



A New Agreement between the EU and Russia: Why, what and when?

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Abstract: The 10th anniversary of the Partnership and Cooperation Agreement (PCA) between the EU and Russia, which falls on 1 December 2007, is already prompting thoughts on whether and how to replace it. This raises basic issues about the form, purpose and content of bilateral treaties in the context of an integrating Europe. The following scenarios are discussed:

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

We argue that the model of the comprehensive multi-sectoral treaty, well known to the EU and its neighbours that aspire to membership, is not suited to the case of Russia, which is not an applicant for membership. Attempts to produce weaker derivatives of this model result in long-winded and pretentious texts that are thin or devoid of legally-binding substance. The treaty form also involves extremely long and risky ratification procedures on the side of the EU and its member states, and is extremely inflexible, even possibly becoming outdated before entry into force. For the foreseeable future, it would be best to focus efforts on concrete, sector-specific agreements.

We 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 more experience with the four Common Spaces. 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.

1. Introduction: The '2007 question'¹

The so-called '2007 question' arises because on 1 December 2007 the Partnership and Cooperation Agreement (PCA) between the EU and Russia reaches the 10th anniversary of its entry into force. Actually the PCA is even older, since it was signed on 24 June 1994, by President Yeltsin in Corfu, and the ratification process took over three years.

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There seems to be a presumption in official circles that there should be a new Agreement to replace the PCA, even though there is no compelling legal argument to do something. On the contrary, the existing PCA will live on automatically in the absence of any agreement to do the contrary. Art. 106 of the PCA reads:

"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".

The simplest reason why there should be a new agreement is that much has changed since the PCA was negotiated in both the EU in its membership, policies and competences, and in Russia since the early days of the post-communist and post-Soviet period. It can be argued therefore that the PCA is obsolete.

There are, however, more precise motivations to negotiate a new agreement. There is an unease on the part of both sides over the status quo, which has become a complex but also irritable relationship.

2. Interests and values

The EU-Russian relationship has become a complex and rich one as the post-Soviet Russia has opened itself to the world and especially its European neighbours. The EU and Russia find themselves interacting on a huge agenda of common interests and concerns. This is illustrated by the fact that the Russian mission to the EU in Brussels is now believed to be Russia's biggest embassy in the world, staffed with diplomats and experts covering every aspect of the wider European integration process.

It appears that the European Commission and the Russian government are setting up no less than 40 bilateral dialogue groups on specifically identified policy domains, which suggests that the two administrations are getting to know each other extremely well. Could this also lead, in the terminology of political science, to 'Europeanisation' by 'socialisation'?

At the top level, however, the relationship has also become irritable, essentially because of different world views of the two parties. In the summary language of international relations theory, this reflects different positions in the realist-idealist spectrum. Russia today behaves as a predominantly *realpolitik* actor, with little recognisable trace of what EU citizens consider to be political values. The EU advocates for itself and its partners much more of a values-based conception of public policy, both domestically and in foreign policy.

According to Timofei Bordachev, Russia now aspires to an agreement that would reflect its specificity – its size, geo-political significance and unwillingness to be an EU associate that automatically accepts alignment on EU norms. Russia's idea of being an 'equal partner' with the EU is reflected in an increasing self-confidence and assertiveness on the international stage, boosted by the trump cards it can play in the energy sector. For some at least, e.g. Nadia Arbatova, the 'Europeanisation' of Russia in terms of political and societal norms remains a motivation. But Russia has in any case some quite pragmatic interests in Europe, for example freedom of movement for its people – businessmen, students, tourists, officials, etc. - in the EU, as has been illustrated by its strong demands for visa facilitation.

The EU for its part is uneasy over political and foreign policy developments in Russia, which are perceived to be increasingly divergent from the EU's conception of European values. This 'values gap' is perceived to have widened especially during President Putin's second term in office as a result of two influences, both internal and external.

The first, internal development has been the strengthening of the Kremlin's 'power vertical', the absence of pluralist party politics, the erosion of media and NGO freedoms, and the lack of an independent judiciary and rule of law. President Putin was widely credited with having reversed the comparative chaos of

governance in Russia under Yeltsin during his first term of office. But he is now perceived in Europe as having gone unnecessarily and undesirably far in reverting to a semi-authoritarian and only pseudo-democratic state. These tendencies have interacted with the huge incentives presented by Russia's oil-gas resources to create a rent-controlling and distributing regime.

The second, external but related development has been the emergence of the new Russian geo-politics, in which the Kremlin-Gazprom complex exerts pressure on former Soviet states bordering now both Russia and the EU using a combination of commercial-energy and politico-diplomatic instruments. Deputy Prime Minister Sergei Ivanov has set this out in writing in a text he placed in a Western newspaper (see Box 1), in terms that appear to aim at a cross between a new Yalta and the old Monroe Doctrine. Maybe he wishes to go down in history as originator of an Ivanov Doctrine. But, not surprisingly, this doctrine is fundamentally unacceptable to the EU and no less so to independent states such as Ukraine, Moldova and Georgia. The values gap has – in a typical EU view – become distressingly and alarmingly wide when Russia punishes former Soviet states with gas supply or wine import sanctions for trying to become more democratic or simply not being 'Russia-compliant'.

Box 1. "The New Russian Security Doctrine"

by Sergei Ivanov, Deputy Prime Minister and Minister of Defence of Russia [Extract]

Russia is not itching for war. War is never by choice. Right now, there is no conflict or dispute outside the country that could be seen as a direct military threat. However, to ignore the future is irresponsible. We need to look several moves ahead – on all levels, from military planning to a strategic vision of the future of armed conflict. We need to consider the implications of the 'uncertainty factor' as well as of the high level of existing threats. By uncertainty we mean a political or military-political conflict or process that has a potential to pose a direct threat to Russia's security, or to change the geo-political reality in a region of Russia's strategic interest. Our top concern is the internal situation in some members of the Commonwealth of Independent States, the club of former Soviet republics, and the regions around them.

Source: *The Wall Street Journal*, 11 January 2006.

