

**AGREEMENT
BETWEEN THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA AND
THE GOVERNMENT OF THE REPUBLIC OF BELARUS
ON CO-OPERATION AND MUTUAL ASSISTANCE
IN CUSTOMS MATTERS**

The Government of the Republic of Austria and the Government of the Republic of Belarus, hereinafter referred to as the Contracting Parties;

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

Considering the importance of accurate assessment of customs duties and taxes;

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

Convinced that action against customs infringements can be made more effective by co-operation between their Customs Administrations;

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:

**Article 1
DEFINITIONS**

For the purposes of this Agreement,

- 1) "Customs Administration" shall mean:
the Federal Ministry of Finance – in the Republic of Austria, and
the State Customs Committee – in the Republic of Belarus;
- 2) "customs legislation" shall mean any legal or regulatory provisions applied by the Customs Administrations regulating the import, export and transit of goods as well as the means of payment, and also any customs procedure under which the goods may be placed,

and concerning either customs duties and taxes collected by the Customs Administrations, or measures of prohibition, restriction and control;

- 3) "infringement" shall mean any violation or attempted violation of customs legislation;
- 4) "requesting Customs Administration" shall mean the Customs Administration of a Contracting Party, which makes a request for assistance in customs matters;
- 5) "requested Customs Administration " shall mean the Customs Administration of a Contracting Party, which receives a request for assistance in customs matters;
- 6) "narcotic drug" shall mean any substance, natural or synthetic, enumerated in Lists I. and II. of the Single Convention on Narcotic Drugs of 1961, as amended;
- 7) "psychotropic substance" shall mean any substance, natural or synthetic, or any natural material, enumerated in Lists I., II., III. and IV. of the Convention on Psychotropic Substances of 1971, as amended;
- 8) "precursors" shall mean chemical substances under control used in the production of narcotic drugs and psychotropic substances, enumerated in Lists I. and II. of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;
- 9) "controlled delivery" shall mean the method which allows the movement out of, through or into the territory of the States of the Contracting Parties of illicit consignments, with the knowledge and under control of their competent authorities for the purpose of detecting and identifying persons involved in infringement of customs legislation;
- 10) "information" shall mean any data, documents, reports, certified or authenticated copies thereof, or other communications, whether computerized or not;
- 11) "personal data" shall mean any information relating to an identified or identifiable natural person;
- 12) "controller" shall mean a natural or legal person, public authority, agency or any other body which alone or jointly with the others determines the purposes and means of the processing of personal data.

Article 2

SCOPE OF AGREEMENT

1. The Contracting Parties agree to afford each other assistance through their Customs Administrations in order to ensure proper application of customs legislation, in particular by preventing, investigating, repressing and prosecuting any infringement in accordance with the provisions of this Agreement.

2. All assistance rendered under this Agreement by either Contracting Party shall be performed in accordance with its national legislation. Assistance pursuant to paragraph 1 of this Article shall be provided for use in all proceedings in the State of the requesting Customs Administration, whether judicial, administrative or criminal, and shall include, but not be limited to, proceedings on classification, value, origin, and other characteristics relevant to the enforcement of customs legislation and proceedings involving fines, penalties, forfeiture and liquidated joint debts and guarantees.

3. Mutual assistance under this Agreement does not affect the provisions applicable regarding mutual assistance in criminal matters, but the Customs Administrations may request or provide mutual assistance in the course of any investigation or in connection with any judicial or administrative proceeding carried out with participation of the Customs Administrations of one of the States of the Contracting Parties.

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

Article 3

ASSISTANCE ON REQUEST

1. The Customs Administrations shall assist each other in the areas within their competences, in the manner and under the conditions within the framework of this Agreement, to ensure proper application of customs legislation, the accurate assessment and collection of customs duties and taxes, including all relevant information regarding activities which could lead to infringements of customs legislation.

2. The requested Customs Administration upon request of the requesting Customs Administration shall inform:

- whether goods as well as means of payment exported from the territory of the State of one of the Contracting Parties have been properly imported into the territory of the State of

the other Contracting Party, specifying where necessary, the customs procedure under which the goods have been placed;

- whether goods as well as means of payment imported into the territory of the State of one of the Contracting Parties have been properly exported from the territory of the State of the other Contracting Party, specifying where necessary, the customs procedure under which the goods have been placed.

3. On request the Customs Administrations exchange information and experience in the usage of detection equipment especially concerning cases of smuggling.

Article 4

ASSISTANCE PROVIDED ON OWN INITIATIVE

The Customs Administrations shall provide each other assistance on their own initiative and in accordance with national legislation, if they consider that to be necessary for proper application of customs legislation and accurate assessment as well as collection of customs duties and taxes, particularly by providing all relevant information about:

- activities which are or appear to be an infringement in the territory of the State of the other Contracting Party;
- new means and methods of committing infringements;
- goods known to be or suspected of being involved in illicit trafficking;
- means of transport in respect of which there are solid reasons to suspect that they were, are, or could be used in committing infringements.

