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**THE DEVELOPMENT
OF LEGAL FRAMEWORK
FOR RUSSIA-EU RELATIONS:
2010 RESULTS**



This article deals with the development of legal framework for Russia-EU relations in 2010. The author analyses the preparation of the new basic agreement, the development of sectoral EU-Russia agreements, and soft law amendments, as well as relevant regulations of the European Union and Russian law. The article reviews current initiatives and approaches of the Parties in the legal regulation of the „Partnership for modernisation“.

Key words: *European Union, Russia, New basic agreement, sectoral EU-Russia agreements, soft law, EU legislation, legislation of the Russian Federation.*

1. Introductory remarks. The year 2010, strongly associated in Russia and the EU with the “Partnership for Modernisation” (P4M) initiative yielded enough results for an analysis of the development of legal regulation of Russia-EU relations at the current stage. It is worth emphasising the stability of connections between the strategic partners in 2010, which naturally facilitates the development of the legal framework of their relations.

There seems no doubt that the weakness of the current P4M initiative is the unstable and dated legal framework. Its modernisation requires a study into the existing legal achievements not only within Russia-EU bilateral relations, but also within Russian legal system, which are undergoing change under the influence of the above mentioned bilateral strategic partnership relations. The EU law as a sui generis legal system developed predominantly in the process of economic integration of different European countries, which, alongside Russia, form the European cultural and civilisational system, contains a considerable number of regulations, whose emergence was affected by relations with Russia. Such regulations are found not only in bilateral EU-Russia agreements, but also in regulatory and other EU acts, as well as in the practice of the EU Court of Justice. Let us focus on the key legal novels of 2010 embracing the following components of the legal regulation of Russia-EU relations:

- Russia-EU basic agreement;
- Russia-EU sectoral agreements;
- soft law in the regulation of Russia-EU relations;
- EU legislation;
- Russian legislation.

2. Russia-EU basic agreement. The conclusion of a new agreement on Russia-EU partnership still remains the most urgent issue. Negotiations on the new Russia-EU basic agreement (hereafter referred to as NBA) continue: the twelfth round was held in December 2010. According to the official account of negotiations, delegations made an advance towards a consensus on four sections of the future agreement — on cooperation in the area of politi-

cal dialogue and external security; cooperation in the area of freedom, security and justice, on sectoral economic issues; on culture, research, education, media, sports and youth policies [1]. It is emphasised that the trade and investment issues within the economic section were discussed in the view of the prospect of Russia's accession to the WTO and the establishment of the Customs Union between Belarus, Kazakhstan, and Russia [1].

The comparison of this information to the results of the first two-three rounds shows that the official accounts hardly differ from each other. In my opinion, the course of negotiations is characterised by certain stagnation. The reason lies apparently in the postponement of Russia's accession to the WTO, which, on the one hand, makes the regime of the current Russia-EU partnership and cooperation agreement (PCA) viable and, on the other, hinders the development of a more advanced economic regime between Russia and the EU, since it must be based on the initial conditions of the WTO. The NBA will come into being only after Russia has accessed to the WTO. However, this process is hindered by many other factors that are in need of immediate intervention.

The problem under consideration gives rise to a question whether the path towards the conclusion of NBA chosen in 2006 was right? If the officials followed the advice of the expert groups of the "Russia in United Europe" committee presented in the PCA modernisation concept [2], which suggested modernising the PCA rather than replacing it. For example, a modernising protocol would give us a renewed PCA in line with the current situation. The negotiations on NBA had to be commenced after Russia's accession to the WTO and the identification of the future forms of economic cooperation with the EU ("free trade area", "free trade area plus", "WTO +", etc).

It is still unclear what will be set forth in the trade and investment section of NBA after Russia's accession to the WTO. Most probably, it will concern the establishment of a certain type of free trade area. The first visible in practice sign was the beginning of negotiations between the member states of the European Free Trade Association and Customs Union between Belarus, Kazakhstan, and Russia on concluding a free trade area agreement [3; 4]. It was an important step anticipating the negotiations with the EU, somewhat of a warm-up.

3. Sectoral Russia-EU agreements. In 2010, sectoral cooperation between Russia and the EU included initiatives embracing the joint efforts of the parties aimed at the implementation of the provisions of the third, second and fourth road maps on Russia-EU common spaces [5].