The EU in principle seeks a policy of maximum practicable engagement with Russia. It has strategic economic interests in maintaining reliable energy supplies from Russia, and strategic political and security interests in having a cooperative rather than conflictual relationship. The EU hopes for some kind of 'socialisation effect', which in due course would see Russian society, private enterprises and government converge on European standards and values.

Could a new agreement contribute to these objectives? The question may be asked, but the answer is not self-evident. Opinions within the EU vary, with the familiar

spectrum of hard vs soft positions. The hard position says that the EU must stand firm on its political principles, and that to agree to Russian demands at this stage for an ambitious new agreement would amount to appeasement of an increasingly undemocratic and arrogant regime. The soft position would give greater credence to possible socialisation effects, or simply give primary weight to economic interests with little regard to political values.

Views within the EU are certainly not static, while Russia and the EU have constantly to interact in response to events. To track the evolution of EU perceptions of Russia as a partner state is of course difficult or speculative. However it seems possible to identify some evolution in these perceptions. At the time of the EU's 2004 enlargement, there was a marked widening in the spectrum of perceptions of Russia. 'New Europe' could be heard saying "the only language Russia understands is that of strength, and we know Russia best". 'Old Europe', represented by the Chirac-Schroeder-Berlusconi trio, gave priority to personalised diplomacy with President Putin in pursuit of various commercial and diplomatic objectives. Berlusconi's role as EU President in 2003 carried this to *reductio ad absurdum* levels, famously nominating himself as advocate of Putin's Chechnya policy in a press conference at the end of an EU-Russia summit. However, it seems that these extreme divergences have narrowed in more recent times. The new member states have moved more towards the centre of the spectrum, maybe through their deeper socialisation within the workings of the EU, while the Chirac-Schroeder-Berlusconi trio has now dwindled to one, with the Merkel-Prodi pair apparently more centrist than their predecessors in their positions on the interests-values spectrum.

3. Forms of agreement in international and European regimes

International regimes these days take many different forms and structures. The comprehensive bilateral treaty of the kind the EU has developed with many of its neighbouring states is only one particular case, which has been driven by the unique nature of the European integration process, including the perspective of leading to EU membership.

At the other end of the spectrum stands the EU-US model. This relationship has no overarching bilateral treaty at all but rather is anchored in several multilateral treaties that form the backbone of the post-second world war multilateral order: the UN family, the WTO, NATO, IMF, IBRD and OECD. These organisations were designed first of all to order trans-Atlantic relations, and to establish the rules of the game that suited the advanced western democracies. These rules and organisations were so substantial and successful that the idea of a comprehensive bilateral treaty between the US and its European allies has been considered superfluous.

These multilateral organisations were also designed for the huge asymmetry of the early post-world war order, namely to organise relations between the US as the only global power and the many small or medium-sized European states. This asymmetry has been most evident in NATO, where the principle of sovereign equality of all member states stands alongside the obviously dominant position of the US.

This asymmetry has itself become increasingly obsolete, however, as the EU has progressively developed over the last decades. Some of these older multilateral organisations have become embarrassingly ill-adapted to the new situation. The many medium and small European states all have their formal place in them on a basis of sovereign equality, yet they have less and less to say beyond referring to positions of the EU. The EU institutions are themselves only patchily represented, for example, through observer status only, or through the voice of the rotating presidency.

As these organisations (such as the OECD and the OSCE) failed to adapt fully to changing needs, there has been a tendency not to abolish or even reform them (all too difficult), but to supplement them with new informal structures, of which the G7 summits have been the prime example. The G7 started with hardly any EU presence, but soon the big four EU states were obliged to accept, under pressure from the smaller non-represented member states, to have the Commission included as full participant. More recently, of course, the G7 became G8, with Russia taking on in 2006 the presidency role for the first time. The G8 also now tends to extend partial invitations to new world powers (China, India, Brazil). All this has happened without any legal agreement or treaty, which has facilitated the organic evolution of this quasi-institution. It is a reminder of the disadvantages of over-using rigid, legally entrenched treaty agreements in an ever changing world, and notably for avoiding legally-binding formalism where there is not a functional necessity for it.

The US and Russia have not had an overarching agreement, but have still made a number of exceptionally important sector-specific treaties, of which the outstanding examples have been the Strategic Arms Limitation Treaties (SALT I and II).

The EU's model of the comprehensive bilateral agreement was initiated with the so-called 'Europe Agreements' made with the Central and Eastern European states, in response to their applications for full membership at the beginning of the post-communist period. These treaties were accordingly anticipating subsequent accession. They were effectively a comprehensive and legally-binding training programme for the candidates. There was no question about the final objective, and so the use of the EU *acquis* as the legal and normative reference was readily accepted.

This model was then adapted with not only the PCAs. It was seen also later with the Stabilisation and Association

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Agreements (SAAs) with the western Balkans states that did not have candidate status, but did have acknowledged 'membership perspectives'. It has been seen again more recently with the Action Plans of the European Neighbourhood Policy (ENP), which is open for European CIS states (except for Russia which has rejected the formula) and the Southern Mediterranean states of the Barcelona Process with which the EU has concluded comprehensive Euro-Mediterranean Association Agreements. These several models have in common with the Europe Agreements that they all start with the same structure of topics, which in turn find their origin in the EU *acquis*. Reflecting the advance of European integration into the fields of justice and home affairs and foreign, security and defence policy since the early 1990s, the SAAs in particular are broader in coverage than the earlier Europe Agreements.

The Action Plans of the ENP are not themselves treaties binding under international law, but just jointly-agreed policy documents of intentions. However, it is anticipated that they may lead to 'Neighbourhood Agreements', i.e. treaties whose likely content may be pre-figured by the Action Plans. Moreover, several of the European states concerned (Georgia, Moldova, Ukraine) declare that full membership is their long-term objective, even if this is not acknowledged at this stage by the EU itself. In the case of Ukraine, it was agreed at summit level in December 2005 that the two parties will work towards an 'enhanced agreement' (i.e. a treaty) as soon as Ukraine accedes to the WTO, with a presumption that a free trade agreement would be a core economic component of a comprehensive treaty. The European Parliament in April 2006 adopted a resolution calling for an Association Agreement with Ukraine, which was immediately translated in the Ukrainian media as meaning Associate Membership. A new 'Enhanced Agreement' with Ukraine is currently under discussion in the EU institutions and between the EU and Ukraine, and negotiations on this agreement may commence as early as the end of 2006.