Article 5

SURVEILLANCE OVER GOODS, MEANS OF TRANSPORT AND LOCATION OF GOODS

The requested Customs Administration shall in accordance with its national legislation, within its competence and available resources, upon request of the requesting Customs Administration assume necessary measures to ensure special surveillance over:

- a) goods being transported or could be transported in a way that there are solid reasons to suspect that they are intended to be used in committing infringements in the territory of the State of the requesting Customs Administration;
- b) means of transport as well as containers suspected of being used in committing infringements in the territory of the State of the requesting Customs Administration;
- c) places where goods are or could be accumulated in a way that there are solid reasons to suspect that they are involved in actions which could lead to infringements in the territory of the State of the requesting Customs Administration.

Article 6

FORM AND SUBSTANCE OF REQUESTS

1. Requests pursuant to this Agreement shall be made in writing in an official language of the State of the requested Customs Administration or in a language acceptable to the requested Customs Administration. Documents necessary for execution of such requests shall accompany the request. When required because of the urgency of the situation, oral or electronic requests made by the requesting Customs Administration may be accepted, but shall be confirmed by official letter without delay.

2. Requests pursuant to paragraph 1 of this Article shall include the following information:

- the name of the requesting Customs Administration;
- the measures requested;
- the object of and the reason for the request;
- indications as exact and comprehensive as possible on the natural or legal persons being the target of the investigation;
- a brief description of the matter under consideration and the legal or regulatory provisions involved;
- a summary of the relevant facts and of the enquiries already done.

3. Originals of files, documents and other materials shall be requested only in cases where copies would be insufficient. Upon special request copies of such files, documents and other materials shall be appropriately certified.

4. Originals of files, documents and other provided materials shall be returned as soon as possible.

Article 7

COMMUNICATION

1. Assistance shall be provided by direct contact between the respective Customs Administrations.

2. In case the requested Customs Administration is not the competent authority to comply with a request, it shall after consultation transmit the request without delay to the appropriate authority, which shall act upon the request according to its powers under the national legislation, or shall offer the requesting Customs Administration the appropriate procedure to be followed regarding such a request.

Article 8

EXECUTION OF REQUESTS

1. Requests shall be executed in accordance with the national legislation of the State of the requested Customs Administration.

2. The requested Customs Administration shall proceed within its competence and available resources, as if it were acting on its own account.

3. Upon request the requested Customs Administration shall conduct any necessary investigation, including questioning of experts and witnesses or persons suspected in committing an infringement, and carry out inspections and fact-finding inquiries in connection with the matters referred to in this Agreement.

4. The requested Customs Administration may allow designated officials of the requesting Customs Administration to be present in the territory of the State of the requested Customs Administration, when its officials are carrying out inquiries in the interest of the requesting Customs Administration, including presence during such inquiries. The designated officials shall be present in an advisory role only and are not empowered equally to officials of the requested Customs Administration acting in accordance with the national legislation. However only for the purpose of the inquiry carried out they shall, in the presence of and through officials of the requested Customs Administration, have access to the same premises and documents as those officials of the requested Customs Administration.

5. The officials of the requesting Customs Administration, authorized to conduct inquiry of infringements, may ask officials of the requested Customs Administration to review relevant books, registers and other documents or data-media and to provide copies thereof or to provide any information related to infringements.

6. When officials of the requesting Customs Administration are present in the territory of the State of the requested Customs Administration pursuant to this Agreement, they must be able at all times to furnish proof of their identity and shall be responsible for any offences they might commit.

7. Upon request the requesting Customs Administration shall be advised of time and place of the action carried out in connection with the request with a view to coordinate this action.

Article 9

EXPERTS AND WITNESSES

1. The requested Customs Administration may authorize its officials, within their empowerment granted, to appear as experts or witnesses in judicial or administrative proceedings regarding the matters subject to this Agreement in the territory of the State of the requesting Customs Administration, and to present such files, documents or certified copies thereof, possibly needed during proceedings.

2. The request for appearance shall indicate the type of proceeding as well as the status in which the official is called to testify.

Article 10

DELIVERY OF DOCUMENTS

1. The requested Customs Administration upon request of the requesting Customs Administration shall in accordance with the national legislation assume all necessary measures in order to deliver any documents or to notify any decision of the requesting Customs Administration which fall within the scope of this Agreement, to an addressee residing or established in the territory of the State of the requested Customs Administration.

