

# PROSPECTS OF THE PARTNERSHIP BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF KAZAKHSTAN

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## 1. Introduction

Since obtaining its independence on 16 December 1991 one of the major priorities of Kazakhstan's foreign policy, which is predicated on a so-called "multi-vectored" approach, was establishing and maintaining mutually beneficial political and economic cooperation with the European Union (EU). Located at the very heart of Eurasia between two major world powers such as Russia and China, Kazakhstan needs strong relations with the EU to balance the influence exerted by Moscow and Beijing and considers the cooperation with the EU as a vital precondition both of its independence and sustainable economic development. The EU had also a strong interest in developing relations with Kazakhstan, a country that lies at a strategically important intersection between Europe and Asia and possesses large fossil fuel reserves and plentiful supplies of other natural resources. The EU strongly supports the sovereignty of Kazakhstan and is the major foreign investor in the country. Moreover, the EU actively facilitates Kazakhstan's commitment to rule of law, democracy, fundamental freedoms, and free market economy, i.e. those values that underlie the EU's constitutional structure and the EU attempts to promote around the globe.<sup>1</sup>

Due to their mutual interest in each other the EU and Kazakhstan could establish partnership based on devotion to principles of public international law, international human rights standards, good governance, open and constructive political dialogue, mutual trust and respect, transparency, and economic liberalization. As a result, their relations have gained a very dynamic character during the past more than twenty years and have significantly grown both in depth and intensity encompassing at the present time a wide variety of political, economic, social and cultural ties.

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<sup>1</sup> On the values underlying the EU see e.g. Z. Kembayev, "Evolution of the Idea of a United Europe: Some Legal Conclusions", 4 *Journal of Philosophy of International Law* (2013), 14-27.

The aim of this article is to examine the development of the EU-Kazakhstan partnership, to highlight major problems experienced by both parties and to identify the prospects of the future progress of the partnership.<sup>2</sup>

## **2. Partnership and Cooperation Agreement**

On 2 February 1993 the President of Kazakhstan Nursultan Nazarbayev paid his first official visit to Brussels. As a result, Kazakhstan and the (at that time still emerging) European Union set up diplomatic relations. Already in December 1993 Kazakhstan opened its representative office to the European Commission in Brussels and in November 1994 the Delegation of the European Union to Kazakhstan started to operate in Almaty. Simultaneously the parties began to work on creating a new international legal framework for cooperation that would replace the Agreement between the European Communities and the USSR on Trade and Commercial and Economic Cooperation of 18 December 1989. As a result, on 23 January 1995, during the next visit of the President of Kazakhstan in Brussels, the Partnership and Cooperation Agreement between the European Communities and their Member States, on the one part, and the Republic of Kazakhstan, on the other part (hereinafter PCA), was signed. The process of ratification of the PCA was completed within four years<sup>3</sup> and it entered into force on 1 July 1999.<sup>4</sup>

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<sup>2</sup> On the EU-Kazakhstan partnership see also e.g. Z. Kembayev, “Правовые основы партнерства между Республикой Казахстан и Европейским Союзом” [Legal Foundations of the Partnership of the Republic of Kazakhstan and the European Union], *Jurist* (6) (2013), 44-49.

<sup>3</sup> It was clear that the ratification of the EU-Kazakhstan PCA will be a long process as the Agreement had to be ratified by the European Parliament and the national parliaments of all EU member states. Also, Kazakhstan experienced a political crisis resulting from the dissolution of its Parliament in March 1995. Thus, the European Parliament issued a note saying that it would not consider ratification of the Agreement until the restoration of parliamentary democracy in Kazakhstan. Only after parliamentary elections in Kazakhstan in December 1995, the European Parliament resumed working on the ratification of the PCA. On the political crisis in Kazakhstan in 1995 see Z. Kembayev, “The Rise of Presidentialism in Post-Soviet Central Asia: The Example of Kazakhstan”, in Rainer Grote and Tilmann Röder (eds.), *Constitutionalism in Islamic Countries: Between Upheaval and Continuity* (Oxford University Press, New York, 2011), 415-430.

