

AGREEMENT BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA
AND
THE COUNCIL OF MINISTERS OF THE REPUBLIC OF ALBANIA

ON
MUTUAL ASSISTANCE AND CO-OPERATION IN CUSTOMS
MATTERS

The Government of the Republic of Austria and the Council of Ministers of the Republic of Albania, hereinafter referred to as the Contracting Parties;

Considering that the offences against customs legislation are prejudicial to the economic, fiscal and commercial interests and to the public health of their respective countries;

Considering the importance of assuring the accurate assessment of customs duties and other taxes on the importation and exportation of goods, as well as the accurate determination of the value and origin of such goods;

Recognizing the need for international co-operation in matters related to the administration and enforcement of the customs legislation;

Convinced that action against customs offences can be made more effective by co-operation between their competent Customs authorities;

Having regard to obligations imposed under international conventions already accepted by or applied to the Contracting Parties and having regard also to the Recommendation of the Customs Co-operation Council on Mutual Administrative Assistance of December 5, 1953;

Have agreed as follows:

DEFINITIONS

Article 1

For the purposes of this Agreement,

1. "Customs Authorities" shall mean, in the Republic of Austria, the Federal Ministry of Finance, in the Republic of Albania, the Directorate General of Customs of the Ministry of Finance.
2. "Customs legislation" shall mean any legal or regulatory provision applicable in the territories of the Contracting Parties concerning the import, the export and transit of goods as they relate to Customs duties, charges and other taxes, including measures in the field of prohibition, restriction and control.
3. "Customs offences" shall mean any violation or attempted violation of the customs legislation.
4. "Applicant Authority" shall mean the Customs Authority making a request for assistance in customs matters pursuant to this Agreement or which receives spontaneous assistance.
5. "Requested Authority" shall mean the Customs Authority receiving the request for assistance in customs matters pursuant to this Agreement or which renders spontaneous assistance.
6. "Narcotic drug" shall mean any substance, natural or synthetic, enumerated in the Lists I. and II. of the 1961 United Nations Single Convention on Narcotic Drugs as amended by the Protocol of 1972.
7. "Psychotropic substances" shall mean any substance, natural or synthetic, or any natural material, enumerated in the Lists I., II., III. and IV. of the 1971 United Nations Convention on Psychotropic Substances.
8. "Precursors" shall mean chemical substances under control used in the production of narcotic drugs and psychotropic substances, enumerated in the Lists I. and II. of the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

9. "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances and precursors, or substances substituted for them, to pass out, through or into the territory of one or more countries, with the knowledge and under supervision of their competent authorities, with the view to identifying persons involved in the commission of offences.
10. "Customs duties" shall mean all duties, taxes, fees or/and other charges which are levied and collected in the territories of the Contracting Parties, in application of customs legislation.
11. "Information" shall mean, inter alia, reports, records, documents and documentation, whether computerized or not, as well as authenticated copies thereof.
12. "Personal data" shall mean all information relating to an identified or identifiable individual.

SCOPE OF AGREEMENT

Article 2

1. The Contracting Parties shall assist each other, in the manner and under the conditions laid down in this Agreement, in order to ensure the correct application of the customs legislation, in particular by preventing, investigating, repressing and prosecuting any customs offence.
2. All assistance under this Agreement shall be rendered in accordance with the domestic law of the requested Contracting Party. Assistance as provided for in paragraph 1 shall be provided for use in all proceedings, in the applicant Contracting Party, whether judicial, administrative or investigative and shall include, but not be limited to, proceedings on classification, value, origin, and other customs procedures relevant to the enforcement of the Customs legislation and proceedings involving fines, penalties and forfeitures.
3. Mutual assistance under this agreement does not affect the provisions applicable regarding mutual assistance in criminal matters, but the Customs Administrations of the Contracting Parties may request or provide mutual assistance in the course of any investigation or in connection with any judicial or administrative proceedings carried out by a Customs Administration of one of the Contracting Parties.

4. Mutual assistance under this Agreement shall not cover the arrest of persons or the recovery of duties or taxes on importation and exportation and of pecuniary penalties or other charges.

