

RUSSIAN FEDERATION



Decision of 30.10.1997
OJ L 327/1 of 28.11.1997

Agreement : Art. 78
OJ L 327/25 of 28.11.1997

Protocol No 2
OJ L 327/48 of 28.11.1997

Joint Declaration in relation to Article
6 of Protocol 2
OJ L 327/63 of 28.11.1997

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL AND COMMISSION DECISION

of 30 October 1997

on the conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part⁽¹⁾

(97/800/ECSC, 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 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 assent of the European Parliament⁽²⁾,

Having consulted 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⁾ This Partnership and Cooperation Agreement was signed with Russia on 24 June 1994 by the European Communities and the twelve Member States at the time. Following enlargement, an Additional Protocol was signed with Russia on 21 May 1997 so as to enable Austria, Finland and Sweden to become members of the Agreement alongside the other twelve Member States and to make the Swedish and Finnish language versions of the Agreement official.

After completion of the necessary procedures, the Communities and their Member States also decided — on the conclusion of this Partnership Agreement — to apply the aforementioned Additional Protocol provisionally pending its entry into force, in accordance with Article 4 thereof. Accordingly, the text of the Partnership Agreement contained in the Finnish and Swedish editions of the Official Journal is the one which is made official by the Additional Protocol.

The Partnership and Cooperation Agreement concluded with Russia will enter into force on 1 December 1997, the notifications regarding the completion of the procedures laid down in Article 112, second paragraph, of the Agreement having been completed by the parties as at 30 October 1997.

Whereas conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Russian Federation, of the other, signed on 24 June 1994 in Corfu, will contribute to the achievement of the objectives of the European Communities;

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⁽³⁾;

⁽²⁾ OJ C 339, 18. 12. 1995, p. 45.

⁽³⁾ OJ L 68, 15. 3. 1990, p. 1.

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;

Whereas the said Agreement imposes on the European Community certain obligations regarding capital movements and payments between the Community and Russia;

Whereas, in addition, insofar 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⁽¹⁾, 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⁽²⁾, which are based on Article 100 of the Treaty establishing the European Community, that Article should be used as a legal basis;

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;

Whereas 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 Russian Federation, of the other part, together with the protocols and declarations, are hereby approved on behalf of the European Community, the

European Coal and Steel Community and the European Atomic Energy Community.

The texts are annexed to this Decision.

Article 2

1. The position to be adopted by the Community in the Cooperation Council and the Cooperation Committee shall be determined by the Council, on a proposal from the Commission, or, where appropriate, by the Commission, in each case in accordance with the relevant 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 91 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 112 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 Luxembourg, 30 October 1997.

For the Commission
The President
J. SANTER

For the Council
The President
F. BODEN

⁽¹⁾ OJ L 225, 20. 8. 1990, p. 1.

⁽²⁾ OJ L 225, 20. 8. 1990, p. 6.

AGREEMENT ON PARTNERSHIP AND COOPERATION

establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, 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 PORTUGUESE REPUBLIC,

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 RUSSIAN FEDERATION,

hereinafter referred to as 'Russia',
of the other part,

CONSIDERING the importance of the historical links existing between the Community, its Member States and Russia and the common values that they share,

RECOGNIZING that the Community and Russia wish to strengthen these links and to establish partnership and cooperation which would deepen and widen the relations established between them 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, hereinafter referred to as the '1989 Agreement',

CONSIDERING the commitment of the Community and its Member States acting in the framework of the European Union by the Treaty on European Union of 7 February 1992 and of Russia to strengthening the political and economic freedoms which constitute the very basis of the partnership,

CONSIDERING the commitment of the Parties to promote international peace and security as well as the peaceful settlement of disputes and to cooperate to this end in the framework of the United Nations and the Conference on Security and Cooperation in Europe and other fora,

CONSIDERING the firm commitment of the Community and its Member States and of Russia 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,

- promotion of European technical standards, systems of certification and regulatory approaches.

