THE IMPACT OF EU ENLARGEMENT ON THE RUSSIAN FEDERATION

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ABSTRACT: *EU Enlargement is a consequence of the success story of the creation of the European Communities, as many applicant countries were attracted to the new legal order based on the rule of law, rather than to an order or disorder based on the rule of politics. As from May 1st 2004, the EU enlargement, unprecedented in its size, marks a historic milestone for the European Union and its Member States, and also for the whole continent. Given this new context, the EU has to find and define new cooperation partnerships with its neighbours. A major partner, not to be neglected in this new policy is by all means Russia. The first Summit between the enlarged EU and Russia held in Moscow on 21 May 2004 was the first high-level meeting of the 25 EU and Russia following the successful conclusion of negotiations between the European Commission and Russia on the extension of the EU-Russia Partnership and Cooperation Agreement (PCA) to the ten new EU Member States. The Summit calls for the reinforcement of EU-Russia relations via the creation of Four Common Spaces: a common economic space (with specific reference to environment and energy); a common space of Freedom, Security and Justice; a field of external security; as well as a space of research and education including culture. The next step will be to define shared priorities and concrete measures for each of the Four Common Spaces in a mutually agreed Action Plan.*

Introduction

Since recently in Moscow, on 21 May 2004, the first Summit between the Enlarged EU and Russia has been held, it seems now the appropriate time to answer the following question. What has been and will be the impact of EU Enlargement in theory and practice on Russia and its citizens, its judiciary, its Government, its Presidential Administration and the Duma? In order to analyze the possible impact of EU Enlargement on the Russian Federation, I have identified the legal instruments and documents that played a role in EU Enlargement in more recent years and its impact on the development of EU- Russia relations.

Methodology and approach

After a short overview ("tour d'horizon") of the development of EU Enlargement and EU Russia relations, I will focus in the first place on the Partnership and Cooperation Agreement (PCA), signed on June 24, 1994 in Corfu and on the role of „Approximation of Legislation" and Tacis. It is acknowledged in the PCA that economic links will be strengthened if legislation were to be made compatible. Russia has undertaken to bring its legislation closer in line with that of the EU. As a consequence the Russian Federation will modernize and improve the overall quality of its legislative process.

Secondly, I will focus on the possible legal effect of the PCA in the legal orders of the Russian Federation, the EU and its Member States. The PCA is not just a „piece of paper". As our analysis will demonstrate the PCA has legal and political effect. To determine the implications of the PCA in the Russian national legal order a study and analysis of the Russian Constitution of 1993 was necessary. For the legal effect of the PCA within the EU, study of Community law is necessary and for its effect in the Member States national legal order, the research and

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analysis of national constitutional law of the EU Member States is necessary. Generally considered the officials, civil servants and academics in the Russian Federation should be made more aware of the advantages of approximation of laws to EU standards and therefore in the need for improving their knowledge and skills in this field.

The following key legal instruments, issues and documents played a role in EU Enlargement and Accession.

1. *The Accession Treaties of April 2003 and the Extension of The Partnership and Cooperation Agreement Russia – EU (= Protocol of 27 April 2004).*
2. *The Draft European Constitution, especially Part I Title VIII: The Union and its Immediate Environment and Part III Chapter IV – Area of Freedom, Security and Justice.*
3. *Fundamental Rights protection in the EU, the European Convention for the Protection of human Rights, and Part II of the European Constitution: the Charter of Fundamental Rights of the Union.*

I will conclude with preliminary findings and conclusions on the possible impact of these new developments in Community law on the Russian Federation and on EU-Russia relations. My comments will be based against the background of my recent consultancy and teaching experiences in EU Member States, in EU candidate countries and lastly in Russia as a Team Leader of a Tacis Project "Harmonisation of Environmental Standards, Russia".

My experiences after one and a half year working with the Duma, the Presidential Administration, Russian ministries and judiciary lead me to the following conclusion, which one should bear in mind in reading the final conclusions and suggestions of this contribution!

Formally Russia looks like a democracy, there is a Parliament, there are elections, there is a Government, Judges and Courts, Freedom of Press, but substantively these institutions function different and not like the democratic institutions that we know in Western Europe and to which we are used to. Why? Because in my opinion the Russian people have a different mentality and fear or respect for power and authority. Members of the Duma, civil servants of the Presidential Administration and the Ministries, local authorities and judiciary have a different culture and mentality and are used to follow up the formal and informal directives of the Kremlin. The President in the Kremlin is recently regaining more power and authority in a hierarchic organization of this society like during the times of the Czars and influenced by the old czarism. The "Trias politica" from Montesquieu is not fully applied in Russia as the Michael Chodorkovski / Yukos case shows. In some cases the rule of politics has priority on the rule of law!

It will take some generations with the help of international education programs to change the mentality focusing on a more democratic government system. Those students and academics which I lectured in 1996 / 1997 in Moscow and who nowadays are working in International law firms and businesses in Moscow have a quite different, more open and flexible approach than the older generations of academics.

Finally a comment on the Freedom of Press in Russia which is mentioned above. There is freedom of press, however many journalists have been killed in the last six years. And last but not least, some time ago, (See Moscow Times of July 23 – 25 July 2004, pp. 1 and 2) Paul Klebnikov, Forbes Russia Editor was killed in a contract hit. Klebnikov was planning to write a series of stories about the unsolved murders of journalists in

Tolyatti, where six editors have been killed. Unfortunately the killing of journalists in Russia often remains unsolved.

A. "Tour d'horizon" of the development of EU Enlargement and EU-Russia relations

Developments in EU

Since the conclusion of the Partnership and Cooperation Agreement in 1994, both Russia and the European Union have undergone profound changes. The EU has established a common currency, the euro, which is contributing to stability in the global economy and playing an increasing role in transactions with EU partners, one of which is of course Russia. The euro now accounts for a quarter of the Central Bank's reserves and is increasingly being used as a vehicle currency for trade and investment between Russia and the EU.

In the Union important steps have been taken to increase cooperation in the field of justice and home affairs and transform the EU into a single area of freedom, security and justice. The challenges particularly the menace of international terrorism, call for common responses. The EU has further developed its Common Foreign and Security Policy and a Common European Security and Defence Policy. In all these areas, the Member States of the Union have chosen to pool some of their sovereignty to deal with common problems more effectively.

Enlargement

EU Enlargement is a consequence of the success story of the creation of the European Communities, as many applicant countries were attracted to the new legal order based on the rule of law, rather than to an order or disorder based on the rule of politics, like previous international intergovernmental organizations as EFTA etc. The rule of law guarantees continuity and stability, and this phenomenon had its attractiveness, so that many European countries applied for Membership. Successive enlargements occurred from 6 to 9 (Denmark, Ireland, Great Britain), to 12 (Spain, Portugal, Greece), afterwards to 15 countries (Austria, Finland, Sweden). As from May 1, 2004 the EU Enlargement concerned ten more countries. Three Baltic States, Poland, Czech Republic, Slovakia, Hungary, Slovenia, Malta and Cyprus. This enlargement, unprecedented in its size, marks a historic milestone for the European Union and its Member States, and also for our whole continent.

Review of EU-Russia relations so far

The European Commission adopted on 9 February 2004 a Communication on EU-Russia relations, which proposes measures to improve the effectiveness of EU-Russia relations, in particular in light of increased EU and Russian interdependence, the EU's historic enlargement on 1 May and the unresolved conflicts in the Newly Independent States (NIS). It underlines that the EU and Russia should be ready, as strategic partners, to discuss frankly all issues of concern, including human rights, media freedom and events in Chechnya in addition to strengthening co-operation on concrete issues, on the basis of common interests. The Communication offers a basis for discussions on a review and strengthening of EU-Russia relations at the General Affairs and External Relations Council on 23 February.

The Communication recognizes the interdependence of the EU and Russia and their extensive common interests, which range from tackling crime and pollution to trade ties (two-

way trade amounted to €78 billion in 2002). It highlights the successes which co-operation in recent years has produced but notes that, in many areas, EU and Russian positions appear to have diverged. These include ratification of the Kyoto Protocol, the extension of the Partnership and Co-operation Agreement (PCA) to the ten new EU Member States and the need to make it work more effectively, the approach to resolving frozen conflicts in the NIS as well as respect for the rule of law and human rights, particularly as regards media freedom and events in Chechnya. To address the lack of progress on these matters, the Communication argues that the EU needs to take a more coherent and more consistent approach to relations with Russia, which must be founded on the implementation of the common values underlying the bilateral partnership. It also suggests that the EU should review and upgrade its policy towards the countries in the southern Caucasus and the western NIS.

The **first Summit between the enlarged EU and Russia held in Moscow 21 May 2004** was the first high-level meeting of the EU of 25 Member States and Russia following the successful conclusion of negotiations between the European Commission and Russia on the extension of the EU-Russia Partnership and Cooperation Agreement (PCA) to the ten new EU Member States. The Summit calls for the reinforcement of EU-Russia relations via the creation of Four Common Spaces: a common economic space (with specific reference to environment and energy); a common space of Freedom, Security and Justice; a field of external security; as well as a space of research and education including culture. The EU-Russia Summit held in 2003 in St Petersburg agreed already on the concept of the Four Common Spaces that will allow a high level of integration and flexibility in EU-Russia relations. The next step is to define shared priorities and concrete measures for each of the Four Common Spaces in a mutually agreed Action Plan.

The concept for the Common European Economic Space aims to create an open and integrated market between Russia and the EU. As a consequence it is necessary to increase the mutual openness and compatibility of their economies, which will include establishing harmonised or compatible regulatory standards, competition rules and intellectual, industrial and commercial property rights. Russia is now the EU's fifth largest trading partner. The EU is Russia's main trading partner, accounting for 35% of Russian foreign trade, a figure that is expected to rise to over 50% after EU enlargement. The EU is also the main source of foreign direct investment in the Russian economy. In other words: EU Enlargement had as an impact the fact that trade with the new EU increased from 35% to approximately 50%.

Russia's accession to the WTO is a key priority in the bilateral economic relations. WTO membership will secure the achievements of the economic reform process and encourage European companies to invest in the modernisation of the Russian economy.

Another priority is to protect the environment in the shared neighbourhood and of the planet as a whole. Environmental degradation knows no borders; many environmental challenges have truly global dimensions.

The Common Space of Freedom, Security and Justice is an area where the EU policy is developing very rapidly, in large part as a response to the pressing challenges of international terrorism, illegal migration and cross-border

crime, including trafficking in human beings and drugs. The interests of the EU and Russia in these areas very much coincide. The objective is to strengthen judicial and police cooperation with Russia to combat all these threats. The recent agreement between Russia and Europol is a significant step forward.

The foundations for a Common Space of External Security have been laid down, as many positions converge on many international problems. A Common Space of Research and Education, which includes cultural cooperation, will increase student, scientific and cultural exchanges. Starting this year, for example Russian graduate students and academics will participate in European Union's Erasmus Mundus programme, and some Russian officials will be able to study at the College of Europe.

