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Europe's interest in the continued economic development of Russia

Opinion¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mrs Sabine Leutheusser-Schnarrenberger, Germany, Alliance of Liberals and Democrats for Europe

A. Conclusions of the Committee

1. The Committee on Legal Affairs and Human Rights congratulates the Committee on Economic Affairs and Development and the Rapporteur, Mr Sasi, on having brought this important topic before the Assembly, after careful consideration and intensive debate.

2. Experience shows that economic development is most successful and durable in countries where the state provides a level playing field for fair competition among businesses, whose owners and employees must enjoy legal security. The state has thus an important role to play in providing a transparent regulatory framework and an efficient, independent judiciary applying the law and enforcing contracts in an unbiased way ("*pacta sunt servanda*"). The Committee therefore considers that the importance of the rule of law as a factor for economic development deserves to be further stressed in the draft resolution tabled by the Committee on Economic Affairs and Development.

3. The amendments proposed below are intended to further strengthen the Assembly's message addressed to all Governments of the Council of Europe's member states in the spirit of a strictly market-oriented, de-politicised approach, highlighting the importance of the rule of law.

B. Amendments proposed by the Committee to the draft resolution

Amendment A:

In paragraph 2, last sentence, insert the words "as well as shortcomings in the rule of law, and wide-spread corruption" before the words "represent serious obstacles to lasting economic growth in the country."

Amendment B:

After paragraph 14, add the following new paragraph:

"International scientific and technological cooperation is an important factor in sustaining the competitiveness of the Russian economy. It is therefore counterproductive that such cooperation has in fact been discouraged by the recent series of criminal prosecutions launched against senior scientists for alleged espionage or violation of official secrecy."

¹ See Doc 11026 tabled by the Committee on Economic Affairs and Development.

Amendment C:

In paragraph 17, after the second sentence, add the following new sentence:

“As a matter of mutual confidence, "rules should not be changed during the game", and the supply of energy should not be abused as a means of political pressure.”

Amendment D:

After paragraph 19., insert the following new paragraph :

“20. The Assembly also recalls its resolution 1418 (2005) and recommendation 1692 (2005) on the circumstances of the arrest and prosecution of leading Yukos executives and regrets that subsequent developments have shown that the Assembly’s well-founded and constructive criticism was not taken into account by the competent Russian authorities.”

Amendment E:

At the end of paragraph 21.1., insert the following words:

“insofar as this is justified in view of progress made by the Russian Federation as regards the rule of law and the fight against corruption.”

Amendment F:

At the end of paragraph 21.2., insert the following words:

“and ensure that the European Union attaches due importance to the Council of Europe’s concerns regarding the rule of law and human rights.”

C. Explanatory memorandum

by Mrs Sabine Leutheusser-Schnarrenberger, Rapporteur

I. Introduction

1. The report by Mr Sasi on “Europe’s interest in the continued economic development of Russia” concerns an important topic that is currently giving rise to intensive discussions throughout our continent. I should therefore like to congratulate the Committee on Economic Affairs and Development on having brought this topic before the Assembly, after careful consideration and intensive debate.

2. In accordance with the distribution of roles among European institutions, the contribution of the Council of Europe to this important debate should focus on rule of law issues, including the protection of property rights, legal certainty, the independence of the judiciary, and the fight against corruption. These are all factors that have a strong impact on the investment climate, and on a country’s chances of fully realising its potential for economic development and prosperity. Any shortcomings in these “legal production factors” invariably lead to an increase of the “risk premium” charged by the markets for investments, which leads to higher capital costs, market volatility, and a tendency towards short-term strategies pursued by investors, to the detriment of sustainable development and the full realisation of a country’s potential.

3. This is the reason why the Committee on Legal Affairs and Human Rights had asked to be seized for opinion for this report. In accordance with the distribution of roles among the Assembly’s committees, this opinion focuses on the above-mentioned rule of law issues. The intention is not to criticise the draft resolution presented by the Economic Affairs Committee, but to complement it, by adding some references to key rule of law issues.

4. Experience shows that economic development is most successful and durable in countries where the state provides a level playing field for fair competition among businesses, whose owners and employees must enjoy legal security. The state has thus an important role to play in providing a transparent regulatory framework and an efficient, independent judiciary applying the law and enforcing contracts in an unbiased way (“pacta sunt servanda”).

5. The amendments proposed below to the draft resolution tabled by the Committee on Economic Affairs and Development are intended to further strengthen the Assembly’s message addressed to all Governments of the Council of Europe’s member states in the spirit of a strictly market-oriented, de-politicised approach.

II. Reasons for amendments

Amendment A:

In paragraph 2., last phrase, insert the words “as well as shortcomings in the rule of law, and wide-spread corruption” before the words “represent serious obstacles to lasting economic growth in the country.”

As explained in the introduction, shortcomings in the rule of law and corruption are indeed “serious obstacles to lasting economic growth” in the Russian Federation and deserve being included in the enumeration of such obstacles in paragraph 2.

As Rapporteur on the circumstances of the arrest and prosecution of leading Yukos executives, I have come across much evidence of shortcomings in the rule of law in the Russian Federation, which I have described in some detail in my report (Doc 10368).

In a new report released on 15 September 2006, the World Bank placed Russia 151st among 208 countries in terms of accountability, political stability, effectiveness of the government, the quality of regulatory bodies, the rule of law, and control over corruption, In the study entitled "Governance Matters: A Decade Of Measuring The Quality Of Governance," Zambia (148), Uganda (149), and Swaziland (150) were placed ahead of Russia, while Niger (152), Kazakhstan (153), and East Timor (154) were just behind.

In my view, it would be in the interest of the Russian Federation to join other member countries of the Council of Europe in the top group of the World Bank’s “rating”.

