



CENTRE FOR
EUROPEAN
POLICY
STUDIES

CEPS POLICY BRIEF No. 16
MARCH 2002

**RUSSIA'S ENGAGEMENT
WITH JUSTICE AND HOME AFFAIRS:
A QUESTION OF MUTUAL TRUST**

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CEPS, with financial assistance of the Finnish SITRA Foundation, embarked at the end of 2000 on a programme to examine the impact of Justice and Home Affairs acquis on an enlarged European Union, the implications for the candidate countries and for the states with which they share borders. **The aim of this programme is to help establish a better balance between civil liberties and security in an enlarged Europe.**

This project will lead to a series of policy recommendations that will promote cooperation in EU JHA in the context of an enlarged Europe as well as institutional developments for the medium- to long-term in areas such as a European Public Prosecutors Office, re-shaping Europol and a developed system of policing the external frontier (Euro Border Guard). These must be made within a balanced framework. **There are two key issues:**

First of all, to prevent the distortion of the agenda by “events” – some items are being accelerated and other marginalised. This risks upsetting the balance, carefully crafted by the Finnish Presidency, between freedom, security and justice. The current ‘threat’ is that security issues, at the expense of the others, will predominate after the catastrophic events of 11th September. These have resulted in a formidable political shock, which served as a catalyst to promote certain initiatives on the political agenda, such as the European arrest warrant, and a common definition of terrorism. The monitoring of items, which could be marginalised and the nature of the institutional/political blockages that could distort the Tampere agenda, is our priority.

Secondly, how to look beyond the Tampere agenda, both in terms of providing a flexible approach during the period of completion of the Tampere programme as well as what should come afterwards. Much detail remains to be filled in about rigid items on the Tampere agenda and CEPS will continue to work in three very important areas:

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- Strengthening of Europol, particularly in the field of serious trans-frontier violence and moves towards a more federalised policing capacity

The CEPS-SITRA programme brings together a multi-disciplinary network of 20 experts drawn from EU member states, applicant countries as well as neighbouring states: the European University Institute in Florence, the Stefan Batory Foundation (Warsaw), European Academy of Law (ERA Trier), Academy of Sciences (Moscow), London School of Economics, International Office of Migration (Helsinki), Fondation Nationale des Sciences Politiques (CERI) in France, Universities of Budapest, Université Catholique de Louvain-la-Neuve, University of Lisbon (Autonoma), University of Nijmegen, University of Burgos, CEIFO in Stockholm, University of Tilberg and University of Vilnius, as well as members with practical judicial and legislative backgrounds.

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Introduction

Does Russia need international cooperation? This question may seem rhetorical, to which one would give a positive response, but the findings of a public opinion survey conducted by the independent Russian research organisation ROMIR clearly suggest otherwise. In April 2001, a total of 1,500 Russians were polled in 160 locations in 94 villages, towns and cities, in 40 regions, territories and republics of the Russian Federation. The questions asked concerned several key aspects of EU-Russian relations and the need for increased cooperation with international organisations.

The survey found that 16% were definitely in favour of joint international efforts to combat crime, 32% thought this might be a good idea and 44% had their doubts. Speaking about the EU in general: only 2% said they fully trusted the EU, 15% said they more or less trusted it; 23% expressed their doubts; 27% said they did not trust the EU at all, and 33% were indecisive. What are the reasons for this mistrust, and what meaning can be attached to the response "this might be a good idea"?

First, there is an obvious lack of confidence among Russians in any international organisation. NATO's image is at rock bottom among the Russian people and their trust in the UN is at a level comparable to that they place in the EU.

Second, the average Russian is still not very well informed about the EU as a political entity; Russians have more understanding of bilateral relations with European countries. However, it is quite possible that a survey undertaken in the border regions in northern and western of Russia would reveal a higher level of trust in the field of Justice and Home Affairs (JHA) cooperation.

Third, one can observe a steady trend in Russian public opinion that Russia is being cut off from the rest of Europe by the Schengen borders.

Trust between unequal partners?