ASSISTANCE ON REQUEST

Article 3

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 as well as information regarding acts committed or planned which offend or would offend customs legislation.
2. At the request of the applicant authority, the requested authority shall inform :
 - whether goods exported from the territory of one of the Contracting Parties have been properly imported into the territory of the other Contracting Party, specifying where appropriate, the customs procedure applied to the goods;
 - whether goods imported into the territory of one of the Contracting Parties have been properly exported from the territory of the other Contracting Party, specifying where appropriate, the customs procedure applied to the goods.
3. Upon request and within the scope of its competence and possibilities the requested authority carries out special surveillance for a certain period of time on the movements of goods known or suspected to be object of customs offences, including movements of persons and means of transport.
4. The Customs Authorities of the Contracting Parties shall, upon request, provide documentation relating to the transportation and shipment of goods, showing the value, origin, disposition and destination of those goods.

SPONTANEOUS ASSISTANCE

Article 4

The Contracting Parties shall within their competences provide each other with assistance, if they consider that to be necessary for the correct application of customs legislation, particularly when they obtain information pertaining to:

- activities which are or appear to be an offence of customs legislation within the territory of the other Contracting Party;
- new means and methods used in committing customs offences;
- goods known to be subject to an offence of customs legislation;
- means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in offences of customs legislation;
- consideration and testing of new equipment or procedures.

SURVEILLANCE OF PERSONS; GOODS; MEANS OF TRANSPORTS AND LOCALITIES

Article 5

At the request of the applicant authority, the requested authority shall, within the framework of its legal or regulatory provisions and to the extent of its abilities, take the necessary steps to ensure special surveillance of:

1. natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in an offence against the customs legislation within the territory of the applicant Contracting Party;
2. 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 an offence against the customs legislation in the territory of the applicant Contracting Party;

3. means of transport suspected of being used in customs offences within the territory of the applicant Contracting Party;
4. places where goods have been or may be assembled in such a way that there are reasonable grounds for believing that they are connected with activities that may result in customs offences in the territory of the applicant Contracting Party.

FORM AND SUBSTANCE OF REQUESTS

Article 6

1. Requests pursuant to this Agreement 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 also be accepted but shall be promptly confirmed in writing. The documents provided for in this Agreement may be replaced by computerized information produced in any form for the same purpose.
2. Requests pursuant to paragraph 1 of this Article shall include the following information:
 - the applicant Authority making the request;
 - the measure requested;
 - the object of and the reason for the request;
 - indications as exact and comprehensive as possible on the natural or legal persons, to which the request relates;
 - a brief description of the matter under consideration and the legal or regulatory provisions involved and
 - a summary of the relevant facts and of the inquiries already done.
3. Requests shall be transmitted in the official language of the requested Contracting Party, or in another language acceptable to the requested authority.

4. Originals of files, documents and other materials shall be requested only in cases where copies would be insufficient. Upon specific request, copies of such files, documents and other materials shall be appropriately authenticated.
5. Originals of files, documents and other materials which have been transmitted shall be returned at the earliest opportunity.
6. If a request does not meet the formal requirements, its correction or completion may be demanded; the ordering of precautionary measures may, however, be undertaken.

CHANNEL OF COMMUNICATION

Article 7

1. Assistance shall be carried out by direct communication between the respective Customs Authorities by establishing and maintaining channels of communication between themselves in order to facilitate the secure and rapid exchange of information.
2. In case the Customs Authority of the requested Contracting Party is not the appropriate authority to comply with a request, it shall, after appropriate consultation, either promptly transmit the request to the appropriate authority, who shall act upon the request according to its powers under the domestic legislation, or advise the applicant authority of the appropriate procedure to be followed regarding such a request.

EXECUTION OF REQUESTS

Article 8

1. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Contracting Party.
2. The requested Authority shall proceed, within the limits of its competence and available resources, as though it were acting on its own account.
3. The Customs Authority of either Contracting Party shall, at the request of the Customs Authority of the other Contracting Party, conduct any necessary investigation within its competence, including the questioning of experts and witnesses or persons suspected of

having committed a customs offence, and undertake verifications, inspections and fact-finding inquiries in connection with the matters referred to in this Agreement.

