

# TURKMENISTAN



Decision of 27.07.2009  
[OJ L 80/19 of 26.03.2011](#)

Agreement: Art. 16  
[OJ L 80/23 of 26.03.2011](#)

Protocol  
[OJ L 80/30 of 26.03.2011](#)

## COUNCIL DECISION

of 27 July 2009

**on the conclusion by the European Community of the Interim Agreement between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Turkmenistan, of the other part, on trade and trade-related matters**

**(2011/188/EC)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Whereas:

- (1) Pending the entry into force of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and Turkmenistan, of the other part, signed in Brussels on 25 May 1998, it is necessary to approve on behalf of the European Community, the Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Turkmenistan, of the other part, signed in Brussels on 10 November 1999.
- (2) Article 31 of that Interim Agreement on trade and trade-related matters should be amended in order to take into account the new official languages of the Community since the signature of the Agreement, through the Exchange of Letters between the European Community and Turkmenistan amending the Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Turkmenistan, of the other part, as regards the authentic language versions,

HAS DECIDED AS FOLLOWS:

### *Article 1*

The Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Turkmenistan, of the other part, together with its Annexes, the Protocol and the declarations, and the Exchange of Letters

between the European Community and Turkmenistan amending the Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Turkmenistan, of the other part, as regards the authentic language versions, which amends Article 31 of that Interim Agreement on trade and trade-related matters, are hereby approved on behalf of the European Community.

These texts are attached to this Decision.

*Article 2*

The President of the Council is hereby authorised to designate the persons empowered to sign the Exchange of Letters on behalf of the European Community.

*Article 3*

The President of the Council shall give the notification provided for in Article 32 of the Interim Agreement on behalf of the European Community.

*Article 4*

This Decision shall take effect on the date of its adoption.  
Done at Brussels, 27 July 2009.

*For the Council*  
*The President*  
C. BILDT

## **INTERIM AGREEMENT**

**on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Turkmenistan of the other part**

THE EUROPEAN COMMUNITY, THE EUROPEAN COAL AND STEEL COMMUNITY AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, hereinafter referred to as 'the Community',

of the one part, and

TURKMENISTAN,

of the other part,

WHEREAS a Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part and Turkmenistan of the other part was initialled on 24 May 1997;

WHEREAS the aim of the Partnership and Cooperation Agreement is to strengthen and widen the relations established previously, notably by the Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on Trade and Commercial and Economic Cooperation signed on 18 December 1989;

WHEREAS it is necessary to ensure the rapid development of trade relations between the Parties;

WHEREAS to this end it is necessary to implement as speedily as possible, by means of an Interim Agreement, the provisions of the Partnership and Cooperation Agreement concerning trade and trade-related matters;

WHEREAS the said provisions should, accordingly, replace the relevant provisions of the Agreement on Trade and Commercial and Economic Cooperation;

WHEREAS it is necessary to ensure that pending the entry into force of the Partnership and Cooperation Agreement and the establishment of the Cooperation Council, the Joint Committee set up under the Agreement on Trade and Commercial and Economic Cooperation may exercise the powers assigned by the Partnership and Cooperation Agreement to the Cooperation Council, which are necessary in order to implement the Interim Agreement;

HAVE DECIDED to conclude this Agreement and to this end have designated as their plenipotentiaries:

THE EUROPEAN COMMUNITY:

THE EUROPEAN COAL AND STEEL COMMUNITY:

THE EUROPEAN ATOMIC ENERGY COMMUNITY:

TURKMENISTAN:

WHO, having exchanged their Full Powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

(...)

*Article 16*

Mutual administrative assistance in customs matters between the authorities of the Parties shall take place in accordance with the Protocol annexed to this Agreement.

# **PROTOCOL**

## **on mutual administrative assistance in customs matters**

### *Article 1*

#### **Definitions**

For the purposes of this Protocol:

- (a) ‘customs legislation’ shall mean any legal or regulatory provisions applicable in the territory of the Parties governing the import, export and transit of goods and their placing under any customs procedure, including measures of prohibition, restriction and control adopted by the said Parties;
- (b) ‘applicant authority’ shall mean a competent administrative authority which has been appointed by a Party for this purpose and which makes a request for assistance in customs matters;
- (c) ‘requested authority’ shall mean a competent administrative authority which has been appointed by a Party for this purpose and which receives a request for assistance in customs matters;
- (d) ‘personal data’ shall mean all information relating to an identified or identifiable individual;
- (e) ‘operation in breach of the customs legislation’ shall mean any violation or attempted violation of customs legislation.

### *Article 2*

#### **Scope**

1. The Parties shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Protocol, to ensure the correct application of customs legislation, in particular by preventing, detecting and investigating operations in breach of that legislation.
2. Assistance, in customs matters, as provided for in this Protocol, shall apply to any administrative authority of the Parties which is competent for the application of this Protocol. It shall not prejudice the rules governing mutual assistance in criminal matters. Nor shall it cover information obtained under powers exercised at the request of the judicial authorities, except where communication of such information is authorised by the said authorities.

### *Article 3*

#### **Assistance on request**

1. At the request of the applicant authority, the requested authority shall furnish it with all relevant information which may enable it to ensure compliance with customs legislation, including information regarding operations noted or planned which are or might be in breach of such legislation.
2. At the request of the applicant authority, the requested authority shall inform it whether goods exported from the territory of one of the Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.
3. At the request of the applicant authority, the requested authority shall, within the framework of its laws, take the necessary steps to ensure special surveillance of:
  - (a) natural or legal persons of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
  - (b) places where goods are stored in a way that gives grounds for suspecting that they are intended to be used in operations in breach of customs legislation;
  - (c) movements of goods notified as possibly giving rise to operations in breach of customs legislation;
  - (d) means of transport for which there are reasonable grounds for believing that they have been, or may be used in operations in breach of customs legislation.

