The EU-Russia Ratification Deal: The Risks and Advantages of an Informal Agreement

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During the last years, when the entry into force of the Kyoto Protocol became dependent on its ratification by Russia, the protocol’s prospects appeared quite uncertain. To a great extent this uncertainty was reinforced by the contradictory declarations of Russian officials—promises of imminent ratification that alternated with critiques of the Kyoto regime, including comments that it is discriminatory in character and unacceptable for Russia. The decision-making process on ratification in Russia has not been transparent and elements of uncertainty are dominant. How has the situation changed as a result of the European Union–Russia Summit held in Moscow in May 2004? The answer to that question suggested in this paper is based on the fact that the compromise reached at the summit had the following impacts: (1) it placed the ratification process within a new institutional framework; (2) it had a number of positive implications for facilitating ratification, speeding it up, and reducing uncertainties and risks; (3) it consolidated the positions of the supporters of the Kyoto Protocol in Russia and weakened its opponents; (4) at the same time, the new institutional framework for ratification has led to a number of new uncertainties and risks that may hinder ratification; and (5) the problem, so far, is that that the new risks are not yet fully recognized and protocol supporters continue to counteract the former threats without realizing that the new front lines deviate significantly from the former ones.

Keywords: Kyoto Protocol, Ratification, Climate policy, World Trade Organization, Informal agreement, Risks.

1. A new period in the Kyoto Protocol ratification process: A positive perspective

After the European Union–Russia Summit held in Moscow at the end of May 2004, the Russian and Western press presented wide coverage of its results. Remarkably, the majority of comments agreed that “a deal” was made by the European Union (EU) and Russia: the EU agreed to back Russia’s bid to join the World Trade Organization (WTO) with no formal agreement on Russia ratifying the Kyoto Protocol (Baker 2004; Russian Federation 2004; Melikova 2004; Samotorova 2004; Shapovalov 2004; European Union 2004). Its promise to ratify the protocol was one of the most important developments among the set of decisions agreed during the summit. Thus, it represented a serious shift in Russia’s position on ratification.

The most important signals coming from Russia about its stance on ratifying the protocol were provided by Russia’s president, Vladimir Putin, during the press conference held after signing the major documents of the summit. The most attention was attracted by his three main statements:

a. EcoPolicy Research & Consulting, Moscow, Russia.
• “We support the Kyoto process.”
• “The EU has met us halfway in talks over the WTO and that cannot but affect positively our position on [the] Kyoto Protocol.”
• “We will speed-up Russia’s movement towards the Kyoto Protocol ratification” (Kolesnikov 2004; Denisov 2004; Ratiani 2004).

Until today, the president’s statements regarding the Kyoto Protocol and its ratification had not been as certain and positive as at this occasion, and this can only be regarded as extremely positive for the future of the protocol. From this author’s point of view, it is the most serious guarantee that Russia is able to provide at present regarding its plans for ratification. The uncertainties in deciding on ratification that have existed over the recent period should be reduced to a great extent, but due to a number of technical reasons such uncertainties cannot be reduced to zero right up to the moment of finalizing the ratification procedure.

As is well known, the summit documents do not contain any formal obligations for Russia regarding ratifying the Kyoto Protocol. Moreover, President Putin even mentioned that there were no links between the jointly agreed conditions for Russia’s entry into the WTO and its promise to ratify the protocol: “We do not tie up the WTO and the Kyoto Protocol” (Kolesnikov 2004; Denisov 2004; Ratiani 2004). Before the summit, information filtered into the press that the European Union was insisting upon including ratification of the protocol in the official summit, but Russia objected, saying that this item was not on the originally agreed agenda. Thus, it is reasonable to ask if the regulations agreed on at the summit might result in new uncertainties and risks replacing the former ones and whether the structure of the entire deal is solid enough. This article will look at this issue only in the context of Russia’s commitments. There is a need to find answers to the following two questions: (1) To what extent are President Putin’s motives serious enough to speed up the ratification process? (2) Does he possess the capacities necessary to meet this goal?