The problem can be better understood if one were to place it in a broader continental or regional context. "While the EU shapes the regional system, states at its perimeter also affect the development of the EU as a compound polity" (Leslie, 1999: 1). This represents my point of departure to discuss EU-Russian imperatives for the JHA cooperation. The construction of a "European area of freedom, security and justice" presupposes various levels of "inclusions" and "exclusions" for the member states as well as outsiders/non-member states. The construction consists of a "core" with clearly defined borders and a "periphery" with fuzzy edges. Non-EU countries may remain excluded from decision-making (Iceland and Norway),

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this exclusion serves as a threat and as an instrument for the candidate countries to adopt in full the JHA *acquis communautaire* (Monar, 2000: 11-12). Russia as well as the other neighbouring states are supposed to be excluded from the EU area of freedom, security and justice.

The trust between the EU and Russia is one of unequal partners having asymmetric relations. What kind of trust can exist between the European Union and a state that is excluded from the emerging EU security zone together with the other countries that will have common borders with the EU?

Another point is that, regardless of this unequal and asymmetric partnership, the EU and Russia have to trust each other: a “good neighbourhood” surrounding the “area of freedom” is the aim declared by the Tampere Council as well as “an open and secure Union”. (Tampere Conclusions, §6). The aim is therefore very coherent. In order to be able to manage the internationalised soft security risks, it seems quite evident that the EU will wish to cooperate with the neighbouring states of Russia, Belarus, Ukraine and Moldova. It is also evident that the member states have to build a common European internal security policy as they are not able to overcome security threats in an isolated manner. On the one hand, the EU Eastern neighbours are exporting security problems; on the other hand, during the period of enlargement, they will be transformed into a buffer zone, a *cordon sanitaire*, keeping the potential migrants from Asian and African countries from penetrating into the Union. Thus, the question of burden-sharing could emerge as a result of this process.

In sum the EU and Russia have no way out but to build mutual trust, as these are issues that could only be decided jointly. What can both sides really do?

On Russia’s part, it could achieve the strategic purpose of becoming an equal partner of the EU without the intention of accession. In this case the character of trust could change. Equal partnership presupposes solving internal Russian problems (which at present give rise to security risks), undertaking economic reform and building a civil society. Until then Russia has to realise that it will live in a Europe with new dividing lines, and the task is how to manage them.

On the part of the European Union, one could envisage a gradual shift from its “protective strategy” (protective in the sense that it protects the “European area of freedom” from the threats coming from the neighbouring countries) towards elaborating a pan-European security strategy (including both external and internal dimensions) (Friis, 1999:163); “to find the right balance between security and openness, between restrictive (“exclusive”) action and the “inclusive” values of a political system which remains open towards neighbours and third-country nationals”(Monar,2000:27).

An Institutional Framework for Cooperation

How to achieve the aim? Which instruments of cooperation should be used? There are several documents of strategic significance, which form an institutional framework for cooperation. First, there is the Partnership and Cooperation agreement (PCA) between the EU and the Russian Federation (RF) signed in 1994. It can be considered as the first important step in the proper direction, making reference to cooperation between the Parties to prevent criminal activities, including money laundering and drug trafficking. The Amsterdam Council in June 1997 took the next step. The European Union action plan called for tackling organised crime and emphasised the importance of closer cooperation and developing relations with Russia in the fields of mutual concern. The European Council meeting in Cologne in 1999 contributed much to accelerating the process by endorsing the EU Common Strategy on Russia. It was at

the Cologne summit when the need to establish a plan focused on common action with Russia in the fight against organised crime was recognised, including actions to combat corruption, money laundering, trafficking in drugs, human beings and illegal immigration.

Another brick in the wall supporting the EU-Russia JHA cooperation was laid by the RF adopting its medium-term strategy for the development of relations between the RF and the EU (2000 to 2010). Cooperation in the field of law enforcement and establishing operative contacts with EU bodies in fighting transnational organised crime is considered one of the strategic key elements. The European Union's plan on Common action for the Russian Federation on combating organised crime approved by the Helsinki Council in December 1999 (Official Journal C 106, 13/04/2000) and by the EU-Russia Cooperation Council on 10 April in Luxembourg was grounded on the solid base of strategic documents. Another important factor should be added – the Helsinki plan is composed by taking into account two important initiatives both of the EU and Russia: the European Union's drug strategy (2000-2004) and the special Federal programme to intensify the fight against crime (1999-2000) approved by the Government of the Russian Federation in March 1999. Combining these different initiatives with sometimes-asymmetrical approaches to the cooperation seems to be an important move towards establishing a relationship of trust.

