

## KYRGYZ REPUBLIC



Decision of 12.5.1999  
[OJL 196/46 of 28.7.1999](#)

Agreement: art. 66  
[OJL 196/65](#)

Protocol  
[OJL 196/78](#)

## COUNCIL AND COMMISSION DECISION

of 12 May 1999

**on the conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Kyrgyz Republic, of the other part**

(1999/491/EC, ECSC, 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 54(2), the last sentence of Article 57(2), and Articles 66, 73c(2), 75, 84(2), 99, 100, 113 and 235, in conjunction with the second sentence of Article 228(2) and the second subparagraph of Article 228(3) thereof,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 95 thereof,

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

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament <sup>(1)</sup>,

Having consulted the ECSC Consultative Committee and with the assent of the Council,

Having regard to the approval of the Council given in accordance with Article 101 of the Treaty establishing the European Atomic Energy Community,

(1) Whereas conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Kyrgyz Republic, of the other, signed on 9 February 1995 in Brussels, will contribute to the achievement of the objectives of the European Communities;

(2) Whereas the purpose of that Agreement is to strengthen the links established 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 and approved by Decision 90/116/EEC <sup>(2)</sup>;

(3) Whereas certain obligations, provided for by the Partnership and Cooperation Agreement outside the scope of Community trade policy, affect or are likely to affect the arrangements laid down by Community acts adopted in the areas of the right of establishment, transport and the treatment of enterprises;

(4) Whereas the said Agreement imposes on the European Community certain obligations regarding capital movements and payments between the Community and the Kyrgyz Republic;

(5) Whereas, in addition, in so far as the said Agreement affects Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States <sup>(3)</sup>, and Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States <sup>(4)</sup>, which are based on Article 100 of the Treaty establishing the European Community, that Article should be used as a legal basis;

(6) Whereas certain provisions of the said Agreement impose on the Community obligations in the field of the provision of services which go beyond the crossborder framework;

(7) Whereas for certain provisions of the said Agreement which are to be implemented by the Community, the Treaty establishing the European Community makes no provision for specific powers; whereas it is therefore necessary to resort to Article 235 of the Treaty,

HAVE DECIDED AS FOLLOWS:

*Article 1*

The Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Kyrgyz Republic, of the other part, together with the Protocol, Declarations and the Exchange of Letters, are

<sup>(1)</sup> OJ C 339, 18.12.1995, p. 52.

<sup>(2)</sup> OJ L 68, 15.3.1990, p. 1.

<sup>(3)</sup> OJ L 225, 20.8.1990, p. 1.

<sup>(4)</sup> OJ L 225, 20.8.1990, p. 6.

hereby approved on behalf of the European Community, the European Coal and Steel Community and the European Atomic Energy Community.

The texts are attached to this Decision.

#### *Article 2*

1. The position to be taken by the Community within the Cooperation Council and within the Cooperation Committee when the latter is empowered to act by the Cooperation Council shall be laid down by the Council, on a proposal by the Commission, or, where appropriate, by the Commission, each in accordance with the corresponding provisions of the Treaties establishing the European Community, the European Coal and Steel Community and the European Atomic Energy Community.

2. In accordance with Article 76 of the Partnership and Cooperation Agreement, the President of the Council shall chair the Cooperation Council and shall present the Community's position. A representative of the Commission shall chair the Cooperation Committee in accordance with

its rules of procedure and shall present the Community's position.

3. The decision to publish the recommendations of the Cooperation Council and the Cooperation Committee in the *Official Journal of the European Communities* shall be taken on a case-by-case basis by the Council and the Commission.

#### *Article 3*

The President of the Council shall give the notification provided for in Article 98 of the Agreement on behalf of the European Community. The President of the Commission shall give such notification on behalf of the European Coal and Steel Community and the European Atomic Energy Community.

Done at Brussels, 12 May 1999.