On 12th May 2004 in a Communication from the European Commission (COM (2004)373 final) a strategy paper on European Neighborhood Policy has been developed. In the Commission's view Article 181a TEC would be the appropriate legal basis for the new Neighborhood Instrument, since it will be an important tool of EU policy towards the neighboring countries. As this article concerns co-operation with third countries, it should allow funding of actions that are joint in nature and involve beneficiaries from both Member States and partner countries (p 26).

The first Summit of 21 May 2004 between the Enlarged EU and Russia could mark the conclusion of the EU-Russia's bilateral deal for Russia's entry into the World Trade Organization (WTO). This bilateral deal is one of the most important results of EU Enlargement and its impact on Russia. Since, as mentioned above, after Enlargement trade with the new EU will increase with approximately fifty percent and Russian foreign trade with the new EU will rise then to over fifty percent.

Another important result of this Summit and therefore from EU Enlargement is the message of President Putin that he will request Russia's Duma to ratify as soon as possible the Kyoto Protocol. Ratifying the Protocol will benefit Russia, notably by modernization of Russia's energy sector and facilitating continued high rates of economic growth. Through the transfer of modern technology it will improve resource efficiency.

The next EU-Russia Summit will be held on 11 November 2004 in the Hague, during the Dutch EU Presidency. It will be necessary that at this Summit the priorities and concrete measures for these four Common Spaces in a unilaterally agreed Action plan will be defined and approved.

B. The impact of the Partnership and Cooperation Agreement (PCA) and Tacis.

The Partnership and Cooperation Agreement (PCA), signed on June 24, 1994 in Corfù entered into force on December 1, 1997 after having been ratified by the European Union Member States' parliaments, the European Parliament and the parliament of the Russian Federation, the Duma. The PCA sets out the general principles and detailed provisions, which will govern the future relationship between Russia and the EU.

The Partnership and Cooperation Agreements (PCAs) are the instruments linking the EC and its Member States with most countries from the former Soviet Union, the so-called Newly Independent States (NIS)[i]. These agreements were signed and concluded between 1994 and 1998. The Preambles to the PCAs intentionally omit any reference to certain phrases

[i] EU Enlargement The Constitutional Impact at EU and National Level, T.M.C. Asser Instituut, The Hague, Editors Alfred Kellermann et al. - Hillion p. 215 – 227 Christophe Hillion, T.M.C. Asser Press, 2001. Common Market Law Review 37: 1211-1235, 2000 - Christophe Hillion Institutional Aspects of Partnership between the European Union and the Newly independent states of the former Soviet Union: Case Studies of Russia and Ukraine.

that can be found in the Europe Agreements (EAs), such as the "process of European integration"[ii].

The PCAs, however have as their objective only the development of close political relations, promotion of trade, investment and harmonious economic relations and support of a PCA country's efforts to complete its transition to a market economy. The support to this transition is given by TACIS (Technical Assistance for Common Wealth of Independent States).

The TACIS objectives are fairly clear. Restructuring of public administration, legal assistance, including approximation of legislation and in particular the strengthening of the civic society are among the indicative areas.

In the major areas of cooperation outlined in the Partner and Cooperation Agreement, the European Union is committed to provide support through the Tacis Programme.

The Tacis Programme is a European Union initiative for the New Independent States and Mongolia, which fosters the development of harmonious and prosperous economic and political links between the European Union and these partner countries. Its aim is to support the partner countries' initiatives to develop societies based on political freedoms and economic prosperity.

Tacis does this by providing grant finance for know-how to support the process of transformation to market economies and democratic societies.

In its first six years of operation, 1991 – 1996, Tacis has committed ECU 2,807 million to launch more than 2,500 projects. Tacis works closely with the partner countries to determine how funds should be spent. This ensures that Tacis funding is relevant to each country's own reform policies and priorities. As part of a broader international effort, Tacis also works closely with other donors and international organisations.

Tacis provides know-how from a wide range of public and private organizations, which allows experience of market economies and democracies to be combined with local knowledge and skills. This know-how is delivered by providing policy advice, consultancy teams, studies and training, by developing and reforming legal and regulatory frameworks, institutions and organisations, and by setting up partnerships, networks, twinnings and pilot projects. Tacis is also a catalyst, unlocking funds from major lenders by providing pre-investment and feasibility studies.

Tacis promotes understanding and appreciation of democracy and a market-oriented social and economic system by cultivating links and lasting relationships between organisations in the partner countries and their counterparts in the European Union.

The main priorities for Tacis funding are public administration reform, restructuring of state enterprises and private sector development, transport and telecommunications infrastructures, energy, nuclear safety and environment, building an effective food production, processing and distribution system, developing social services and education. Each country then chooses the priority sectors depending on its needs.

Only nine of the eleven PCA agreements are in force, because the political situations in Belarus ad Turkmenistan prevent their PCAs, which were signed in 1998, from entering into force. The agreements concern in alphabetical order the following countries: Armenia; Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tadjikistan (not yet signed), Turkmenistan, Ukraine, Uzbekistan.

These so-called EECCA countries (Eastern

[ii] *Handbook on European Enlargement , T.M.C. Asser Instituut, Edited by Andrea Ott et al. - R.Petrov p. 175 – 197, T.M.C. Asser Press, 2002*

Europe, Caucasus and Central Asia) deserve special attention from the OECD in approximation of environmental legislation.

On April 27, 2004 the EU and Russia confirmed the extension of the PCA to the enlarged EU in a Protocol as Annex of the PCA (See annex I to this paper).

B.I. The role of approximation of legislation and support of Tacis: a case -study

Approximation of laws by the PCA countries of their existing and future legislation to the "acquis communautaire" is an important means of strengthening the economic links between EU and NIS countries and may be considered as a common and identical effort for all NIS countries. This joint conference might therefore stimulate an exchange of experiences between all participants with regard to the joint effort of harmonisation of environmental legislation. However, like Russia, the PCA countries only "endeavour to ensure" such compatibility. They are encouraged to approximate their laws to those of the EC but have opted for a process of voluntary harmonization.

Since the Treaty of Amsterdam a new instrument of the Common Foreign and Security Policy (CFSP) has been adopted. This instrument is the so-called Common Strategy (CS) which is an important tool designed to deepen relations with the PCA countries. In 1999 Common Strategies (CSs) towards Russia and Ukraine were adopted. The EU Common Strategy on Russia approved by the European Council in June 1999, included environmental protection and the sustainable use of natural resources as common challenges, requiring common responses and solutions from both EU and Russian sides.

The Agreement with Russia is perhaps the most extensive Partnership and Cooperation Agreement and it is that agreement which we will analyze and comment as a model for all the other eleven PCAs in the following.

The Partnership and Cooperation Agreement (PCA) between the Russian Federation and the EU and its Member States came into force in December 1997. The PCA established the legal and institutional framework for a partnership between the EU and Russia with the aim of strengthening political and economic links with trade; political dialogue; economic co-operation; justice / home affairs and institutions.

The following PCA Articles are relevant for approximation of laws.

Article 55(1) and (2) of the PCA state:

1) *"The Parties recognize that an important condition for strengthening the economic links between Russia and the Community is the approximation of legislation. Russia shall endeavour to ensure that its legislation will be gradually made compatible with that of the Community."*
2) *"The approximation of laws shall extend to the following areas in particular: company law, banking law, company accounts and taxes, protection of workers at the workplace, financial services, rules on competition, public procurement, protection of health and life of humans, animals and plants, the environment, consumer protection, indirect taxation, customs law, technical rules and standards, nuclear laws and regulations, transport."*

This Article is one of the most important PCA articles for the study and analysis of the impact of European law on the Russian federation. It is useful

to compare the approximation of legislation of the Europe and other Association Agreements concluded between the EU and Central and Eastern European Countries with the respective articles of the PCA. They seem more or less identical. Russia can therefore learn from the experiences of the EU new Member States and (pre) Candidate countries with approximation of laws.

Article 69 of the PCA (Environment) *"Bearing in mind the European Energy Charter and the Declaration of the Lucerne Conference of 1993, the Parties shall develop and strengthen their cooperation on environment and human health.Cooperation shall take place particularly through improvement of laws towards Community standards"*

As an example of practice with approximation of laws in Russia, I refer to the following Article on Tacis and its support in practice, which I wrote during my experiences with a Tacis Project in Moscow in January 2004.

Overview of experiences with the Tacis Project "Harmonisation of Environmental Standards", Russia

The common legal bases for approximation of laws in all nine PCA agreements, signed and concluded by the EU and its Member States with the NIS (New Independent States) can be found in the respective articles (with nearly identical provisions!).

The PCAs may be considered as an alternative to the Europe Agreements, which are instruments preparing for accession to the EU. The institutional structure of the agreement resembles that of a Europe Agreement. The Partnership and Cooperation Agreement (PCA), signed on June 24, 1994 in Corfù, entered into force on December 1, 1997 after having been ratified by the European Union Member States' parliaments, the European Parliament and the parliament of the Russian Federation. The PCA sets out the general principles and detailed provisions, which will govern the future relationship between Russia and the EU. It further provides for consultations at the highest level between the President of the Council of the EU and the President of the Commission on one side and the President of the Russian Federation on the other. This "Summit" practice has also developed in relation to Ukraine, although not explicitly provided by the PCA.

At a lower level, the Cooperation Council is, in principle, in charge of monitoring the implementation of the Agreement. Once a year the Members of the Council of the EU and Members of the Commission on the one hand and Members of the Partner's Government on the other hand convene. The Cooperation Council can adopt recommendations on further developments and interpretation of the Agreement. A Cooperation Committee implements the Cooperation Council's recommendations. It consists of representatives of the Council and the Commission and the PCA government at senior servant level. Parliamentary Cooperation Committees provide dialogue between parliamentarians and consist of members of the European parliament and members of the PCA partner parliament. It may require information on the implementation of the PCA.

Case - Study

The Tacis project team "Harmonisation of Environmental Standards, Russia" has for more than one year investigated the Russian legal system and practice of environmental protection, organized conferences and meetings and tested

the results of its findings with authorities and industry in the regions of Moscow, Archangelsk and Penza. The results of these investigations are laid down in the report "Improving Russia's environmental permitting regime for industry. Recommendations on harmonisation of Russia's Environmental Law and Practice with that of the EU". This report and its recommendations have been presented to the Chairman of the State Duma Committee on Ecology of the Russian Federation, Dr Vladimir Grachev. (See further publication Economic Aspects of Environmental Policy in Russia, Selected papers of Seminars, Wybe Th. Douma and Alfred E. Kellermann, Moscow January 2004)

In short, the project Recommendations suggest to change the present system of environmental permitting in Russia towards harmonisation with the EC IPPC Directive. This implies providing for an integral permit and for permit conditions and emission limit values based on BAT and on pre-fixed emission limit values for specific substances. Such change necessarily will include a review of the system of environmental standards in Russia, as limitations of emissions form one of the major conditions of permits in Russia.