There are also some special cases where the EU has very close relations with European neighbours without the legal base of a comprehensive agreement. This concerns in particular Switzerland, where the regime that emerged over the last decade was to a degree an accidental and improvised response to unexpected referendum results. It has become nonetheless a model of wider interest for students of the conceivable options for systemic relationships with the EU. Indeed, in large part due to the pillar structure of the EU, a growing number of sectoral agreements are concluded with non-member states, although, in contrast to the Swiss model, these are concluded alongside (and often in the framework of) the comprehensive agreements.

Comparisons with these various forms of 'association agreement' serve to highlight Russia's unease with the PCA for reasons that go beyond its obsolescence. As Bordachev says quite clearly, Russia does not want to be

an associate of the EU. It wants to be its equal partner, with no presumptions about Russia's possible convergence of the EU *acquis*, which might be seen as implying their normative superiority. On the other hand, Russia did, in May 2005, enter into the Four Common Spaces agreement with the EU (economics, justice and home affairs, education and culture, and external security). In fact, these documents are not so different from the Action Plans of the European Neighbourhood Policy, with the major exception they exclude the big missing common space – that of democracy and human rights.

Comparison of agreements such as the PCA on the one hand, and the four common space agreements and action plans on the other hand, raises the issue of legal form. Agreements such as the PCA are treaties, i.e. having the highest status in international law and being 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.

Bordachev emphasises that any new agreement or package of documents "cannot fall within the same 'system of coordinates' as the EU's present practice of formalising relations with neighbouring states." However, any agreement concluded by the EU with Russia must be based on the EU treaties. International agreements are mentioned in numerous articles in both of the main treaties, the Treaty Establishing the European Community (EC) and the Treaty on European Union (TEU) and the EU is thus faced with several options and choices as to the legal base of any new agreement with Russia (see Box 2).

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 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 neighbours 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 organising 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.

4. The-EU-Russia status quo

4.1 The Partnership and Cooperation Agreement (PCA)

The PCA has a similar structure and scope in terms of policy areas covered as other agreements, such as the Europe Agreements and the EEA, concluded in the same period (see Annex 1 for the main headings of the PCA). The commitments are much more limited in the PCA than in the Europe Agreements, because Russia was only

at the beginning of its post-communist transition, not an EU accession candidate, and lacking WTO membership and, at the time, even market economy status. The political dialogue, on the other hand, is more extensive, with bi-annual summits in addition to the typical ministerial meetings.

Apart from Title III, which deals with trade in goods, and the general and institutional principles and frameworks set out in Titles I, II and XI, most of the provisions of the PCA consist of vague commitments to ‘cooperate’ in various areas. A frequent complaint is that many of the provisions remain un-implemented, although the precise number is uncertain, as the vagueness of many of the provisions makes it sometimes difficult to determine whether they can be said to be ‘implemented’ or not.

The relative weakness of the PCA regime since its entry into force in late 1997 seems to be testified by efforts to deepen and broaden the bilateral relationship further, as reflected in two sets of documents adopted: first, in 1999, the EU and then Russian strategy documents on the future of the bilateral relationship; and secondly, in 2005, the set of Road Maps for the development of Four Common Spaces.

4.2 The strategy documents

The 1999 Common Strategy on Russia (Annex 2) was the first experiment with a new CFSP instrument introduced by the Amsterdam Treaty. It was an attempt to upgrade the EU-Russian relationship beyond the PCA. The EU's document was unilateral, through which the EU institutions and the member states sought to define more precisely what they wanted from the relationship with Russia. Its content also reflected the development of the EU itself, with much more prominence given to issues of foreign policy and matters of cross-border crime as well as democracy and the rule of law.

Russia for its part replied later in 1999 with its 'Medium-Term Strategy for Development of Relations between the Russian Federation and the European Union' (Annex 3). This was at least a statement by Russia to the effect that the relationship was not to be defined only in a unilateral document by the EU.

A first review of the process by the High Representative in late 2000 was not encouraging. Although the 'Common Strategy' was renewed for a year upon the end of its four-year duration in June 2003, it was quietly ignored and allowed to expire the following year. The Russia document has met a fate similar to that of the 'Common Strategy'. Although due to expire only in 2010, it has been rarely referred to in the bilateral relations in the following years.

4.3 The Road Maps for the Four Common Spaces

Following the decisions to create a Common European Economic Space in May 2001, subsequently expanded to Four Common Spaces in May 2003, the EU and Russia adopted four Road Maps for these Four Common Spaces in May 2005. The Common Spaces reflect the extent to which the relationship has evolved beyond the areas of cooperation envisaged in the PCA. Two of the Common Spaces are dedicated to 'external' and 'internal' security issues respectively, corresponding to the common foreign and security policy (CFSP) and the justice and home affairs agendas in the EU. These are relatively new policy areas in the EU that existed only in embryonic form at the time of the signing of the PCA.

The parties are currently in the process of establishing the numerous 'dialogues', mainly on economic regulatory issues, called for in the Road Maps. An important question of interpretation and evaluation is where all these dialogue groups are heading. In particular are they preparing the ground for the regulatory convergence announced in the 'Common European Economic Space', and if so, convergence on which norms and standards? The story that seems to emerge is one of a two-level Russian discourse and practice. At the top political level, the discourse is all about being equal partners, with silence over matters of alignment on EU norms and standards. At the more technical and expert level, the practice seems to become one of far more alignment on

EU norms and standards, especially where they can stand as proxy for wider international standards, than the political strategists suggest. The interpretation can be that across the very wide range of business interests there are many sectors where it makes sense for Russian enterprises, or the Russian regulator to adopt European standards. This would surely be the case, for example, for product standards and accounting, audit and financial regulation standards for enterprises seeking access to European and Western markets for trade, investment or capital market (IPO) access. This is a complex process of case-by-case and autonomous decisions by Russian government departments and business interests to choose where and when to align on common (i.e. European and/or international) standards. It is not evident whether the Russian policy-maker even has a clear idea of what the overall score is on these accounts, which means that the gap between discourse and practice may indeed be substantial.