2. Motivation mechanisms

During the EU–Russia Summit, ratifying the Kyoto Protocol turned into a matter of bargaining a deal between the two parties. It is well known that this kind of deal is routine diplomatic practice and not at all extraordinary. Both Russia and the European Union demonstrated through this deal that they had common interests and that they were capable of finding ways to realize them. It is also well known that the interests of the parties participating in this kind of deal are not of equal importance to each of them; by taking part in such a deal each participant exchanges less important interests for more important ones, and thus both parties benefit. Hence, the ratification deal is not a zero-sum game where one participant gains a benefit at the expense of the other.

It was obvious that in this particular case it was important for the European Union to secure ratification of the Kyoto Protocol and simultaneously get access to Russia’s market, which absorbs a substantial volume of EU exports, and also to provide considerable and sustainable energy flows to the European Union.
As for Russia, it was important to assure access to WTO markets and remove discriminatory barriers. Besides this obvious goal, Russia, through its entry into the WTO, might provide the solution of a number of problems that are no less important. Putin’s convictions make him a right-wing rather than a left-wing politician, and this is revealed in particular by his views on economic policy; the prospects of joining the WTO fully correspond to right-wing ideas. First, membership in the WTO will not only help entrench the transformation of institutional structures that already took place over the last decade but also to program their implementation in the necessary direction for the future, beyond 2008, when his term in office as the Russian Federation’s president will be over. Second, the entry of Russia into the WTO would allow it to embed the economic structures that were established during the 1990s, but were weakened by the elements of monopoly and corruption into a competitive space provided by the WTO, and to oust the criminal and monopolistic structures from domestic economic sectors. Third, WTO membership will permit the linkage of these institutional changes with an acceleration of economic growth. According to the recommendations of right-wing politician and economist Egor Gaidar, the integration into a wider economic space could be primarily the main way of speeding up growth of gross domestic product (GDP) in Russia. Fourth, through ratification of the Kyoto Protocol, Russia becomes a participant in an international regime that provides the use by its members of flexible mechanisms, further enhancing additional possibilities for technological changes.

3. Impact on the positions of ratification supporters and opponents

Membership in the WTO is not considered by everyone in Russia as something totally valuable; there are far more opponents to Russia’s WTO entry than supporters of ratifying the Kyoto Protocol. The role that the Russian Federation’s president plays in its ratification, however, and the way he understands national interests (in the context of entry into the WTO) can play into the hands of both the supporters of ratification and the supporters of Russia’s membership in the WTO.

Opponents of the protocol in Russia have been emphasizing that its ratification has economic disadvantages for the country and thus should be rejected. Nowadays, however, the chances for such declarations are shrinking considerably, because by rejecting the protocol they block Russia’s entry into the WTO along with its economic benefits. In case the Kyoto opponents are at the same time among the WTO antagonists, they also turn into opponents of the clearly defined position of President Putin, who actively supports Russia’s membership in the WTO. If they enter into a conflict on the issue, which is of high importance on the president’s priorities scale, however, it might result in them losing most of their influence. Opening, through ratification, access to the WTO for Russia puts an end to the wrestling tactics against Kyoto as infringing on national economic interests. Besides, for bureaucrats in the government service such tactics become not only pointless but risky as well. As a result, anti-Kyoto forces in Russia might thin out in the near future. Hence, implementation of such a deal reinforces and consolidates the positions of protocol supporters in the Russian establishment, and it reduces uncertainties and risks within the ratification process.

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1. Note that not all opponents of the Kyoto Protocol have the same position.
4. The role of Russia’s president in the ratification process

The Kyoto Protocol is a multilateral intergovernmental agreement that will become binding for the Russian Federation only after its ratification. The importance of Putin’s recent statements on the protocol is intertwined to a great extent with the decisive role played by the presidency institution within this kind of agreement. The Russian federal law “On International Agreements” assigns a decisive role in this process to two institutions: (1) the Federal Assembly (the State Duma and the Federation Council) and (2) the President (Russian Federation 1995). A draft law on ratifying an international agreement cannot be submitted to the State Duma for ratification without the signature of the president. And, again, it cannot come into force after approval by the Federal Assembly without the signature of the president (who can decline the law). Besides, the federal government is responsible for carrying out the process of submitting the draft law on ratification, and its activities (as are those of the federal executive authorities) are directed by the president.