General principles and main areas of cooperation are outlined in the Action plan. Improving international judicial cooperation is considered as a top priority task. To ensure that a legislative framework suitable for such cooperation exists, several efforts are demanded: to adopt appropriate legislative measures and ratification and full implementation of the international agreements on combating organised crime. In this sense European Conventions are a powerful instrument for the JHA cooperation, namely those against money laundering and drugs trafficking.

Another area of mutual interest is law enforcement cooperation. An exchange of technical, operational and strategic information between the appropriate law enforcement agencies is planned as well as regular meetings of experts and training courses for the law enforcement personnel. Working contacts between Europol and the respective Federation agencies are to be developed in the framework of the Europol Convention.

There are many similar features of the discussed Action plan and the Pre-Accession Pact on Organised Crime (Official Journal C 220, 15/07/1998) concluded by the EU JHA ministers Council with the ministers of the candidate countries in May 1998. However, the eventual goals of the documents are different according to the general context of relations of the EU-Russia and the EU-candidate countries. Subsequently, the instruments to implement the planned activities are not the same for the candidate countries and Russia. Technical assistance programmes are mentioned in the Action plan. Meanwhile, shifting to a more pan-European approach could mean engaging Russia more deeply into various training, exchange and study programmes which already exist in the EU member states and which also apply to the candidate countries as well, namely GROTIUS, OISIN, ODISSEUS, FALCONE, OCTOPUS II. A new project of the European Commission, the Association of European Police Colleges and ten member states "Curriculum" launched in October 1999 to assist the applicant states in fighting drug trafficking, money laundering, car theft, illegal immigration, trafficking in weapons and radioactive materials could be very helpful for using the existing experience in Russia.

In analysing the strategic documents of the EU-Russia JHA cooperation, a question of format and tools of cooperation arises. The Action plan itself can be regarded as one of the powerful instruments of such kind. The format and framework of cooperation are included in the

document. The implementation of the plan is supposed to be done through the PCA subcommittee, which could coordinate the combat against organised crime in the framework of the PCA. Regular meetings of Russian experts with those of the Europol suggested by the plan have already been envisaged.

“High” and “Low” Politics

The problems of flee of capital and money laundering are obviously of main concern to the law enforcement agencies in Russia as well in the member states. Various methods of currency transfer are used by criminals– from cross-border transport of banknotes by persons, smuggling of raw materials, energy and precious metals to complicated schemes of illegal export and import trading and financial operations. Offshore zones have been used very intensively to transfer and legalise criminal capital. According to Russian Federal Tax Police Service officials, there are hardly any examples of civilised offshore Russian firms.

On the other hand, criminal foreign firms are “worthy” partners for Russian illegal groupings. One even has to say – unfortunately – they are and that this is due to the fact that police cooperation between Russia and the EU lags behind criminal cooperation. About \$70 billion belonging to criminal foreign groups is expected to be legalised in Russia in the coming years (Nezavisimaja Gazeta, 2001). This illustrates the importance of a cooperation with the EU and the member states to prevent breaking the tax laws.

To evade taxation foreign criminal structures use bank accounts in Russia and create “black” enterprises. At present, several cases of joint Russian-foreign firms are investigated for being sponsored by tax-hidden money in the criminals’ countries of origin. Last year the activity of an illegal leasing firm was stopped. Since 1996 this company transferred \$30 million annually from Russia abroad. To counteract activities of this kind, Russian and EU member states’ law enforcement and tax agencies plan to increase operational and investigating measures to prevent tax criminality on the international level. They are to be based on more than 20 bilateral agreements. Other agreements are being prepared with law enforcement agencies in Italy, Greece, Poland, Slovakia, Hungary and Rumania. In 1999 joint consultations with the Federal Tax Police Service and Europol started, as well as with OLAF in order to prevent frauds and counterfeit on the international scale.