The Road Maps for the Four Common Spaces also have indicated a long list of sector-specific agreements that would be negotiated (a selection is presented in Box 3). This means a lot of work in progress, which will be a task of several years.

Box 3. Agreements envisaged in the Road Maps on the Four Common Spaces

Common Economic Space

- Investment-related issues
- Veterinary
- Fisheries
- GALILEO/GLONASS cooperation
- Trade in nuclear materials

Freedom, security and justice

- Visa-facilitation
- Readmission
- Mutual legal assistance
- Europol-Russia operational agreement
- Eurojust-Russia agreement
- Judicial cooperation in civil matters

External security

- Framework on legal and financial aspects of crisis
- Management operations
- Information protection

4.4 World Trade Organisation

Russia's WTO accession process has taken much longer than initially expected. Russia applied in 1993, and at the time of the signing of the PCA, it was envisaged that accession could occur as early as 1998 or 1999. By contrast, at the time of writing it seems unlikely that Russia will be able to accede by the end of 2006, the most recent date suggested by Russian officials. This delay has put a brake on the development of the trading relationship between the EU and Russia, most notably by

postponing indefinitely talks on the creation of an eventual EU-Russian free trade area, one of the most ambitious projects mentioned in the PCA. The EU has agreed bilaterally with Russia on the terms of its accession, but the agreement of other WTO member states is still lacking, including the United States. Moreover, Russia's trade sanctions against Ukraine (farm produce), Moldova (wine) and Georgia (wine and drinking water) in the first half of 2006 would almost certainly have been illegal by WTO standards, given that adequate justification for these restrictive measures has not been supplied. These actions are further pushing back the prospects of Russia's WTO accession, with high-level US officials making critical remarks in public.¹

The intentions of the EU and Russia on the question of eventual free trade are not made explicit in the Roadmap for the Common Economic Space, since WTO accession is the next step in any case. However there is a tendency for the EU to extend its set of bilateral free trade agreements, especially for nearby countries. In particular the Commission has been contracting a number of feasibility studies on the content and consequences of free trade with major trade partners, such as Ukraine, India and Korea. A first study² has recently been completed by a CEPS-led consortium on Ukraine, for which negotiations are set to begin as soon as Ukraine enters the WTO – now expected in 2006. The accent on the word 'deep' in the title implies that there will be many detailed topics for negotiation. As and when these negotiations take real shape, there will be impetus to review the same agenda between the EU with Russia.

4.5 The Energy Charter Treaty and Protocol on Transit

In the energy sector, the EU and Russia are formally engaged in the Energy Charter Treaty, but in practice have not reached a political consensus on the actual degree of commitment to the obligations of the Treaty and implementation of its provisions.

The European Energy Charter Treaty of 1994 has sought to provide the political, technical and legal foundations for East-West cooperation in the energy sector. The Treaty covers the protection and promotion of foreign investment in the energy sector, free trade in energy goods and services (based on WTO rules and practice), energy transit, energy efficiency and environment, and multilateral mechanisms of settlement investor-to-state or government-to-government disputes. By now, 51

countries plus the European Communities have signed the Treaty; 46 countries, including the EU member states, have ratified it. Russia has signed but postponed the ratification and is currently applying the Treaty on a provisional basis.

Russia has been persistently called upon by the EU and member states to ratify the Treaty and also proceed with negotiations on a related Transit Protocol. These issues have risen to the top of the political agenda in the first half of 2006, as a result of the Russian-Ukrainian gas supply crisis of January. Moreover, the prospect of the G8 summit to be hosted by Russia in July opens the possibility for outstanding issues to be tackled at the highest level.

At the time of writing, it is unclear whether negotiations can reach the point that Russia will ratify the Energy Charter Treaty and agree to sign the Transit Protocol. The Russian position in public is heard through two voices, the first being that of the energy minister and the second that of Gazprom spokesmen. The government says that there are just some relatively technical concerns to be resolved. The spokesmen of Gazprom, which is majority-controlled by the government, are utterly dismissive of the Energy Charter. The key articles of the draft Transit Protocol are reproduced in Annex 5. Concretely, Art. 8 would require Gazprom to make its pipeline capacity open for transit for third country suppliers, such as from Turkmenistan to Ukraine or the EU. Art. 20 is effectively addressing obligations to the EU (the language is about regional organisations) to make its internal distribution networks available to third country suppliers on no less favourable terms than for domestic suppliers.

These are extremely important matters for both sides. The fact that negotiations are taking place in the first half of 2006 under very special circumstances (Ukraine crisis, G8) illustrates two important points about how to organise the EU-Russia relationship. First, the main texts and treaties are multilateral, not bilateral. Second, the impetus to conduct substantive negotiations came at a particular point in time from a specific political context that forced the issues to the top level. Both factors are warnings to those who might have excessive expectations for the plausible content of a comprehensive bilateral treaty, addressing so many issues at the same time, and intended to last for many years.

In the event that the Charter is ratified and the Transit Protocol agreed there would surely, however, follow renewed impetus for negotiations under the energy dialogue heading, leading to various specific agreements.

Following Russia's ratification in 2004 of the Kyoto Protocol on global warming, with its overlapping energy and environmental policy domains, the country has become a full player in detailing implementation measures and in the recent debates on the post-Kyoto regime to be devised for 2012 onwards. There will surely be intense bilateral dialogue between the EU and Russia on possible designs for the follow-on regime. Also there

¹ See remarks by Vice-President Dick Cheney at the Vilnius Conference, 4 May 2006 (<http://www.whitehouse.gov/news/releases/2006/05/20060504-1.html>).

² *The Prospect of Deep Free Trade between the European Union and Ukraine*, Michael Emerson, Huw Edwards, Ildar Gazizullin, Matthias Lücke, Daniel Müller-Jentsch, Vira Nanivska, Valeriy Pyatnytskiy, Andreas Schneider, Rainer Schweickert, Olexandr Shevtsov and Olga Shumylo, CEPS, April 2006.

are likely to emerge many issues requiring bilateral operational agreements in this field.