Amendment B:

After paragraph 14., add new paragraph 15 with the following wording:

"International scientific and technological cooperation is an important factor in sustaining the competitiveness of the Russian economy. It is therefore counterproductive that such cooperation has in fact been discouraged by the recent series of criminal prosecutions launched against senior scientists for alleged espionage or violation of official secrecy"

This Amendment refers to the series of high-profile espionage cases in the Russian Federation, which are the subject of a report prepared by Christos Pourgourides and adopted unanimously by the Committee on Legal Affairs and Human Rights on 15 September. Several high-level scientists, including Mr Sutyagin and Mr Danilov, have received long prison sentences for having made use of information, whilst cooperating with foreign scientific partners, that was already in the public domain. These prosecutions have had a chilling effect on the Russian scientific community, as regards their readiness to engage in international cooperation. The importance of international cooperation in the scientific field for the continued economic development of Russia is rightly stressed in the draft report of Mr Sasi. A gesture towards the Russian scientific community as proposed in the Amendment would therefore be very much in the interest of the Russian Federation itself, as well as in that of the individuals concerned, who, as Mr Pourgourides’ report shows, deserve the Assembly’s support.

Amendment C:

In paragraph 17. after phrase 2, add the following sentence:

“As a matter of mutual confidence, “rules should not be changed during the game”, and the supply of energy should not be abused as a means of political pressure.”

The amendment ties in with the previous one in that monopolies, or dominant market positions, where they still exist, should not be misused for political purposes. The amendment is phrased neutrally, without accusing any country of having committed such abuses. But it sends a clear message that the sale of goods, even of such important commodities as oil and gas, should be guided by the laws of the market and not be subject to political manoeuvring, or used as a means to exercise pressure.

Recent administrative measures regarding the British-Japanese consortium Sakhalin Energy and the Franco-Norwegian Charjaga project have been widely perceived as demonstrations of state power aimed at pressuring the foreign investors concerned (in particular, Shell and Total) to agree to modify a series of contracts (so-called PSA's or Production Sharing Agreements) dating back to the early 1990's, for the benefit of certain Russian companies.²

Amendment D:

After paragraph 19., insert the following new paragraph :

“20. The Assembly also recalls its resolution 1418 (2005) and recommendation 1692 (2005) on the circumstances of the arrest and prosecution of leading Yukos executives and regrets that subsequent developments have shown that the Assembly's well-founded and constructive criticism was not taken into account by the competent Russian authorities.”

Paragraph 19 rightly refers to a previous resolution of the Assembly – Resolution 1455 (2005) on the honouring of obligations and commitments by the Russian Federation - that is indeed highly relevant to the continued economic development of Russia. It is only logical to make a similar reference to the two texts adopted by the Assembly in 2005 on the so-called Yukos affair.

Subsequent developments have shown that the competent authorities have not taken into account the Assembly's criticism, as is borne out by the continued imprisonment of the leading Yukos executives, in the most remote parts of Siberia, making it difficult for their families and their lawyers to maintain contact. I was also informed that Mr Khodorkovsky was repeatedly subjected to severe disciplinary sanctions, for such petty violations as drinking tea in the wrong place, or being in possession of unauthorised reading materials. As regards the dismantling of Yukos for the benefit of Gazprom and Rosneft, following procedures which totally lacked transparency, the beginnings are described in the 2005 report³. The re-distribution of Yukos' assets is now practically completed.

² According to press reports, the EU Commissioner for Energy, Andris Piebalgs, invited the Russian authorities to clearly present their environmental worries and reminded Moscow that the energy partnership between the EU and Russia depended on both sides respecting basic principles such as transparency and reliability. The administrative measures on environmental and other grounds followed a statement to the press by Mr Igor Schuvalov, deputy head of the Presidential administration, who announced that joint projects involving foreign firms in the exploration of Russian energy resources should be transferred into a “national” regime. This had been interpreted as a warning of an impending attack on the three PSA's still existing in the country (cf. DIE WELT, 21 September 2006: “EU-Kommissar fordert mehr Transparenz”, “Plötzliche Liebe zu Wäldern und Wälen”, and “Russland droht jetzt auch Total mit Rausschmiss”). According to press reports on 28 September, President Putin has himself joined the discussion, making a statement that was perceived as threatening foreign oil companies with “measures”.

³ cf. Resolution 1418 (2005), para. 13 and paras. 62-68 of the explanatory memorandum.

Amendment E:

At the end of paragraph 21.1., insert the following words:

“insofar as this is justified in view of progress made by the Russian Federation as regards the rule of law and the fight against corruption.”

Amendment F:

At the end of paragraph 21.2., insert the following words:

“and ensure that the European Union attaches due importance to the Council of Europe’s concerns regarding the rule of law and human rights.”

The accession of the Russian Federation to WTO, and the renewal of the Partnership and Cooperation Agreement between the European Union and the Russian Federation is an objective we all share. The ongoing negotiations, in which Council of Europe member states have an important role to play, provide good opportunities to promote progress regarding the rule of law and respect for human rights. These opportunities should be seized, in the interest of the continued economic development of Russia. It is for the Assembly to remind Governments of the Council of Europe’s member states of their duty to speak up in these important international fora and to ensure that the Council’s rule of law and human rights concerns are voiced in an appropriate manner.

Reporting committee: Committee on Economic Affairs and Development

Committee for opinion: Committee on Legal Affairs and Human Rights

Reference to committee: Doc 10343 and Reference No 3025 of 23 November 2004; Doc 10361, Reference No 3045 of 24 January 2005

Opinion approved by the committee on 2 October 2006

Secretariat of the committee: Mr Drzemczewski, Mr Schirmer, Ms Heurtin