Apart from the measures of “protocol character”, good working contacts have been established with the German criminal police and law enforcement agencies of Finland, Denmark, Sweden, the Netherlands, Slovakia, Poland and some other states.

Bilateral contacts are worth special attention, especially with regard to the countries that are to form the neighbouring area after the enlargement takes place.

The recent agreements in the framework of the Pact of Stability for Southern Europe are very important. The aim is to secure the future European Union borders and it seems to be of mutual concern to all the states that have to fight illegal migration. By preparing and signing re-admission agreements between the neighbouring states the main routes of illegal migration and human trafficking from Asia through Russia, Ukraine, Moldova to Romania, Bulgaria and Greece can be cut off. Yet another problem arises: if the “transit states” sign re-admission agreements, are they able to deport all the illegal immigrants delayed at the EU and send them back? The answer is obviously negative.

The October 2001 EU-Russia summit provided for another round of JHA cooperation by adopting statements on international terrorism. Police cooperation was declared the key matter in this field. Russia and the European Union decided “to consider the conditions and detailed procedures for an exchange of information on:

- the activities and movements of individuals or groups belonging to terrorist networks or maintaining links with such networks;
- tickets of dubious authenticity;
- supplies of arms, explosive, or dual-use goods;
- new forms of terrorist activities, including chemical, biological or nuclear threats”.

However, one could notice that the process of the EU-Russia JHA cooperation has been developing in a very slow way without taking into account the urgency for not necessarily a dialogue, but for specific actions. Measures “to combat money laundering and drug trafficking, mutual administrative assistance in custom matters and in all other relevant areas” (Statement on international terrorism) are more discussed than realised. A lot still needs to be done to strengthen the ties between the Russian Ministry of Home Affairs and Europol, “the Russian bureau” of Europol is still an idea, but not yet reality.

It is relevant to remind ourselves that there are several levels of trust and cooperation – that is of “high” and “low” politics. As Fairlie states, “the high politics of treaties, traditional diplomacy and agreements between the EU and states are only part of the picture. ...Cooperation and positive results achieved at low levels may compensate for the political risks which “high politics” still entail.” (Fairlie, 2000:15) In this context the “Baltic-Sea Task Force on Organised Crime” has, since its foundation in 1996, played a significant role. It consists of personal representatives of the Heads of State and Government in the Baltic Sea region, including Russia, as well as of the European Commission and a representative of the Presidency of the EU. The activities of the Task Force cover several areas: improved and increased exchange of information, joint concrete and operative actions, judicial cooperation, special survey and training. A number of *ad hoc* groups fulfil their mission consisting of experts from the police, customs and border authorities (Arnswald, 2000:148-149). To give an example, the Task Force elaborated its own concept on Kaliningrad visa regime before the Commission Communication was published. The proposals included empowering a consulate of one of the member states to issue visas on behalf of the other member states. The Council also suggested moving consulates close to borders, extending opening hours, increasing the use of long term multiple entry visas, opening more border crossings and finally to introduce shorter procedures at the border. Many proposals are similar to those of the Commission Communication. However, there was one innovative suggestion to reduce the need for strict visa procedures by introducing the establishment of extensive data banks combined with the checking of fingerprints at borders. These measures could provide for a reduction of visas to a mere stamp in the passport of those crossing borders. (Lithuanian Foreign Policy Review, 2000/2/6: 144-145)

The Kaliningrad “Puzzle” and the Asymmetry of the EU-Russian Relations

The Kaliningrad “puzzle” is an excellent case study to illustrate the asymmetry of the EU-Russia relations, which entails a specificity of their mutual trust. It is absolutely obvious that both sides are interested to solve the dilemma. But the question seems more sensitive for the EU, who initiated the discussion, than to Russia. The reason is that Kaliningrad *oblast* (KO) is regarded by the EU as a “black hole” in the “European area of freedom, security and justice”. So the main objective of the EU policy is rather pragmatic: to guard the Single Market border and to minimise soft security risks. The “Commission Communication on Kaliningrad” represents this viewpoint clearly. The majority of suggestions including visa and transit regimes could be seen as an integral part of the EU “protective strategy”. The Russian