In addition, it is necessary to take into account that the political party Unified Russia won the majority in the State Duma in the 2003 elections, and this party is supporting the president’s political course. In fact, via this party, President Putin has acquired wide opportunities for control over adoption of the most important laws by the State Duma. So any big surprises are unlikely after he submits the draft law on ratifying the Kyoto Protocol.

This means that in this stage of ratification, Putin is in a crucial position for determining the fate of the Kyoto Protocol. Thus, while earlier (i.e., in the 1990s to early 2000s), when it was mainly mid-level government officials and policy makers that determined Russia’s climate policy, now a new influential actor (i.e., the president) is involved in the development of Russia’s climate policy. And this actor has publicly announced his positive position on ratification of the Kyoto Protocol.

5. Ratification and national interests

In September 2003 Putin already indicated the principles that would determine the decision on ratification of the Kyoto Protocol with the following statement: “The decision will be made...in accordance with Russia’s national interests” (Leskov 2003). The choice of the term “national interests” as the key decision criterion changed the approach to the resolution of this issue; ratifying the protocol was moved up onto the agenda of “Big National Policy.”

The ratification issue is a point where various interests are concentrated and collide—not only the interests of climate policy as such but interests rooted in the policy of economic growth, social policy, energy and structural policies, as well as foreign policy. It means that, according to this approach, the ratification goal can be subordinated to the other goals whose priorities will be regarded as higher. According to this approach, ratification is no longer the subject of climate policy as such, and the decision on ratification cannot be made only within the framework of climate policy itself. The decision will be made on other (higher) levels of competence by actors who have other interests and motivations.

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2. The upper and the lower chambers of the Russian parliament.
3. The Unified Russia party has the constitutional majority in the parliament.
Inclusion of the ratification issue into a package agreement with the European Union signified the practical realization of such an approach; ratification of the protocol seemingly belonging solely to environmental or climate policy was subordinated to the national interests through its linkage with entry in the WTO, i.e., an issue which is completely beyond the environmental domain. The possibility of realizing such an approach was created by a legislative structure that assures the decisive role of the president in decision-making on ratification. But the economic priorities formed within contemporary Russian society will still play an important role in the final decision.

6. Ratification of the Kyoto Protocol and the priorities of Russian society

The structure of priorities in Russian society has some specific features that seem to be different today from those typical in the West. One of its key characteristics is the low ranking given to ecological concerns. The consequence is that ecological considerations are not playing a lead role in the ratification process in Russia (Kotov 2002).

The elections to the State Duma in December 2003 once again highlighted the miserable situation with public awareness of environmental problems that emerged in the early 1990s, and this has been evident for more than a decade. The political parties that paid top-priority attention to environmental problems won a very small percentage of votes. In contrast to the end of the Soviet era in the late 1980s—particularly right after the Chernobyl nuclear power plant disaster, when tens of thousands of people quickly and readily gathered for environmental meetings—the significance of environmental problems in the public mind has declined drastically during the post-Soviet period. In the last election the problems of poverty and economic growth, rather than the environment, were the top-priority problems for the Russian public, although the state of the environment is very poor.

Clearly, President Putin has taken into account in his policies the expectations and preferences of Russian society: his 2004 election platform focused on the fight against poverty and the acceleration of economic growth, and his presidential address to the Federal Assembly focused again mainly on these same two issues. The goal of spurring economic growth resonated particularly with public perceptions. Under these conditions, obviously, there is little possibility that climate policy instruments can be realized in Russia if they are in direct conflict with economic growth. It seems that in the near future climate policy and its instruments are unlikely to have a direct impact on economic growth aims, but even though climate policy is likely to be subordinated to the prevailing economic growth policy there is still a path for its implementation through measures such as increases in gas and electricity prices and cutting off supplies to non-payers—issues which today face active social opposition.

