partnership established by the PCA, Russian lawyer E. Kovalkova stresses: "Obligations of the Parties to follow the values and principles, on which a modern development of civilized society is based, are put in the ground of the partnership"<sup>3</sup>.

The Treaty of Lisbon makes an important step legalizing the term "partnership" with the third countries in the Article 10A (1). The partnership should be created on base of main external principles of the EU, on the common values.

This is important for relations with Russia, because the "strategic partnership" is a form of such partnership; the approach of the EU is definitively formalized for such form of external relations.

Etymologically, the term "strategic partnership" means the relations of partnership, which the Parties consider prior, synchronizing common actions.

Practically for Russia, they are a real prior relations predestined by unalternative economic dependency from the European market. For the EU – There is a doubt concerning a prior nature of the relations. The European law sets other privileged forms of the relations with the third countries, in particular, "association" and "neighbourhood".

On the other hand, it is not a secret, that the PCA is rather similar to the European Agreements on Association, Euro-Mediterranean Agreements on Association, as well as with the most modern agreements of such type – Agreements on Stabilization and Association.

Is it possible to consider the partnership or the strategic partnership as "*quasiassociation*" or "*quasineighbourhood*"?

This is not only a theoretical question; this is actual question for the practical relations between the EU and the East-European countries within framework of the European neighbourhood policy, in particular, in the relations with Ukraine.

Concluding the new agreement the EU and Ukraine have a problem: both of the Parties were ready to give a privileged status for the relations, but without the formal creation of the association between them<sup>4</sup>.

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<sup>2</sup> The Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part, concluded 24 June 1994 on Korfu (OJ 1997 L 327/1; СЗ РФ, 1998, N 16, ст. 1802).

<sup>3</sup> Ковалькова Е.Ю. О принципах партнерства и сотрудничества (на примере взаимоотношений России и Европейского Союза) // Российский юридический журнал. Екатеринбург. 2005. № 3. С. 61.

<sup>4</sup> Hillion Ch. Mapping-Out the New Contractual Relations between the European Union and its Neighbours: Learning from the EU-Ukraine 'Enchance Agreement'// European Foreign Affairs Review (2007) 12. P. 174.

Analogous problem rises in relations between the EU and Russia. The Parties are not ready to create an association politically, but they are ready for the privileged relations of integrational nature, including closer integration in economic sphere, inter alia, through the creation of the free trade area and the liberalization of the establishment, trade in services and movement of the capitals.

The "strategic partnership" is characterized by its aims and objectives stated in Joint statements of the Russia-EU Summits<sup>5</sup>. In this context the "strategic partnership" means the relations of partnership, complemented by the purposes of the regional security and by practical objective to build the Four Common Spaces between the Russia and the EU.

However the practical steps of the Parties do not allow us to define the strategy of cooperation for the regional security matter or to speak on creation of the four common spaces in schedules. There is no strong legal basis for these steps.

Furthermore, the term "strategic partnership" is also used for the relations between the EU and other third countries, e.g. the Republic of South Africa, India or China<sup>6</sup>. But they are too hard to compare with the EU–Russia relations. They have a legal basis of other nature. The EU and South Africa signed the Agreement on Trade, Development and Cooperation in 1999<sup>7</sup>. There are no modern agreements of basic nature between the EU and India, as well as between the EU and China<sup>8</sup>.

### **3. Strategic partnership acquis**

The development of the relations between Russia and the EU was accompanied by a development of their legal grounds. The present day relations of strategic partnership are based on three blocks of norms. In my opinion, they could be considered as a *strategic partnership acquis*. In this context, the "strategic partnership acquis" means all norms, which cover any aspects of the relations between Russia and the European Union.

By their legal nature the strategic partnership acquis are a form of the *cooperation acquis*, which is forming on the borders of *acquis communautaire* at realization of the provisions of the EU's agreements with the third countries<sup>9</sup>. Such kind of legal achievements could be considered as a form of external dimension of the *acquis communautaire*<sup>10</sup>.

The First block is drawn up by norms of the Partnership and Cooperation Agreement between Russia and the EU (PCA) and of specific agreements taken on the basis of the PCA as strict grounds of their relations. The Second block consists of norms of "roadmaps" on four common spaces and other soft law. By nature they are norms of the programmes and declarations, which do not have obligatory legal effect, but define practical measures and actions within the framework of the current relations between the Parties. The Third block includes norms of the Russian legislation and the EU rules concerning the relations between the Parties.