position on the other hand differs significantly, although formally the RF government inclines to accept almost all suggestions. Russia is naturally interested to gain from the positive effects of the enlargement process to the *oblast* after it becomes a Russian enclave in the Union. For this reason the main accent is put on the transit regime and economic development of Kaliningrad, including the Special Economic Zone – an issue which is approached by the EU rather cautiously. The asymmetry and mistrust can be noticed in the partners' position towards the future status of Kaliningrad. The EU seems even more frightened than Russia itself by the possibility of the *oblast* obtaining autonomy. Fears of receiving a criminal enclave in degradation, run by an absolutely corrupt regional authority appear to have influenced the EU position towards Kaliningrad. An idea, which at the first sight looks rather obscure; this is, to regard KO as a *pilot project* in the relationship with the European Union or to think about some special regime for *the oblast*. This idea was mentioned a few times in various Russian documents, but never in those of the EU. Kaliningrad *oblast* is an integral part of Russia and should be treated according to this presupposition – that is the main point being emphasised in the EU's official approach (Commission Communication).

According to this approach the problem of the visa and transit regime is hereby solved. As an integral part of Russia, Kaliningrad would be included in the “negative list” of the countries whose nationals are not allowed visa-free movement to the EU. The only flexibility that is supposed to be applied to Kaliningrad is to facilitate the visa obtaining procedure. It needs to be stressed that these suggestions are worked out (very) deliberately and seem rational only for an ideal model. It is questionable whether this model would work in the Kaliningrad reality. The perception of mistrust could be noticed in the Russian position during the current negotiations on this problem. The reaction of the RF government expressed in the “Evaluation document” sent to the Commission on 19 March seems justified: “For that (Community policies on visas and on external borders) we rather need the principal political decision, while technicalities may be settled later on”(Uniting Europe, ¹138 –2/4/2001, P/6). From its side, the Russian government suggests a one-year-term free Schengen visa for Kaliningrad resident Russian citizens for visits to Lithuania, Poland and Latvia, rather than only facilitating the procedure. Besides, Russia is preoccupied with the travel regime for nationals of the “bigger” Russia, as no special arrangements were proposed in the Commission Communication. The chances of coming to an agreement on this specific position seem rather slim; the same can be applied to the case of the re-admission agreement with the *oblast*. As such, an agreement can hardly be concluded for one region of Russia only. Lastly, the Kaliningrad dilemma as a special problem both for Russia and the EU has emerged when discussing the format of consultation. The Russian proposal “to single out the issue to be discussed in the framework of a specific and single forum” instead of splitting the various aspects of it among the different existing PCA sub-committees looks more reasonable than that of the EU. Of course, by singling out Kaliningrad again as a quite unique Russian region according to its geographic position, could add to the idea of looking for a special innovative approach to the dilemma both from Russian and the EU parts.

The solving of the “puzzle” is complicated by the fact that no analogies are suggested by world practice. Popular and sometimes extravagant parallels between Kaliningrad and Hong Kong, Gibraltar, Cuba, Angola, Seuta and Melilia and many others do not convince in this case. When creating these artificial analogies, only the geographic situation is taken into account, whereas the economic, political, institutional aspects are ignored. In this very case comparisons might be hardly relevant, as the *oblast* becomes an enclave not inside a country, but inside a political entity, a union of several states with its specific rules and laws.

By singling out KO as the only region of the Russian Federation in the enlargement negotiations, the EU hereby confirms the *oblast* specific position and the necessity to find a unique method of solving the problem. The question of KO status remains thus open.

The definition of Kaliningrad as a pilot project, which appeared in the strategy for developing relations of the RF and the EU for 2000-2010 has changed into “a testing ground for working out new effective forms of cooperation with the European Union”. But the sense remains the same. The idea of a pilot project remains rather vague. One could believe that the testing of the market economy mechanisms, which are new for Russia but familiar to the EU, could be tried on the territory of this small enclave as a first step for an institutional compatibility of the RF and the European Union. However, it must be absolutely clear that the unique geographical situation and the rather peculiar character of the KO development may turn this idea into a utopia.

A pilot project could mean perhaps not the specific example of the KO development that could be followed by the other Russian regions. It could rather mean a special type of an EU-Russia collaboration to solve the problem of this small enclave-enclave, with the possibility that although Russia might be involved in the process of the European economic and social area, it remains outside Europe. In this sense the *oblast*, being an integral part of the RF, would become a real testing ground for the elaboration of a new relationship of Russia and the EU.