Thus, the absence of environmental concerns among the top priorities of the Russian public inevitably had some impact on the ratification process; ratifying the Kyoto Protocol does not have strong support due to a general lack of concern about ecological issues among the public and political parties. So far, the chances for success of ratification are to be attributed to be economic rather than environmental interests. The key role of economic considerations in the interests of Russian society in

4. The ecological party, named Kedr, received less than 0.5 percent of votes during the parliamentary elections and it failed to get elected into the Duma.
the context of a significant benefit for Russia has the chance of attracting the public and the actors of the ratification process to the camp of ratification supporters. The specific balance of various interests seems to have been realized in an optimal manner within the WTO/Kyoto Protocol ratification deal.

7. New uncertainties and risks

Will the European Union–Russia deal remove all barriers to ratifying the Kyoto Protocol? What are other possible implications of this deal for perspective ratification? Can new risks and uncertainties evolve as a result of the embedding of the ratification process into new institutional frameworks?

The new institutional structures that have emerged as a result of the deal between the European Union and Russia are not able to entirely solve the problem of the uncertainties and risks attached to ratification, although the ratification process is currently based on a much more solid foundation than before. It is not possible, however, to exclude the emergence of new problems in this field, some of which are outlined next.

First, there are two major circumstances that might press the partners of the deal to artificially maintain some uncertainties into the future. For Russia, this includes the fact that it has not yet become a WTO member, and until its accession there is no way to ensure 100 percent certainty in the outcome of the Kyoto Protocol ratification process. And because the protocol has not yet been ratified by Russia, the problem is directly mirrored in the European Union.

This line of behavior of the partners is predefined by the technical specifics in the performance of this deal, which is an informal agreement—within this game the cards being played by the European Union and Russia remain valid and are only able to be used only while a certain level of uncertainty in the actions of each is preserved. Application of such strategies can be clearly documented in the parties’ behavior during recent years of negotiations. The European Union had been repeatedly promising its support for Russia’s entry into the WTO, along with exaggerated demands conditioning such entry. In turn, Russia has repeatedly promised to ratify the Kyoto Protocol in the near future, but simultaneously made public the results of scientific symposiums, where scholars of the Russian Academy of Sciences presented their arguments against ratification. In the near future, playing such games by both parties might continue. It would not be correct, however, to assess this as exhibiting a desire to break the deal; rather, it can be regarded as technical means for realization of the agreement. It is important, however, to promote bilateral control over the process in order not to cause unnecessary turbulence in the course of heading towards a common goal and to exclude inadequate reactions from each party.

Second, additional risks might be caused by a possible desire to “attach” a number of unresolved issues to the already agreed deal. Indeed, some newspapers in Russia interpret the deal between the European Union and Russia as a package that also includes solving the transit problem in Kaliningrad, relaxation of the EU visa regime for Russian citizens, etc. Expanding the basket of items to be resolved might significantly increase the uncertainties and risks and, in case of further escalation, might lead the ratification process to a dead-end. The same situation might be developing within the unfinished negotiations on Russia’s entry to the WTO.
Third, the government of the Russian Federation has to implement some preparatory measures before it can approve ratification by law. In its meeting on April 11, 2002, the government made a decision to prepare for ratification. Elaborating the drafts of normative acts to be used as a legal basis for domestic implementation of the Kyoto Protocol was determined as one of the obligatory steps of this preparatory process (Russian Federation 2002). The materials produced for this preparatory government meeting included proposals of concrete legal acts to be further elaborated, including the following items:

- a law on governmental regulation of GHG emissions and sinks in Russia;
- a law on ownership of emission quotas, certification of emission reduction, and establishing an emissions trading market; and
- a governmental bill on a national system for monitoring and registry of GHG emissions and sinks.