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<sup>5</sup> See: Joint Statement from 17 May 2001, Joint Statement from 29 May 2002, Joint Statement "300th anniversary of St.-Petersburg – celebrating three centuries of common European history and culture" from 31 May 2003, Joint Statement from 6 November 2003. < [http://ec.europa.eu/external\\_relations/russia/intro/summit.htm](http://ec.europa.eu/external_relations/russia/intro/summit.htm) >

<sup>6</sup> See: Baroowa S. The Emerging Strategic Partnership between India and the EU: A Critical Appraisal. *European Law Journal*, Vol. 13, No. 6, November 2007, P. 732-749; Sautenet A. The Current Status and Prospects of the 'Strategic Partnership' between the EU and China: Towards the Conclusion of a Partnership and Cooperation Agreement. *European Law Journal*, Vol. 13, No. 6, November 2007, P. 699-731; Larsen M. F. Trade Negotiations between the EU and South Africa: A Three-Level Game. *Journal of Common Market Studies*, Vol. 45, Issue 4, November 2007, P. 857-881.

<sup>7</sup> OJ L 311, 04.12.1999

<sup>8</sup> The legal basis for the EU–India relations pawns the Cooperation Agreement on Partnership and Development 1993 (OJ 1994 L 223/24); for the EU–China relations – the Agreement on trade and economic cooperation 1985 (OJ 1985 L 250/2).

<sup>9</sup> Although the term "strategic partnership acquis" is not used in the official documents of the EU, we can find similar categories as "Barcelona process acquis" or "acquis of the Euro-Mediterranean Partnership" in appropriated documents. *European Neighbourhood Strategy Paper*, Communication from the Commission, COM (2004) 373 final.

<sup>10</sup> Petrov R. The External Dimension of the Acquis Communautaire. *EUI Working Papers*, MWP 2007/2. P. 7–8.

*First block.* The EU–Russia Partnership and Cooperation Agreement entered in force on 1 December 1997. It contains the preamble, 112 articles, eleven annexes, four protocols, several joint and unilateral declarations, as well as statements and exchange of letters.

The Partnership and Cooperation Agreements were concluded by the European Union with all C.I.S. countries<sup>11</sup>. Contents and texts of such agreements coincide, so Partnership and Cooperation Agreement may be regarded as “a pattern agreement”. The PCA with Russia became a “prototype” for all the rest Partnership and Cooperation Agreements. The PCAs with other C.I.S. countries were based on the experience of the PCA with Russia.

In my opinion, it was incorrect to create a certain contractual model in the form of the PCA in general. It made no sense to conclude identical agreements with Moldova and with Armenia, with Ukraine and with Uzbekistan; these countries are not similar and have little in common, except that they were included in the USSR. This has become obvious after 10 years – the C.I.S. countries have become much more different than before.

The Partnership and Cooperation Agreement between Russia and the EU 1994 has paved the firm foundation for development of dialogue between the Parties in political, economic, social and cultural fields. Thus the Agreement is complex in character.

The PCA is basic in its nature. It contains general provisions concerning cooperation between the European Union and Russia. The PCA is also a ‘framework agreement’, because many of its provisions need further development within the framework of special bilateral agreements on separate issues. Some articles of the PCA laid down the necessity to conclude such agreements (for instance, Articles 21–22).

The PCA was made to operate under conditions, when market economy was formed in Russia, which at that time was in the process of entering in the WTO. There is one more important factor, which underlines the significance of modern provisions of the PCA. It is its final aim of creation of free trade area between Russia and the EU (Art. 1 the PCA).

Well-known Dutch scientist Alfred E. Kellermann notes: “The PCA is designed to bring Russia to gateway of the world market economy”<sup>12</sup>. Agreeing with professor Kellermann I would like to note that the PCA does not tell what to do and how to build the relations between the Parties after integration of Russia in world economy and its entering in the WTO.

The PCA was concluded for 10 years with possible following annual automatic prolongation of the Agreement unless either Party denounces it. The hard duration of the PCA expires in 2007.

In accordance with Article 15(4) of the Constitution of Russia 1993, the PCA between Russia and the EU forms part of national legal order of Russia. The PCA has direct effect within the territory of Russia under Article 5(3) of the Federal Law of 15 July 1995 101-ФЗ “On International Treaties of Russian Federation”<sup>13</sup>.

The PCA pertains to categories of the international agreements of the EU, which are concluded together by the Communities and the Member States. It is a mixed agreement by its nature. Certain provisions of the PCA have direct effect within the territory of the EU in accordance with Judgment of the European Court of Justice of 12 April 2005 on Case C-265/03 “Simutenkov”<sup>14</sup>.