The project results have been discussed at the final project conference held on Friday 21 November 2003 at the President Hotel in Moscow. The debates focused - on the recommendations of the project team and - on opportunities, possibilities, next steps and strategies to implement the Project recommendations at Federal and Regional level.

Russia however is not obliged to implement these recommendations. These recommendations do not have the same legal effect as the Community Directives in the European Community, where the European Court of Justice can order the Member States to pay a penalty for not complying with or for not implementing environmental directives.

The European Court of Justice for example ordered Spain on 25 November 2003 (Case C-278/01) to pay to the Commission a penalty payment of EUR 624 150 per year considering that the penalty payment must not be imposed on a daily basis but on an annual basis, following submission of the annual report relating to the implementation of the Directive by the Member State concerned and 1% of bathing areas in Spanish inshore waters which have been found not to conform to the limit values laid down under Directive 76/160. That amount of 624 150 per year must be multiplied with 20 (= EUR 12. 483 000 per year) to include all the areas where the bathing water did not comply with the EC Directive.

Although Russia is legally not obliged to implement the recommendations of the Tacis project team. And although there is no legal sanction nor penalty payment in order to guarantee that Russia will adopt these recommendations, there is however an economic sanction for not implementing these recommendations!

According to calculations and estimates made by economists of the Tacis project team adopting these recommendations by Russia will raise even more economic profits and benefits for Russia than the amount of the penalty payment to be paid by Spain in the above-mentioned case.

It is estimated that the implementation of the project recommendations to apply European environmental Standards as for example Integrated permitting, resource efficiency and simplification of procedures, will lead to many savings and will provide a benefit to Russian Industry and citizens by protecting Human Health and improving Environment in Russia.

For the Russian Federation, the screening and monitoring of the approximation of laws is implemented according to Article 90 of the PCA by the Co-operation Council. This Council consists of the members of the Council of Ministers, members of the European Commission and members of the Government of the Russian Federation. In the performance of its duties, the Co-operation Council is assisted by a Co-operation Committee in accordance with Article 92 of PCA.

B.II. Direct or indirect effect PCA provisions in Russian legal order?

We turn now to the Russian legal order. Under the Russian Constitution relations with foreign states and the conclusion of international treaties fall within the jurisdiction of the Federal Government, which enjoys primary competence regarding the matter. At the same time, the Constitution provides that „the subjects of the Russian Federation", that is, the constituent republics and provinces, have the right to establish their own „international and foreign economic relations„ with foreign states. This provision may imply that the subjects of the Federation are granted limited treaty-making power, at least for matters over which they have exclusive jurisdiction. This procedure is specified by Articles 86 and 106 of the Constitution.

The significance of the constitutional innovations concerning the relationship between international and domestic law can be fully appreciated only against the background of the previous experience of the Soviet Union. The former Soviet Union never considered international law as something that might be invoked before, and enforced by, its domestic courts. By relying on this dualistic approach the Soviet Union was able to sign numerous international treaties, including treaties on human rights, and still avoid implementing some, if not all, of their provisions in the domestic legal order.

The movement towards reform of the „closed„ legal system began only with the advent of perestroika. The leaders of the Soviet Union realized that the country would have no prospects for further economic and social development unless a modern society based on the rule of law is built in the USS.R. An important element of the overall political and legal reform was the recognition that the country would never be fully integrated into the world community if it did not ensure the observance of internationally accepted norms, in particular norms concerning the protection of human rights.

The Constitution inherited by the „newly independent" Russia from its Soviet past, like all other Soviet constitutions, did not envisage the possibility of direct application of international law by domestic courts and administrative agencies. In the light of the violations of human rights in Russia, the drafters of new constitutional provisions placed special emphasis on domestic implementation of international human rights standards. In November 1991, the Congress of People's Deputies adopted the Declaration of the Rights and Freedoms of Persons and Citizens, which was largely based on internationally recognized human rights principles and norms. Article 1 provided that „the generally recognized international norms concerning human rights have priority over laws of the Russian Federation and directly create rights and obligations for the citizens of the Russian Federation". In April 1992, the declaration, including Article 1, became part

of the Constitution that was then in force.

A general reform of the judicial system was based on the adoption of the idea of constitutional review as a constituent element of democracy based on the rule of law. In 1991 the Russian parliament enacted the Law on the Constitutional Court. During recent years the Constitutional Court has decided important cases that played a significant role in working out the relationship between international and Russian domestic law.

The above-mentioned cases indicate that, even before the adoption of the 1993 Constitution (approved by a popular referendum on December 12, 1993), which entered into force on December 25, 1993, the Constitutional Court, by its innovative approach, had established a firm legal basis for the direct application of international norms by national tribunals. The new Constitution contains a special clause on the relationship between international law and the Russian legal system. Article 15(4) provides:

„The generally recognized principles and norms of international law and the international treaties of the Russian Federation shall constitute part of its legal system. If an international treaty of the Russian Federation establishes other rules than those stipulated by the law, the rules of the international treaty shall apply.“

Some features of this extremely important constitutional norm are worth mentioning. Art 15(4) states that all international law is part of the Russian domestic legal system. Thus both treaty law and the „generally recognized principles and norms of international law“. The Article embraces not only the principles and norms that are binding on Russia at this moment, but also principles and norms that Russia might accept in future treaties. The Article does not distinguish between self-executing (or directly applicable) and non-self-executing (or not directly applicable) international principles and norms. Individuals may therefore invoke all kinds of norms of international law, as part of the legal system before any national administrative agency, court or tribunal. Finally, the Article establishes a higher normative status for treaty rules than for contrary domestic laws. Consequently, legal regulations in force within Russia shall not apply if their application would be incompatible with treaty provisions. National tribunals must give precedence to treaty norms over domestic law, be it antecedent, posterior, federal or provincial. Article 15(4) does not, however, confer such status on the „generally recognized principles“. With the exception of the European Convention for the protection of Human Rights, we did not discovered court decisions in which the Russian judge gives priority to international norms. Nor does it place international treaties above the federal Constitution itself. The new Constitution envisages the Constitutional Court as the principal domestic forum for resolving constitutional disputes.

Russian Constitution and PCA

It is important to complement the above discussion by another on the direct legal effect of the PCA in Russia and in the EU Member States. Companies based in the Member States of the EU will be allowed, in accordance with the PCA, to set up subsidiaries in Russia on terms, which are no less favourable than those accorded to Russian companies. The same treatment will be granted to Russian companies setting up subsidiaries in the EU. In the PCA, there are negative obligations for Russia after a transitional period of five years as from the entry into force of the PCA, that is 1 December 2002 For example, Article 52(5) states that "the Parties shall not introduce any new restrictions on the movement of capital and

current payments connected therewith between residents of the Community and Russia and shall not make the existing arrangements more restrictive" In order to have an understanding of the legal protection of EU and Russian companies we must distinguish the legal protection in three legal orders: the Russian legal order , the Community legal order and the national legal order of the EU Member States.

According to the above-mentioned Articles 15(4) of the new Russian Constitution, and as the PCA has been ratified by the Duma, the PCA and its provisions form part of the Russian legal order and may therefore under this Article be invoked before any Russian Court in case that the respective Legislative measure is in conflict and does not comply with the negative obligation of article 52 (5) of the PCA. The respective Russian Court may decide not to apply the Legislative Measure from the Duma and/or the Government, in case the latter does introduce new restrictions on the movement of capital or current payments. And therefore does not comply with the negative obligation as mentioned for example under Article 52(5) of the PCA As the Russian Constitution does not distinguish between directly and non-directly applicable international principles and norms, non-compliance with these principles and norms is already a condition for direct effect and as a consequence the possibility to be invoked for the national court. It is not necessary that the international obligation be directly applicable. In this way the Russian Constitution is even more internationally minded, than for example the Dutch Constitution, which limits the priority of international law on Dutch national law only for direct applicable norms[iii].

After EU Enlargement also companies and persons of the New Member States should enjoy this kind of legal protection in the Russian Federation. However we should always bear in mind our remarks in the introduction concerning the state practice of the possible priority of the rule of politics on the rule of law in the Russian Federation.

B.III. Direct effect of PCA provisions in the Community legal order?

PCA provisions could potentially be regarded as having direct effect according to the doctrine of Community law and its criteria. It could follow from the interpretation of the free movement of capital relating to direct investments in companies in Russia, non-discrimination treatment in labor and services, but also the negative obligations as the obligation not to raise customs duties after a certain date.

The legal protection of Russian companies within the legal order of the European Community will depend on the European law doctrine as well as on EU Member States constitutional national law on the interpretation of direct effect and the priority of PCA provisions on national law.

Some authors, however, question the direct effect of PCA's as the purpose and nature of the PCAs in the EC legal order question this notion since they aim only at "sustaining mutually advantageous co-operation and support … to complete transition into a market economy". In my opinion however there are standstill clauses, which makes the PCA provisions different from flexible GATT rules. Especially since the PCA provisions being approved by the parliaments and therefore peoples of all EU Member States belong

[iii)] *See also my remarks in Publication 2001 (ISBN 5 – 89123-538-2(NORMA) pages 117 – 120 Proceedings Conference MGIMO Moscow 11-12 May 2000.*

to the acquis communautaire.

For the legal protection of Russian companies established in the EU and its Member States two different cases and situations are conceivable. One situation for example is where the EU institutions are not complying with PCA obligations, for example if the levies of the External Customs Tariff are raised by the Commission. According to the European Court of Justice international agreements can in certain circumstances have direct effect. The provision must however be clear and unambiguous, unconditional and its operation must not be dependent on further action being taken. Provisions containing negative obligations meet these requirements. If the Council or Commission are not complying with such an obligation, the Russian Company may bring an action against the Community institution concerned before the European Court of First Instance in Luxembourg. The second situation for example is possible when the respective EU Member State, where the Russian company is established, is not complying with an obligation of the PCA.

Any company, EU or Russian, established within the EU may for example, in my opinion, bring an action as from 2002 against the Decision or Legislative measure of a Government of a Member State which is not complying with a negative obligation of Article 52(5) PCA, which states that:

"Without prejudice to paragraphs 6 and 7, after a transitional period of five years as from entry into force of this Agreement, the Parties shall not introduce any new restrictions on the movement of capital and current payments connected therewith between residents of the Community and Russia and shall not make the existing arrangements more restrictive .."

In such cases the Russian company can bring the case before the national court of the Member State that did not comply with the Article of the PCA has jurisdiction. The national court can then decide according to the principles of European law as developed in the Van Gend & Loos Case and in Costa versus ENEL. If there still raises a question of interpretation of European law, the national court can refer the question for a preliminary ruling to the European Court of Justice, according to Article 234 EC.

After EU Enlargement in May 2004 Russian companies will also enjoy this legal protection of non- discrimination in the New Member States. National courts interpreting the EU and EC Treaty provisions play an important role for the legal protection of the citizens in the community legal order as well as in the candidate countries. As for example the Polish judges in the pre-accession period referred to the Europe Agreements and Community secondary legislation, it might be expected that they can in the relevant cases if necessary also refer to the PCA provisions.

