

TAJKISTAN



Decision of 17.11.2009
[OJ L 350/1 of 29.12.2009](#)

Agreement : Art. 63 (3)
[OJ L 350/18 of 29.12.2009](#)

Protocol
[OJ L 350/36 of 29.12.2009](#)

DECISION OF THE COUNCIL AND OF THE COMMISSION

of 17 November 2009

on the conclusion of a Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Tajikistan, of the other part

(2009/989/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 44(2), the last sentence of Article 47(2) and Articles 55, 57(2), 63(3), 71, 80(2), 93, 94, 133 and 181a, in conjunction with the last sentence of the first subparagraph of Article 300(2) and the second subparagraph of Article 300(3) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the first paragraph of Article 101 thereof,

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament,

Having regard to the Council's approval pursuant to Article 101 of the Treaty establishing the European Atomic Energy Community,

Whereas:

- (1) The Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Tajikistan, of the other part, was signed on behalf of the Community at Luxembourg on 11 October 2004.
- (2) The Agreement should be concluded,

HAVE DECIDED AS FOLLOWS:

Article 1

1. The Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Tajikistan, of the other part, together with the Annexes and Protocol attached thereto, and the Declarations made by the Community unilaterally or jointly with the other Party that are attached to the Final Act, are hereby approved on behalf of the European Community and the European Atomic Energy Community.

2. The text of the Agreement, Annexes, Protocol and the Final Act is attached to this Decision.

Article 2

1. The position to be taken by the Community within the Cooperation Council and the Cooperation Committee established by the Agreement shall be adopted by the Council, on a proposal from the Commission, or by the Commission, in accordance with the corresponding provisions of the Treaties establishing the European Community and the European Atomic Energy Community.

2. The President of the Council shall preside over the Cooperation Council and present the position of the Community. A representative of the Commission shall preside over the Cooperation Committee and present the position of the Community.

3. The Community shall be represented by the Commission in the special committees established by the Cooperation Council in accordance with Article 80 of the Agreement.

Article 3

The President of the Council shall give the notification provided for in the second sentence of the first paragraph of Article 100 of the Agreement on behalf of the European Community. The President of the Commission shall give that notification on behalf of the European Atomic Energy Community.

Done at Brussels, 17 November 2009.

For the Council

The President

C. BILDT

For the Commission

The President

José Manuel BARROSO

PARTNERSHIP AND COOPERATION AGREEMENT

establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Tajikistan, of the other part

(...)

THE EUROPEAN COMMUNITY AND THE EUROPEAN ATOMIC ENERGY COMMUNITY,

hereinafter referred to as 'the Community',

of the one part, and

THE REPUBLIC OF TAJIKISTAN,

of the other part,

CONSIDERING the links between the Community, its Member States and the Republic of Tajikistan and the common values that they share,

RECOGNISING that the Community and the Republic of Tajikistan wish to strengthen these links and to establish partnership and cooperation which would strengthen and widen the relations established in the past in particular 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,

CONSIDERING the commitment of the Community and its Member States and of the Republic of Tajikistan to strengthen the political and economic freedoms which constitute the very basis of the partnership,

RECOGNISING in that context that support of the independence, sovereignty and territorial integrity of the Republic of Tajikistan will contribute to the safeguarding of peace and stability in Central Asia,

CONSIDERING the commitment of the Parties to promote international peace and security and the peaceful settlement of disputes, and to cooperate to this end in the framework of the United Nations and the Organisation for Security and Cooperation in Europe (OSCE),

CONSIDERING the firm commitment of the Community and its Member States and the Republic of Tajikistan to the full implementation of all principles and provisions contained in the Final Act of the Conference on Security and Cooperation in Europe (CSCE), the Concluding Documents of the Madrid and Vienna Follow-Up Meetings, the Document of the CSCE Bonn Conference on Economic Cooperation, the Charter of Paris for a New Europe and the CSCE Helsinki Document 1992 'The Challenges of Change', and other fundamental documents of the OSCE,

CONVINCED of the paramount importance of the rule of law and respect for human rights, particularly those of persons belonging to minorities, the establishment of a multiparty system with free and democratic elections and economic liberalisation aimed at setting up a market economy,

BELIEVING that full implementation of this Partnership and Cooperation Agreement will both depend on and contribute to the continuation and accomplishment of political, economic and legal reforms in the Republic of Tajikistan and the introduction of the factors necessary for cooperation, notably in the light of the conclusions of the CSCE Bonn Conference,

DESIROUS of encouraging the process of internal reconciliation launched in the Republic of Tajikistan following the Moscow peace agreements,

DESIROUS of encouraging the process of regional cooperation in the areas covered by this agreement with neighbouring countries in order to promote the prosperity and stability of the region,

DESIROUS of establishing and developing regular political dialogue on bilateral and international issues of mutual interest,