This Judgment gives Russian citizens, working legally in Member States, a possibility to enforce their rights derived from the Article 23 PCA for equal treatment before national courts of Member States in order to protect their labor rights.

For the first time the European institutions took the side not of Russian political establishment, but of ordinary Russian citizens.

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<sup>11</sup> However, PCAs with Belarus, Tajikistan and Turkmenistan have not entered in force.

<sup>12</sup> А.Е. Келлерманн. Последствия расширения ЕС для Российской Федерации // Политика и право, № 1(61), 2005. С. 117.

<sup>13</sup> СЗ РФ, 1995, № 29, ст. 2757.

<sup>14</sup> Case C-265/03 Igor Simutenkov v. Ministerio de Educación y Cultura, Real Federación Española de Fútbol [2005] ECR I-5961.

Moreover, it clearly follows from the Judgment on "Simutenkov" case that not only provisions of Article 23, but also provisions of some other articles of the PCA are to have direct effect<sup>15</sup>.

The PCA has 'entry-level' and 'framework' nature<sup>16</sup>. Several bilateral agreements were concluded on the basis of the PCA. These specific agreements develop provisions of the PCA in different spheres of the interaction between Russia and the European Union. It allows us to come to the conclusion that today's system of bilateral agreements between Russia and the European Union is formed on the basis of the PCA objectives<sup>17</sup>.

The Process of conclusion of bilateral agreements between Russia and the European Union on the basis of PCA will certainly continue. Today several new agreements in the field of pharmaceuticals, veterinary, fishing are in the stage of preparation. In the nearest future it is appropriate to conclude agreements on cooperation in the field of environment, concerning participation of Russia in activities of Eurojust, on trade in nuclear materials, etc.

*The Second block.* A Russian scientist professor M. Entin mentioned: "The PCA is a flexible legal instrument. Very important changes are introduced in the PCA, without formally amending it, by the Summit decision to streamline the political dialogue and launch the work of the Russia – EU Permanent Partnership Council"<sup>18</sup>.

The most important documents, which were adopted by The Russia – EU Summit on 10 May 2005 are four "roadmaps" on four common spaces<sup>19</sup>. These documents reflect a concept of four common spaces and develop provisions of the PCA in corresponding spheres.

The Roadmaps in their provisions contain a complex of practical actions for nearest prospects in the relations between the Parties. However this complex does not establish certain periods or timetables for implementation of these actions and does not envisage clear instruments of control and responsibility for its implementation.

A "Roadmap" is not legally binding document. This is a political act, an act of *soft law*. Besides, neither Constituent Treaties of the EU, nor secondary legislation of the EU provide that the Community and the Union build their relations with third countries on such kind of documents. So it is an act *sui generis*, which much more depends on political will of the Parties. Accordingly, "roadmaps" are not able to create a strong legal basis for development of relations between the Parties within the framework of four spaces.

*The Third block.* This block covers norms of the Russian law and norms of the EU law, including case-law of the European Court of Justice, which realize provisions of agreements and other acts between Russia and the EU and the arrangements concerned. Also, this block includes a practice of Russian courts on application of these agreements, in particular the PCA.

Among acts of the Russian law it is possible to mention acts adopted for strengthening partnership between Russia and the EU and acts adopted in purposes of approximation of the Russian legislation with Community rules (for instance, Federal Law of 10 December 2003 N 172-Φ3 "Amending the Law of the Russian Federation "On organization of the insurance business in Russian Federation")<sup>20</sup>.

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<sup>15</sup> See paragraph 28 of the Judgment of the EC Court of 12 April 2005.

<sup>16</sup> R. Petrov. The Partnership and Co-operation Agreements with the Newly Independent States // Handbook on European Enlargement. A Commentary on the Enlargement Process / Ed. A. Ott, K. Inglis. The Hague. 2002. P. 177.

<sup>17</sup> There are agreements on trade in textile products (1998), on cooperation in the field of science and technology (2000), on cooperation in nuclear fusion (2001) and nuclear safety (2001), concerning participation of Russia in activities of Europol (2003), concerning participation of Russia in European Policy Mission (2004), on trade in steel products (2005), on the facilitation of issuance of short-stay visas (2006), on readmission (2006).

<sup>18</sup> M. Entin. Strengthening legal grounds for developing Russian relations with the European Union // Azerbaijani-Russian Journal of International and Comparative Law, No 1(2) 2005. P. 146.

<sup>19</sup> There are the "Roadmap" on Common Economic Space, the "Roadmap" on Common Space of Freedom, Security and Justice, the "Roadmap" on Common Space of External Security, the "Roadmap" on Common Space of Research and Education, including Cultural Aspects.