<sup>4</sup> Nevertheless, pending ratification of the PCA the parties negotiated an Interim Agreement on 22 December 1994 with the purpose to immediately put into effect most of the PCA provisions related to trade and economic issues. On

The very title of the EU-Kazakhstan PCA reflects the commitment of its parties to the principle of partnership that became very popular in the late 1980s and early 1990s in connection with the collapse of the former socialist bloc. In particular, this principle implies that confrontation between the two antagonistic political and economic systems is now to be replaced by cooperation between all countries on the basis of democracy, rule of law and market economy. In this context, it should be noted that that the EU concluded similar agreements with most other post-Soviet countries/members of the Commonwealth of Independent States (CIS), replacing the EC-USSR Agreement of 18 December 1989 and aiming at strengthening their democracies through political dialogue and developing their economies through cooperation in a wide range of areas.<sup>5</sup>

Similarly to Partnership and Cooperation Agreements with other post-Soviet/CIS countries, the PCA was conceived to be a comprehensive framework document consisting of a preamble, 100 articles (divided into nine chapters) and a number of annexes. The contents of the EU-Kazakhstan PCA contain the typical components of the EU's partnership with CIS countries including: (1) stipulating the parties' commitment to respect the principles of international law and observe human rights as defined in particular in the UN Charter, the Helsinki Final Act and the Charter of Paris for a New Europe; (2) providing a framework for political dialogue; (3) supporting efforts to consolidate democracy; (4) promoting trade and investment on the basis of the WTO principles; and (5) establishing cooperation in economic, social, financial, technological and cultural fields.<sup>6</sup>

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that period see also Z. Kembayev, "Republik Kasachstan und die Europäische Union: Rechtsgrundlagen einer Partnerschaft", 46 *Jahrbuch für Ostrecht* (2005), 341-356.

<sup>5</sup> The first Partnership and Cooperation Agreements were concluded with Ukraine (signed on 14 June 1994 and entered into force on 1 July 1998) and Russia (signed on 24 June 1994 and entered into force on 1 December 1997). Subsequently, Partnership and Cooperation Agreements were signed with Moldova (28 November 1994), Kyrgyzstan (9 February 1995), Armenia, Azerbaijan, Georgia (with all three on 22 April 1996), and Uzbekistan (21 June 1996), all of which (the same as the one with Kazakhstan) entered into force on 1 July 1999. The Partnership and Cooperation Agreement with Tajikistan was signed on 11 October 2004 and entered into force on 1 January 2010. Also, the EU signed Partnership and Cooperation Agreements with Belarus on 6 March 1995 and Turkmenistan on 25 May 1998; however, those agreements did not take effect as their ratification was frozen by the EU in response to the political situations in those countries and the lack of their commitment to democratic values.

<sup>6</sup> Yet the contents of PCAs may have some differences. Thus, unlike the EU-Kazakhstan PCA, Partnership and Cooperation Agreements with Ukraine and Russia contain clauses foreseeing the creation of necessary conditions for the future establishment of an FTA.

The PCA became the starting point for the development of relations between the parties constituting a basis for the adoption of additional instruments that govern the EU-Kazakhstan partnership such as the Memorandum of Understanding on Cooperation in the Field of Energy (2006) and the Memorandum of Understanding on Cooperation in the Field of Transport (2009). In addition, the implementation of the PCA (as well as the same agreements with other Central Asian countries) significantly contributed to the adoption of the EU Strategy for a New Partnership with Central Asia currently representing a framework for the EU's regional approach in cooperation with the Central Asian countries (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan).<sup>7</sup>

The PCA was concluded for an initial period of 10 years and supposed to automatically renew year-by-year. In November 2009, the EU-Kazakhstan Cooperation Council adopted a joint statement marking the tenth anniversary of the entry into force of the PCA. Observing the successful implementation of the PCA in the past decade (evidenced by establishing an effective bilateral political dialogue and the EU becoming Kazakhstan's biggest trading partner and foreign investor), the parties recognized, however, the emergence of new challenges (such as the fight against terrorism, international crime and trafficking, religious radicalism, as well as the mitigation of climate change and the establishment of transnational transport corridors) that can only be effectively tackled through concerted joint efforts and stepping up bilateral cooperation. Therefore, the EU and Kazakhstan shared the view that the PCA in its present form does not reflect to the full extent the "mature partnership" which has developed in the past years, nor Kazakhstan's growing relevance as a political and economic actor.<sup>8</sup> As a result, on 27 June 2011 in Brussels negotiations on a new agreement on enhanced partnership started with the aim of upgrading the EU-Kazakhstan relationship.

### **3. Political Dialogue**

By concluding the PCA, Kazakhstan and the EU established a regular political dialogue between each other and committed themselves to develop and intensify it. It has the following

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<sup>7</sup> The Strategy was adopted by the European Council on 21-22 June 2007. It is available at <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010113%202007%20INIT>>.