*For the Commission*

*The President*

J. SANTER

*For the Council*

*The President*

K.-H. FUNKE

**PARTNERSHIP AND COOPERATION AGREEMENT**

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

THE KINGDOM OF BELGIUM,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

IRELAND,

THE ITALIAN REPUBLIC,

THE GRAND DUCHY OF LUXEMBOURG,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE PORTUGUESE REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Contracting Parties to the Treaty establishing the European Community, the Treaty establishing the European Coal and Steel Community, and the Treaty establishing the European Atomic Energy Community,

hereinafter referred to as 'Member States', and

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

THE KYRGYZ REPUBLIC,

of the other part,

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

*Article 63***Small and medium-sized enterprises**

1. The Parties shall aim to develop and strengthen small and medium-sized enterprises and their associations and cooperation between SMEs in the Community and the Kyrgyz Republic.

2. Cooperation shall include technical assistance, in particular in the following areas:

- the development of a legislative framework for SMEs,
- the development of an appropriate infrastructure (an agency to support SMEs, communications, assistance to the creation of a fund for SMEs),
- the development of technology parks.

*Article 64***Information and communication**

The Parties shall support the development of modern methods of information handling, including the media, and stimulate the effective mutual exchange of information. Priority shall be given to programmes aimed at providing the general public with basic information about the Community and the Kyrgyz Republic, including, where possible, access to databases, in full respect of intellectual property rights.

*Article 65***Consumer protection**

The Parties will enter into close cooperation aimed at achieving compatibility between their systems of consumer protection. This cooperation may include the exchange of information on legislative work and institutional reform, establishment of permanent systems of mutual information on dangerous products, the improvement of information provided to consumers especially on prices, characteristics of products and services offered, the development of exchanges between the consumer interest representatives, and increasing the compatibility of consumer protection policies, and the organisation of seminars and training periods.

*Article 66***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 Kyrgyz Republic's customs system to that of the Community.

2. Cooperation shall include the following in particular:

- the exchange of information,
- the improvement of working methods,
- the introduction of the Combined Nomenclature and the single administrative document,
- the interconnection between the transit systems of the Community and the Kyrgyz Republic,
- simplification of inspections and formalities in respect of the carriage of goods,
- the support in 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 further cooperation foreseen in this agreement and in particular Article 69 the mutual assistance between administrative authorities in customs matters of the Parties shall take place in accordance with the provisions of the Protocol attached to this Agreement.

*Article 67***Statistical cooperation**

Cooperation in this area shall have as its aim the development of an efficient statistical system to provide the reliable statistics needed to support and monitor the process of economic reform and contribute to the development of private enterprise in the Kyrgyz Republic.

The Parties, in particular, shall cooperate in the following fields:

- adaptation of the Kyrgyz statistical system to international methods, standards and classification,
- exchange of statistical information,
- provision of necessary statistical macro- and microeconomic information to implement and manage economic reforms.

## PROTOCOL

### on mutual assistance between administrative authorities in customs matters

#### Article 1

#### Definitions

For the purposes of this Protocol:

- (a) 'customs legislation' shall mean provisions applicable in the territories of the Parties governing the import, export, transit of goods and their placing under any customs procedure, including measures of prohibition, restriction and control and adopted by the said Parties;
- (b) 'customs duties' shall mean all duties, taxes, fees or any other charges which are levied and collected in the territories of the Parties, in application of customs legislation, but not including fees and charges which are limited in amount to the approximate costs of services rendered;
- (c) '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;
- (d) '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;
- (e) 'contravention' shall mean any violation of the customs legislation as well as any attempted violation of such legislation.

#### Article 2

#### Scope

1. The Parties shall assist each other, within their competences, in the manner and under the conditions laid down in this Protocol, in ensuring that customs legislation is correctly applied, in particular by the prevention, detection and investigation of contraventions of this legislation.

2. Assistance, in customs matters, as provided for in this Protocol, applies 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 authority, unless those authorities so agree.

