

KAZAKHSTAN



Information of 25 February 2020
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Council Decision of 20 January 2020
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Council Decision of 26 October 2015
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Agreement, Article 26
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Information concerning the entry into force of the Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part

The Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part, signed in Astana on 21 December 2015 (¹), enters into force on 1 March 2020, in accordance with Article 281(1) of the Agreement. The last instrument of ratification or approval was deposited on 20 January 2020.

¹ OJ L 29, 4.2.2016, p. 3.

**COUNCIL DECISION (EU) 2020/244
of 20 January 2020**

**on the conclusion, on behalf of the Union, of the Enhanced Partnership and
Cooperation Agreement between the European Union and its Member States, of the
one part, and the Republic of Kazakhstan, of the other part**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91, Article 100(2) and Articles 207 and 209, in conjunction with Article 218(6)(a) and the second subparagraph of Article 218(8) thereof,

Having regard to the joint proposal from the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy,

Having regard to the consent of the European Parliament ⁽²⁾,

Whereas:

- (1) In accordance with Council Decision (EU) 2016/123 ⁽³⁾, the Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part ('the Agreement') was signed on 21 December 2015, subject to its conclusion at a later date.
- (2) The Agreement constitutes an important step towards increased political and economic involvement of the Union in Central Asia. By strengthening political dialogue and improving cooperation in a broad range of areas, it will provide the basis for more effective bilateral engagement with the Republic of Kazakhstan.
- (3) The Agreement should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part, is hereby approved on behalf of the Union. ⁽⁴⁾

² Consent of 12 December 2017 (not yet published in the Official Journal).

³ Council Decision (EU) 2016/123 of 26 October 2015 on the signing, on behalf of the European Union, and provisional application of the Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part (OJ L 29, 4.2.2016, p. 1).

⁴ The Agreement has been published in OJ L 29, 4.2.2016, p. 3, together with the decision on signature.

Article 2

The President of the Council shall designate the person(s) empowered to give, on behalf of the Union, the notification provided for in Article 281(1) of the Agreement in order to express the consent of the Union to be bound by the Agreement. ⁽⁵⁾

Article 3

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

Done at Brussels, 20 January 2020.

For the Council
The President
J. BORRELL FONTELLES

⁵ The date of entry into force of the Agreement will be published in the Official Journal of the European Union by the General Secretariat of the Council

COUNCIL DECISION (EU) 2016/123

of 26 October 2015

on the signing, on behalf of the European Union, and provisional application of the Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91, Article 100(2) and Articles 207 and 209, in conjunction with Article 218(5) and the second subparagraph of Article 218(8) thereof,

Having regard to the joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission,

Whereas:

- (1) On 13 April 2011, the Council authorised the Commission to open negotiations with the Republic of Kazakhstan on an Enhanced Partnership and Cooperation Agreement ('the Agreement').
- (2) Negotiations on the Agreement were successful and the Agreement was initialled on 20 January 2015.
- (3) Article 281 of the Agreement provides for the provisional application in whole or in part of the Agreement before its entry into force.
- (4) The Agreement should be signed on behalf of the Union and applied in part on a provisional basis, pending the completion of the procedures for its conclusion.
- (5) The signing of the Agreement on behalf of the Union and the provisional application of parts of the Agreement between the Union and the Republic of Kazakhstan is without prejudice to the allocation of competences between the Union and its Member States in accordance with the Treaties,

HAS ADOPTED THIS DECISION:

Article 1

1. The signing on behalf of the Union of the Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part, is hereby authorised, subject to the conclusion of the said Agreement.
2. The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union.

Article 3

1. Pending its entry into force, in accordance with Article 281 of the Agreement and subject to the notifications provided for therein, the following parts of the Agreement shall be applied provisionally between the Union and the Republic of Kazakhstan, but only to the extent that they cover matters falling within the Union's competence, including matters falling within the Union's competence to define and implement a common foreign and security policy:

- (a) Title I;
- (b) Title II: Articles 4, 5, 9 and 10;
- (c) Title III (with the exception of Articles 56 and 58, Article 62 to the extent that it concerns criminal enforcement of intellectual property rights, and Article 147).

The provisional application of Article 141 shall not affect the sovereign rights of the Member States over their hydrocarbon resources in accordance with international law, including their rights and obligations as Parties to the 1982 United Nations Convention on the Law of the Sea.

- (d) Title IV: Chapters 5, 6 and 7 (with the exception of point (c) of Article 210 and points (b), (f), (g), (h) and (i) of Article 212), and Chapters 12 and 15;
- (e) Title V: Article 235 and Article 238 (with the exception of paragraphs 2 and 3);
- (f) Title VI: Chapters 5 and 9;
- (g) Title VII;

- (h) Title VIII (to the extent that the provisions of that Title are limited to the purpose of ensuring the provisional application of the Agreement);
- (i) Title IX (with the exception of Article 281(7), to the extent that the provisions of that Title are limited to the purpose of ensuring the provisional application of the Agreement in accordance with this Article);
- (j) Annexes I to VII as well as Protocol on Mutual Administrative Assistance in Customs Matters.