4. The requested Authority may allow appointed officials of the applicant Authority to be present in the territory of the requested Contracting Party, when its officers are carrying out inquiries of interest to the applicant Authority, including presence at such inquiries. The appointed officers shall be present in an advisory role only and may not exercise the powers conferred on officials of the requested Authority by the domestic law of the requested Contracting Party. They shall, however, for the sole purpose of the inquiry being carried out and in the presence of and through officials of the requested Authority, have access to the same premises and same documents as those officials of the requested Authority.
5. The officials of the applicant Authority, authorized to investigate offences of customs legislation, may ask that officials of the requested Authority review relevant books, registers and other documents or computerized data and supply copies thereof or provide any information relating to the offences.
6. When officials of the applicant Authority are present in the territory of the requested Contracting Party pursuant to this Agreement, they always have to be able to identify themselves and shall be responsible for any offences they might commit.
7. The applicant Authority shall, if it so requests, be advised of the time and place of the action to be taken in response to the request so that such action may be co-ordinated.

EXPERTS AND WITNESSES

Article 9

1. An official of a requested Authority may be authorized to appear, within the limitations of the authorization granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by this Agreement in the territory of the applicant Contracting Party, and produce such files, documents or authenticated copies thereof, as may be needed for the proceedings.
2. The request for appearance shall indicate the type of the proceeding as well as the status in which the official is called to testify.

DELIVERY OF DOCUMENTS

Article 10

1. At the request of the applicant Authority the requested Authority shall, in accordance with its legal and regulatory provisions take all necessary measures in order to deliver any documents or to notify any decisions emanating from the applicant Authority and falling within the scope of this Agreement, to an addressee, residing or established in the territory of the requested Contracting Party.
2. Requests for delivery of documents or notification of decisions shall be made in writing in an official language of the requested Contracting Party or in a language acceptable to the requested Authority. Additionally, the content of the official document to be notified shall be accompanied by an authenticated translation in an official language of the Contracting Party in which the requested Authority is based.
3. Such delivery shall be evidenced by a receipt of the addressee bearing the date of delivery or by a certificate describing the manner and date of the delivery.

EXEMPTIONS FROM THE OBLIGATION TO PROVIDE ASSISTANCE

Article 11

1. In cases where the requested Contracting Party is of the opinion that compliance with a request would infringe upon its sovereignty, security, public policy or other substantive national interest or would violate a commercial, industrial or professional secret, assistance can be refused or compliance may be made subject to the satisfaction of certain conditions or requirements. Assistance may also be refused if the request involves currency or tax regulations other than regulations concerning customs duties.
2. Assistance may be postponed by the requested Authority on the ground if it interferes 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 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 over to the requested Authority to decide how to respond to such a request.

4. Whenever assistance is denied or postponed, reasons for the denial or postponement shall be notified to the applicant Authority, in writing, without delay.

COSTS

Article 12

1. The Contracting Parties shall normally waive all claims for reimbursement of costs incurred in the execution of this Agreement, with the exception of expenses for witnesses, fees of experts, and costs of interpreters other than government employees.
2. If expenses of a substantial and extraordinary nature are or will be required to execute the request, the Customs Authorities of the Contracting Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

CONFIDENTIALITY AND USE OF INFORMATION

Article 13

1. Any information communicated in whatsoever form pursuant to this Agreement shall be of a confidential nature. It shall be covered by the obligation of official secrecy and shall enjoy the same protection extended under the relevant laws relating to the same kind of information applicable in the Contracting Party, which received it.
2. Personal data may only be transmitted if the level of personal protection afforded by the legislation of the Contracting Parties is equivalent. The Contracting Parties shall ensure at least a level of protection based on the principles mentioned in the Annex to this Agreement, which is an integral part of the Agreement.
3. Information received in the course of mutual assistance may only be used for the purposes specified in this Agreement, including the use in judicial or administrative proceedings concerning the respective customs offence.