#### Article 3

#### Assistance on request

1. At the request of the applicant authority, the requested authority shall furnish it with all relevant information to enable it to ensure that customs legislation is correctly applied, including information regarding operations noted or planned which contravene or would contravene 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 take the necessary steps to ensure that a surveillance is kept on:
  - (a) natural or legal persons of whom there are reasonable grounds for believing that they are contravening or have contravened customs legislation;
  - (b) place where stocks of goods have been assembled in such a way that there are reasonable grounds for supposing that they are intended as supplies for operations contrary to the legislation of the other Party;
  - (c) movements of goods notified as possibly giving rise to substantial contraventions of customs legislation;
  - (d) means of transport for which there are reasonable grounds for believing that they have been, are or may be used in the contravening of customs legislation.

#### Article 4

#### Spontaneous assistance

The Parties shall provide each other, 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 have contravened, contravene or would contravene such legislation and which may be of interest to other Parties,

- new means or methods employed in realising such operations,
- goods known to be subject to substantial contravention 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) is applicable.

#### Article 6

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

1. Requests pursuant to this Protocol shall be made in writing. Documents necessary for the execution of such requests shall accompany 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 of this Article 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 being 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 such authority.

4. If a request does not meet the formal requirements, its correction or completion may be demanded; the ordering of precautionary measures may, however, take place.

#### Article 7

#### **Execution of requests**

1. In order to comply with a request for assistance, the requested authority or, when the latter cannot act on its own, the administrative department to which the request has been addressed by this authority, shall proceed, within 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.

2. Requests for assistance will 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 within 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 the contravention 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 within 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.

*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 sovereignty, public policy, security or other essential interests; or
  - (b) involve currency or tax regulations other than regulations concerning customs duties; or
  - (c) violate an industrial, commercial or professional secret.
2. Where the applicant authority asks for 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 withheld or denied, the decision and the reasons therefore must be notified to the applicant authority without delay.

*Article 10***Obligation to observe confidentiality**

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential nature. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to like information under the relevant laws of the Party which received it and the corresponding provisions applying to the Community authorities.
2. Nominative data shall not be transmitted whenever there are reasonable grounds to believe that the transfer or the use made of the data transmitted would be contrary to the basic legal principles of one of the Parties, and, in particular, if the person concerned would suffer undue disadvantages. Upon request, the receiving Party shall inform the furnishing Party of the use made of the information supplied and of the results achieved.
3. Nominative data may only be transmitted to customs authorities and, in the case of need for prosecution purposes, to public prosecution and judicial authorities. Other persons or authorities may obtain such information only upon previous authorisation by the furnishing authority.
4. The furnishing Party shall verify the accuracy of the information to be transferred. Whenever it appears that the

information supplied was inaccurate or to be deleted, the receiving Party shall be notified without delay. The latter shall be obliged to carry out the correction or deletion.

5. Without prejudice to cases of prevailing public interest, the person concerned may obtain, upon request, information on the data stored and the purpose of this storage.

*Article 11***Use of information**

1. Information obtained shall be used solely for the purposes of this Protocol and may be used within each Party for other purposes only with the prior written consent of the administrative authority which furnished the information and shall be subject to any restrictions laid down by that authority.
2. Paragraph 1 shall not impede the use of information in any judicial or administrative proceedings subsequently instituted for failure to comply with customs legislation.
3. 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 12***Experts and witnesses**

An official of a requested authority may be authorised to appear, within the limitations of the authorisation granted, as expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol in the jurisdiction of another 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 13***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 dependent upon public services.



*Article 14***Implementation**

1. The management of this Protocol shall be entrusted to the central customs authorities of the Kyrgyz Republic on the one hand and the competent services of the Commission of the European Communities and, where appropriate, the customs authorities of the Member States of the European Union on the other. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration rules in the field of data protection. They may recommend to the competent bodies amendments which they consider 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 15***Complementarity**

1. This Protocol shall complement and not impede the application of any agreements on mutual assistance which have been concluded or may be concluded between individual or several Member States of the European Union and the Kyrgyz Republic. Nor shall it preclude more extensive mutual assistance granted under such agreements.

2. Without prejudice to Article 11, these agreements do not prejudice Community provisions governing the communication between the competent services of the Commission and the customs authorities of the Member States of any information obtained in customs matters which could be of Community interest.

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