Article 78

Customs

1. The aim of cooperation shall be to achieve compatibility of the customs systems of the Parties.
2. Cooperation shall include the following in particular:
 - the exchange of information,
 - the improvement of working methods,
 - the harmonization and simplification of customs procedures regarding the goods traded between the Parties,
 - the interconnection between the transit systems of the Community and Russia,
 - the support in the introduction and management of modern customs information systems, including computer-based systems on the customs check points,
 - mutual assistance and joint actions with respect to 'dual-use' goods and goods subject to non-tariff limitations,
 - the organization 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 Articles 82 and 84, the mutual assistance between administrative authorities in customs matters of the Parties shall take place in accordance with the provisions of Protocol 2.

Article 79

Statistical cooperation

1. The cooperation shall aim at further development of efficient statistical systems, informational and programme-technological compatibility of statistical data, to provide, in time, reliable statistics needed to support and monitor economic cooperation between the Parties and the process of economic reform in Russia, and also to contribute to the development of private enterprise in Russia.
2. The Parties shall cooperate in particular:
 - to enhance the development of an efficient statistical system in Russia, in particular to elaborate an appropriate institutional framework,

- to improve the standards of training and the professional level of the statistical personnel,
- to bring about harmonization with international, and in particular, Community methods, standards and classifications,
- to provide private and public sector economic operators with the appropriate macro- and microeconomic data,
- to guarantee the confidentiality of data,
- to exchange statistical information and to this end to build up and/or to make appropriate use of databases.

Article 80

Economics

The Parties shall facilitate the process of economic reform and the coordination of economic policies by cooperating to improve understanding of the fundamentals of their respective economies and the design and implementation of economic policy in market economies.

The Parties shall:

- exchange information on macroeconomic performance and prospects and on development strategies,
- analyse economic issues of mutual interest, including the framing of economic policies and implementation instruments,
- encourage extensive cooperation among economists and senior officials in order to expedite the transfer of information and know-how for the drafting of economic policies, and provide for wide dissemination of the results of policy-relevant research.

Article 81

Money laundering

1. The Parties agree on the necessity of making efforts and cooperating in order to prevent the use of their financial systems for laundering of proceeds from criminal activities in general and drug offences in particular.
2. Cooperation in this area shall include administrative and technical assistance with the purpose of establishing suitable standards against money laundering equivalent to those adopted by the Community and international fora in this field, including the Financial Action Task Force (FATF).

PROTOCOL 2

on mutual administrative assistance for the correct application of customs legislation

Article 1

Definitions

For the purposes of this Protocol:

- (a) 'customs legislation' shall mean provisions applicable in the territories of the Parties and 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, including documents 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 detected or planned which are, appear or would be in contravention of such legislation.

2. At the request of the applicant authority, the requested authority shall inform it whether goods exported from the territory of one of the Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.

3. At the request of the applicant authority, the requested authority shall 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) places 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 customs legislation of the other Party;
- (c) movements of goods notified as possibly giving rise to contraventions of customs legislation;
- (d) means of transport for which there are reasonable grounds for believing that they have been, or are or may be used in the contravening of customs legislation.

Article 4

Spontaneous assistance

The Parties shall within their competences provide each other with assistance without prior request where they consider that to be necessary for the correct application of customs legislation, particularly when they obtain information pertaining to:

- operations detected or planned, which are, appear or would be in contravention of such legislation,
- new means or methods employed in realizing such operations,
- goods known to be subject to substantial contravention of customs legislation on import, export, transit or any other customs procedure.

*Article 5***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.
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 6***Execution of requests**

1. Requests for assistance will be executed in accordance with the laws, rules and other legal instruments of the requested Party.
2. In order to comply with a request for assistance, the requested 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.
3. Duly authorized 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, in particular cases 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.

5. When, in the circumstances provided for under this Protocol, officials of one Party are present at enquiries carried out in the territory of the other Party, they must, at all times, be able to furnish proof of their official capacity. They must not wear uniform nor carry arms.