<sup>8</sup> See Joint Statement of the 11th EU-Kazakhstan Cooperation Council (17 November 2009), available at <[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/er/111290.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/111290.pdf)>.

major objectives: (1) to accompany and consolidate the rapprochement between the EU and Kazakhstan; (2) to support the political and economic changes underway in Kazakhstan; (3) to strengthen the links between Kazakhstan and the EU and its member states, and thus with the community of democratic nations as a whole; and (4) to bring about an increasing convergence of positions on international issues of mutual concern thus increasing security and stability.<sup>9</sup>

For conducting their political dialogue Kazakhstan and the EU created an institutional framework. It includes the Cooperation Council, the Cooperation Committee and the Parliamentary Cooperation Committee. The Cooperation Council consists of the members of the Council of the European Union and members of the European Commission, on the one hand, and of members of the Government of Kazakhstan, on the other. It meets at ministerial level once a year and supervises the implementation of the PCA. It may examine any major issue arising within the framework of the PCA or any other bilateral or international issue of mutual interest for the purpose of attaining the objectives of the PCA and may make appropriate recommendations. The office of President of the Cooperation Council is held alternately by a representative of the EU and by a member of the Government of Kazakhstan.<sup>10</sup> In performance of its duties the Cooperation Council is assisted by a Cooperation Committee composed of representatives of the parties at senior (ministerial) official level. The Cooperation Committee ensures continuity between meetings of the Cooperation Council. The Parliamentary Cooperation Committee is a forum for members of the Kazakhstan's Parliament and the European Parliament to meet and exchange their views. It may request relevant information regarding the implementation of the PCA and make recommendations to the Cooperation Council. To be also noted is that the EU Strategy for a New Partnership with Central Asia establishes a regular regional political dialogue between the EU with Central Asian countries at Foreign Minister level.

The EU and Kazakhstan agreed that their political partnership will be based on principles of international law as defined in particular in the United Nations Charter, the Helsinki Final Act and the Charter of Paris for a New Europe.<sup>11</sup> In particular the PCA emphasized the commitment

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<sup>9</sup> PCA, Art. 4.

<sup>10</sup> On 24 July 2013 the 13<sup>th</sup> meeting of the Cooperation Council between the EU and Kazakhstan took place. The meeting was chaired by Minister of Foreign Affairs of the Republic of Lithuania, Mr. Linas Linkevicius, as head of the EU delegation. The delegation of Kazakhstan was led by Mr. Yerbol Orynbayev, Deputy Prime Minister of the Republic of Kazakhstan.

<sup>11</sup> PCA, Art. 2.

of the parties to promote international peace and security and the peaceful settlement of disputes,<sup>12</sup> and especially in the post-Soviet area.<sup>13</sup> To this end Kazakhstan and the EU agreed to cooperate in the framework of the United Nations and the Organization for Security and Cooperation in Europe (OSCE). Also, the PCA provided that major principles underlying the EU-Kazakhstan relations include respect for democracy, rule of law and human rights. The parties agreed that these principles will underpin their internal and external policies of and constitute an essential element of their partnership. Thus, we can clearly distinguish two priority areas of the EU-Kazakhstan political partnership: (1) cooperation in the matters related to peace and security; and (2) promotion of democracy, rule of law and human rights.

The EU-Kazakhstan political dialogue in the first area may be characterized as effective and fruitful. Kazakhstan emphasizes security and stability in its domestic affairs and successfully projects them to the entire region. It has peaceful and stable relationships with all of its neighbors. Even though Kazakhstan is a member of the Russia-led Collective Security Treaty Organization and the Shanghai Cooperation Organization (dominated by China), Kazakhstan is also a member of the North Atlantic Cooperation Council and an active participant at the Partnership for Peace Program that allows it to build up an individual relationship with NATO.<sup>14</sup> Besides, Kazakhstan plays an important role in the OSCE. It held the chairmanship of this organization in 2010 and organized an OSCE summit in Astana in December 2010. To be noted is also that Kazakhstan hosted a ministerial meeting for the Conference on Interaction and Confidence Building Measures in Asia in September 2012. The EU supports Kazakhstan's effort aimed at ensuring security and stability in Eurasia generally and in Central Asia in particular. It needs a stable and reliable partner in Central Asia, a region beset by numerous security threats and challenges. Therefore, it works closely with Kazakhstan *inter alia* in order to promote confidence-building measures, especially in such areas as the fight against extremism, terrorism, trans-boundary crimes as well the management of water resources.