4.6 Other agreements and initiatives

The EU and Russia have concluded several limited sectoral agreements since the entry into force of the PCA in 1997. This includes agreements envisaged in the PCA, such as the agreements on trade in textiles, steel and nuclear materials, as well as other agreements, for instance, the agreement between Russia and Europol, and the Science and Technology agreements.

In addition to the high-level dialogues on energy, foreign, security and defence policy, the EU and Russia have agreed on a series of joint initiatives in recent years, covering a broad range of areas including organised crime, non-proliferation and nuclear disarmaments, higher education, civil protection, human rights and transport.

5. Scenarios for 2007 and Beyond

We identify six scenarios for the post-2007 outlook of EU-Russia relations, and evaluate each for their possible content and timing.

Scenario 1: Retire the PCA without replacement

The PCA would be retired because it has not been so effective and has also become increasingly obsolete, and overtaken by subsequent initiatives. But it would not be replaced by a new treaty.

The hypothesis of retiring the PCA without any replacement is not that inconceivable. As already noted, in the case of relations with the US, the absence of an overarching bilateral treaty has not stood in the way of the deepest of alliances. However this scenario has two disadvantages in the case of EU-Russian relations.

First, the PCA today provides the legal basis for EU-Russian trade relations, which is necessary given that Russia is not yet a member of the WTO. While Russia may finally accede in 2007, the history of this application has been one of continuous rescheduling and delay. The present legal basis should in any case not be scrapped until its successor is in place.

Second, in accordance with Art. 106 of the PCA, it would require that one party gives six months notice to denounce it, i.e. a deliberate negative act, which would be open to more negative interpretations than were intended. It is one thing for the EU and US not to have a comprehensive treaty, with their affairs having always been managed without one, but quite another one to scrap an existing treaty. It would still be possible to go ahead with various sector-specific agreements (as detailed under the next scenario) without an overarching treaty, but the act of scrapping the PCA without replacing it would risk signalling or being interpreted as a political rupture,

especially in the current uneasy atmosphere between the two parties.

Scenario 2: Extend the status quo

The PCA would continue to live on, as provided automatically by Art. 106, alongside the continuing negotiation of operational sectoral agreements, each of which would follow its own timetable.

These sector-specific agreements can be grouped in two main categories. The first group links to major steps to complete Russia's participation in global multilateral processes, namely through WTO accession, ratification of the Energy Charter Treaty and implementation of the Kyoto Protocol on global warming. All three cases could lead on to further related bilateral agreements.

The second category concerns agreements already anticipated under the programmes for the Four Common Spaces (as indicated above). Other operational agreements can be expected as a result of the work of the many dialogue groups already in progress, or currently being initiated. The parallel negotiation of multiple sector-specific agreements should offer opportunities for *log-rolling* between issues that may be only loosely or not all connected. A recent example of log-rolling was apparent in the deal in May 2004, when the EU and Russia concluded negotiations on Russia's WTO accession,³ to be followed only a few months later by Russia's ratification of the Kyoto Protocol on climate change, which needed Russia's approval in order to enter into force.

Retaining the PCA as the political framework at least provides a common denominator to uphold that which Bordachev calls 'peaceful coexistence' between the parties. Nonetheless, the substantive business agenda that could be pursued under this scenario is very substantial, and it is maybe best to do this with minimal politicisation in the present circumstances.

Scenario 3: Extend the status quo, adding a Political Declaration on Strategic Partnership

The previous scenario is retained, with the only difference that there is a Political Declaration adopted at summit level providing an updating of the de facto system as it has emerged and continues to develop.

The decision to add here a "Political Declaration on Strategic Partnership" would be justified as and when a new phase in the relationship becomes realistic. Conclusion of Russia's WTO accession and ratification of the Energy Charter could be elements conducive for this scenario. The PCA could then be retired with dignity. Any remaining details of the PCA that were of significant operational use after WTO accession could be made the subject of specific and technical agreements. The name

³ The agreement included outstanding issues such as tariffs, anti-dumping measures and most notably, Russia's commitment to gradually raise domestic energy prices.

‘Strategic Partnership’ would signal the change of circumstances warranting replacement of the PCA and the essential quality of the EU-Russian relationship as equal partners within Europe. The EU side would presumably be attentive to the political climate within Russia, and especially also regarding Russia’s policies towards the European ‘near abroad’ states, before adopting a text with language about common geo-strategic purpose and common values uniting the EU and Russia.

There are precedents for such a Political Declaration on Strategic Partnership. This is exactly the title of a declaration adopted by the EU and India in 2003, which was a short document of two pages. It was accompanied by a detailed Action Plan not so dissimilar from the Roadmaps of the Four Common Spaces. The Indian precedent is of course all the more interesting as an example of a relationship between the EU and an emerging global power, unencumbered by complexities of the EU’s integration model. It might also be noted that this declaration starts by proclaiming the two parties to be the “world’s two biggest democracies”, which is in itself an accurate statement. The EU and India seem to have got closer and faster to a viable and unambiguous model for formalising their cooperation than has been the case between the EU and Russia.

Scenario 4: Replace the PCA with a short Treaty of Strategic Partnership

A simple variant of the preceding scenario would turn the Political Declaration into a legally-binding Treaty and the PCA would be repealed.

This supposes identical substance to the previous scenario, but gives the top document the form of a treaty, rather than a political declaration. In legal terms of course the treaty has the highest level of obligation, and in terms of procedure requires ratification.

There are some fundamental disadvantages in this scenario. It would be debasing the use of the treaty instrument in the present circumstances, if the content were merely updating the status quo with language about the Four Common Spaces and the Permanent Partnership Council procedures. There are signs that Russia would like a new treaty simply for reasons of diplomatic prestige – one could call it ‘trophy diplomacy’ or ‘cosmetic diplomacy’. It is hard to see what interest the EU could find in this, unless the treaty marked a real rapprochement politically.