The third road map. 2010 saw the conclusion of one sectoral agreement between Russia and the EU, namely, the Agreement on the protection of classified information. The importance of this document is explained by Russia-EU cooperation in the field of security. I would like to emphasise that I have read this agreement only in the languages of EU member states (it was published in the Official Journal of the European Union). As of today (the end of October 2010), it seems impossible to find this document either published, officially or online. Nor is it available through law-related search engine. And I would like to ask the officials, why?

The second road map. Mass media announced that the Russian party developed a project of agreement on the visa free regime between Russian and the EU. However, it has never been published. This project is buried deep in the ‘subsoil’ of the corresponding Russian and EU structures. Why has it not been published? There is an evident problem of information deficiency in Russia-EU relations.

The fourth road map. In the area of sectoral cooperation, the parties were preparing throughout the year for the opening of negotiation on Russian participation in EU framework programmes in the field of science and technology. The agreement will cover:

- associating Russia with EU policy in the field of research and technological progress;
- Russian financial contribution into the EU budget for these purposes;
- non-discriminating regime of participation of Russian research organisation in EU financed projects.

It will be one of the key aspects in the framework of P4M

4. *Soft law in Russia-EU relations.* Following the Russia-EU summit held in May 2010, a joint statement on the P4M initiative was issued. December saw the signing of a working paper on the implementation of this initiative, which included a package of measures for a period until 2012. This working paper should also be classed as soft law, however, unlike, for instance, road maps; it does not suggest concrete periods for undertaking joint initiatives.

Russia-EU relations are still characterised by a significant share of “paralaw”. Apparently, the parties are ready to reach consensus on many points, but are still unable to agree on strict obligations in most cases.

5. *EU law on relations with Russia.* The most significant events in this area are associated with the practice of the EU Court of Justice pertaining to Russian affairs. The three main developments are as follows.

Firstly, the European Commission put back on the agenda the issue of transsiberian flights. In October the Commission launched an investigation within the procedure laid down in articles 258—260 of the Treaty on the Functioning of the EU against Germany, Finland, Austria, and France pertaining to the incompliance of their airspace agreements with Russia with the EU legislation. The member states strongly oppose the Commission in this relation. The case is approaching court proceedings.

This move of the Commission was not unexpected. In 2009, Austria, Finland, and Sweden lost lawsuits brought by the Commission against these member-states over the incompliance of their investment agreements with Russia with PCA and EU legislation in general. These precedents are very important for the development of the bilateral relations between Russia and the member-states. In fact, the rulings on these cases speak of the narrowing of existing opportunities. The limitations imposed on the external competence of the EU make it possible, according to some Russian scholars, to conclude a number of multilateral agreements with member-states, in particular, in the field of avoidance of double taxation (through concluding one convention instead of 27 stereotypes bilateral agreements) [6, p. IX], as well

as in the field of recognising and enforcement of international court rulings (through acceding to the Lugano II convention) [7].

In view of the lost cases, as well as the *Open skies* case [8—14], the prospects of winning new cases pertaining to airspace agreements in the EU Court of Justice are not very bright. On the other hand, the Russian information agency, Lenta. ru, citing Agence France-Presse, published a material claiming that Russia was ready to review its position of transsiberian flights and exempt all EU airlines from the corresponding fees [15]. It seems that the key to remedying the situation lies in Russian position on the issue.

Secondly, the Russian diamond corporation, Alrosa, lost its case in the Court of Second instance [16]. The case concerned the pro rata principle and the right to be heard during the examination of a case in the framework of the EU competition policy. The Court overrode the ruling of the tribunal made in favour of the Russian company and emphasised the equity of the Commission's decision limiting the trade connections of another diamond company — De Beers — with Alrosa.

Thirdly, it is the case lost by Russian natural persons *Goncharov* [17] and *Volvo Trademark Holding v OHIM — Grebenshikova (SOLVO)* [18]. Both cases concerned the recognition of trademarks on the territory of the EU and both will be continued. Russian citizen Mr. Goncharov filed a claim with the Court of Second instance, whereas Ms Grebenshikova filed a new claim against the Office for Harmonization in the Internal Market with the Tribunal.

6. Russian legislation and relations with the EU. There are two dimension of legal regulation development in this area — Europeanization of Russian legislation and Europeanization of Russian jurisdiction.

Today the most important component of Europeanization of Russian public law is the Europeanization of legislation on technical regulation. In accordance to the amendments made through the federal law No 358-FZ on December 30, 2009 to the federal law On technical regulation of 2002 [19], the government of the Russian Federation are vested with authority to introduce mandatory requirements formulated in EU documents on technical regulation on the territory of the Russian Federation, up to the implementation of analogous Russian technical regulations (paragraph 6.2, article 46 of the Federal law). In this relation, Russia outdistanced all other republics of the former USSR, having integrated into its legislation not only harmonisation measures, but also a possibility of direct reception of EU legislation into internal legal system.