2. The date from which the Agreement is to be provisionally applied shall be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Article 4

This Decision shall enter into force on the day following that of its adoption.

Done at Luxembourg, 26 October 2015.

For the Council

The President

F. MOGHERINI

ENHANCED PARTNERSHIP AND COOPERATION AGREEMENT

**between the European Union and its Member States, of the one part, and the
Republic of Kazakhstan, of the other part**

CHAPTER 2

Custom

s (...)

Article 26

Mutual administrative assistance

Without prejudice to other forms of cooperation envisaged in this Agreement, in particular in Article 25, the Parties shall provide each other with mutual administrative assistance in customs matters in accordance with the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters.

PROTOCOL

on mutual administrative assistance in customs matters

Article 1

Definitions

For the purposes of this Protocol:

- (a) ‘customs legislation’ means the 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 thereof;
- (b) ‘applicant authority’ means a competent administrative authority which makes a request for assistance pursuant to this Protocol and which has been designated by a Party for that purpose;
- (c) ‘requested authority’ means a competent administrative authority which receives a request for assistance pursuant to this Protocol and which has been designated by a Party for that purpose;
- (d) ‘personal data’ means any 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 of their competence, in the manner and under the conditions laid down in this Protocol, to ensure the correct application of their customs legislation by preventing, investigating and combating operations in breach of that legislation.

2. The 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 and shall not cover exchange of information obtained under powers exercised at the request of a judicial authority, except where the communication of such information is authorised by that authority.

3. The 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 the former 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 the former of:

- (a) circumstances (facts and conditions) of export of goods from the territory of a Party and import into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;
- (b) circumstances (facts and conditions) of import of goods into the territory of a Party and export 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 goods are stocked in respect of which there are reasonable grounds to suspect that operations in breach of customs legislation take place;
- (c) goods transported or intended for transportation in respect of which there are reasonable grounds to suspect that operations in breach of customs legislation take place;
- (d) means of transport carrying goods in respect of which there are reasonable grounds to suspect that operations in breach of customs legislation take place.

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 that to be necessary for the correct application of customs legislation, in particular by providing information 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 and notification

At the request of the applicant authority, the requested authority shall, in accordance with the legal or regulatory provisions applicable to the latter, take all necessary measures in order to deliver any documents or to notify any decisions, originating 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 object of and the reason for the request;
- (c) the requested measure;
- (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 enquiries;
- (f) a summary of the relevant facts and of the enquiries already carried out;
- (g) any other relevant information that is needed to execute the request.

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 in paragraphs 1 to 3, its correction or completion may be requested; in the meantime 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 in the authority's possession, by carrying out appropriate enquiries or by arranging for them to be carried out. This 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. In case the request cannot be executed, the requesting Party shall be informed of this without delay.

3. Duly authorised officials of a Party may, with the agreement of the other Party and subject to the conditions laid down by the latter, be present in the offices of the requested authority or any other concerned authority in accordance with paragraph 1 to obtain 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 may, with the agreement of the other Party 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 writing together with relevant documents, certified copies or other items.
2. This information may be in a computerised 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 the sovereignty of the Republic of Kazakhstan or that of a Member State of the European Union which has been requested 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) of this Protocol; or
 - (c) violate an industrial, commercial or professional secret.
2. Assistance may be postponed by the requested authority on the grounds 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 Party. 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 and the corresponding provisions applying to the institutions of the European Union.
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 or judicial 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 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. The competent authority which supplied that information or gave access to those documents shall be notified of such use.
4. The information obtained under this Protocol shall be used solely for the purposes set out in this Protocol. Where a Party 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 the latter 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 a witness in administrative or judicial proceedings regarding matters covered by this Protocol, and may produce such objects, documents or certified copies thereof, as may be needed for the proceedings. The request to the official shall be made by the applicant authority and must indicate specifically before which administrative or judicial authority the official will have to appear, on what matters and in what capacity (title or qualification).

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 related to experts and

witnesses, and those related 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 the Republic of Kazakhstan and, on the other hand, to the competent services of the European Commission and the customs authorities of the Member States of the European Union, 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.

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 European Union and of the Member States of the European Union, the provisions of 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 of the European Union and the Republic of Kazakhstan; and
- (c) not affect the provisions of the European Union governing the communication between the competent services of the European Commission and the customs authorities of the Member States of the European Union of any information obtained under this Protocol which could be of interest to the European Union or to the Member States of the European Union.

2. Notwithstanding paragraph 1 of this Article, the provisions of this Protocol shall take precedence over the provisions of any bilateral Agreement on mutual assistance which has been or may be concluded between individual Member States of the European Union and the Republic of Kazakhstan 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 in order to resolve the matter in the framework of a regular dialogue on customs matters between the Parties.