Being a treaty, there would have to be ratification by parliaments on both sides, including all EU member states. The experience gained with the extension of the PCA to the 10 EU new member states suggests that ratification of any new legally binding document that was not convincingly advantageous could encounter political obstacles. Potentially divisive issues could be downplayed or bypassed in a political declaration. In a treaty, these would have to be addressed, for the fairly

straightforward reason that the text would otherwise be blocked in national parliaments, or already at the negotiation table in anticipation of such difficulties. The EU of 25 member states has seen a quantitative and qualitative change in the facility with which treaties may be passed, especially with Russia given the sensitivities of the former Soviet and Warsaw Pact member states. It is all too easy to imagine some emotionally charged political incident occurring sometime during the two or more years of the ratification procedure just at the time when a parliament is preparing to vote on the new treaty. A single parliament’s negative vote would then block the entire process. This is itself not so much an unhealthy prospect, since it is the essence of democratic procedure, but the prospect of possible difficulties is also a reality check. Treaties are meant to be the highest form of internationally binding agreement. It is better for them to be reserved for texts whose content and indeed political intent truly warrant such status.

Scenario 5: Replace the PCA with a comprehensive Treaty of Strategic Partnership

A comprehensive new treaty, replacing the PCA, would give binding form to the subject matter of the Four Common Spaces, including annexed protocols with various sector-specific agreements, and updated institutional provisions.

The form and substance of this scenario comes closest to Nadia Arbatova’s preferred option. Although she terms it a ‘modified’ and ‘modernised’ PCA, the content of the new PCA version would in fact be a new treaty that integrates, specifies and upgrades the general provisions contained in the Road Maps, and tops them up with two titles on ‘General Principles’ and ‘Political Dialogue’, and two separate protocols on implementation of the agreement and on Kaliningrad.⁴

This scenario takes into account significant developments since 1997, both in the Four Common Spaces, and institutionally through the Permanent Partnership Council established in 2005. The new agreement would, like the old PCA, be a treaty. It would consolidate and improve on these developments, and reflect also changes in the EU’s competences and policies over the last decade, such as in the justice and home affairs and foreign, security and defence domains.

The most serious problem with this scenario is precisely the opposite of that of the preceding scenario offering a short treaty. This comprehensive treaty would involve lengthy negotiations to progress beyond the content of the old PCA and the newer Four Common Spaces. The process has the hazard of having to bring so many sectoral negotiations to a point of maturity at the same time. It would then be subject to the long ratification delay before entry into force. The overall result would be

⁴ Arbatova, op. cit., pp. 107-110.

vulnerable to two problems: inflexibility and rapid obsolescence of the substance, and risks of rejection of ratification in some member state.

Scenario 6: A Treaty of Strategic Union

This would be a short treaty, but a very ambitious one, raising the level of mutual commitment to deep cooperation in the affairs of Europe to the highest possible level. This is signaled by the name – Treaty of Strategic Union.

This scenario adopts the name ‘Strategic Union’ as proposed by Timofei Bordachev. The role of this Treaty would be to do on an all-European scale between the EU and Russia something comparable to what the French-German reconciliation and their bilateral treaty has done in Western Europe. Of course this analogy cannot be taken too far. Yet there are certain properties that the Treaty of Strategic Union might aim at, which the French-German model of the Elysée Treaty brings to mind (see Box 4). These include 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. For Russia, this new state of affairs would mean also dissolving any sense of exclusion from European society, and for the EU and Russia to be able to observe that together they are Europe, and working according to common ideas and even ideals.

Today this can be no more than a mental exercise, but it may still be a useful one at a time when EU-Russian relations appear to be moving further away from this ideal case and to become more tense, without any sense of how to reverse this trend.

There are major prerequisites for achieving this ideal Europe, on both sides. The EU, for its part, 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 defence capabilities, and perhaps also a single seat in the UN Security Council.

Russia for its part would have to become a real democracy and redefine its security doctrine. Russia’s leadership says that there are many forms of democracy, and Russia has its own model. This argument fails to convince. While it is true that democracy has many forms, there are some necessary conditions, such as a truly multi-party political structure, media freedoms and an independent judiciary, which today Russia does not meet.

Russia’s current security doctrine, as defined recently by Sergey Ivanov (Box 1), would have to be revised. Of course, it is not so difficult to replace one piece of paper with another. But more fundamental is the matter of the prevailing mind-set of the governing class, and of the so-called ‘power ministries’. These qualitative changes

would clear the way at last for resolution of the so-called ‘frozen conflicts’.

The new treaty would see the two parties constantly seeking to form common positions on matters of foreign and security policy. Russia would find satisfaction in being co-promoter of European interests and values. This would be the opposite to Russia using its considerable capacity as ‘spoiler’ in international affairs, by taking positions that complicate the search for international consensus, while clothing such positions in the language of national interest.

It would be premature at this time to try to anticipate what the Strategic Union would do. The essential point is that it would get started with leaderships that were determined to achieve certain overarching objectives, and to respect certain guiding principles. The precise mechanisms and actions would follow in accordance with the concrete problems of the time. The French-German relationship was founded by Adenauer and de Gaulle, and greatly deepened for its European content by Kohl and Mitterrand. The Treaty of Strategic Union would be born of enlightened and indeed visionary future leadership.

Box 4. The Elysée Treaty [extracts]

General De Gaulle, President of the French Republic, and Dr Konrad Adenauer, Chancellor of the Federal German Republic, (...)

Convinced that the reconciliation of the German People and the French People, ending a centuries-old rivalry, constitutes an historic event which profoundly transforms the relations between the two peoples (...)

Recognising that a reinforcing of cooperation between the two countries constitutes an indispensable stage on the way to a united Europe, which is the aim of the two people (...)

Have given their agreement to the organisation and principles of cooperation between the two States such as they are set out in the Treaty signed this day (...):

The two Governments will consult before any decision on all important questions of foreign policy and, in the first place, on questions of common interest, with a view to reaching as far as possible an analogous position. (...)

The two Governments will study jointly the means of reinforcing their cooperation in other important sectors of economic policy, such as agricultural and forestry policy, energy, the problems of communications and transport and industrial development, within the framework of the Common Market, as well as the policy of export credits. (...)