So, in the field of stock market regulation, the provisions of the federal law On Prevention of Illegal Use of Insider Information and Market Manipulation adopted on July 27, 2010 [20] fully embody the norms of the Directive of the European Parliament and Council 2003/6/EC of January 28, 2003 on insider trading and market manipulation [21], as well as the regulation adopted by the EU Commission in the course of the introduction of the Directive, as well as the experience of its implementation in Germany and the UK.

In the field of private law, the Concept of modernisation of the Civil Code in line with the EU regulations and the decree of the president of Rus-

sian On improvement of the Civil Code of the Russian Federation of July 18, 2008 No 1108 [21]. Such concepts have been developed for various sections of the Civil code; most attention is paid to the EU law in the Concept of modernisation of securities regulations.

As to the Europeanization of the practice of the courts, it demonstrates an increase in the number of cases, in which Russian courts apply EU law. This trend is most pronounced in the fields of trade, taxation, and customs, where it has been developing for more than 10 years. However, it penetrates into other spheres too.

In particular, it is worth noting the Ruling of the Constitutional Court of the Russian Federation No 14-P of June 22, 2010, pertaining to the constitutionality test of clause a, paragraph 1 and clause a, paragraph 8 of article 29 of the federal law On Basic Guarantees of Electoral Rights and The Right of Citizens of the Russian Federation to Participate in a Referendum upon complaint of Mr A. M. Malitsky [22]. Paragraph 3, clause 4.1. of the Ruling of the Constitutional Court referred to article 9 of the Council Directive 203/109/EC of November 25, 2003 on the status of permanently residing third country citizens [23], which contains provisions on granting residence permits, for substantiating its position claiming that the granting of a residence permit in EU member states does not suggest the loss of the package of rights granted to a Russian citizen by Russian legislation.

The Supreme Arbitration Court of the Russian Federation in its rule of December 7, 2009 No VAS-13688/09 [24] confirmed the possibility of applying PCA as the basis for recognition and enforcement of international court rulings, in particular, those of Dutch courts. In view of earlier cases pertaining to the application of Article 98 of PCA, one can speak of the existence of an established practice in commercial courts relating to such issues. Moreover, a website dedicated to legal aspects of Russia-EU relations was launched in 2010 (www.eu-law.ru).

Further development of EU legislation pertaining to relations with Russia, the modernisation of bilateral legal framework and Europeanization of Russian law will create opportunities for building a common legal space stretching from Lisbon to Vladivostok.

References

1. *Postojannoe predstavitel'stvo Rossijskoj Federacii pri Evropejskom Sojuze [The Permanent Mission of the Russian Federation to the European Union]*, available at: <http://www.russianmission.eu> (accessed 17 December 2010).

2. *Koncepcija modernizacii Soglashenija o partnerstve i sotrudnichestve mezhdu Rossiej i ES i zakljuchenija Soglashenija o prodivnutom partnerstve, uchrezhdajuwem asociaciju [The concept of modernization of the Partnership and Cooperation Agreement between Russia and the EU and the Agreement on Advanced Partnership to establish associations]*, 2005, Moscow.

3. *Minjekonomrazvitija Rossii [Ministry of Economic Development of the Russian Federation]*, available at: http://www.economy.gov.ru/minec/press/news/doc20101123_04 (accessed 15 December 2010).



4. *Postojannoe predstavitel'stvo Rossii pri Evropejskom sojuze* [*Permanent Mission of the Russian Federation to the European Union*], available at: <http://www.russianmission.eu> (accessed 17 December 2010).

5. *Oficial'nyj sajt Prezidenta Rossii* [*Official website of the President of Russia*], available at: <http://www.kremlin.ru/text/news/2005/05/88001.shtml> (accessed 17 December 2010).

6. Zakharov, A. V. 2010, *Nalogovoe pravo ES: aktual'nye problemy funkcionirovaniya edinoj sistemy* [*EU tax law: current problems of the unified system*], Moscow.

7. Mikhailova, S. A. 2009, *Nekotorye aspekty evropejskoj transgranichnoj nestojatel'nosti* [Some aspects of European cross-border insolvency. In: *Aktual'nye problemy sovershenstvovaniya rossijskogo zakonodatel'stva i pravoprimeneniya: materialy mezhdunarodnoj nauchno-prakticheskoj konferencii* [Actual problems of the Russian legislation and enforcement], the International Scientific and Practical Conference] (Russia, Ufa, April 29, 2009), vol. 1, *Gosudarstvenno-pravovye i mezhdunarodno-pravovye problemy* [*Public legal and international legal issues*], Ufa, pp. 161—163.