4. The applicant Authority shall not use evidence or information obtained under this Agreement for purposes other than those stated in the request without the prior consent of the requested Authority.
5. The provisions of paragraphs 3 and 4 of this Article are not applicable to information concerning offences relating to narcotic drugs and psychotropic substances. Such information may be communicated to the authorities of the applicant Contracting Party which are directly involved in combating illicit drug trafficking.
6. The provisions of this Agreement do not affect the provisions applicable to the exchange of information between the European Commission and the customs authorities of the Member States of the European Community relating to customs offences of the financial interests of the European Community.

CONTROLLED DELIVERY

Article 14

1. The Contracting Parties shall take the necessary measures, within their possibilities, to permit the appropriate use of controlled delivery for the purpose of criminal investigations.
2. Decisions to carry out controlled deliveries shall be made on a case-by-case basis and shall take place in accordance with the domestic law and procedures of the requested Contracting Party and in accordance with any arrangements or agreements which may have been reached concerning the particular case.
3. Illicit consignments whose controlled delivery is agreed to, may, by mutual consent of the competent authorities, be intercepted and allowed to continue with the narcotic drugs or psychotropic substances or other goods as agreed upon by the Customs Authorities intact or removed or replaced in whole or in part.

IMPLEMENTATION

Article 15

1. The implementation of this Agreement shall be entrusted to the Customs Authorities of the Contracting Parties. They decide on all practical measures and arrangements necessary for its application or on any other customs matter which may be of mutual interest.
2. The Contracting Parties may issue coordinated administrative directives for the implementation of this Agreement and will facilitate effective coordination between themselves, including the exchange of personnel, experts, and the posting of liaison officers. The Customs Authorities of the Contracting Parties may arrange for their intelligence services to be in direct communication with each other.
3. The Customs Authorities undertake by mutual accord to resolve problems arising from the application of this Agreement. This does not exclude the settlement of such disputes by diplomatic means.

ENTRY INTO FORCE AND TERMINATION

Article 16

1. This Agreement shall enter into force on the first day of the third month following the date on which the Contracting Parties have notified each other by an exchange of diplomatic notes that all necessary national legal procedures for its entry into force have been fulfilled.
2. The Contracting Parties agree to meet in order to review this Agreement upon request.
3. This Agreement shall be concluded for an indefinite period of time, unless terminated by one of the Contracting Parties in writing through diplomatic channels. The Agreement shall cease to be in force six months following the receipt of such notification.

IN WITNESS THEREOF, the undersigned, being duly authorized by their respective governments, have signed this Agreement.

Done at Vienna, on March 9, 2007, in duplicate, in German, Albanian and English languages, all the texts being equally authentic. In case of divergence of the interpretation, the English text shall prevail.

For the Government of the Republic
of Austria:

For the Council of Ministers of the Republic
of Albania:

Hans Winkler m.p.

Besnik Mustafaj m.p.

ANNEX
BASIC PRINCIPLES OF DATA PROTECTION

1. The Authority that communicates data shall ensure that they are accurate and up-to-date.
2. If it emerges that inaccurate data have been communicated or data have been communicated which should not have been communicated or that lawfully communicated data are required at a later stage to be erased in accordance with the law of the communicating Contracting Party, the recipient authority shall be informed immediately thereof. It shall be obliged to correct such data or have them erased.
3. If the recipient authority has reason to believe that communicated data are inaccurate or should be erased, it shall inform the communicating Contracting Party.
4. According to national laws the data communicated shall be kept in a database for a period not exceeding that necessary for the purposes for which they are communicated.
5. The right of a person concerned to receive information about the personal data communicated shall be determined in accordance with the National laws, regulations and procedures of the Contracting Party in whose territory the information is requested. Before any decision is taken on providing information, the communicating authority shall be given the opportunity of stating its position.
6. In cases where communicated data should, according to the law of the communicating Contracting Party, be erased or amended, the persons concerned must be given the effective right to correct the data.
7. The Contracting Parties shall be liable, in accordance with their own laws, regulations and procedures, for injury caused to a person through processing of data communicated in the Contracting Party concerned.
8. In addition to the above mentioned principles the principles of the Council of Europe Convention No 108 of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data will be applied by the Republic of Albania upon the ratification of this Convention.

9. None of the provisions of this Annex shall be interpreted as limiting or otherwise affecting the possibility for a Contracting Party to grant data subjects a wider measure of protection than that stipulated in this Annex.