RECOGNISING AND SUPPORTING the wish of the Republic of Tajikistan to establish close cooperation with European institutions,

CONSIDERING the necessity of promoting investment in the Republic of Tajikistan, including in the energy and water management sectors, confirming the importance attached by the Community, its Member States and the Republic of Tajikistan to the European Energy Charter, and to the full implementation of the Energy Charter Treaty and the Energy Charter Protocol on energy efficiency and related environmental aspects,

TAKING ACCOUNT of the Community's willingness to provide socioeconomic cooperation and technical assistance as appropriate, including in the fight against poverty,

BEARING IN MIND the utility of the Agreement in favouring a gradual rapprochement between the Republic of Tajikistan and a wider area of cooperation in Europe and neighbouring regions and its progressive integration into the open international trading system,

CONSIDERING the commitment of the Parties to liberalise trade, in conformity with World Trade Organisation (WTO) rules, and that the Community welcomes the intention of the Republic of Tajikistan to accede to WTO,

CONSCIOUS of the need to improve conditions affecting business and investment, and conditions in areas such as establishment of companies, labour, provision of services and capital movements,

CONVINCED that this Agreement will create a new climate for economic relations between the Parties and in particular for the development of trade and

investment, which are essential to economic restructuring and technological modernisation,

DESIROUS of establishing close cooperation in the area of environment protection taking into account the interdependence existing between the Parties in this field,

RECOGNISING that cooperation for the prevention and control of illegal immigration, international organised crime and drug trafficking and the fight against terrorism constitute primary objectives of this Agreement,

DESIROUS of establishing cultural cooperation, cooperation in the field of education and improving the flow of information,

HAVE AGREED AS FOLLOWS:

(...)

Article 63

Customs

1. The aim of cooperation shall be to guarantee compliance with all the provisions scheduled for adoption in connection with trade and fair trade and to achieve the approximation of the Republic of Tajikistan's customs system to that of the Community.

2. Cooperation shall take place particularly through:

- the exchange of information,
- the improvement of working methods,
- the introduction of the Combined Nomenclature and the single administrative document,
- the simplification of controls and formalities in respect of the carriage of goods,
- support for the introduction of modern customs information systems,
- the organisation of seminars and training periods.

Technical assistance shall be provided where necessary.

3. Without prejudice to other cooperation under this Agreement, and in particular Title VIII, mutual assistance in customs matters between administrative authorities of the Parties shall take place in accordance with the provisions of the Protocol attached 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 Contracting Parties governing the import, export and transit of goods and their placing under any other customs regime or 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 Contracting 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 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 accordance with the arrangements and the conditions laid down in this Protocol, to ensure that the customs legislation is correctly applied, in particular with a view to preventing, investigating and prosecuting 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 Contracting Parties which is competent for the application of this Protocol. It shall not prejudice the provisions 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 that legislation.
2. At the request of the applicant authority, the requested authority shall inform it as to whether:
 - (a) goods exported from the territory of one of the Contracting Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;
 - (b) if the goods imported into the territory of one of the Contracting 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 legal or regulatory provisions, take the necessary steps to ensure special surveillance of:
 - (a) natural or legal persons for whom there are reasonable grounds for believing that they carry out or have carried out operations in breach of customs legislation;
 - (b) places where stocks of goods have been or may be assembled in such a way that there are reasonable grounds for suspecting that they are intended to be used in operations in breach of customs legislation;
 - (c) goods that are or may be transported in such a way that there are reasonable grounds for suspecting that they are intended to be used in 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 Contracting 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:

- activities which constitute or appear to constitute operations in breach of

- customs legislation and which may be of interest to another Contracting Party,
- new means or methods employed in carrying out operations in breach of customs legislation,
 - 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 applicable legal or regulatory provisions, take all necessary measures in order:

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

emanating from the applicant authority and 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.
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 any other authority to which the request has been addressed by the requested authority by virtue of this Protocol when the requested authority 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 Contracting Party.
3. Duly authorised officials of a Contracting 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 Contracting 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 provision of documents provided for in paragraph 1 may be replaced by that of information produced in any form for the same purpose by computerised means.

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 the Republic of Tajikistan 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) breach an industrial, commercial or professional secret.

2. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. 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.

4. 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 immediately 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

1. 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.
2. The official shall enjoy the protection guaranteed by existing legislation to officials of the applicant authority on its territory.

Article 12

Assistance expenses

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

Article 13

Implementation

1. The application of this Protocol shall be entrusted to the central customs authorities of the Republic of Tajikistan 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 Contracting 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 the Republic of Tajikistan, 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 in the fields covered by 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 the Republic of Tajikistan 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 Contracting Parties shall consult each other to resolve the matter in the framework of the Cooperation Committee established under Article 79 of this Agreement.