8. Case C-467/98 *Commission v Denmark*, 2002, *European Court Report*, I-09519.

9. Case C-468/98 *Commission v Sweden*, 2002, *European Court Report*, I-09575.

10. Case C-469/98 *Commission v Finland*, 2002, *European Court Report*, I-09627.

11. Case C-471/98 *Commission v Belgium*, 2002, *European Court Report*, I-09681.

12. Case C-472/98 *Commission v Luxemburg*, 2002, *European Court Report*, I-09741.

13. Case C-475/98 *Commission v Austria*, 2002, *European Court Report*, I-09797.

14. Case C-476/98 *Commission v Germany*, 2002, *European Court Report*, I-09855.

15. *Rossija soglasilas' otmenit' platu za prolet nad Sibir'ju radi VTO* [Russia has agreed to waive for flying over Siberia for WTO], Nov. 29, 2010, *Lenta.ru*, available at: <http://lenta.ru/news/2010/11/29/charge> (accessed 21 December 2010).

16. Case C-441/07 P *Commission v Alrosa*, 2010, *European Court Report*.

17. Case T-34/07 *Goncharov v. OHIM*, 2010, *European Court Report*.

18. Case T-434/07 *Volvo Trademark Holding v OHIM — Grebenshikova (SOLVO)*, 2009, *European Court Report*.

19. *O vnesenii izmenenij v Kodeks RF ob administrativnyh pravonarushenijah: federal'nyj zakon ot 28 dekabrya 2009 g. №380-FZ* [Amendments to the Code of Administrative Offenders-sheniyah: Federal Law of December 28, 2009 №380-FZ], *Sobranie zakonodatel'stva Rossiyskoy Federatsii* [*Collected Legislation of the Russian Federation*], 2010, no. 1, art. 6.

20. *O protivodejstvii nepravomernomu ispol'zovaniju insajderskoj informacii i manipulirovaniju rynkom i o vnesenii izmenenij v otdel'nye zakonodatel'nye akty Rossijskoj Federacii: federal'nyj zakon ot 27 ijulja 2010 №224-FZ* [On combating misuse of insider information and market manipulation and amending certain legislative acts of the Russian Federation: Federal Law of July 27, 2010 №224-FZ], *Sobranie zakonodatel'stva Rossiyskoy Federatsii* [*Collected Legislation of the Russian Federation*], 2010, no. 31, art. 4193.

21. *O sovershenstvovanii Grazhdanskogo kodeksa Rossijskoj Federacii: ukaz Prezidenta RF ot 18 ijulja 2008 g.* [Improving the Civil Code of the Russian Federa-

tion Presidential Decree July 18, 2008], *Sobranie zakonodatel'stva Rossiyskoy Federatsii* [Collected Legislation of the Russian Federation], 2008. no. 29, ch. 1, art. 3482.

22. Ob osnovnykh garantijah izbiratel'nykh prav i prava na uchastie v referendume grazhdan Rossijskoj Federacii» po zhalobe grazhdanina A. M. Malickogo: postanovlenie Konstitucionnogo Suda RF ot 22 ijunja 2010 g. №14-P po delu o proverke konstitucionnosti podpunkta «a» punkta 1 i podpunkta «a» punkta 8 stat'i 29 Federal'nogo zakona [On Basic Guarantees of Electoral Rights and the Right to Participate in Referendum in the Russian Federation "on the complaint of a citizen AM Malitskaya: the Constitutional Court on June 22, 2010 №14-P of the case on the constitutionality of paragraph "a" of paragraph 1 and paragraph "a" of paragraph 8 of Article 29 of the Federal law], *Sobranie zakonodatel'stva Rossiyskoy Federatsii* [Collected Legislation of the Russian Federation], 05.07.2010. no. 27, art. 3552.

23. *OJL*. 2004, no. 16, 23.1, p. 44.

24. Ob otkaze v peredache dela v Prezidium VAS RF: opredelenie VAS RF ot 7 dekabnja 2009 g. №VAS-13688/09 [Refusal to transfer the case to the Presidium of the Russian Federation: definition of the RF on December 7, 2009 №VAS-13688/09], *Sprav.-pravovaja sistema «Konsul'tantPljus»* [Legal-reference system «Adviser Plus».]

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