C. The impact of the accession Treaties of April 2003

C.I Introduction

EU Enlargement and Constitutional Impact

It is in the interest of an enlarged EU to increase the effectiveness of its legal order. To achieve security, democracy and effectiveness of the rule of law, it is necessary to have an effective and transparent administration, an independent judiciary and an adequate system of legal protection at EU and National level. As many candidate countries will accede to the community

legal order, which is based on the rule of law and not on the rule of politics and as this community legal order has developed itself as a success-story, which was an incentive for further enlargement, I expect that these objectives will also be applicable for Russia. In other words the effectiveness of Russia's legal order, the transparency of its administration and the independency of its courts, will be improved in my opinion as an effect of reflex from EU Enlargement. The approximation of legislation with the support of TACIS as mentioned above and its impact in practice on the modernization of Russian legislation are clear examples of this tendency.

Taking into consideration the approach of EU Enlargement, in the IGC 2000 progress have been made and agreed to pass over to more qualified majority-voting (QMV) for a large number of articles for which now unanimity is required. The consequence of more QMV is not a new transfer of sovereignty from the State to the EC institutions or what was called at the conference the transfer of "the exercise of certain state powers".. More QMV may be contrasted with the transfer of sovereignty, for which in some countries in such cases a national referendum might be regarded as necessary (virtually nowhere it is actually a constitutional requirement).

The procedures for reinforced co-operation or closer co-operation need more flexible arrangements. However the core conditions have been maintained.

Regarding the number of Commissioners, one national Member per Member State was not considered as a must after EU Enlargement. This would seriously affect the Commission's capability to act efficiently as a college, thereby weakening its position in the institutional architecture of the Union.

A Commission composed of a limited number of Commissioners, irrespective of the number of Member States, was considered to be a better guarantee to maintain its efficiency.

As concerns the weighting of votes in the Council three options were put forward: simple re-weighting, double majority and the introduction of a new key related to concrete economic criteria such as financial contribution. However comparative studies for example concerning the situation in the US have shown that the number of votes to be cast in the Senate has no relationship at all with the above-mentioned criteria. Every State is equally represented in the Senate.

In many candidate countries accession to the EU contributed to the constitutional modernization of the country. The lack of political consensus blocked constitutional reform but the accession gave likely impetus to fundamental changes in this respect. This concerned especially the implications of their Membership for the national constitutional provisions concerning the following topics:

- *The principle of the transfer of the exercising of certain state powers to the EU (deriving from the national state sovereignty)*
- *Supremacy, primacy or priority of community law*
- *Direct effect an direct applicability*
- *Specific provisions from EU and EC Treaty (European citizenship, voting rights, etc.)*
- *Specific provisions in national constitutions which contradict the acquis communautaire like the acquisition of land and real-estate by non-residents, extradition of own nationals*

The Russian Constitution of 1993 according its Art 15 (4) was already more advanced than the national constitutions in many candidate countries, as the principle of primacy was recognized.

Accession of the ten Acceding New Member

States will have as an impact that for several policies the Presidential Administration and Government in Russia will have to negotiate in the near future directly with the European Commission and EU Council in those areas where the exercise of certain state powers has been transferred and belongs irreversible to the acquis communautaire. As a consequence more meetings in Brussels and less in Riga, Tallinn, Vilnius Warsaw etc.

A country-by-country approach reveals the fact that various approaches do exist and that constitutional changes are dependent on the respective national legal order.

To reach a satisfactory system of legal protection not only the texts of the constitutions are decisive but also the interpretations given by the national courts when interpreting the constitutions and constitutional laws ("living constitutions"). These constitutional aspects as well as an adequate legal protection have to be adjusted and regulated before accession.

Regular Reports and screening

The European Commission analyses for its accession negotiations every year the progress in each candidate country's capacity to adopt the acquis of the Union in the so called "Regular Reports on Progress". The aim of this screening process is to help the countries concerned to increase their understanding of the rules that underpin the EU and identify more clearly which issues they need to address as they adopt and implement the acquis communautaire. The relevant sectors are identified but not the constitutional acquis. A chapter on the constitutional acquis should be added and included. A post-screening meeting should be held for the candidate countries helping them to understand what the constitutional requirements of the accession process are about.

The information in these Progress Reports is based initially on information provided by the candidate countries themselves. In the Progress Reports from the European Commission one cannot find directives or suggestions to adapt national constitutions as the European Commission considers national constitutions as belonging to the people and the national sovereignty of the national states. There are further so many different constitutional traditions in Central and Eastern Europe, that the European Commission cannot establish in advance whether one country's Constitution permits accession without the prior amendment to the Constitution or not. The European Commission has also taken into account information provided in the screening of the acquis and in the context of the accession negotiations as well as meetings held under the association agreements. It has also compared information from these sources with that contained in the new national programmes for the adoption of the acquis. Further reports of the European Parliament, evaluations of the Member States, the work of international organizations and NGO's.

C.II. Summing-up of references to the Russian Federation in the EU Accession documents

In the following I will present a summing-up of the references to Russia (Russia is typed in italics), which I discovered in the Commission's Enlargement Strategy Paper of 2000 and in the November 2003 Regular Reports on the Progress as well as the Accession Treaty with its Annexes, Declarations and Documents (4.800 pages). As you will notice from

the following the entire proceeds amounted to not more than 30 references to Russia or the Russian Federation.

In the European Commission's Enlargement Strategy Paper of 2000 on page 9 under Chapter 5. The enlargement process and neighboring countries:

Enlargement will bring benefits of enhanced security, stability and prosperity not only for the Union but also to the wider international community, including the EU's major trading partners. Concerning Russia the following comments are made. Russia has expressed an interest in holding discussions with the EU on the implications of enlargement. Rather than creating a special group for this purpose, the Commission proposes to use the institutions of the partnership and cooperation agreement (Cooperation Committee and Cooperation Council). One Russian region that will be particularly affected by enlargement is Kaliningrad. After the accession of Lithuania and Poland, Kaliningrad will become a Russian enclave within the EU. The Union needs to devise a strategy, in cooperation with Lithuania, Poland and Russia to ensure that Kaliningrad can benefit from the greater prosperity that accession to the EU will bring to its neighbours. Regional cooperation will be an important element of that strategy.

In the Regular Report on Poland's progress of November 2003 I found the following References to Russia on page 53 regarding visa policy to its neighbour the Russian Federation. As from 1 October 2003 Poland has introduced visa obligations for Russian citizens. Further efforts are needed in relation to infrastructure, recruitment of staff and training, as well as for installation of information technology for the consulates in the Russian Federation. Furthermore an adequate national visa register still needs to be established. As regards the management of the future external borders, Poland has in general aligned its legislation on border control and border surveillance. In the area of migration, legislative alignment has been completed, including on carrier liability through the new Aliens Law, which entered into force in September 2003. The level of cooperation with neighbouring countries on readmission seems appropriate, although agreements have not yet been concluded with Russia (p.54).

In the Regular Report on Romania's progress of November 2003 I discovered the following references to Russia on page 101. As regards external borders and Schengen, during the reporting period the Ministry of Administration and Interior approved a Border Security Strategy for 2003 – 2007 and a revised Schengen Action Plan. In the same month (i.e. March 2003) the border police reached an agreement with the Russian Federal Border Service on co-operation in border matters. P.104 As far as visa policy is concerned Romania is in the process of aligning with the "acquis" on the list of countries whose nationals require a visa to enter the EU and is engaged in negotiations to introduce visas with Ukraine and Turkey, will enter into negotiations with Serbia and Montenegro, has finalized an agreement with Russia and will apply visas to Moldovan nationals upon Romania's accession to the EU.

P.112 (Chapter Common foreign and security policy). Romania has improved its relations with the Russian Federation and a Romanian-Russian Treaty on Friendly Relations and cooperation was signed in July 2003.

In *the Regular Report on Estonia's progress* of November 2003 I found the following references to Russia. P.28 As regards international fisheries agreements, Estonia needs to withdraw from the

international Baltic Sea Fisheries Commission (ISSFC), the North Atlantic Fisheries Organisation (NAFO) and the North-east Atlantic Fisheries Commission (NEAFC) before accession. A solution has been found between Lithuania, Estonia, Latvia and Russia on the division of the NAFO block quotas. On page 35 Concerning anti-discrimination, legislation remains to be prepared to ensure full alignment with the acquis and the Equality Body required by the acquis needs to be established. Estonia is also encouraged to further promote integration of the Russian minority by, in particular, continuing to increase the speed of naturalization procedures and by taking other proactive measures to increase the rate of naturalisation. p . 45 On visa policy.

The capacity of the consulates in the Russian Federation, Belarus and Ukraine need to be reinforced. Estonia also has to provide all diplomatic and consular missions with equipment to detect forged and falsified documents.p. 46 In the area of migration, legislative alignment has been completed, including with regard to carrier liability. However, provisions concerning expulsion still need to be adopted. Estonia is taking action to conclude readmission agreements with the Russian Federation, Belarus and Ukraine.

In ***Annex II*** pages 2173 to 2186 the respective land, sea borders and air borders between Estonia, Latvia and Lithuania and the Russian Federation are described. Protocol No 5 on the transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation (p 4770 – 4774). *Final Act, III C Joint Declarations from the present Member States No 12. Declaration on the transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation, p 18 – 19.*

C. III The Protocol of 27 April 2004 and Conflicting rights and obligations before accession / Article 307 EC Treaty [iv]

Consideration No 6: As from the date of accession, and pending the conclusion of the necessary protocols referred to in paragraph 2, the New Member States shall apply the provisions of the Agreements concluded by the present Member States and, jointly, the Community with Algeria, Armenia, … the Russian Federation … etc as well as the provisions of other Agreements concluded jointly by the present Member States and the Community before accession.

From consideration No. 6 of the Accession Treaties we may conclude that all the New Member States shall apply the provisions of all agreements between present Member States and Russia and therefore also the Partnership and Cooperation Agreement EU – Russia, which after all belongs to the acquis communautaire. However these agreements have to be concluded once again and ratified between the New EU Member States and the Russian Federation. An other option is that a draft Protocol, which should enable the PCA to be extended to the ten future Member States will be signed and ratified.

On April 27, 2004 the following option was agreed. The EU and Russia confirmed the extension of the PCA to the enlarged EU in a Protocol to the Partnership and Cooperation Agreement.

This Protocol was an Annex 1 of a Joint Statement on EU Enlargement and EU-Russia Relations. See for the Protocol and Joint Statement ANNEX I of this paper.

If there are conflicting interests between the PCA and previous Treaties of New Member States with the Russian Federation, bilateral negotiations

[iv)] *The EU Accession Treaty with the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia of April 2003 with the European Union and its Member States contains including Annexes and Protocols (containing approximately 4.800 pages). http://europa.eu.int/comm/enlargement/negotiations/treaty_of_accession_2003/*

should have been held and if necessary compensations have to be made, to get the agreement and approval of the Russian Federation. Thanks to the Protocol of 27 April 2004 this is not necessary any more!