In the event that Russia and the EU recognise the need to search for new approaches to solve “the puzzle” by introducing a special regime for Kaliningrad, it would be relevant to talk about several scenarios for the KO integration in the European economic area Joenniemi, et. al., 2000:169-170).

The question of distribution of competence between the EU and Russian regional and federal authorities seems very important. Realising a few contacts between Brussels and Kaliningrad, the *oblast* could establish broad links with Lithuania and the neighbouring Poland's *voevodstva*. Cooperation with the regions that do not directly belong to the KO neighbourhood – Swedish regions and German lands – could become an important component of Kaliningrad's external activities. (Stefan Batory Foundation, 2001: 6-7)

It is in this framework of a special approach that the question of “the pilot visa regime” could emerge. The visa regime for the inhabitants of Seuta and Melilia might be taken as an example. The analogies between the positions of these regions in general are artificial, but the experience for the elaboration of a special visa regime is surely worth mentioning.

The new approach to the problem should be based on a perception that the partners – the EU and Russia – regardless of any asymmetry or inequality of their relationship, are eager to solve the “puzzle”. For Russia, Kaliningrad is really a native land that should be treated properly. For the European Union, it is a region that is more involved in the integration process than the whole of Russia itself and thus its future is very important to the EU. Besides, Kaliningrad is the ground where both partners could work out some concrete policy for both economic development of *oblast* and for minimising soft security risks. To achieve a result and to find mutual trust they should realise that their asymmetric goals could be combined in one – soft security risks cannot be overcome without taking decisions on Kaliningrad's economic and social future, economic and social developments can not be achieved without hard efforts to establish the rule of law

Conclusion and Proposals

The Kaliningrad case study could be regarded as a particular, though unique example, of the EU-Russia JHA cooperation and mutual trust. There is an important phrase in the Action plan: “Particular attention should be paid to the fact that prevention can play a significant role in combating organised crime by reducing circumstances in which the phenomenon can operate” (Action plan, 2). To establish the rule of law in Russia is indissoluble connected with the economy revival process. Thus, the EU-Russia JHA cooperation is an integral part of the activities on the way to a strategic partnership. This could be an answer to several ideas that deeply associate Russia with the EU in the JHA matters. There will be no effect on enforcing efforts in fighting organised crime apart from reforming an environment that allows crime to flourish. Consequently, the specific form of trust in JHA matters is a part of a trust in a general context that could or could not arise between the partners in the process of their cooperation.

1. The EU and Russia should intensify their dialogue on JHA cooperation. Up till now, it has been placed below all the other matters of cooperation. The decisive step should be taken by adding concrete activities to the Action plans.
2. The existing experience of non-Schengen European states (Switzerland, Great Britain) should be taken into account. Russia could be excluded from the Schengen zone while being deeply associated with those items of the *Schengen acquis* related to police cooperation as well as to information exchange through Europol and Schengen Information System.
3. The mechanism of cooperation needs to be cleared up. How should Russia develop the consultations –through Europol or through the Schengen executive committee?
4. A Russian office of Europol should be created.
5. To engage Russia in JHA cooperation, programmes such GROTIUS, OISIN, ODISSEUS, FALCONE and OCTOPUS II, could be extended to Russia. These programmes could create a common custom and other kinds of border control as well as to prepare qualified personnel.
6. As stated at the EU-Russian Summit in October 2001, “it is essential to guarantee border security, while preventing borders from becoming an insurmountable barrier to our citizens”. This means that talks should be continued on facilitating visa procedures for the border residents not only in the Kaliningrad *oblast*, but also for those living in Leningrad, Pskov and Murmansk oblast as well as in Ivan-gorod. The possibilities of *small border traffic* should be examined more precisely. People living in the border regions should be placed in a more privileged position than other Russian nationals. Otherwise, cross-border cooperation will suffer severely.
7. The EU Commission should intensify its information activity in Russia on the JHA issues. Up to now there are few people in Russia who are aware of the problems and opportunities for cooperation in this field.

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