

# KOSOVO\*



DECISION of 12.02.2016.  
[OJ L 71/1 of 16.03.2016.](#)

AGREEMENT: Article 104  
[OJ L 71/3 of 16.03.2016.](#)

PROTOCOL No IV  
[OJ L 71/311 of 16.03.2016.](#)

\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

## **COUNCIL DECISION (EU) 2016/342**

**of 12 February 2016**

**on the conclusion, on behalf of the Union, of the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 37 in conjunction with Article 31(1) thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217, in conjunction with Articles 218(7), 218(6)(a)(i) and the second subparagraph of Article 218(8) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with Council Decision (EU) 2015/1988, the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, and Kosovo ('the Agreement'), was signed on behalf of the Union on 22 October 2015 subject to its conclusion at a later date.
- (2) The Union and Kosovo have strong links and share values and a desire to strengthen those links and establish a close and lasting relationship based on reciprocity and mutual interest, which should allow Kosovo to further strengthen and extend its relations with the Union.
- (3) The 'First agreement on principles governing the normalisation of relations' was reached on 19 April 2013 in the framework of the EU-facilitated dialogue.
- (4) The Agreement provides for the establishment of an association between the Union and Kosovo involving reciprocal rights and obligations, common actions and special procedure. It also contains provisions falling within the scope of Chapter 2 of Title V of the Treaty on European Union (TEU) concerning the Common Foreign and Security Policy of the Union. The decision to conclude the Agreement should therefore be based on the legal basis providing for the establishment of an association allowing the Union to enter into commitments in all areas covered by the Treaties and on the legal basis for agreements in areas covered by Chapter 2 of Title V of the TEU.
- (5) This is an EU-only agreement. The commitments and cooperation to be entered

into by the Union under this Agreement relate only to the areas covered by the EU *acquis* or existing Union policies. The signing and conclusion of this Agreement as an EU-only Agreement is without prejudice to the nature and scope of any similar agreements to be negotiated in the future. It is also without prejudice to the powers of the EU institutions conferred on them in the Treaties and the positions of EU institutions and Member States on competences. The Agreement provides for wide-ranging cooperation in various policy areas, including in justice and home affairs.

- (6) The conclusion of the Agreement is without prejudice to Member States' position on the status of Kosovo, which will be decided in accordance with their national practice and international law.
- (7) In addition, none of the terms, wording or definitions used in this Decision and the attached text of the Agreement, nor any recourse to all the necessary legal bases for the conclusion of the Agreement, constitute recognition of Kosovo by the Union as an independent State nor does it constitute recognition by individual Member States of Kosovo in that capacity where they have not previously taken such a step.
- (8) The conclusion of the Agreement as regards matters falling under the competence of the European Atomic Energy Community is subject to a separate procedure.
- (9) The Agreement should be approved

HAS ADOPTED THIS DECISION:

#### *Article 1*

The Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, and Kosovo is hereby approved on behalf of the Union for the parts falling under the TEU and the Treaty on the Functioning of the European Union.

The text of the Agreement is attached to this Decision.

#### *Article 2*

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 144 of the Agreement

#### *Article 3*

1. The Stabilisation and Association Council shall be chaired on the Union side by the High Representative of the Union for Foreign Affairs and Security Policy, in

accordance with his/her responsibilities pursuant to the Treaties and his/her capacity as President of the Foreign Affairs Council.

The Stabilisation and Association Committee shall be chaired by a representative of the Commission.

2. The Commission shall be authorised to approve on behalf of the Union modifications to the Agreement where it provides for them to be adopted by the Stabilisation and Association Committee.

*Article 4*

This Decision is without prejudice to Member States' and the Union's position on the status of Kosovo.

*Article 5*

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 12 February 2016.

*For the Council*

*The President*

J.R.V.A. DIJSSELBLOEM

## **STABILISATION AND ASSOCIATION AGREEMENT**

**between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part**

### *Article 1*

1. An association is hereby established between the EU, of the one part, and Kosovo, of the other part.

2. The aims of this association are:

(a) to support the efforts of Kosovo to strengthen democracy and the rule of law;

(b) to contribute to political, economic and institutional stability in Kosovo, as well as to the stabilisation of the region;

(c) to provide an appropriate framework for political dialogue, allowing the development of close political relations between the Parties;

(d) to support the efforts of Kosovo to develop its economic and international cooperation, should objective circumstances so permit, including through the approximation of its legislation to that of the EU;

(e) to support the efforts of Kosovo to complete the transition into a functioning market economy;

(f) to promote harmonious economic relations and gradually develop a free trade area between the EU and Kosovo;

(g) to foster regional cooperation in all the fields covered by this Agreement.  
(...)

### *Article 104*

#### **Customs**

The Parties shall establish cooperation in this area with a view to guaranteeing compliance with the provisions to be adopted in the area of trade and to achieve the approximation of the customs systems of Kosovo to that of the EU, thereby helping to pave the way for the liberalisation measures planned under this Agreement and for the gradual approximation of the Kosovo customs legislation to the EU acquis.

Cooperation shall take due account of priority areas related to the EU acquis in the field of customs.

The rules on mutual administrative assistance between the Parties in the customs field are laid down in Protocol IV.