<sup>20</sup> C3 PΦ, 2003, N50, ст.4858.

In the EU law there are acts establishing practical measures, schemes and programmes in relation with Russia, e.g. Council Joint Action 2004/796/CFSP of 22 November 2004 for the support of the physical protection of a nuclear site in the Russian Federation<sup>21</sup>.

In case-law of the ECJ, Judgment of 12 April 2005 on Case C-265/03 “Simutenkov” has a principal meaning for application the PCA with Russia in national courts of the Member States. Since 1997 Russian courts have considered more than 10 cases concerning an application of the PCA in Russian legal order.

#### **4. Towards the New Treaty**

The question is in replacing a central ground of legal achievements of the strategic partnership, in modernization of basic norms of the first block strategic partnership *acquis*.

The PCA has become old, it does not fully reflect the reality of a modern relations of strategic partnership, does not take into account a future membership of Russia in the WTO, the changed geographies of the EU, new challenges in international area.

As I mentioned above, the main duration term of the PCA expires in 2007. Independently from this event, it is clear that Russia and the European Union in the beginning of XXI century are quite different partner that these who agreed in 1993 on certain partnership and cooperation and have signed the PCA in 1994.

Firstly, the European Union now includes not 15, but 27 Member States. However, political and economic potential of the EU notably increased in contrast with beginning of 1990<sup>th</sup>. In my opinion, an introduction of euro has played a significant role in this.

Secondly, today’s Russia is not regarded as "the biggest splinter of the Soviet Empire" with controlled economy in stage of the decay. Modern Russia is recognized as a State with rising market economy, which dominate in energy market of United Europe, in the most vulnerable sector of the economy of the developed countries.

Thirdly, a mutual development of “partnership and cooperation” between Russia and the EU has moved this partnership and cooperation on a new qualitative level of strategic partnership.

The expiry of the initial period of the PCA provides for an excellent opportunity to modernize the framework agreement between the EU and Russia, which will serve as the basic treaty for deepening integrations between the Parties.

The need of preparing a new treaty for a long time has been discussed in Russian scientific literatures. For first time this idea was reflected in the book "Russia and the European Union: documents and materials", which was published in 2003. In this book it was expressed the opinion that it is necessary to amend the PCA or replace it by a new agreement reflecting concept of four common spaces<sup>22</sup>. Later this idea was dealt in depth in the book of Russian researcher Y. Borko "The European Union and Russia need the Agreement on strategic partnership"<sup>23</sup>.

In 2006 Russia initiated negotiations concerning the new basic agreement between Russia and the EU, which should replace the PCA. In general this initiative was supported by European partners. The Parties have already agreed a working title of the future agreement – the Strategic Partnership Treaty (SPT).

#### **5. A form of the New Treaty**

Concerning the form of the new agreement, it is necessary to note that the SPT will be an ‘entry-level’ and ‘framework’ agreement by its nature. It will contain general provisions, which will constitute a basis for conclusion of special agreements between the Parties in concrete spheres. The PCA has a similar nature, as I mentioned above.

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<sup>21</sup> OJ L 349, 25.11.2004, p. 57.

<sup>22</sup> Россия и Европейский Союз: документы и материалы / Под ред. Кашкина С.Ю. М. 2003. С. 446.

<sup>23</sup> Ю. Борко. Европейскому Союзу и России необходимо Соглашение о стратегическом партнерстве М. 2004. С. 6 и далее

However the SPT must not become only a catalog of norms, which links to future specific agreements. It should be a legal obligatory document providing for background principles of strategic partnership and flexible instruments of their realization on a political level.

The term "framework agreement" can be interpreted as an agreement containing norms *lex generalis*, and as an agreement containing norms, which require additional instruments of their implementation in practice. The first meaning reflects a nature of the PCA with Russia; the second meaning is an obstacle for direct effect for a new agreement.

In any case, it would be legally correct to refrain from mentioning its framework nature in the title and in the text of the SPT. It will allow to define a direct effect of the SPT provisions in the Member States and will simplify applying of the SPT in the Russian legal order.

In any case, the New Agreement should be concluded for an unlimited period of time.

As I mentioned above the PCA is a *mixed agreement*. It covers matters falling under the EU and under competence of the Member States. It was signed by the Communities and its Member States. Undoubtedly, the Commission will be provided with the powers to negotiate and conclude a new mixed agreement with Russia replacing the PCA.

Is it necessary to conclude a mixed agreement? Politically, it is simpler for the Parties to conclude relieved "*unmixed agreement*". Such an Agreement would be similar with the Agreement between the European Community and Portugal concluded at the beginning of 1970-th<sup>24</sup>. That agreement was not mixed by its nature, it did not require ratifications in the Member States.