However, the dialogue in the second area cannot be qualified as harmonious. Since its independence, Kazakhstan has some achieved progress in building institutions of modern and

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<sup>12</sup> Ibid, Preamble.

<sup>13</sup> Ibid, Art. 3.

<sup>14</sup> Moreover, on 31 January 2006 Kazakhstan choose to deepen their cooperation with NATO by developing an Individual Partnership Action Plan.

functional genuine democracy.<sup>15</sup> In 2004 the Kazakhstan Parliament concluded an agreement on cooperation with the Parliamentary Assembly of the Council of Europe (PACE). Members from both chambers of the Kazakhstan Parliament may regularly attend Assembly sessions in Strasbourg. In 2008, according to the EU Strategy for a New Partnership with Central Asia, the EU launched regular, result-oriented “Rule of Law Initiative” and “Human Rights Dialogue” for Kazakhstan (and other Central Asian countries) in order to support legal and judicial reforms and to promote human rights. In March 2012, Kazakhstan became a member of the European Commission for Democracy through Law (Venice Commission).

Nevertheless, the EU continuously raises concerns regarding a number of human rights issues in Kazakhstan, including excessive restrictions on the press, on political opposition, on religious groups and on civil society organizations. Furthermore, the EU frequently criticized elections in Kazakhstan to fall short of being genuinely pluralistic and not to meet key democratic principles. In this regard the EU underlines that closer and stronger bilateral ties must go hand in hand with adherence to the common values of democracy, rule of law and respect for human rights and urges the Kazakh authorities to make every effort to improve the human rights situation in their country by implementing the recommendations of the Venice Commission and bringing its legal system fully into line with international standards. Therefore, the EU emphasizes that progress in the negotiation of the new PCA must be linked to the progress of political reforms in Kazakhstan and its commitment to build up an open and democratic society including an independent civil society and opposition and respecting fundamental rights and the rule of law.<sup>16</sup>

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<sup>15</sup> In particular Kazakhstan ratified all major human rights conventions (including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights). It enacted the moratorium on the execution of the death penalty in December 2003. On the human rights situation in Kazakhstan see Z. Kembayev, “К вопросу о конституционных правах и свободах человека в Казахстане” [On the Issue of Constitutional Rights and Freedoms in Kazakhstan], *Jurist* (8) (2009), 40-43.

<sup>16</sup> The EU has made a series of statements that enhanced cooperation should be accompanied by full commitment to the values of democracy, rule of law and respect for human rights. Thus, on 2 February 2012 the High Representative of the Union for Foreign Affairs and Security Policy Catherine Ashton issued the statement expressing her concerns in particular about the Kazakhstani government’s handling of the Zhanaozen protests in late 2011. She took into account the results of the recent Parliamentary elections in Kazakhstan. Further, she stated that the EU is committed to strengthen its relations with Kazakhstan through negotiating a new enhanced PCA; however, as stated by the EU before, progress in these negotiations depend on progress on political reforms in Kazakhstan.

## 4. Economic Partnership

### 4.1. General Provisions

The PCA emphasizes that more intense political relations between the parties can be achieved by facilitating their economic convergence on the basis of the principles of market economy.<sup>17</sup> Therefore, the PCA is intended to pursue Kazakhstan's "progressive integration into the open international system" based on the liberalization of trade and other principles of the WTO/GATT.<sup>18</sup> The examination of the PCA's text gives ground to distinguish the following major provisions related to the current status of the EU-Kazakhstan economic partnership.

*First*, the PCA recognizes economic and social disparities between Kazakhstan and the EU and aims at eliminating them through EU assistance to the development and restructuring of the Kazakh economy.<sup>19</sup> Until 2006 the EU technical assistance to Kazakhstan was provided in the framework of TACIS program.<sup>20</sup> Since 2007 the TACIS for Central Asian countries was replaced by a new program called "Development Cooperation Instrument".<sup>21</sup> The EU support has been especially important in the first decade of Kazakhstan's development as an independent country. In spite of having significant resources which in recent years enable Kazakhstan to finance more of its own development, the country still needs technical expertise. Consequently, EU funds are

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<sup>17</sup> PCA, Arts. 2, 4.

<sup>18</sup> *Ibid*, at Preamble.

<sup>19</sup> *Ibid*.

<sup>20</sup> The TACIS (Technical Assistance to the Commonwealth of Independent States) program aimed to promote the transition to a market economy and to reinforce democracy and the rule of law in the partner states in Eastern Europe and Central Asia. From 1991 to 2006 TACIS provided assistance in the total amount of € 166 million for the implementation of projects primarily related to restructuring state-owned enterprises and conducting public administration reform by sending expert groups and providing advice.