In the field of strategy and tactics, the competent authorities of the two countries will endeavour to bring their doctrines closer together with a view to reaching common conceptions. (...)

Drawn up in Paris on 22 January 1963.

6. Conclusions: Why, what and when?

Why? The EU and Russia need an ordered relationship because they are ever-closer neighbours, and they are Europe's only two major powers, both with aspirations to be global actors as well. Their list of common concerns and interests is extremely long and inescapable. In general terms the EU wants its big neighbour to be the friendly and reliable partner, both on concrete matters of which energy supplies is the most important, and on matters of political values for both internal and external affairs. Russia wants to confirm and deepen its presence and identity in modern Europe, but without being tied to the EU's all-entangling mass of legal and normative rules and regulations.

What? The model of the comprehensive treaty, covering all sectors of mutual interest in legally binding form, ratified by the parliaments of all EU member states, is ill-adapted to the needs of the EU-Russia relationship. The comprehensive treaty model is suited to the case where the partner state wishes to accede to the EU, since in these circumstances the permanent stock of laws of the EU provides a mutually acceptable anchor. However, for Russia, and other cases such as the United States, this form of agreement has serious disadvantages. It is extremely rigid, given that the process of negotiating across the board on all economic, political and security matters requires that many issues are brought to the point of agreement at the same time. And this has to be followed by the heaviest of ratification procedures on the EU side, which experience shows can take up to three years, with non-negligible risks that a single member state's parliament might wreck the endeavour right at the end of the laborious process.

Far more realistic and efficient would seem to be the model of negotiating multiple sector-specific agreements, each adapted to the most appropriate timing and format. There could be strategically important agreements for free trade after Russia's WTO accession and on energy questions. There are so many issues of mutual interest that one can also envisage loosely connected packages of agreements, allowing for the advantages of some log-rolling (i.e. a balanced set of advantages between several agreements of unequal interest to each party). This would be somewhat similar to what has emerged as the EU-Swiss model of multiple agreements, more than the Europe Agreement model with the EU's accession candidates. The PCA started as an experimental weak derivative of the Europe Agreement model, and the experiment failed basically because Russia does not fit into the mould of a long-range accession candidate. The successive strategy documents and roadmaps that have emerged in recent years represent a search for a better model, but they too have failed to satisfy.

In the longer run, the time may and hopefully will come when a deeper and more mature relationship can be established. The only certainty is that the large majority of the Russian population will carry on living in Europe.

This inescapable co-habitation should lead at some stage to a noble formula, possibly a Treaty of Strategic Union. Even this, however, should probably not be in the shape of a huge comprehensive treaty document. Rather, it should consist of some basic institutional provisions and a solemn commitment to fundamental political and societal objectives, for which the French-German Treaty of 1963 offers a very different model. The wisdom of this model is that there can be historic moments when political leaders can take steps to consolidate trust and chart a fresh course for history. But trust cannot be legislated. Either it becomes an evident fact, or it does not exist. For modern Europe this would have to be based on deeply shared common values.

When? We therefore argue in favour of a three-stage scenario for the years and decades ahead. In the short run, the accent should be on pragmatic, tangible, sector-specific agreements. It is clear that the EU and Russia do not need to rush into making a new agreement, since there is automatic extension of the status quo after the tenth anniversary on 1 December 2007, and therefore no problem of a legal void. There are also several reasons why it would be better not to be hasty. Russia's WTO accession is still not decided, and this is the key to further developments of the economic side. There are important discussions currently underway over energy matters, including whether Russia ratifies the Energy Charter, and this is equally key to further developments in this sector. There are very sensitive issues surrounding the 'frozen conflicts', and that of Transnistria comes closer now to EU interests with the accession of Romania in 2007 or 2008. Resolution of this irritating anomaly in the neighbourhood would be helpful to creating fresh conditions for cooperation. Russia has presidential elections in 2008, for which President Putin cannot stand according to the Constitution. It might be prudent to wait and see what the intentions of his successor might be, thus to see the answer to the 2008 question, before tackling the so-called '2007 question'. In practical terms, the recommended Political Declaration on Strategic Partnership might best wait until after the 2008 presidential elections in Russia.

Just how distant is the prospect of the model Treaty of Strategic Union? 2010, 2015, 2020? Nobody knows. However, conventional opinion often does err on the side of extrapolating the present for too long, while underestimating the chances for breaks in trend. On the EU side, the ongoing dynamics of its foreign and security policies seem quite robust, and not really damaged by the failure of the Constitution. The expectations-capability gap on the side of EU foreign policy may become smaller. On the Russian side, it would seem quite possible that with growing economic well-being the people will come to demand a real democracy and an equitable and efficient rule of law. The values gap may also close in due course, perhaps sooner than expected.

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Annex 1

The Partnership and Cooperation Agreement

Signed June 1994, in force since December 1997

		<u>Article</u>	<u>(no.)</u>
	Preamble	1	(1)
Title I	General principles	2- 5	(4)
Title II	Political dialogue	6- 9	(4)
Title III	Trade in goods	10- 22	(3)
Title IV	Provisions on business and investment	23- 51	(29)
	Chapter I: Labour conditions (Art. 23-27)		
	Chapter II: Conditions affecting the establishment and operation of companies (Art. 28-35)		
	Chapter III: Cross-border supply of services (Art. 36-43)		
	Chapter IV: General provisions (Art. 44-51)		
Title V	Payments and capital	52	(1)
Title VI	Competition; intellectual, industrial and commercial property protection; legislative cooperation	53- 55	(3)
Title VII	Economic cooperation	56- 83	(28)
Title VIII	Cooperation on prevention of illegal activities	84	(1)
Title IX	Cultural cooperation	85	(1)
Title X	Financial cooperation	86- 89	(4)
Title XI	Institutional, general and final provisions	90- 112	(23)
Annex 1	Indicative list of advantages granted by Russia to the countries of the former USSR in areas covered by this Agreement		
Annex 2	Derogations from Article 15 (quantitative restrictions)		
Annex 3	Community reservations in accordance with Article 28(2)		
Annex 4	Russian reservations in accordance with Article 28(3)		
Annex 5	Cross-border supply of services list of services for which the parties shall grant most-favoured-nation (MFN) treatment		
Annex 6	Definitions in relation to financial services		
Annex 7	Financial services		
Annex 8	Provisions in relation to Articles 34 and 38		
Annex 9	Transitional period for provisions on competition and for the introduction of quantitative restrictions		
Annex 10	Protection of intellectual, industrial and commercial property referred to in Article 54		
Protocol 1	On the establishment of a coal and steel contact group		
Protocol 2	On mutual administrative assistance for the correct application of customs regulation		