In the Progress Reports for the candidate countries we did not find any reference to conflicting obligations between New Member States and Russia. The now more academic question arises if these problems have been discussed at all during the screening operation and accession negotiations of the candidate countries with the EC.

These conflicting rights and obligations are regulated for all candidate countries in Article 307 of the EC Treaty (ex-Article 234 of Treaty of Maastricht) which states:

"The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding states, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty

To the extent that such agreements are not compatible with this Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude

In applying the agreements referred to in the first paragraph, the Member States shall take into account the fact that the advantages accorded under this Treaty by each Member State form an integral part of the establishment of the Community and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of t he same advantages by all the other Member States."

Article 307 seems to ensure the neutrality of the Community towards obligations under international agreements inconsistent with the Treaty, which were concluded by Member States with non-member states prior to the accession of the former to the Community[v].

In the Juan C. Burgoa case (1979) the European Court of Justice upheld such an interpretation of Article 307 and added: " That it is without prejudice to the obligation of the Member State concerned to take, in accordance with the second paragraph of that Article, all appropriate steps to eliminate any incompatibilities between such agreements and the Treaty. Article 234 is of general scope and it applies to any international agreement, irrespective of the subject-matter, which is capable of affecting the application of the Treaty."

Provisions akin to Article 307 EC Treaty were included in many accession agreements with for example Great Britain, Greece, Spain, Portugal etc.

What is missing in the Protocol of 27 April 2004 is a summing-up of bilateral agreements between the ten New Member States and Russia concluded before accession to the EU. Identical problems have occurred in the negotiations on Protocol No.7 between Croatia and the European Commission, as Croatia has bilateral agreements on freet trade with six acceding countries, which will, cease to apply when on 1 May, 2004 these countries become Members of the EU (Slovenia, Slovakia, Hungary, Czech republic, Poland, Lithuania).

The references to Russia or the Russian Federation in the Progress Reports mainly concern or dealt with the following areas and topics, however without mentioning the eventual incompatibility of these matters with previous bilateral treaties or agreements:

Transit of persons between Kaliningrad and

[v] *See Eugeniusz Piontek, European Union Membership and Obligations under Bilateral and Multilateral Agreements to which Poland is a Party; 25 Polish Yearbook of International Law, 2001, p 127 – 148).*

Russia, visa-policy, borders description, control and cooperation, naturalization, discrimination and protection of minorities, withdrawal from international fisheries organizations and the application by the New Member States of the previous concluded agreements as for example the PCA's .

In my opinion for agreements regulating the sub-matter under exclusive jurisdiction of the Community there should be introduced clauses of expiration in the agreements with Russia on the day that the candidate countries attain membership of the EU.

In agreements regulating matters subjected to parallel competences of the Community and the Member States, the Community clauses should be introduced which reserve the introduction of adjustments to the Community policies or the replacement of respective agreements with agreements of the Community and of the Member States together.

As the Community policies grow, more and more policies and subject-matters, come under the exclusive jurisdiction of the Community and as a consequence of the ERTA Case (1970) also more external powers come under exclusive community jurisdiction: This process has started with the ERTA Case and is now continuing with the Seven Open Skies decisions of the European Court of Justice. In these seven decisions this tendency has further been developed. In these cases the ECJ decided that the Open Skies Treaties between individual Member States and the United States of America, are partially in conflict with Community law, since powers concerning air transport, licensing, tariffs, distribution of slots have been transferred to the community level in regulations. (Cases C-467/98; 468/98; 469/98; 471/98; 472/98; 475/98; 476/98; 466/98).

The impact for Russia of the transfer of treaty making powers to Brussels from the Member States, will be that it is expected that the Russian Federation will have to negotiate always more multilateral treaties with the European Commission in Brussels in stead on bilateral treaties with Member States.

D. The impact of the European Constitution

The Treaty establishing a constitution for Europe was finally submitted by the Convention on the Future of Europe to the European Council in July 2003.

The objectives of this Convention as well as from the Laeken Declaration which launched the European Convention are: a more precise delimitation of competences between the EU and the Member States, the simplification of the Treaties and legislative instruments, and the efficiency, transparency and democratic accountability of the decision-making process, including in particular the role of National Parliaments. In the following short analysis I will not attempt to cover every aspect of the numerous and complex provisions of the European Constitution and provisions on external policy, but especially those issues which in my opinion are relevant to the objective of our analysis: the impact or effect of the European Constitution on Russia.

The EU Constitution

- *Fundamentally changes the structure of the Union: in particular it gets a single legal personality on the EU and merges the Union with the European Community; it gets rid of the "pillar" structure of the Union; and it incorporates the Charter of Fundamental Rights into the Constitution and gives it binding force;*
- *it introduces a large number of reforms which improve the way the Union works: especially, it*

extends the scope of the codecision procedure for the adoption of European laws and makes provision for the Council's work to be fully transparent where it is involved in lawmaking; it maintains the necessary flexibility in what is a more sophisticated and balanced system for assigning competences to the Union; it replaces the complicated definition of what constitutes a qualified majority as decided by the Treaty of Nice, with the simpler and more democratic formula of the double majority; it enshrines the Commission's right of legislative initiative and the interinstitutional programming of the Union's work; it rationalises and clarifies the Union's instruments for action; it strengthens arrangements for monitoring compliance with the principles of subsidiarity and proportionality, and enhances the role of national parliaments in the European integration process;

- *strengthens the Union's means of action: in particular it extends the Community method to the entire area of freedom, security and justice; it creates the Office of Minister for Foreign Affairs, who will be both a Member of the Commission and the recipient of a Council mandate, which will enable the Union to develop more consistent and more effective external action; it revamps the provisions concerning the common foreign security and security policy; it develops the common security and defence policy and enables those Member States wishing to do so to enhance their capacity for action within a common framework.*
- *One of the necessary reforms concerns the EU's ability to speak with one voice in foreign policy. The EU is increasingly expected to assume a role on the global scene commensurate with its economic weight. The EU already speaks with one voice in many areas such as trade policy.*

As shown above the European Constitution is more than an exercise in coordination and simplification. It is an attempt at integration of the EC and EU Treaty, the integration of the Pillar Structure as well as the integration of policies and External Action.

One way in which the draft Treaty seeks to integrate the Community and the Union and their differing policies is by establishing a framework of principles, values and objectives, on which the Union is based. The statement of values is also designed to establish an identity for the Union, which will be promoted both to its citizens and to the outside world.

Therefore the Union in its relations with the Russian Federation will and shall uphold and promote its values and interests.

"It shall contribute to peace, security, the sustainable development of earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights and in particular children's rights, as well as to strict observance and development of international law, including respect for the principles of the United Nations Charter".

In Title II: Fundamental Rights and Citizenship of the Union in Article I-7 reference is made to Part II of the Constitution, the Charter and to the accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Title III Internal Policies and Action: Chapter IV – Area of Freedom, Security and Justice

Policies on border checks, asylum and immigration; judicial cooperation in civil and criminal matters; police cooperation.

Title V of Part III, on the Union's External Action reflects the values of democracy, the rule of law, the universality and indivisibility of human

rights and fundamental freedoms, respect for human dignity, equality and solidarity.

In the field of common foreign and security policy, the Minister for Foreign Affairs/Vice-President of the Commission acts alone, as mandated by the Council.

A draft declaration appended to the draft Constitution provides for the Minister to be assisted by a European External Action Service, which will embrace the Union's delegations in third countries and to international organisations.

The EC Delegation in Moscow for example could therefore in my opinion after entry into force of the European Constitution be enlarged in the near future with such an European External Action Service.

Title VIII: The Union and its Immediate Environment

Article I-56 The Union and Its immediate environment

"The Union shall develop a special relationship with neighboring States, aiming to establish an area of prosperity and good neighborliness, founded on the values of the Union and characterized by close and peaceful relations based on cooperation.

For this purpose, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation."

This Article will be the legal base for new initiatives in the EU-Russia relationship. As this Article is placed in Part I (before Membership) and not in Part III, with other External policies, this neighbourship policy is designed to remove fear that the current enlargement will create new dividing lines with Europe. It implies a special status of relationship as an alternative to membership.[vi]

E. The impact of the Fundamental Rights in the EU, The European Convention for the Protection of Human Rights and the EU Charter

E.I. Fundamental Rights in the EU

Articles 6 (2) and 46 of the Treaty on European Union and Article 220 of the Treaty establishing the European Community

The Treaty of Amsterdam has strengthened the constitutional basis for the protection of fundamental rights by the Union itself. The new Article 46 (ex Article L) of the Treaty on European Union has extended the exercise of the Court's powers to Article 6 (ex Article F) (2) of that Treaty "with regard to action of the institutions, in so far as the Court has jurisdiction under the Treaties establishing the European Communities and under this Treaty". Article 6 (2) provides that "the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law". The Court for thirty years has been engaged in determining whether Community acts (and national measures which fall within the scope of Community law) are compatible with fundamental rights as now defined in Article 6 (2) of the Treaty on European Union. The aim was probably not to weaken the protection of fundamental rights in the Community legal order, an essentially praetorian form of protection which in any case depends ultimately for its legitimacy on Article 220 (ex Article 164) of the Treaty establishing the European Community, under which the Court is required to

[vi] *See Cremona p. 1364 CML Rev. 2003: "The Draft Constitutional Treaty: External Relations and External Action".*

ensure that "the law is observed" in the interpretation and application of that Treaty

Articles 13 and 141 of the Treaty establishing the European Community.

The Amsterdam Treaty may have failed in respect of enlisting fundamental rights in the Treaties, it did provide for two interesting new legal bases allowing the Community to adopt rules with a view to secure their protection. In addition to the general rules for the protection of fundamental rights within the European Union, Articles 13 and 141 define some aspects of the principle of non-discrimination. Apparently without wishing to call into question the established case law on the subject, the constituent power of the European Union has chosen to anchor the principle of equal treatment even more firmly in the text of the Treaty establishing the European Community.

Human rights and "democracy clauses" in co-operation and association agreements between the European Union and European States applying for EU membership

In almost all its agreements concluded with the Central and Eastern European countries since the fall of the Berlin Wall in 1989, the Community has made co-operation, aid, liberalisation of trade or the establishing of trade preferences conditional upon the fulfillment of requirements of respect for fundamental rights and democracy.

In a second phase, at the beginning of the nineties, the European Community gradually moved from Co-operation to Association Agreements with the so-called 'Europe Agreements', concluded with the ten Eastern and Central European States applying for EU membership, establishing free trade, a high-level political dialogue, the progressive introduction of the principles of free movement of persons, services and capital, legal approximation and co-operation in other fields, including culture, industry, environment, transport and customs. The Europe Agreements are accompanied by a programme of financial support to assist the reform of the Eastern and Central European economies and institutions (PHARE). The Preambles to the Europe Agreements are far more ambitious in referring to fundamental rights principles than the Trade and Co-operation Agreements, committing the Parties not only to respect human rights and the rule of law, but likewise to establish a pluralist democracy, a multiparty system and a market economy. A further step was taken in the 1992 Agreements with Albania and the Baltic States. For the first time "the importance of guaranteeing the rights of ethnic and national groups and minorities, in accordance with the undertakings made within the context of the Conference on Security and Co-operation in Europe, was recognized. And for the first time as well, references to fundamental rights were no longer confined to the Preamble, but formed an essential part of the Agreement itself. In addition, they were equipped with the so-called 'Baltic clause', a non-execution clause allowing the Community to unilaterally - without even consulting the third State concerned - suspend the Agreement with immediate effect in case the Community would establish a serious violation of the essential provisions of the Agreement.