*Article 7***Form in which information is to be communicated**

1. Under the conditions and within the limits laid down in this Protocol, the Parties shall communicate each other information in the form of documents, certified copies of documents, reports and the like.
2. Original files and documents may be transmitted on request only in cases where certified copies would be insufficient. Those files and documents shall be returned at the earliest opportunity.
3. The documents provided for in paragraph 1 may be replaced by computerized information produced in any form for the same purpose. All relevant information for the utilization of the material shall be supplied on request.

*Article 8***Exceptions to the obligation to provide assistance**

1. The Parties may refuse to give assistance as provided for in this Protocol, provide it partially or provide it subject to certain conditions or requirements, where to do so would:
 - (a) be likely to prejudice sovereignty, public policy, security or other essential interests;
 - or
 - (b) violate an industrial, commercial or professional secret.
2. Where the applicant authority asks for assistance which it would itself be unable to provide if asked so by another party, 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 in written form to the applicant authority without delay.

*Article 9***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 legislation applicable in the Party which received it and the corresponding provisions applying to the Community institutions.

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 a prejudice to fundamental human rights. 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 authorization 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 stores and the purpose of this storage.

Article 10

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 11

Experts and witnesses

An official of a requested authority may be authorized to appear, within the limitations of the authorization

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 12

Assistance expenses

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

Article 13

Implementation

1. The management of this Protocol shall be entrusted to the competent services of the Commission of the European Communities and, where appropriate, the customs authorities of the Member States on the one hand and the central customs authorities of Russia 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 Cooperation Council 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

Complementarity

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

2. Without prejudice to Article 10, 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.

Joint Declaration in relation to Article 107 (2)

The Parties agree that 'appropriate measures' referred to in Article 107 (2) are measures taken in accordance with international law.

If a Party takes a measure in a case of 'special urgency' as provided for pursuant to Article 107 (2), the other Party may avail itself of the procedures provided for in Article 101.

Joint Declaration in relation to Articles 2 and 107

The Parties declare that the inclusion in the Agreement of the reference to the respect for human rights constituting an essential element of the Agreement and to cases of special urgency flows from:

- the Community's policy in the area of human rights, in conformity with the Declaration of the Council of 11 May 1992 which provides for the inclusion of this reference in cooperation or association agreements between the Community and its CSCE partners, as well as
- Russia's policy in this field, and
- the attachment of both Parties to the relevant obligations, arising in particular from the Helsinki Final Act and the Charter of Paris for a new Europe.

Joint Declaration in relation to Article 112

The Parties confirm that although the present Agreement replaces the Agreement of 18 December 1989 regarding relations between the Parties, the Agreement shall not prejudice or otherwise affect any measures taken before the entry into force of this Agreement or agreements made between them before that date in conformity with the 1989 Agreement and this upon the conditions and for the period of application contained in such measures or agreements.

Joint Declaration in relation to Article 6 of Protocol 2

1. The Parties agree to take the necessary measures in order to assist each other, as provided for in this Protocol and without delay, for the following movements of goods:
 - (a) movement of arms, ammunition, explosives and explosive devices;
 - (b) movement of objects of art and antiquity, which present significant historical, cultural or archaeological value for one of the Parties;
 - (c) movement of poisonous goods as well as the substances dangerous for the environment and the public health;
 - (d) movement of sensitive and strategic goods subject to non-tariff limitations in accordance with the lists agreed upon by the Parties.

2. The Parties agree, if permitted by the basic principles of their respective legal systems, to take the necessary measures to allow the appropriate use of the controlled delivery technique on the basis of mutually agreed implementing provisions adopted by them in accordance with the procedures of this Protocol.
 3. The Parties agree to take all necessary measures, in accordance with their respective legislation, in order:
 - to deliver all documents,
 - to notify all decisions,falling within the scope of this Protocol to an addressee, residing or established in their respective territories on the basis of mutually agreed implementing provisions adopted by them in accordance with the procedures of this Protocol. In such a case Article 5 (3) is applicable.
 4. The Parties agree that when the requested authority cannot act on its own, the administrative department to which the request has been addressed by this authority shall proceed under the same conditions applicable to the requested authority.
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