Final act

Annex 2

The Common Strategy on Russia

Adopted in June 1999

Preamble

PART I: VISION OF THE EU FOR ITS PARTNERSHIP WITH RUSSIA

PRINCIPAL OBJECTIVES

- 1. Consolidation of democracy, the rule of law and public institutions in Russia**
- 2. Integration of Russia into a common European economic and social space**
- 3. Co-operation to strengthen stability and security in Europe and beyond**
- 4. Common challenges on the European continent**

INSTRUMENTS AND MEANS

- 1. General provisions**
- 2. The Council, the Commission and Member States**
- 3. Coordination**
- 4. Implementation and review**
- 5. Cooperation with Russia**
- 6. Specific initiatives**

PART II: AREAS OF ACTION

- 1. Consolidation of democracy, the rule of law and public institutions in Russia**
 - strengthen the rule of law and public institutions
 - to strengthen civil society
- 2. Integration of Russia into a common European economic and social space**
 - consolidate the process of economic reform in Russia
 - support the integration of Russia into a wider area of economic cooperation in Europe
 - lay the basis for a social market economy
- 3. Co-operation to strengthen stability and security in Europe and beyond**
 - reinforcing political dialogue
 - Russia's place in the European security architecture
 - preventive diplomacy
- 4. Common challenges on the European continent**
 - energy and nuclear safety
 - environment and health
 - fight against organised crime, money laundering and illicit traffic in human beings and drugs; judicial cooperation
 - regional and cross-border cooperation and infrastructure

PART III: SPECIFIC INITIATIVES

- **Political and security dialogue**
- **Dialogue on economic questions**
- **Trade and investment**
- **Fight against organised crime**
- **Twinning programmes**
- **Exchange programmes for students and young scientists**
- **Establishment of a viable health and welfare system**

PART IV

DURATION

PUBLICATION

Annex 3

The Medium-Term Strategy for Development of Relations between the Russian Federation and the European Union

Presented in October 1999

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

Annex 4

Road maps for the Four 'Common Spaces'

Adopted in May 2005

THE COMMON ECONOMIC SPACE

1. Trade and economic cooperation

- 1.1. Regulatory Dialogue on industrial products
- 1.2. Public procurement
- 1.3. Intellectual, industrial and commercial property rights
- 1.4. Competition
- 1.5. Investment
- 1.6. Enterprise policy and economic dialogue
- 1.7. Interregional and cross-border cooperation
- 1.8. Financial services (banking, insurance, securities)
- 1.9. Accounting/auditing and statistics
- 1.10. Agriculture, forestry, timber, fisheries. Sanitary and phyto-sanitary measures

2. Trade facilitation and customs

3. Networks

- 3.1. Telecommunications, information society and e-business
- 3.2. Transport

4. Energy

5. Space

6. Environment

THE COMMON SPACE OF FREEDOM, SECURITY AND JUSTICE

1. Freedom

- 1.1 Movement of persons, readmission
- 1.2 Border issues
- 1.3 Migration policy
- 1.4 Asylum policy

2. Security

- 2.1 Counter terrorism.
- 2.2 Security of documents.
- 2.3 Transnational organised crime.
- 2.4 Anti-money laundering
- 2.5 Narcotic drug problem
- 2.6 Trafficking in human beings
- 2.7 Corruption
- 2.8 Trafficking in stolen vehicles and items of cultural and historic value

3. Justice

- 3.1 Judicial system
- 3.2 Criminal matters
- 3.3 Civil matters

4. Monitoring mechanism

COMMON SPACE OF EXTERNAL SECURITY

1. Objectives

2. Scope

- 2.1. International scene
- 2.2. Terrorism
- 2.3. Non-proliferation of WMD, export control, disarmament
- 2.4. Crisis management
- 2.5. Civil protection

COMMON SPACE OF RESEARCH AND EDUCATION, INCLUDING CULTURAL ASPECTS

1. Research, science and technology

2. Education

3. Culture

ANNEX 5

Draft Transit Protocol of the Energy Charter (extracts)

Part III - Specific provisions

Article 8 - *Utilisation of available capacity*

1. Each Contracting Party shall ensure that owners or operators of Energy Transport Facilities under its jurisdiction will negotiate in good faith with any other Contracting Parties or Entities of Contracting Parties requesting access to and use of Available Capacity for Transit. Such negotiations shall be based on transparent procedures, on commercial terms, and be non-discriminatory as to the origin, destination or ownership of the Energy Materials and Products.

2. Contracting parties shall ensure that owners or operators shall be obliged to provide a duly substantiated explanation in case of refusing access to and use of Available Capacity for Transit.

Part V - Implementation and Compliance

Article 20 - *Regional Economic Integration Organization*

1. For the purposes of this Protocol, the "Area" of a Contracting Party referred to in Article 7(10) (a) of the Treaty shall, as regards Contracting Parties which are members of a Regional Economic Integration Organization, mean the area to which the treaty establishing such a Regional Economic Integration Organization applies.

2. A Regional Economic Integration Organization undertakes to ensure that its provisions treat Energy Materials and Products originating in another Contracting Party and in free circulation in its Area no less favourably than Energy Materials and Products originating in its constituent member-states. Furthermore, the rules of a Regional Economic Integration Organization shall provide an overall standard at least equivalent to that resulting from the provisions of the Protocol.

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 Agricultural Policy

Politics, Institutions and Security

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 Justice and Home Affairs
 The Wider Europe
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