The requirement of respect for fundamental rights in the pre-accession strategy

At the Copenhagen European Council of 21-22 June 1993, the Member States officially took a stand in favour of a considerable enlargement of the European Union eastwards. As accession to the European Union is now the main focus of the European States applying for EU membership, the Europe Agreements have become part of the pre-accession framework within which these countries are preparing for membership. The Member States

seized the opportunity to clarify the principles with which European States applying for EU membership have to comply in order to be eligible for European Union membership. The 'Copenhagen criteria' require the European States applying for EU membership to give an undertaking to achieve stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the latter as envisaged by the Organization for Security and Co-operation in Europe (Conference on Security and Co-operation in Europe, at the time). Since then, Accession Partnerships and National Programmes for the Adoption of the Acquis (NPAA), containing these Copenhagen criteria, are concluded with every of the thirteen States negotiating for accession to the Union.

An important innovation by the Treaty of Amsterdam is the requirement, inserted in the first paragraph of Article 49 of the Treaty on European Union, that any European State wishing to become a Member of the European Union must respect the principles on which that Union is founded, set out in Article 6 (1) of that Treaty. This is a firm political signal to the European States that have applied to join the Union.

Thus respect for fundamental rights by European States applying for EU membership has now become a legal condition of that membership. In principle, fulfillment of that condition may be the subject of judicial review by the Court of Justice, since the Court's jurisdiction extends to Article 49 of the Treaty on European Union [see Article 46(e) of that Treaty]. In practice, however, it will once again be a matter for political assessment by the Council acting by unanimity and the European Parliament acting by an absolute majority of its members. It appears to be somewhat unlikely that the Court will be called upon to review the legality of such a decision, for example at the request of the Commission or of a Member State that has failed to exercise its veto.

E.II. The European Convention on Human Rights

Some legal questions

1. Is the Community bound by the Convention?

Especially in Germany the submission that the European Communities would not be bound by human rights raised problems. The first chapter of the German Federal Constitution enumerates the most important human rights. Subsequently, in Article 79 the Constitution provided that the basic principles laid down in these articles may not be amended. It was obvious that the powers of the German Federal Government were restricted by the human rights enumerated in the Constitution and that the German Government had no authority to create an international organisation which would not be bound by the same fundamental rights. According to many German lawyers the classical rule that nobody can transfer more powers than he has means that all powers of the European Communities are restricted by the same fundamental human rights that restrict the powers of the German Government.

Although the academic discussion on this problem was almost entirely German, the problem existed for most other member states as well. There were good reasons to presume that the Community was necessarily bound by the same human rights, which limited the powers of the member states. However, there was no legal relationship between the European Communities and the institutions of the European Convention on Human Rights. If ever the European Court of Human Rights would decide that

the Community had to pay damages or had to change its legislation, how could such a judgment be enforced when the Community is not legally bound?

The question then arose what one could do if the Community took a decision in violation of the Convention. Because of the procedure for decision-making it is unlikely that the Community will ever make regulations or directives contrary to the Convention. But an individual decision contrary to the Convention could be possible.

2. Are the Member States liable for infringements by the Community?

Germany was bound by the Convention when it concluded the EEC-Treaty. It could be submitted therefore that Germany had not been able to transfer unrestricted powers to the Community and that Germany remained responsible for any violations of the Convention by the Community. This issue finally came before the European Commission of Human Rights.

Mrs Matthews brought a case for Community violation of human rights against the United Kingdom. As a citizen of Gibraltar she had not been permitted to participate in the voting for the European Parliament. As Article 3 of the First Protocol to the Convention gives a right to participate in elections for the legislature she claimed that the UK had violated her fundamental right by not providing a possibility for her to participate in the voting. It was disputed whether the European Parliament was part of the legislature. If it was not, Article 3 of the First Protocol to the Convention would not at all be applicable. The exclusion of Gibraltar from the voting for the European Parliament was laid down in a treaty text and therefore not subject to any control by the ECJ. Unlike the previous cases the Commission declared this case admissible (though it did not find a violation of the Convention) which meant that it could be brought before the European Court of Human Rights. This Court found in its new composition that the United Kingdom had breached Article 3 of Protocol 1.

E.III. The Possible impact of the EU Charter on Fundamental Rights[vii]

Can the Charter solve the conflict with the European Convention on Human Rights?

If the citizens of the Union could invoke the Charter before the ECJ against any infringement of fundamental rights, be it by the Community or by a Member State, still then the individual could subsequently bring his case to the European Court of Human Rights.

Would the addition of a Charter of Human Rights to the Treaty of the Union offer a solution? Clearly, the answer must be: "No". A charter of human rights in the Treaty of the Union would perform the same role as a chapter on human rights in any national constitution. It would contain rights which individuals must exhaust before they are permitted to bring a complaint to the European Court of Human Rights. But the Charter could not replace the Convention. Even if the Charter would be literally the same as the European Convention on Human Rights the interpretation of the provisions by the ECJ could diverge from the interpretation by the European Court of Human Rights. Therefore, individual applicants would continue to attack in Strasbourg Member States for acts committed by the Community. However interesting a charter of human rights may be for the citizens of the Union, it will not solve any future conflict with the European Convention on Human Rights.

[vii] *For the impact of the EU Charter of Fundamental rights in the perspective of enlargement I refer to the contribution of Koen Lenaerts in "EU Enlargement: The Constitutional Impact at EU and National Level" pages 447 – 481, as mentioned here fore.*

There is some justification for the view that a European State cannot be accepted as a member of the European Union, respecting the principles on which the Union is founded, without first acceding to the European Convention on Human Rights. However, in the near future this requirement will probably still be a necessary but no longer a sufficient condition for accession in the field of compliance with human rights, as European States applying to join the Union are required to respect fundamental rights as enumerated in the - possibly higher standard - EU Charter of Fundamental Rights.

The latest draft of the Charter includes chapters on citizenship, equality, and solidarity. Thus, the Charter will bring more than a restatement of the rights ensuing from the citizenship of the European Union and some well-known elements of the European Social Charter. It will also deal with new issues in the sphere of fundamental rights like the physical and mental integrity of the person in the fields of medicine and biology, the protection of personal data, the integration of persons with disabilities, and everyone's right to reconcile their family and professional lives.

The work on the Draft Charter of Fundamental Rights of the European Union has been completed. After intense discussions on previous drafts and hundreds of amendments, the 62 members of the Convention met on October 3, 2000, for the last time in Brussels and reached consensus – notwithstanding individual comments on some of the articles – that the draft was ready for presentation at the European Council. In December 2000, the Charter was proclaimed as a leading document for European cooperation.

An important point since the beginning of the work has been, and will be also in the future, the relation with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Both houses of the Dutch Parliament have expressed their view that the European Union and the European Community should accede to the European Convention. There are simply no sound arguments against. All the current Member States and possible future Member States of the Union are bound by the European Convention and, according to the case law of the Strasbourg Court of Human Rights, the contracting parties are bound by the Convention also in the application of EU law.

The work on the Charter can be viewed as an escape from the question that could have been on the table of the intergovernmental conference, i.e. the approval of clauses in the European Treaties allowing accession to the European Convention on Human Rights. Apparently some politicians, even in the highest ranks, tend to be frightened by the legal discipline and judicial powers. These politi-cians may not really feel reassured, but they should understand that there is simply no escape from judicial review. According to well-established case law and Article 6 of the Treaty on European Union, the Luxembourg Court of Justice along with the national judiciaries already has the obligation to examine the conformity of European decisions with the rights and freedoms under the European Convention. What is at stake, however, is that we should not have different interpretations of these fundamental rights by the Courts in Strasbourg and Luxembourg, respectively. In the long run, we cannot do without a coordination mechanism between the Luxem-bourg and Strasbourg Courts, based on the acknowledgement that the unity of doctrine in EC law has its proper place in Luxem-burg, and interpretation of fundamental rights in Strasbourg. The Charter aims at minimizing the risks through identical phrasing for rights that are the same in both documents.

Although the EU Charter of Fundamental Rights has been granted by the Nice European Council in December 2000 no legal binding force, it will in any event be a strong statement on the values and principles the European Union stands for and this both vis-à-vis the present Member States, the other European States applying for EU membership and third countries. One may expect that human rights and democracy clauses will be included in Commercial agreements.

The Charter will lead to an increased level of protection through the formulation of rights that had not been stated so far, or else through the non-inclusion in the formulation of rights stemming from other instruments, of some limitations attaching to these rights. In either case the Charter contains a potential for growth of the material scope of protection of fundamental rights beyond the sources of those rights mentioned in Article 6(2) of the Treaty on European Union. The Charter is addressed to the Member States "only when they are implementing Union law" (Article 51(1)) and "rights recognized by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties" (Article 52(2)).

Finally, even if the Charter becomes part of "primary" Union law, the fact that it is addressed "to the institutions and bodies of the Union" (Article 51(1)) should not diminish the importance of accession of the European Community or Union (when the latter receives legal personality) to the European Convention on Human Rights. Only such accession can indeed give the EU Member States, as Contracting Parties to that Convention, the watertight guarantee that they will in no circumstances be held responsible - under some future development of the Matthews case-law of the European Court of Human Rights - for the infringement of fundamental rights by the EU institutions.

For Russia the increased level of protection by the Charter through the formulation of rights that had not been stated before (For example Article 21 Non-discrimination based on sexual orientation), might inspire the Russian judges and might have an impact on the considerations of Russian courts dealing with Human Right cases.

PRELIMINARY FINDINGS AND CONCLUSIONS*

Possible impact and effect of EU Enlargement on Russian Federation

1. The PCAs by its Articles on approximation of laws with the support of Tacis, will stimulate the Russian legislation to be made compatible with EU Standards. This will lead to modernization of Russian legislation. EU Enlargement will raise awareness on the need for this approximation of laws. This process will be accelerated when also Russia's neighbours will comply with the European standards and therefore will get a competitive advantage. Russia is encouraged to approximate its laws to those of the EC, particularly in areas like competition, protection of intellectual property and environment. Russia is not obliged but free to approximate its legislation, as the objectives of the PCA do not focus on EU Membership like the Europe Agreements where approximation

* *When reading the above-mentioned findings and conclusions one should always bear in mind my remarks made in the introduction concerning the practical application of the "trias politica" principle of Montesquieu (independency of Government, Parliament and Judiciary) in the Yukos case and the Freedom of Press and its possible consequences in the Russian Federation in practice.*

is obligatory. The PCA focuses on support of the reform process in Russia and on the gradual integration of Russia into a wider European economic area.