There might be serious conflicts between the federation and individual regions in the process of legally instituting the framework for implementing the Kyoto Protocol. The formation of such structures (particularly relating to legal procedures) should be a kind of prelude to the ratification process. Many actors within the group of regional bureaucrats are interested in the economic benefits of emissions trading, and their primary task is to put quota allocation mechanisms under their control. In order to achieve this goal, regional authorities have tried to spread their ownership of the regions over types of natural resources such as nature’s capacity to absorb GHG emissions. On the contrary, the federal authorities wanted to secure this as federal property; the functions of the future quotas market regulation were supposed to be concentrated at the federation level (Institute of Energy Strategy 1999). There was a reasonable apprehension that the regional authorities would regard the financial resources that would be generated by the sale of quotas as an administrative rent that they rightfully owned, and that not much of the revenues would be invested in energy saving. Besides, the Russian Federation was allocated its emission quota under the international climate change regime, with the federation, in particular, responsible for complying with the obligations of the Kyoto Protocol. In support of their claims the regions point to the federal law on environmental protection, which considers the natural resources in the regional territories to be under state ownership, and according to the Russian Federation’s constitution, the state is defined as the federation as well as the regions. Environmental regulation is also to be jointly shared by the federation and the regions.

The activity of regional officials in forming climate policy forced the federation to face a very complex dilemma. Either the federation made concessions to the regions and recognized their right of control over resources that it considered federal property (which would create an unpleasant precedent for the whole complex of relations between the federation and the regions in terms of the division of natural resource ownership) or it should get involved in a prolonged battle for the division of these rights, along with the prospect of legal actions instituted by the regions and a worsening of relations between it and the regions. Neither of these prospects is acceptable to the federal authorities. Therefore, the prospects of newly aggravating the conflict between the federation and the regions in the context of ratifying the Kyoto Protocol can create new uncertainties and risks for the ratification process. The greatest trouble could be in store for the protocol, primarily if these instruments become the focus of the struggle between the federation and the regions.
After the European Union–Russia Summit, ratification of the Kyoto Protocol entered a new stage. The particular characteristic differentiating this one from the previous period, which was hampered by uncertainties and delays, is that now Russia’s position is principally defined. From now on, Russia will not only be involved in the ratification process but its movement along this path is also going to be accelerated. President Putin has strong motivation for doing so—Russia’s entry into the WTO is among the highest priorities in his political and economic strategy. He did not make any promises about deadlines, and Russia has not made any official commitments. Putin’s statement indicates only the “speeding up” of Russia’s movement towards ratification. So far the question remains open regarding the meaning of this acceleration. It might signify a shift away from uncertainty and stagnation and a transition from the absence of any dynamics in this area to performance of at least the initial steps towards ratification. As the ratification procedure is strictly regulated in Russia by law, speeding up the process by cutting out particular formal procedures is impossible.

Currently, the Kyoto Protocol is at the very beginning of the ratification process in Russia. Before the draft law on ratification is introduced to the State Duma by the president, the ratification issue must be discussed by the government of the Russian Federation, which has not yet finalized its part of the job. It had to formulate its conclusions on ratification at its meeting on May 20, 2004 (the very eve of the summit). But in response to a request by the Federation’s Ministry of Industry and Energy (MIE), the agency responsible for this agenda item so far, its discussion was removed from the meeting agenda and postponed for three months. Among the reasons cited for the delay was the negative conclusion on ratification produced by the Russian Academy of Sciences (RAS), which became involved in assessing the implications of ratification on the request of President Putin. The MIE’s position on ratifying the Kyoto Protocol differs from the RAS position; it has long supported ratification.

It is quite difficult at the moment, however, to determine whether the State Duma will be in a hurry to decide on ratification. It has its own process for ratifying international treaties, incorporating them into the working plans of its sessions, discussion in Duma committees, putting them on a particular meeting agenda, etc. Here certain reserves for both speeding up or slowing down the ratification process are believed to exist. A slowdown, or even the slight possibility of rejecting ratification, could take place if some parliamentarians from the pro-president party consider that the interests of the regions are infringed upon under the emissions trading regime to be adopted, or in the course of defining property rights over emission quotas, and thus they would be inclined to violate party discipline and resist ratification.

Such a slowdown might be significant if the regions that are willing to realize their own interests within the Kyoto Protocol manage to incorporate into the “slowdown” campaign not only the protocol’s opponents but WTO antagonists, as well. Today, the Russian public is not yet fully aware of the contents of the 400-page protocol along with the conditions of Russia’s entry into the WTO. It might happen that with the considerable general benefits from WTO accession, especially related to

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5. The results of the assessment by the Russian Academy of Sciences were presented May 18, 2004.
6. Especially in the case that they are dependent on the regional administration and are under pressure from it, for example, in a re-election campaign.
7. Negotiations with many other WTO partners are also not finalized to date.
acceleration of economic growth, some economic sectors might be seriously damaged due to external competition.