### *Article 4*

#### **Spontaneous assistance**

The Parties shall provide each other, at their own initiative and in accordance with their laws, rules and other legal instruments, with assistance if they consider that to be necessary for the correct application of customs legislation, particularly when they obtain information pertaining to:

- operations which are or appear to be in breach of such legislation and which may be of interest to another Party,
- new means or methods employed in carrying out such operations,
- goods known to be subject to operations in breach of customs legislation,
- natural or legal persons concerning whom there are reasonable grounds for believing that they are or have been involved in operations in breach

- of customs legislation,
- means of transport concerning which there are reasonable grounds for believing that they have been, are or may be used in operations in breach of customs legislation.

#### *Article 5*

#### **Delivery/Notification**

At the request of the applicant authority, the requested authority shall, in accordance with its legislation, take all necessary measures in order:

- to deliver all documents,
- to notify all decisions,

falling within the scope of this Protocol to an addressee, residing or established in its territory. In such a case, Article 6(3) shall apply to the requests for communication or notification.

#### *Article 6*

#### **Form and substance of requests for assistance**

1. Requests pursuant to this Protocol shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately.
2. Requests pursuant to paragraph 1 shall include the following information:
  - (a) the applicant authority making the request;
  - (b) the measure requested;
  - (c) the object of and the reason for the request;
  - (d) the laws, rules and other legal elements involved;
  - (e) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations;
  - (f) a summary of the relevant facts and of the enquiries already carried out, except in cases provided for in Article 5.
3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority.
4. If a request does not meet the formal requirements, its correction or completion may be requested; precautionary measures may, however, be ordered.



## *Article 7*

### **Execution of requests**

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same Party, by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out. This provision shall also apply to the administrative department to which the request has been addressed by the requested authority when the latter cannot act on its own.
2. Requests for assistance shall be executed in accordance with the laws, rules and other legal instruments of the requested Party.
3. Duly authorised officials of a Party may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, obtain from the offices of the requested authority or other authority for which the requested authority is responsible, information relating to operations which are or may be in breach of customs legislation which the applicant authority needs for the purposes of this Protocol.
4. Officials of a Party may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.

## *Article 8*

### **Form in which information is to be communicated**

1. The requested authority shall communicate results of enquiries to the applicant authority in the form of documents, certified copies of documents, reports and the like.
2. The documents provided for in paragraph 1 may be replaced by computerised information produced in any form for the same purpose.
3. Original files and documents shall be requested only in cases where certified copies would be insufficient. Originals which have been transmitted shall be returned at the earliest opportunity.

## *Article 9*

### **Exceptions to the obligation to provide assistance**

1. The Parties may refuse to give assistance as provided for in this Protocol, where to do so would:
  - (a) be likely to prejudice the sovereignty of Turkmenistan or that of a Member State which has been asked to provide assistance under this Protocol; or

- (b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10(2); or
  - (c) involve currency or tax regulations other than customs legislation; or
  - (d) violate an industrial, commercial or professional secret.
2. Where the applicant authority requests assistance which it would itself be unable to provide if so asked, it shall draw attention to that fact in its request. It shall then be left to the requested authority to decide how to respond to such a request.
  3. If assistance is refused, the decision and the reasons therefore must be notified to the applicant authority without delay.

### *Article 10*

#### **Information exchange and confidentiality**

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature, depending on the rules applicable in each of the Parties. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Party which received it and the corresponding provisions applying to the Community institutions.
2. Personal data may be exchanged only where the receiving Party undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the supplying Party.
3. Information obtained shall be used solely for the purposes of this Protocol. Where one of the Parties requests the use of such information for other purposes, it shall ask for the prior written consent of the authority which furnished the information. Such use shall then be subject to any restrictions laid down by that authority.
4. Paragraph 3 shall not impede the use of information in any judicial or administrative proceedings subsequently instituted for failure to comply with customs legislation. The competent authority which supplied that information shall be notified of such use.
5. The Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol.

## *Article 11*

### **Experts and witnesses**

An official of a requested authority may be authorised to appear, within the limitations of the authorisation granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol in the jurisdiction of the other Party, and produce such objects, documents or authenticated copies thereof, as may be needed for the proceedings. The request for an appearance must indicate specifically on what matters and by virtue of what title or qualification the official will be questioned.

## *Article 12*

### **Assistance expenses**

The Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as appropriate, for expenses to experts and witnesses and to interpreters and translators who are not public service employees.

## *Article 13*

### **Application**

1. The application of this Protocol shall be entrusted to the central customs authorities of Turkmenistan on the one hand and to the competent services of the Commission of the European Communities and, where appropriate, the customs authorities of the Member States on the other. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in the field of data protection. They may recommend to the competent bodies amendments which they consider should be made to this Protocol.
2. The Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Protocol.

## *Article 14*

### **Other agreements**

1. Taking into account the respective competences of the European Community and the Member States, the provisions of this Protocol shall:
  - not affect the obligations of the Parties under any other international agreement or convention,
  - be deemed complementary with agreements on mutual assistance which have been or may be concluded between individual Member States and

Turkmenistan, and

— not affect the provisions governing the communication between the competent services of the Commission and the customs authorities of the Member States of any information obtained under this agreement which could be of interest to the Community.

2. Notwithstanding the provisions of paragraph 1, the provisions of this agreement shall take precedence over the provisions of the bilateral agreement on mutual assistance which have been or may be concluded between individual Member States and Turkmenistan insofar as the provisions of the latter are incompatible with those of this Protocol.

3. In respect of questions relating to the applicability of this Protocol, the Parties shall consult each other to resolve the matter in the framework of the Joint Committee referred to in Article 17 of this Agreement.