In such case, the SPT could be not a mixed agreement, because of its framework nature. In such case, it can be concluded between Russia and the European Union without participation of the Member States. Unmixed nature of this Agreement will help to avoid the difficulties with its ratifications.

The Agreement on Trade, Development and Cooperation 1999 between the EU and South Africa is another example. It is a forced mixed agreement. The Member States refused to accept it as a pure Community agreement, "even if it was obvious that there was no legal need to conclude the agreement as a mixed agreement"<sup>25</sup>. Taking into account this experience and differences of approaches of the Member States in relations with Russia it is impossible to exclude a similar scenario for signing the SPT.

On the other side, the situation with agreement of complex nature is more complete. The SPT should not be only economic agreement. Moreover, it should not only provide for a creation of the free trade area plus energy and investment matters illuminated in separate protocols.

If an agreement on a classic free trade area is possible to be concluded without participation of the Member State, the agreement on free trade area plus or the basic agreement on the Four Common Spaces will obviously be only as a mixed agreement.

Is agreement of mixed nature enough for the EU-Russia strategic partnership? Russian researchers M. Entin and I. Ivanov proposed the idea of an EU-Russia agreement covering competences of the EU and its Member States, as well as an additional or implied competence<sup>26</sup>. Such "*double-mixed agreement*" or "*supra-mixed agreement*" could consist in elements of the enhanced cooperation, referred to in the Treaty on the European Union 1992. There are no derogations from the ERTA doctrine. The Parties or the Institutions of the Strategic Partnership could get a legal ability to establish the partnership in new fields, out the scopes of the SPT without replacing the agreement.

Practically, the process of preparation of the New Treaty has other legal difficulties. Russia is still not a member of the WTO. The Process of accession goes extremely slow. There is no doubt, it

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<sup>24</sup> OJ L 301, 31.12.1972.

<sup>25</sup> Leal-Arcas R. The European Community and Mixed Agreements.// European Foreign Affairs Review, (2001) 6. P. 513.

<sup>26</sup> See: Энтин М. Предложения по основным разделам будущего нового договора между Россией и ЕС // По пути к Договору о стратегическом партнерстве между Россией и Европейским союзом. СПб. 2007. С. 219; Иванов И. Прагматические предложения по наполнению будущего договора конкретным содержанием // По пути к Договору о стратегическом партнерстве между Россией и Европейским союзом. СПб. 2007. С. 61;

will occur. The date of the entering Russia in the WTO is under the question. Until this does not happens, most of the economic provisions of the PCA are still applicable; this reduces urgency of the conclusion of the SPT.

In my opinion, such situation may lead to a two-headed, bicephalous approach to the legal basis of the relations between Russia and the EU. It consists in idea of two basic agreements: the Basic agreement on relations (the SPT) and the corresponded agreement on the common economic space. It is rationally to conclude such second agreement after entering Russia in the WTO.

Such approach will also relieve the negotiations, because it reflects the dualism of the external competency of the EU, as well as the division of the external political and external economic competency between the Ministry of Foreign Affairs of Russia and the Ministry for Economic Development of Russia. It will also relieve entering them in force.

## **6. A content of the New Treaty**

The main idea of the new agreement consists of the arrangement of a qualitatively new level of relations between the EU and Russia and in creation of the strong legal basis for development of integration between the Parties. For these purposes it is necessary to legally transpose a 'partnership' between the EU and Russia to a 'strategic partnership' between them.

It is important to set the purpose of "gradual integration" in the SPT. Legally this purpose unites the partnership agreements and agreements on association in accordance with the "Simutenkov" case. This is a very important formula, which puts the PCA in one level with privileged agreements of the EU.

The Parties have already proposed certain ideas on provisions of the new Treaty. Russian party proposes to reflect general provisions on four Spaces, provisions concerning modernized institutional structure and mechanisms of strategic partnership, as well as provisions on investment guaranties in the new Treaty. European partners suggest to include provisions on human rights and common values, on a creation of a "free trade area plus" between the EU and Russia in the future, as well as provisions on cooperation in the field of energy.

### *6.1 Inside the Four Common Spaces*

The SPT could logically reflect the general provisions on the Four Common Spaces between Russia and the European Union. Such step is a response to the objectives of the strategic partnership. Unlike the roadmaps, the provisions of the SPT should contain the schedules for the realization of practical actions, as well as elementary instruments for the supervision and liability.