<sup>21</sup> Under this instrument, the EU finance measures aimed at supporting two strategic priority areas: a) "poverty reduction and increasing living standards"; and b) "good governance and economic reform". The DCI indicative budget 2011-2013 was allocated by country as follows: Kazakhstan: €30 million (14%); Kyrgyzstan: €51 million (24%); Tajikistan: €62,1 million (29%); Turkmenistan: €30,9 million (14%); Uzbekistan: €42 million (19%). In addition, in 2007 the EU launched "Central Asia Invest" program with the purpose to promote the development of the private sector, especially of small and medium-sized enterprises.



mostly allocated for policy advice to various state bodies based on European experience and best international practices.<sup>22</sup>

*Second*, the PCA builds trade relations between the EU and Kazakhstan on the basis of the WTO principles (despite the fact that Kazakhstan still did not join the global trading system as a WTO member). In particular, the parties agreed to govern their relations on the basis of such principles as non-discrimination, including most-favored-nation (MFN) and national treatment clauses. Also, they set up free transit of goods via or through their territory and agreed that goods must be traded at their market price and quantitative restrictions on imports may no longer apply between the parties.<sup>23</sup> As a result, the EU became Kazakhstan's leading trading partner ahead of Russia and China accounting for 35.6 % of the total trade of Kazakhstan (31.1 billion Euro), 45.2 % of its exports (23.6 billion Euro), and 22.2 % of its imports (7.5 billion Euro) in 2013.<sup>24</sup> To be noted is also that since 2003 Kazakhstan's exports to the EU grew almost six fold while imports from the EU increased four times.<sup>25</sup>

*Third*, the PCA applies MFN and national treatment clauses for the establishment and operation of the EU and Kazakhstan companies<sup>26</sup> and provides discrimination-free treatment (in particular with respect to working conditions, remuneration and dismissal) to all legally employed citizens of the EU and Kazakhstan in the territories of the parties. The companies of the parties (or their subsidiaries or branches) may employ the so called "key personnel" from among their own nationals. In addition, the parties agreed to create better conditions for investment protection, the transfer of capital and the exchange of information on investment opportunities by concluding agreements between the EU member states and Kazakhstan on promotion and protection of investment<sup>27</sup> and on avoiding double taxation.<sup>28</sup> Finally, the PCA

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<sup>22</sup> See European Commission. International Cooperation and Development: Kazakhstan, available at <[https://ec.europa.eu/europeaid/countries/kazakhstan\\_en](https://ec.europa.eu/europeaid/countries/kazakhstan_en)>.

<sup>23</sup> These provisions, however, do not apply for textile and coal and steel products. The trade in those goods is governed by Agreement between the European Economic Community and the Republic of Kazakhstan on trade in textile products of 15 October 1993 and Agreement between the European Community and the Republic of Kazakhstan on trade in certain steel products of 19 July 2005.

<sup>24</sup> See European Union, Trade in Goods with Kazakhstan, available at <[http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_113406.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113406.pdf)>.

<sup>25</sup> Ibid.

<sup>26</sup> These conditions do not apply to air, inland waterway and maritime transport.

<sup>27</sup> In this regard it should be noted that at present Kazakhstan concluded agreements on promotion and protection of investments with 20 EU member states: Austria, Belgium-Luxembourg Union, Bulgaria, Great Britain, Hungary,

requires the parties to authorize: a) any payments in freely convertible currency on the current account of balance of payments between their residents connected with the movement of goods, services or persons; and b) free movement of capital relating to direct investments made in their companies, the liquidation or repatriation of these investments and of any profit stemming from them.<sup>29</sup> Consequently, at the present the EU is the largest investor in Kazakhstan with the gross investment of about 68 billion USD during the period of 2000-2011 (including almost 12 billion USD invested in 2011).<sup>30</sup>

*Fourth*, Kazakhstan and the EU consider the approximation of their legislation as an important condition for strengthening their partnership. In this regard, Kazakhstan committed itself to make efforts to ensure that its legislation will be gradually made compatible with the EU Law while the EU pledged itself to provide necessary technical assistance (exchange of experts, organization of seminars, aid for translation of the EU legislation in the relevant sectors).<sup>31</sup>

#### *4.2. Energy and Transport Partnership*

Cooperation in the energy sector occupies a special place in the EU-Kazakhstan partnership as both parties are strongly interested in stability of energy supplies and predictability of energy demand. The EU's economy demands a steady flow of energy while the energy that the EU imports from Kazakhstan contributes very significantly to Kazakhstan's development. Thus,

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Germany, Greece, Spain, Italy, Latvia, Lithuania, Netherlands, Poland, Romania, Slovakia, Finland, France, Czech Republic and Sweden.