2. The PCA may be considered as a relatively successful formula in EU external policy. It is certainly a reliable legal instrument for sustaining long-term relations with the Russian Federation. The PCA is designed to bring Russia to the gateway of the world market economy. It offers access of goods of the Russian Federation to the European Market and open many opportunities for EC financial and technical assistance. Principles of free trade, reciprocity and fair competition are core to the fulfillment of the objectives of the agreement. The chance is given to build a solid institutional framework for political dialogue with the EU.
3. The approximation of Russian laws to EU Standards is initiated by the PCA and will for example in the field of environment lead to resource efficiency and simplification of procedures, which will lead to many savings and will provide a benefit to Russian industry and citizens by protecting Human Health and improving the Environment in Russia.
4. Legal protection of EU companies and Russian companies in the Russian legal order will also apply, after EU Enlargement, to the companies and citizens of the New Member States, as the independency of the courts in candidate countries and Russia will be improved according to EU Standards. Russian judges, inspired by the jurisprudence of their neighbors, will have to apply the provisions of the PCA as the PCA is according to Article 15 (4) of the Russian Constitution part of the Russian legal order. This inspiration will be increased and strengthened by the creation in the EU Constitution of the common space of freedom, security and justice.
5. Furthermore Russian companies can rely on non-discriminatory treatment should they want to establish themselves in EU Member States. After EU Enlargement in May 2004 Russian companies will also enjoy the legal protection of non-discrimination in the New Member States, as the PCA will be part of the acquis communautaire.
6. EU Enlargement will also increase stability and prosperity beyond the enlarged Union's borders. There can be no doubt that the enlargement of the EU has been a powerful stimulus for political and economic reforms. It has also supported the creation of competitive, socially oriented market economies. These benefits will be shared with the EU neighbours; growing interdependence means that issues of security and prosperity no longer stop at borders. Enlargement offers an opportunity to extend cooperation with EU neighbours, from border management to trans-European transport networks and people-to-people contacts. See communication (COM (2004)373final) on European Neighborhood Policy Strategy Paper.
7. EU Enlargement will be beneficial to the Russian economy. Trade with the New EU will increase with approximately 50%. Direct proximity to the world's largest Single Market with a single set of rules presents Russian companies with new opportunities for trade and investment.

Conditions for Russian exports to the EU will become more favorable with enlargement: the average level of tariffs will go down from 9% to 4%. Energy supplies, which currently make up 55% of Russia's exports to the EU, are completely free of tariffs and quotas. Enlargement will of course bring the EU closer to Russia; in geographical terms the common border will increase to 2,200 km. This means that operational cooperation in areas such as border management, migration controls and the fight against organized crime has to be managed.

8. Accession of the ten Acceding New Member States will have as an impact on the activities of the Presidential Administration, and Government, as for certain policies they will have to negotiate directly with the European Commission and EU Council, especially in those areas where the exercise of certain state powers has been transferred and belongs irreversible to the acquis communautaire. As a consequence more meetings in Brussels and less in Riga, Tallinn, Vilnius, Warsaw etc. The development of the doctrine of Community law, since the European Court of Justice Decisions in AETR and Open Skies Agreements, will strengthen this tendency.

9. The Partnership and Cooperation Agreement, the cornerstone of EU-Russia relations, will be extended to cover all 25 EU Member States after enlargement. From consideration No. 6 of the Accession Treaties of April 2003 we may conclude that all New Member States shall apply the Partnership and Cooperation Agreement EU – Russia, which after all belongs to the acquis communautaire. However, in theory, these agreements should have been concluded once again bilaterally between the New EU Member States and the Russian federation. If there are conflicting interests and obligations between the PCA and previous Treaties with the Russian Federation, bilateral negotiations have to be held and if necessary compensations have to be made, to get agreement and approval by the Russian Federation. In the Progress Reports for the EU candidate countries we did not find any reference to conflicting obligations between New Member States and Russia. The question arises if these problems have been on the Agenda of the Screening operation and accession negotiations of the candidate countries with the EU. Thanks however to the Protocol of 27 April 2004 to the Partnership and Cooperation Agreement which confirms the extension of the PCA to the enlarged EU and thanks to the Joint Statement on EU Enlargement and EU-Russia relations (SEE ANNEX I) bilateral negotiations are not any more necessary concerning eventual possible conflicting interests between the PCAs and previous Treaties. In the Protocol however we discovered references to pre-accession agreements concerning nuclear materials, contracts for the supply of nuclear materials, agreements on nuclear cooperation etc. In the Joint Statement of 27 April 2004, it was explicitly mentioned that the EU expects the acceding countries to notify to the Commission about the contents of these agreements. The question therefore may arise if the New Member States did

comply with the obligations of Article 307 EC, concerning the elimination of incompatibilities?

10. Through desk-research in the accession treaties (approximately 4.800 pages) documents we discovered approximately 30 references to Russia and the Russian Federation, concerning mainly with the following topics and areas: Transit of persons between Kaliningrad and Russia, visa-policy, borders description, control and cooperation, naturalization, discrimination and the protection of minorities. Withdrawal from international fisheries organizations and the application by the New Member States of the previous concluded agreements as for example the PCA's.
11. The Union in its relations with the Russian Federation will and shall uphold its values according to the Union's External Action referred to in Title V of Part III of the European Constitution. In the field of common foreign and security policy, the Minister for Foreign Affairs / Vice President of the European Commission will act alone, as mandated by the Council. The Minister will be assisted by a European External Action Service, which will embrace the Union's delegations in third countries and to international organizations. After ratification of the European Constitution the EC Delegation in Moscow could be enlarged with such a service. Especially should be mentioned the neighbourship provisions in Article I- 56 Title The Union and its immediate environment. As neighbourship was placed in Part I of the Constitution (before Membership) and not in Part III (External relations) this Article can give Russia a special preferential status. However if we compare this legal basis with that of the Commission's view in the Strategy Paper (COM(2004)373 final , p 26 Article 181a, Russia would be considered as a third country, and would not have the preferential status according to the European Constitution.
12. The impact of EU fundamental rights might be increased by the creation of a common space of freedom, security and justice, especially since the Commission underlines the common values on which EU-Russia relations are built (democracy, rule of law, human rights). The EU will include Human Rights and "democracy clauses" in Co-operation and Association agreements between the EU and Russia. The Copenhagen criteria for Enlargement will have an impact on Russia, as it is incorporated in a common EU space of freedom, security and justice. The Copenhagen criteria require the achievement of stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. As Russia is a party to the European Convention on Human Rights, the Russian judiciary and lawyers will after EU enlargement be encouraged and inspired to follow the examples of their neighbours in protecting fundamental rights. The EU Charter of Fundamental Rights will in any event be a strong statement on the values and principles the European Union stands for and this with regard to the Member States, New Member States and third countries like Russia. For Russia the

increased level of protection by the Charter through the formulation of rights that had not been stated before (for example Article 21 Non-discrimination based on sexual orientation), might inspire Russian judges and might therefore have an impact on the considerations of Russian courts dealing with Human Right cases.

13. The conclusion of the EU- Russia bilateral deal on 21 May 2004 for Russia's entry into the World Trade Organization (WTO) is a direct follow-up of the EU Enlargement since after enlargement the EU as Russia's main trading partner will have over 50 % of Russian foreign trade. Another important issue of this Summit of 25 Member States with Russia, is the message of President Putin that he will request Russia's Duma to ratify as soon as possible the Kyoto Protocol, which implementation will benefit Russia, notably by encouraging the modernization of Russia's energy sector and will improve energy efficiency through the transfer of modern technology.
14. The creation of the Four Common Spaces will take many years. A genuine equal partnership between Russia and the European Union, based on effective common institutions and mutual trust, is essential and necessary to reach the creation of the four Common Spaces. In this way a "common European home" can be build for EU and Russian citizens.
15. It is suggested to upgrade the Cooperation Council to a Permanent Partnership Council, which will be able to meet in different Ministerial formats to find solutions to specific sets of outstanding issues, for example in justice and home affairs or in environmental cooperation. Permanent partnership councils will improve the creation of these four common spaces and the EU-Russia cooperation. However only if the political will from all parties is present.
16. It is further also necessary that the officials involved in this cooperation have sufficient theoretical and practical knowledge of EU and Russian institutions and procedures. To improve the necessary theoretical knowledge the Russian universities like for example MGIMO could play an important role to develop more postgraduate interdisciplinary studies on European integration. It is to be expected that at the next EU-Russia Summit, which will be held on 11 November 2004 in the Hague, during Dutch EU Presidency, a unilaterally agreed action plan of priorities and concrete measures for the Four Common Spaces will be adopted.

APPENDIX

Annex 1

EU and Russia confirm the extension of the PCA to the enlarged EU

Brussels, 27 April 2004
PROTOCOL

TO THE PARTNERSHIP AND COOPERATION AGREEMENT ESTABLISHING A PARTNERSHIP BETWEEN THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES, OF THE ONE PART, AND THE RUSSIAN FEDERATION, OF THE OTHER PART, TO TAKE ACCOUNT OF THE ACCESSION OF THE CZECH REPUBLIC, THE REPUBLIC OF ESTONIA, THE REPUBLIC OF CYPRUS, THE REPUBLIC OF LATVIA, THE REPUBLIC OF LITHUANIA, THE REPUBLIC OF HUNGARY, THE REPUBLIC OF MALTA, THE REPUBLIC OF POLAND, THE REPUBLIC OF SLOVENIA, AND THE SLOVAK REPUBLIC TO THE EUROPEAN UNION

2

THE KINGDOM OF BELGIUM,
THE CZECH REPUBLIC,
THE KINGDOM OF DENMARK,
THE FEDERAL REPUBLIC OF GERMANY,
THE REPUBLIC OF ESTONIA,
THE HELLENIC REPUBLIC,
THE KINGDOM OF SPAIN,
THE FRENCH REPUBLIC,
IRELAND,
THE ITALIAN REPUBLIC,
THE REPUBLIC OF CYPRUS,
THE REPUBLIC OF LATVIA,
THE REPUBLIC OF LITHUANIA,
THE GRAND DUCHY OF LUXEMBOURG,
THE REPUBLIC OF HUNGARY,
THE REPUBLIC OF MALTA,
THE KINGDOM OF THE NETHERLANDS,
THE REPUBLIC OF AUSTRIA,
THE REPUBLIC OF POLAND,
THE PORTUGUESE REPUBLIC,
THE REPUBLIC OF SLOVENIA,
THE SLOVAK REPUBLIC,
THE REPUBLIC OF FINLAND,
THE KINGDOM OF SWEDEN,

3

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

hereinafter referred to as the "Member States" represented by the Council of the European Union, and THE EUROPEAN COMMUNITY AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, hereinafter referred to as "the Communities" represented by the Council of the European Union and the European Commission, of the one part, and THE RUSSIAN FEDERATION of the other part, HAVING REGARD TO the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union on 1 May 2004, HAVE AGREED AS FOLLOWS:

ARTICLE 1

The Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia shall be Parties to the Partnership and Cooperation Agreement, establishing a partnership between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part, signed at Corfu on 24 June 1994 (hereinafter the "Agreement") and shall respectively adopt and take note, in the same manner, as the other Member States of the Community, of the texts of the Agreement, as well as of the Joint Declarations, Exchanges of Letters, and Declaration by the Russian Federation

annexed to the Final Act signed on the same date and the Protocol to the Agreement of 21 May 1997 that entered into force on 12 October 2000.