*Common Economic Space – A Free Trade Area Plus.* In spite of the fact that the PCA mentions creation of a free trade area, as a long-term objective of the partnership, there are no provisions concerning practical steps for its achievement.

The SPT should put an ambitious objective – a creation of Wide European integrated market. It could be possible to achieve in a way of realization of the practical tasks, in particular, a task of the creation of a *North-Eurasian Free Trade Area* between Russia and the European Union.

The SPT could contain the provisions on the creation a "free trade area plus" between Russia and the EU. It provides for a realization between the Partners the free movement of goods, services, capitals, as well as workers.

This proposal corresponds to the idea of the creation of the common economic space between Russia and the EU. The 2007 research of the Russian business and of the Ministry for economic development of Russia confirmed the essential advantage gained from the creation of free trade area for economy of the Russia. A creation of a free trade area between the Parties is possible as it mentioned in the Opinion of the Economic and Social Committee<sup>27</sup>.

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<sup>27</sup> See: Opinion of the Economic and Social Committee on the contribution of civil society to EU-Russia relations (OJ 2005 C 294/33); and previous: Opinion of the Economic and Social Committee on 'EU/Russia strategic partnership; What are the next steps?' (OJ 2002 C 125/39).

A free trade area is an instrument of economic integration within the framework of the WTO under paragraph 8(b) of Article XXIV GATT. Accordingly, creation of a free trade area between Russia and the European Union will adequately serve a purpose of Russia to access to the WTO and build trade relations with the other countries on the basis of its rules and principles.

It is important, that a new agreement, providing for creation of such free trade area, should contain mutually acceptable and clear timetables and periods for establishing the free trade area.

In the opinion of officials from the Russian Ministry of Economic Development, Russia is ready and can embark on negotiations on creating a free trade area with the EU immediately after its accession to the WTO. Well-thought-out and sound progress in creating such a free trade area will on no account run counter to the economic and trade interests of Russia, but will promote them.

Such a free trade area should provide for special rights and duties of partners, which naturally resulted from rights and duties in accordance with the WTO rules. Although a membership of Russia in the WTO should not be a starting moment for realization of these ideas and must not become the pretext, in my opinion, creation of a free trade area may go parallel with this process.

The economic relations between Russia and the EU require a more advanced treatment, different from the treatment, established by the WTO rules, a sort of "the WTO plus". Only a liberalization of trade is not enough for needs of a strategic economic partnership. The free movement of goods must be complemented by instruments, providing for straightening and specification of production chains in bilateral economic relations.

The question is only, how to arrange this legally. In my opinion, it is necessary to reinforce freedom of establishment and freedom of movement of capitals between Russia and the EU in provisions of the new Treaty.

It is necessary to create a whole system of investment guaranties, providing for shaping the production schemes with mixed capital and property. The Russian business is interested in provisions concerning investment guaranties in the SPT. Such provisions are weakly reflected in the PCA. But they are vitally required for Russian business acting in the territory of the Member States. This will require the reinforcements in the realization of the freedom of establishment and freedom of movement of the capitals between Russia and the EU through the granting of the national treatment in certain questions.

The European partners are interested in setting the provisions concerning the cooperation in the field of energy. Unfortunately, this matter was ruined by the mutual political intrigues. Legally it is reasonable to set this block of the provisions out of the main text of the SPT, for instance, in the special protocol to the SPT or in the separate agreement.

In any case, such provisions should reflect the modern Energodiologue between Russia and the EU founded on the principles of the Energy Charter Treaty 1994 and complemented by principle of the mutual energy cooperation<sup>28</sup>.

*Common Space of Freedom, Security and Justice.* Creation of the legal backgrounds for the Common Space of Freedom, Security and Justice is equally vital.

Certain instruments concerning readmission, visa simplification and the participation of Russia in the Europol already exist between Russia and the EU in this Space. These measures are founded on the basis of special agreements out from the scopes of the PCA. There are no general provisions for these actions in the Basic Agreement.

Currently, a huge practical interest both for Russia and for the European Union lies in the field of the struggle against terrorism, xenophobia and other forms of criminality along with development of the cooperation between courts and law enforcement bodies.

This Space should include a possibility for participation of Russia in activities of the Union's bodies such as the Europol, the Eurojust or the Schengen Information System, as well as a real

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<sup>28</sup> These principles are the principle of mutual responsibility for conditions in the energy markets, the principle of the joint benefits gained from joint sharing of the energy markets, as well as the principle of security in energy supplies and security in demand of energy products.

mechanism of legal approximation. In particular, provisions concerning the European arrest warrant should also cover Russia.