In this case certain vulnerabilities might evolve in the new institutional structure that made ratifying the protocol dependent on Russia’s entry into the WTO. In general, this structure is expected to contribute positively to the prospects of ratification, but at the same time it might induce the emergence of new risks. WTO opposition, particularly from potential sectoral losers—including, for example, automobile manufacturing, which involves a huge number of workers, and the insurance sector with its considerable capital—and especially if supplemented by a consolidation of efforts of entrepreneurs, regions, and trade unions, might target the derailment of Kyoto Protocol ratification in order to block Russia’s entry into the WTO. Personally, this author believes that the Russian Federation’s president does possess enough levers to counteract such a strategy. But, nevertheless, it might result in certain delays in ratification.

Ratification supporters unfortunately had not recognized the shift in the ratification process and were using the wrong strategy to counteract the arguments of their opponents. They have concentrated most of their efforts on proving that Russia will not reach its Kyoto emission target during the first commitment period (2008–2012). Meanwhile, in the context of the European Union–Russia deal, this issue has lost its relevance to a great extent; indeed, the economic benefits for Russia from WTO entry exceed by several-fold its potential losses from surpassing the Kyoto targets. Ratification supporters chose the defense strategy and have tried to prove that ratification will not result in losses for Russia. Employing such a strategy seems to be a mistake. Today the outcomes of ratifying the Kyoto Protocol do not depend on whether or not Russia achieves its emissions reduction target during the first commitment period. It depends on whether or not the supporters of ratification are able to counteract the new risks emerging as a result of the European Union–Russia ratification deal. The front lines in the ratification campaign have changed.

Given the prevailing poverty, Russia’s society will accept the decision on the Kyoto Protocol ratification if it generates a considerable economic benefit, i.e., it will be ultimately accepted for economic reasons. And the society perceives that such a benefit will be generated by Russia’s accession to the WTO, rather than by the Kyoto Protocol as such. The link between the Kyoto Protocol ratification and the WTO radically changed the context of ratification—ratification is no longer connected with impeding the growth; on the contrary, its proposed aim is to open up the way to accelerated economic growth. At the same time, we should not forget that Russia has not yet completed its negotiations with such partners as the United States, Brazil, and China, and we can expect new surprises here. We cannot, however, also exclude the possibility that serious disagreements concerning the domestic climate policy might emerge within the pro-president party. These disagreements might stem from the differences in the interests of the federation and the regions and might result in slowing down of the ratification process.
8. Conclusion

Recently the above assessment of the prospects of Russia ratifying the Kyoto Protocol seems to be the most probable scenario. Long before the EU–Russia Summit in Moscow this scenario appeared for me to have the highest chances of occurring, and the outcome of the May summit proved this out. At this point, additional evaluation of the prospects of Russia ratifying the protocol needs to be undertaken, but not to counteract the opponents to ratifying the protocol in Russia, however, because the critical factor right now is neither the ratification opponents nor the protocol itself. The core issue now is the response to the terrorist acts staged against Russia in August-September 2004. Today Russia appears to be at the threshold of important system changes aimed at counteracting terrorism. Although the major details of these changes are still being developed (they can only be thoroughly assessed by the end of 2004), it is becoming probable that there might be radical shifts (1) in Russia’s development priorities, (2) in its political system, (3) in mechanisms of interaction between federal and regional authorities, and (4) in major reorganization of institutions of executive authorities. It seems that national security will be the highest priority for Russia from now on. As a result, the development of Russia might be channeled along a path with other priorities and also within a new institutional framework. In this case the ratification process might also be channeled into another framework. In the case that Russia’s national development priorities and the approaches of the major actors might be considerably modified under the impact of new factors, this new context requires additional assessment. The time for such analyses has not come yet. The chances of ratification still appear to be high.

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