## **PROTOCOL IV**

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

#### *Article 1*

#### **Definitions**

For the purposes of this Protocol:

- (a) 'customs legislation' means any legal or regulatory provisions applicable in the territories of the 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;
- (b) 'applicant authority' means a competent administrative authority which has been designated by a Party for this purpose and which makes a request for assistance on the basis of this Protocol;
- (c) 'requested authority' means a competent administrative authority which has been designated by a Party for this purpose and which receives a request for assistance on the basis of this Protocol;
- (d) 'personal data' means all information relating to an identified or identifiable individual;
- (e) 'operation in breach of customs legislation' means 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 the customs legislation, in particular by preventing, investigating and combating 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 a judicial authority, except where communication of such information is authorised by that authority.
3. Assistance to recover duties, taxes or fines is not covered by this Protocol.

### *Article 3*

#### **Assistance on request**

1. At the request of the applicant authority, the requested authority shall provide it with all relevant information which may enable it to ensure that customs legislation is correctly applied, including information regarding activities noted or planned which are or could be operations in breach of customs legislation.
2. At the request of the applicant authority, the requested authority shall inform it:
  - (a) 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;
  - (b) whether goods imported into the territory of one of the Parties have been properly exported from 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 in respect 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 stocks of goods have been or may be assembled in such a way that there are reasonable grounds for believing that these goods 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 believing that they are intended to be used in operations in breach of customs legislation;
  - (d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation.

### *Article 4*

#### **Spontaneous assistance**

The Parties shall assist each other, at their own initiative and in accordance with their legal or regulatory provisions, if they consider such assistance to be necessary for the correct application of customs legislation, particularly by providing information obtained pertaining to:

- (a) activities which are or appear to be operations in breach of customs legislation and which may be of interest to the other Party;
- (b) new means or methods employed in carrying out operations in breach of customs legislation;
- (c) goods known to be subject to operations in breach of customs legislation;
- (d) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
- (e) means of transport in respect of 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 legal or regulatory provisions applicable to the latter, take all necessary measures in order:

- (a) to deliver any documents; or
- (b) to notify any decisions,

emanating from the applicant authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the requested authority.

Requests for delivery of documents or notification of decisions shall be made in writing in an official language of the requested authority or in a language acceptable to that authority.

#### *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;
- (b) the measure requested;



- (c) the object of and the reason for the request;
- (d) the legal or regulatory provisions 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 inquiries already carried out.

3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority. This requirement shall not apply to any documents that accompany the request under paragraph 1.

4. If a request does not meet the formal requirements set out above, the requested authority may request its correction or completion. Pending such correction or completion, precautionary measures may 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 inquiries 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 when the latter cannot act on its own.

2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party.

3. Duly authorised officials of a Party may, with the agreement of the other Party, be involved and subject to the conditions laid down by the latter, be present to obtain in the offices of the requested authority or any other authority concerned in accordance with paragraph 1, information relating to activities that are or may be operations in breach of customs legislation which the applicant authority needs for the purposes of this Protocol.

4. Duly authorised officials of a Party involved may, with the agreement of the other Party, be involved and subject to the conditions laid down by the latter, be present at inquiries 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 inquiries to the applicant authority in writing together with relevant documents, certified copies or other items.

2. This information may be in electronic form.
3. Original documents shall be transmitted only upon request in cases where certified copies would be insufficient. These originals shall be returned at the earliest opportunity.

#### *Article 9*

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

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Party is of the opinion that assistance under this Protocol would:
  - (a) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10(2); or
  - (b) violate 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 seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.
4. For the cases referred to in paragraphs 1 and 2, the decision of the requested authority and the reasons therefor must be communicated 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 that received it.
2. Personal data may be exchanged only where the Party which may receive them undertakes to protect such data in a manner that is considered adequate by the Party that may supply them.
3. The use, in administrative and related proceedings instituted in respect of operations in breach of customs legislation, of information obtained under this

Protocol, is considered to be for the purposes of this Protocol. Therefore, the Parties may, in their records of evidence, reports, testimonies and charges brought in the context of administrative and related proceedings, use as evidence information obtained and documents consulted in accordance with this Protocol. The competent authority which supplied that information or gave access to those documents shall be notified of such use.

4. Information obtained shall be used solely for the purposes of this Protocol. Where one of the Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

#### *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 administrative or related proceedings regarding the matters covered by this Protocol, and produce such objects, documents or certified copies thereof, as may be needed for the proceedings. The request for appearance must indicate specifically before which authority the official will have to appear, 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 those to interpreters and translators who are not public service employees.

#### *Article 13*

### **Implementation**

1. The implementation of this Protocol shall be entrusted, on the one hand, to the customs authorities of Kosovo and, on the other hand, to the competent services of the European Commission and the customs authorities of the Member States as appropriate. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in particular 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 competencies of the EU and the Member States, this Protocol shall:
  - (a) not affect the obligations of the Parties under any other international Agreement or Convention;
  - (b) be deemed complementary to Agreements on mutual assistance which have been or may be concluded between individual Member States and Kosovo;and
  - (c) not affect the EU provisions governing the communication between the competent services of the European Commission and the customs authorities of the Member States of any information obtained under this Protocol which could be of interest to the EU.
2. Notwithstanding paragraph 1, this Protocol shall take precedence over any bilateral Agreement on mutual assistance which has been or may be concluded between individual Member States and Kosovo insofar as the latter is incompatible with 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 Stabilisation and Association Committee set up under Article 129 of this Agreement.