<sup>28</sup> Currently Kazakhstan concluded agreements on avoidance of double taxation also with 20 EU member states (with all of the above-mentioned countries except for Greece, but with addition of Estonia).

<sup>29</sup> PCA, Arts. 41, 46.

<sup>30</sup> See Kazakhstan & the EU. Trade and Economic Relations, available at <[http://eeas.europa.eu/delegations/kazakhstan/eu\\_kazakhstan/political\\_relations/index\\_en.htm](http://eeas.europa.eu/delegations/kazakhstan/eu_kazakhstan/political_relations/index_en.htm)>.

<sup>31</sup> The approximation of laws extended in particular to the following areas: customs law; company law; banking law; company accounts and taxes; intellectual property; protection of workers at the workplace; financial services; competition law; public procurement; protection of health and life of humans, animals and plants; the environment; consumer protection; indirect taxation; technical rules and standards; nuclear laws and regulations; and transport. See PCA, Art. 43 (2).

it is very logical that the PCA proclaims commitment of the parties to the European Energy Charter<sup>32</sup> and “the progressive integration of the energy markets in Europe”.<sup>33</sup>

The EU is one of the largest energy importers<sup>34</sup> and Kazakhstan becomes one of the largest energy exporters.<sup>35</sup> Both the EU and Kazakhstan are strongly interested in full implementation of the provisions of the Energy Charter Treaty and especially with respect to the free transit of hydrocarbons and the diversification of transportation routes. Therefore, they actively cooperate in the framework of TRACECA<sup>36</sup> and INOGATE<sup>37</sup> programs. Also,

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<sup>32</sup> PCA, at Preamble. Kazakhstan signed the Energy Charter Treaty and the Protocol on Energy Efficiency and Related Environmental Aspects on 17 December 1994 and ratified these instruments on 18 October 1995. Thus, Kazakhstan is a member of the Energy Charter Conference, an intergovernmental organization that is the governing and decision-making body for the Energy Charter process aiming at achieving the following Energy Charter Treaty objectives: 1) the protection of foreign investments, based on the extension of national treatment, or most-favored nation treatment (whichever is more favorable) and protection against key non-commercial risks; 2) non-discriminatory conditions for trade in energy materials, products and energy-related equipment based on WTO rules, and provisions to ensure reliable cross-border energy transit flows through pipelines, grids and other means of transportation; 3) the resolution of disputes between participating states, and, in the case of investments, between investors and host states; and 4) the promotion of energy efficiency, and attempts to minimize the environmental impact of energy production and use.

<sup>33</sup> Ibid, Art. 53. Moreover, the PCA provides that “insofar as matters covered by the PCA are covered by the Energy Charter Treaty and Protocols thereto, such Treaty and Protocols shall... apply to such matters to the extent that such application is provided for therein” (PCA, Art. 91).

<sup>34</sup> In October 2011, European Commissioner for Energy Günther Oettinger said that the EU imports over 80% of its oil and over 60% of its gas and that Europe's level of import dependence will grow over the next decades. See <[http://eeas.europa.eu/delegations/kazakhstan/documents/press\\_corner/20111004\\_01\\_en.pdf](http://eeas.europa.eu/delegations/kazakhstan/documents/press_corner/20111004_01_en.pdf)>.

<sup>35</sup> In 2011, Kazakhstan produced over 80 million tons of oil and it is projected that in 2020 Kazakhstan will produce 140 million tons. See <[http://mgm.gov.kz/index.php?option=com\\_content&view=article&id=1781:-2011-&catid=21:2011-09-01-12-16-56&Itemid=10&lang=ru](http://mgm.gov.kz/index.php?option=com_content&view=article&id=1781:-2011-&catid=21:2011-09-01-12-16-56&Itemid=10&lang=ru)>.

<sup>36</sup> TRACECA (Transport Corridor Europe-Caucasus-Asia) is the technical assistance program for the development of the transport corridor between Europe and Asia across the Black Sea, the countries of the South Caucasus, the Caspian Sea and the Central Asian countries with the purpose of supporting political and economic independence of its participants by enhancing their capacity to access European and world markets through diversification of transport routes. It was initiated in May 1993 and has currently the following 14 participants: Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan, Kyrgyzstan, Iran, Moldova, Romania, Turkey, Ukraine, Uzbekistan, Tajikistan, and Turkmenistan.