ARTICLE 2

To take into account recent institutional developments within the European Union, the Parties agree that following the expiry of the Treaty establishing the European Coal and Steel Community, existing provisions in the Agreement referring to the European Coal and Steel Community shall be deemed to refer to the European Community which has taken over all rights and obligations contracted by the European Coal and Steel Community.

ARTICLE 3

This Protocol shall form an integral part of the Agreement.

ARTICLE 4

1. This Protocol shall be approved by the Communities, by the Council of the European Union on behalf of the Member States, and by the Russian Federation in accordance with their own procedures.

4

2. The Parties shall notify each other of the accomplishment of the corresponding procedures referred to in the preceding paragraph. The instruments of approval shall be deposited with the General Secretariat of the Council of the European Union.

ARTICLE 5

1. This Protocol shall enter into force on 1 May 2004 provided that all the instruments of approval of this Protocol have been deposited before that date.
2. If not all the instruments of approval of this Protocol have been deposited before that date, this Protocol shall enter into force on the first day of the first month following the date of the deposit of the last instrument of approval.
3. If not all the instruments of approval of this Protocol have been deposited before 1 May 2004, this Protocol shall apply provisionally with effect from 1 May 2004.

ARTICLE 6

The texts of the Agreement, the Final Act and all documents annexed to it as well as the Protocol to the Partnership and Cooperation Agreement of 21 April 1997 are drawn up in the Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovene and Slovak languages.
They are annexed to this Protocol and are equally authentic with the texts in the other languages in which the Agreement, the Final Act and the documents annexed to it as well as the Protocol to the Partnership and Cooperation Agreement of 21 April 1997 are drawn up.

ARTICLE 7

This Protocol is drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovene, Slovak, Spanish, Swedish and Russian languages, each of these texts being equally authentic.

JOINT STATEMENT ON EU ENLARGEMENT AND EU-RUSSIA RELATIONS

The European Union and the Russian Federation acknowledge the opportunities to further strengthen their strategic partnership offered by the enlargement of the EU. We reaffirm our commitment in this regard to establish the four

common spaces agreed at the St Petersburg Summit in May 2003. The interdependence of the EU and Russia, stemming from our proximity and increasing political, economic and cultural ties, will reach new levels with the enlargement of the EU.

We take note of the Protocol to the Partnership and Cooperation Agreement (PCA), signed today, extending the PCA to the new Member States of the EU. Taking into account the substantial work which has already been done, we agree to step up our efforts to address a number of outstanding issues.

We acknowledge that, overall, the level of tariffs for imports of goods of Russian origin to the new Member States will decrease from an average of 9% to around 4% due to the application by the enlarged EU of the Common Customs Tariff to imports from Russia, as of 1 May 2004, leading to improved conditions for trade. The EU confirms that Russian exports of non alloyed aluminium into Hungary will benefit from a gradual alignment to the Common Customs Tariff until 1 May 2007 as set out in the Treaty of Accession. Furthermore, the EU confirms that Russian exports of aluminium manufactured products benefit as of 1 January 2003 from the EU GSP and will thus be subject to a customs duty rate of around 4% in the enlarged EU. EU also confirms that compensatory tariff adjustments accorded in the context of EU enlargement through modifications of the EU tariff schedule will be applied on an MFN basis to the advantage of Russian exporters.

Agreement has been reached to adapt the EU-Russia agreement on trade in certain steel products to reflect traditional Russian exports to the acceding countries. This will result in an overall increase of the quota. In a related effort, the EU will allow Russian investors into the Community steel industry to benefit from additional quantities of certain steel products for two joint service centres for steel processing in Latvia and Lithuania. These agreed measures will allow Russian exporters to additionally increase their deliveries of steel products to the enlarged EC market by 438 thousand tons to the end of the year 2004.

We have agreed that special measures concerning the most significant existing EU antidumping measures on Russian exports will be adopted. The purpose of the transitional special measures will be to prevent a sudden sharp negative impact on traditional trade flows.

The products subject to the antidumping measures concerned are potassium chloride, ammonium nitrate, grain oriented electrical sheets and products subject to measures incorporating quantitative thresholds, notably silicon carbide, aluminium foil. Reviews of other measures, such as steel wire ropes and cables, may also be initiated on the basis of justified requests by Russian interested parties. These reviews shall be treated as a priority.

Furthermore, we note that as from 1 May all trade defence measures currently applied by the acceding countries on imports from third countries, including Russia, will cease to exist.

We confirm our intention to complete the procedures to introduce new veterinary certificates for exports of products of animal origin from the EU to Russia in the nearest future and to continue negotiations on a veterinary cooperation agreement, which will facilitate trade in goods of animal origin between Russia and the enlarged EU. Both sides commit themselves to address outstanding issues with regard to the ongoing EU authorisation process for import of Russian products and the certification requirements for EU exports of animal products to

Russia. We reaffirm our commitment to avoid any unnecessary disruption of trade in these products. We also settled the specific situation of the transit of animal products to and from Kaliningrad.

We note that the EU is currently examining the market access conditions for Russian exports of agricultural products to the enlarged EU. We reconfirm our wish to conduct mutual consultations on bilateral tariff quotas of agricultural goods introduced by both parties, including the question of a country allocation for the Russian Federation. We will also conduct mutual consultations, in accordance with our obligations under the PCA, before introducing measures which could negatively influence the conditions of trade.

The EU confirms that current contracts for the supply of nuclear materials with the acceding countries, a person or an undertaking, concluded before accession will remain valid on terms and conditions provided therein if duly communicated by the new Member States to the Commission in accordance with the normal rules of notification under the Euratom Treaty. In this context, Russia has drawn the attention of the EU to the existence of agreements concluded with the acceding countries in the field of nuclear cooperation. The EU expects the acceding countries to duly notify the Commission of the contents of those agreements in order to confirm them or request modification in accordance with their provisions. We agree to launch negotiations on an Euratom-Russia agreement on trade in nuclear materials.

We recall the Joint Statement of the EU and the Russian Federation on Transit between the Kaliningrad Region and the rest of the Russian Federation of 11 November 2002 which acknowledges the unique situation of the Kaliningrad region, a part of the Russian Federation separated from the rest of the territory of Russia, and take note of its implementation. In this regard, we welcome the smooth introduction and running of the FTD/FRTD scheme on transit of persons. We also:

- Confirm that, on the basis of Article 12 of the PCA and Article V GATT, we will effectively implement the principle of freedom of transit of goods, including energy between Kaliningrad region and the rest of Russia. In particular, we confirm that there shall be freedom of such transit, and that the goods in such transit shall not be subject to unnecessary delays or restrictions and shall be exempt from customs duties and transit duties or other charges related to transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the costs of services rendered and that treatment no less favourable than that which would have been accorded to such goods had they been transported without transiting through the EU territory shall be accorded to goods in transit to and from Kaliningrad region, as it has to be in general for all trade in goods between the EU and Russia.
- Note that, on the basis of Article 19 of the PCA, prohibitions or restrictions on goods in transit can only be imposed if justified, inter alia, on grounds of public security or protection of health and life of humans, or protection of intellectual, industrial or commercial property. We also acknowledge that such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on transit, within the limits of Community competence.
- Welcome the customs arrangement of 17-18 December 2003 with respect to the implementation of an easy and simple customs procedure for the transit of goods to and from Kaliningrad by road and

rail across EU territory. We take note that due to the simplified administrative procedures administrative costs for customs transit will be lower on 1 May 2004 than before EU enlargement and in any case shall be in line with GATT principles of proportionality and cost-relatedness.

- Underline that this arrangement can be considered as a starting point and that the experience acquired in that context will be of importance in the perspective of fulfilling the aims of Article 78 of the PCA, including inter alia the further facilitation of trade and transit. We hereby confirm our commitment to conclude, as soon as both sides are ready from a legal and practical point of view, a further agreement on the interconnection of the EU and Russian customs transit regimes, also applicable to the transit of goods to and from Kaliningrad, based on the above mentioned principles.
- Recall that no customs transit formalities, including guarantees, are required for movements of goods through pipelines and that electricity is not subject to customs transit under EC law including in respect of transit between the Kaliningrad region and the rest of Russia.
- Note that the activities of private operators providing transit-related services on a commercial basis will take place under fair competitive and market based conditions in accordance with the respective applicable legislation.
- In the context of the creation of the EU/Russia Common Spaces, we undertake to continue work to facilitate trade and to support the social and economic development of Kaliningrad region.
- Confirm our readiness to continue to exchange information on changes made to our respective legislation, including that on customs, affecting trade in goods and to address issues related to the transit regime within the PCA structures.
- Look forward to the final report of the study on the feasibility of a high-speed train connection to Kaliningrad by mid-July 2004.

We recognise the fundamental importance and growing potential of EU-Russia cooperation on energy and energy related issues in the framework of the energy dialogue. The EU confirms that it does not impose any limits on imports of fossil fuels and electricity. The EU recognises that long term contracts have played and will continue to play an important role in ensuring the stable and reliable supplies of Russian natural gas to the EU market.

We note that from 1 April 2002, after a ten-year phase-out period, Member States have been allowed to authorise on a case-by-case basis operations of noisy aircraft (chapter 2) noncompliant with the ICAO resolution from 1990 pursuing to the related EU Directive. This will continue following EU enlargement. The EU confirms that an additional phase-out period until 31 December 2004 has been agreed for operations at Lithuania's Kaunas airport and in Hungary, as set out in the Accession Treaty.

The EU and Russia reaffirm their commitment to ensure that EU enlargement will bring the EU and Russia closer together in a Europe without dividing lines, inter alia by creating a common space of freedom, security and justice.

The EU and Russia underline the importance of people-to-people contacts in promoting mutual understanding between our citizens. We confirm that the facilitated visa issuance regimes between Russia and the acceding states existing at the moment of EU enlargement shall be preserved on a reciprocal basis after 1 May 2004, insofar as they are compatible with EU and Russian legislation. We confirm our intention to facilitate visa issuance for Russian and EU citizens on a

reciprocal basis and plan to launch negotiations in 2004 with a view to concluding an agreement. We will continue to examine the conditions for visa-free travel as a long-term perspective.

We agree to actively pursue negotiations launched in October 2003 with the aim of timely concluding an agreement on readmission.

Further, the EU and the Russian Federation welcome EU membership as a firm guarantee for the protection of human rights and the protection of persons belonging to minorities. Both sides underline their commitment to the protection of human rights and the protection of persons belonging to minorities.