A fundamental controversial question in this connection is a free movement of persons. The PCA does not guarantee any elementary opportunities for it. Undoubtedly, this is a gap of the PCA, which requires urgent filling. It can be filled by the conclusion of special agreement on free movement of persons on the basis of the SPT.

In my opinion, the Fourth Spaces are impossible without free movements of persons. The first step for this should be made with regards to establishment of visa-free movement of the citizens between Russia and the EU. It cannot be ruled out for this purpose; Russia's joining to the Schengen aquis may be required.

The SPT must also provide the instruments for the legal assistance on civil and commercial matters.

*Common Space of External Security.* Approaches to the problem of sovereignty vary significant today. The nature of modern society, the new challenges, the new threats, their depth and, most importantly, their interdependence is so extensive that it does not allow any country, either the USA, or Russia, or Member States of the EU to keep on navigating alone in this tumultuous globalize world.

Similar conditions dictate the need for establishing the Common Space of External Security in the provisions of the SPT. It could include tripartite dialog between Russia the EU and NATO e.g. on problem of non-proliferation, disarmament and others. In any case, the creation of such space could become a strong basis for a new system of security in Europe, which has not been fully achieved ever since the end of Cold War.

The Treaty of Lisbon opens positive perspectives for development and modernization of the legal basis of the relations between Russia and the EU in this field. The clause of solidarity is referred in the Article 188R of the TFEU<sup>29</sup> provided for support to Member State, which is attacked by terrorists or is influenced by natural or technogenic catastrophes. An analogous provision is possible to reflect in the new Basic agreement between the EU and Russia. Such provision represents a spirit of real strategic partnership and could create the basis for certain strategic "alliance" between the EU and Russia in search of the common answers for the new challenges.

*Common Space of Research and Education, including Cultural Aspects.* Development of the European consciousness within the Russian society is backed by the creation of the Common Space of Research and Education, including Cultural Aspects. This Space envisages joint research projects, development of the European education in Russia and comparability of the Russian educational standards with the Bologna process, programmes for studying and development of the Russian culture along with cultures and languages of other peoples without separation from each other.

The Treaty of Lisbon enlarges the EU competencies, in particular, spreading the powers on sport, civil protection and space. The new policies of the EU give the new possibilities to develop the Common Space of Research and Education, including Cultural Aspects between the EU and Russia, the so called "Fourth space".

It is logical to reflect provisions on this Space in the SPT taking into account the provisions of the Treaty of Lisbon and in subject to modernize the structures responsible for realization of this Space in the near future. This non-political sphere of the relations represents minimum of discords between the Parties. The New treaty could be an appreciable breakout in the relations of the Parties in these matters.

## *6.2 Outside the Forth Common Spaces*

Some questions of the relations between Russia and the EU have the horizontal nature or grow out from the Four Spaces. Prior, they are common values, social matters and environment, approximation of law and regional aspect of the partnership.

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<sup>29</sup> the Article 222 in renumbered version of the TFEU.

It is necessary to set the provisions on human rights and the *common values* in the SPT. Although, today these principles are the principles of the strategic partnership, they are needed for new qualitative reflection in the Basic agreement between Russia and the EU.

The Article 2 of the PCA does not take into account neither the fact of the participation of Russia in the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, nor the provisions of the Article 6 of the Treaty on the European Union, nor the Charter of Fundamental Freedoms of the European Union 2000.

The SPT will be necessary also to take into account the provisions of the Treaty of Lisbon on partnership with third countries.

The Roadmaps do not pay sufficient attention *to the social sphere* and *to the environment*. However, the provisions of the PCA in these spheres have got the practical realization. The provisions of the Article 23 of the PCA on labour guarantees for Russian workers were interpreted by the ECJ in the Simutenkov case<sup>30</sup>. The Article 24 of the PCA on cooperation in social security field became a basis for the bilateral agreements between Russia and the Member States<sup>31</sup>.

The provisions of the Article 69 of the PCA established the basis for the bilateral dialog on environment between the EU and Russia<sup>32</sup>.

As a whole, an *approximation of legislation* is one of the most efficient means of the creation of the comparable conditions for realization of the free movement of goods, persons, services and capital. This instrument must be reflected in the provisions of the Strategic Partnership Treaty.

Such approximation, first of all, is dictated by globalization of interests in trade and movement of investments and rapid development of the legislation in cross-border spheres (transport, communications and nets).

The PCA has chosen the approximation of the legislation as a way of legal integration between Russia and the EU. The Article 55 of the PCA is especially devoted to that process. This article nominates the 15 spheres of the approximation.

Approximation of legislation is an important and effective tool of the partnership between Russia and the EU aimed at development of such partnership into stable strategic partnership on the basis of a free trade area.