<sup>37</sup> INOGATE is another technical assistance program funded by the European Union with the purpose to promote: a) converging energy markets of partner countries on the basis of the principles of the EU internal energy market; b) enhancing energy security; c) supporting sustainable energy development; and d) attracting investment towards

Kazakhstan is a participant of the “Baku Initiative” launched on 13 November 2004 with the objective to facilitate the gradual integration of the energy markets of the Littoral States of the Black and Caspian Seas into the EU market as well as the transportation of the extensive Caspian energy resources towards Europe, be it transiting through Russia or via other routes such as Iran and Turkey.

Besides, the EU and Kazakhstan adopted a Memorandum of Understanding on Cooperation in the Field of Energy (4 December 2006)<sup>38</sup> and a Memorandum of Understanding on cooperation in the field of transport (12 June 2009).<sup>39</sup> In the former document the parties agreed to promote enhancing energy security through regular consultations and exchange of information related to the production, processing and transportation of energy resources. The latter document expressed the willingness of the parties to exchange experience and best practices on the development of a sustainable national transport policy covering all modes of transport and to start exploratory discussions with the aim to identify the most efficient way to connect Kazakhstan with the European Transport Networks taking into account the TRACECA corridors, Eurasian routes as well as connectivity between Western China and the EU.

Furthermore, the EU Strategy for a New Partnership with Central Asia (2007) reaffirmed the EU’s willingness to conduct an enhanced regular energy dialogue with Central Asia states in the framework of the Baku Initiative based on the Energy Charter Treaty and bilateral Memoranda of Understanding on energy and transport issues. In particular, the Strategy aims at facilitating: (a) development and expansion of the regional infrastructure in the fields of transport, energy and trade and making better use of Central Asia’s economic potential; (b) exploration of new oil, gas and hydro-power resources and the upgrading of the existing energy infrastructure; and (c) development of additional pipeline routes and energy transportation

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energy projects of common and regional interest. It started in 1996 and has at the present 11 partner countries (all of the above except for Bulgaria, Iran, and Romania).

<sup>38</sup> The text is available at <[http://ec.europa.eu/dgs/energy\\_transport/international/regional/caucasus\\_central\\_asia/memorandum/doc/mou\\_kazakshtan\\_en.pdf](http://ec.europa.eu/dgs/energy_transport/international/regional/caucasus_central_asia/memorandum/doc/mou_kazakshtan_en.pdf)>. The parties also emphasized the importance of the diversification of energy supply routes and the construction (or upgrading) of transportation infrastructure of mutual interest (mentioning in particular the Odessa-Brody-Plock oil pipeline). In addition, they agreed to promote industrial cooperation, both in the upstream and the downstream as well as in the field of energy efficiency, energy saving and alternative renewable energy technologies.

<sup>39</sup> The text is available at <[http://eeas.europa.eu/delegations/kazakhstan/documents/eu\\_kazakhstan/memorandum\\_field\\_transport\\_en.pdf](http://eeas.europa.eu/delegations/kazakhstan/documents/eu_kazakhstan/memorandum_field_transport_en.pdf)>.

networks (in particular, a Caspian Sea-Black Sea-EU energy transport corridor).<sup>40</sup> To be noted is also that in August 2008 Kazakhstan adopted a State Program “Path to Europe” that aims not only at expanding and deepening of the existing relationship, but also at “establishing strategic partnership with the EU and the leading European countries”.<sup>41</sup> In doing so, the Program reiterated Kazakhstan’s commitment and alacrity to pursue the cooperation with EU striving for free transit of hydrocarbons and diversification of transportation routes.<sup>42</sup>

## 5. Conclusion

Kazakhstan and the EU are deeply interested to continue developing and deepening their political and economic relations. However, it obvious that the current PCA does not correspond to the modern time and needs to be updated. The main objectives of the PCA were to assist Kazakhstan in consolidating its statehood and becoming a market economy while currently Kazakhstan is a full-fledged member of international community with a free economic system. Therefore, the further development of the EU-Kazakhstan partnership requires a new enhanced legal foundation. Thus, on 3 June 2013 during the visit of the President of the European Commission José Manuel Barroso to Kazakhstan the parties issued a joint communiqué confirming that their interest in proceeding with negotiating and concluding a new enhanced PCA

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<sup>40</sup> The Strategy also provides that the EU will promote and support: a) removal of trade barriers between the Central Asia states; b) WTO accession for those of them which are not yet WTO members (in doing so, the EU considers WTO accession as a key for wider economic reforms, diversification and better integration of the countries into the international trade and economic system); c) creation of regulatory and institutional frameworks for an improved business and investment environment; d) cooperation in improving access for Central Asian products to EU markets (in this regard the best preferential framework aimed at encouraging exports and economic diversification in these countries is offered by the renewed EU Generalized System of Preferences, GSP–2006/2015).