Implementation of the Common Spaces is impossible without emergence of common or *Single Legal Space*<sup>33</sup>.

When modeling the mechanism of legal approximation and taking specific measures in this field the fallows should be taken into account. Russia is a federal state and areas of legal approximation touch upon all levels of legislative competence of the Federation and its regions identified in Articles 71-73 of the Constitution of Russia.

It is necessary to put the basis for development of cooperation between the EU and regions of Russia in the provisions of the SPT. The *Northern Dimension* is a successful example of efficiency of such approach.

The set of problems arising around Kaliningrad could be the subject of a separate protocol or a declaration in the shape of a supplement to the New Treaty.

Moreover, it is necessary to include a rule into the new Treaty that all the provisions of the PCA, which are not discordant by the new Agreement, will remain in force until special agreements on matters concerned will come into force. It would be a most plain and legally literate way of the

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<sup>30</sup> See paragraph 3 of this paper.

<sup>31</sup> E.g. the Treaty between Russia and Kingdom of Spain on cooperation in social security matters 1994.

<sup>32</sup> See: Communication from the Commission of 17 December 2001 - EU-Russia environmental cooperation (COM(2001)772 final - Not published in the Official Journal). On successful practical partnership in this field see: Economic Aspects of Environmental Policy in Russia. / Eds. W. Douma. A. Kellermann. Moscow. 2004.

<sup>33</sup> See: Moscow–Bruges White Paper: The Rule of Law and a single legal space for Europe and post-Soviet states. // The World Rule of Law Movement and Russian Legal Reform. / Eds. F. Neate, H.Nielsen. Moscow. 2007. P. 219.

conservation of all these important and viable legal achievements in relations between Russia and the EU.

### *6.3. New institutional scheme for the strategic partnership*

The SPT could contain the provisions concerning the new organizing structure and institutional mechanism of the strategic partnership, which exist informally or are found by acts of the soft law.

Prior, it concerns the Permanent Partnership Council (PPC) and its structures<sup>34</sup>. Also, the "dialogues" between Russia and the EU on different questions of their relations are needed in legalization.

Considering this proposal it is necessary to stress that the certain deficit of democracy exists in the activity of the structures of the strategic partnership at the present. This requires to specify the following important positions in the SPT:

- a) The principles of transparency and of access to information on activity of such structures,
- b) Setting the structures providing for the parliamentary representation in the relations between the Russia and the EU,
- c) Creating the structures providing for civil society representation in the relations between the Russia and the EU, in particular, interests of the business community.

However, it is necessary to take in special account the creation of the institutional mechanism promoting the approximation of the legislation and tracing its results. The Parties could use the experience of the institutional structure between the EU and Turkey within the framework of the customs union and the other spheres, where they make general and compatible rules of the interaction.

It could correspond to the development of the "small results" practice, which is offered by a Russian researcher A. Chetverikov<sup>35</sup>. This idea consists in the participation of Russia in all the EU bodies providing the possibility of the participation in their activity for the third countries.

## **7. Conclusion**

Unfortunately, there are a number of the political difficulties for the conclusion of the new Basic agreement on relations between the Russia and the EU. In my opinion, most of the difficulties exist because they are not covered by the Basic legal document between the Parties. However, the process of the conclusions of the SPT is very complicated in absence of the common external approach of the Member States in respect of Russia.

Relations between Russia and the European Union never were simple. They have always accompanied by different economic and political problems, divergences of interests and lack of mutual trust. But all these problems in bilateral relations were always solved. There were a number of examples.

I'm sure the Parties will begin negotiations concerning the New Treaty as soon as possible. It is necessary to replace the PCA by a new treaty establishing legal scopes for strategic partnership.

Certainly the new agreement should reflect a "technological approach", which would support the succession of the PCA's provisions and practice in relations between the Parties. It is necessary to save existing positive integrational "baggage" and transpose it on relations of new level. The new Treaty may better satisfy the growing scale and spheres of strategic partnership between Russia and the European Union as well of common interests of the Parties.

There is no doubts, the modern European Integration is impossible without Russia.

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<sup>34</sup> The formats of the PPC: the PPC on freedom, security and justice, the PPC on energy, the PPC on transport, the PPC on environment, the PPC on culture, the PPC on science and etc.

<sup>35</sup> See: Кашкин С., Калиниченко П., Четвериков А., Жбанков В. Взаимодополняемость ЕС и его государств-членов в области внешних действий и ОВПБ и ее влияние на отношения ЕС и России // Право и государство: теория и практика. 2008 №4(40). С. 10.