<sup>41</sup> See Kazakhstan’s State Program “Path to Europe” approved by the Decree of the President of RK, No. 653 of 29 August 2008.

<sup>42</sup> In particular, the Program gave priority to the development of cooperation in the following areas: 1) attracting the latest know-how and gradually adopting European certification standards with the purpose of enabling Kazakh products to access the EU market; 2) enabling Kazakhs investors to acquire energy-related infrastructure in Europe such as ports, terminals, refineries, gas stations, etc.; 3) further developing transcontinental transport corridors in Eurasia and ensuring full participation of Kazakhstan in discussing a wide range of problematic issues in this field; and 4) diversifying Kazakhstan’s exports, in particular by means of the EU Generalized System of Preferences).

between Kazakhstan and the EU. However, adopting a new enhanced PCA will not be easy due to a number of stumbling blocks.

Foremost, the process of negotiating a new agreement is slow due to the EU's mounting disagreements on political reform, including much needed attention to Kazakhstan's Rule of Law and Human Rights record. The EU is concerned about Kazakhstan's lack of democratic development as well as the country's severe shortcomings in upholding the rule of law. It requires Kazakhstan's commitment to democratic values and its progress towards good governance, respect for human rights, the establishment of a multiparty system with truly free elections. In this regard we firmly believe that conducting gradual political reforms in Kazakhstan is a precondition for a reliable and sustainable partnership.

Yet the EU-Kazakhstan partnership is based not only on the political but also on economic liberalization. With respect to the latter, Kazakhstan achieved quite significant progress. However, another major problem hindering a closer EU-Kazakhstan partnership is the fact that Kazakhstan and the EU do not share common border and therefore are not able to fully liberalize their energy and transport markets. To this end it is highly desirable that the EU and Russia would find a compromise on the issues related to the Energy Charter Treaty. This compromise is also required because of the proliferation of regional integration processes in Eurasia in recent years<sup>43</sup> and the proclamation of the Eurasian Economic Union in May 2014.<sup>44</sup> These developments certainly give ground to assume that the EU-Kazakhstan partnership could most successfully function within a strategic partnership between the European and the (emerging) Eurasian Unions.

Forging a strategic partnership between two Unions will be very challenging. However, we believe also that there is already an appropriate framework that may serve as a foundation for cooperation between Europe and Eurasia. This framework may be constituted by the concept of

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<sup>43</sup> For an overview of all integration groupings created on the territory of the former USSR see e.g. Z. Kembayev, *Legal Aspects of the Regional Integration Processes in the Post-Soviet Area* (Springer Verlag, Berlin, Heidelberg, 2009); Z. Kembayev, *The Emerging Eurasian Union: Problems and Perspectives* (REES Public Policy Research Paper, University of Graz, 2014), available at <[http://static.uni-graz.at/fileadmin/rewi-zentren/Reees/Projekte/Zhenis\\_Kembayev.pdf](http://static.uni-graz.at/fileadmin/rewi-zentren/Reees/Projekte/Zhenis_Kembayev.pdf)>.

<sup>44</sup> On the 'most recent events with respect to regional integration processes in the post-Soviet area see e.g. Z. Kembayev, "The (In)Compatibility between Regional Integration Processes in the Post-Soviet Area and within the European Neighborhood Policy", 59 (4) *Osteuropa-Recht* (2013), 369-377; Z. Kembayev, "Regional Integration in Eurasia: Legal and Political Frameworks", *Review of Central and East European Law* (2015), forthcoming.

four “common spaces” (the common economic space, the common space of freedom, security and justice, the common space of external security and the the common space of research and education) that is being negotiated between the EU and Russia since 2003.

A strategic partnership between Europe and Eurasia on the basis of common values and shared interests will definitely contribute to the objective of building a new Europe without dividing lines and creating a space of freedom, security and prosperity from Atlantic to Pacific for the benefit of all peoples living in it.

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