2. Requests for delivery of documents or notification of decisions shall be made in writing in the language of the State of the requested Customs Administration or in a language acceptable to the requested Customs Administration. Furthermore, the content of the official document to be notified shall be accompanied by a certified translation in an official language of the State of the requested Customs Administration.

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 delivery.

Article 11

EXEMPTIONS FROM THE LIABILITY TO RENDER ASSISTANCE

1. In cases where the Customs Administration of one Contracting Party considers that compliance with the request for assistance would infringe upon sovereignty, security, public order or other substantive interests of its country or would involve a violation of an industrial, commercial or professional secret, the Customs Administration of the State of this

Contracting Party may refuse to provide assistance, provide it partly or provide assistance subject to certain conditions or requirements.

2. Assistance may be postponed by the requested Customs Administration for the reason that it will interfere with an ongoing investigation, prosecution or proceeding. In this case, the requested Customs Administration shall consult with the requesting Customs Administration to determine if assistance can be rendered subject to such terms or conditions as the requested Customs Administration may require.

3. If the Customs Administration asks for assistance which it would itself be unable to provide if so requested to do, it shall draw attention to that fact in its request. It shall then be left over to the requested Customs Administration to decide how to respond to such a request.

4. If assistance is refused or postponed, reasons for its refusal or postponement shall be notified to the requesting Customs Administration without delay.

Article 12

COSTS

1. The Customs Administrations shall waive all claims for reimbursement of costs incurred in the execution of this Agreement, with the exception of expenses for experts and witnesses, interpreters and translators other than government employees, which shall be covered by requesting Customs Administration.

2. If expenses of a substantial and extraordinary nature are or will be required to execute the request, the Customs Administrations shall hold mutual consultations to determine the terms and conditions under which the request will be executed as well as the manner how the costs shall be covered.

Article 13

CONFIDENTIALITY AND USE OF INFORMATION

1. Any information communicated in whatever form pursuant to this Agreement shall be of a confidential nature. It shall enjoy the same kind of protection as ensured for similar information in accordance with the national legislation of the State of the Contracting Party which Customs Administration receives it.

2. When personal data are exchanged under this Agreement, the Contracting Parties shall ensure a standard of data protection at least equivalent to that resulting from the

implementation of the principles mentioned in the Annex to this Agreement, which is an integral part of the Agreement.

3. Information received during mutual assistance may only be used for the purposes specified in this Agreement, including the use in judicial or administrative proceedings concerning the respective infringement.

4. The requesting Customs Administration shall not use evidence or information obtained in accordance with this Agreement for purposes other than those indicated in the request without prior consent of the requested Customs Administration.

5. The provisions of paragraph 4 of this Article are not applicable to information about offences concerning narcotic drugs and psychotropic substances. Such information may be transmitted to other competent authorities combating illicit drug trafficking.

6. Furthermore, due to the obligations of the Republic of Austria as a Member State of the European Union, the provisions of paragraph 4 do not exclude that the information received may, if so required, be transmitted to the European Commission and other Member States of the European Union.

Article 14

CONTROLLED DELIVERY

1. The Customs Administrations shall assume the necessary measures, within their available resources, for appropriate use of controlled delivery for the purpose of criminal investigations.

2. Decisions to use the controlled delivery are to be made on a case-by-case basis and shall take place in accordance with the national legislation and procedures of the State of the requested Contracting Party and in compliance with arrangements which may be reached concerning particular cases.

3. The illicit consignments, controlled deliveries of which are carried out pursuant to reached arrangements, by mutual consent of the competent authorities may be intercepted and allowed to continue with the illicit consignment intact or removed or replaced in whole or in part.

Article 15

IMPLEMENTATION OF THE AGREEMENT

1. The Contracting Parties agree that the Customs Administrations may communicate directly for the purpose of dealing with matters arising out of this Agreement or any other customs matter which may be of mutual interest.

2. The Contracting Parties may issue coordinated administrative directives concerning the implementation of this Agreement.

3. The Customs Administrations by mutual consent undertake measures to resolve problems or discrepancies related to the application of this Agreement. This does not exclude the settlement of such disputes through diplomatic channels.

4. The present Agreement does not affect any obligation deriving from the membership of the Republic of Austria to the European Union. Consequently, the provisions of this Agreement may not be invoked or interpreted in such a way as to affect or invalidate obligations arising from the Treaty on European Union or the Treaty on the Functioning of the European Union or agreements concluded between the Republic of Belarus and the European Union.

Article 16

AMENDMENTS TO THE AGREEMENT

By mutual consent of the Contracting Parties this Agreement can be amended in form of separate protocols. Amendments will enter into force according to the provisions of Article 17 paragraph 1 and shall be an integral part of the Agreement.

Article 17

ENTRY INTO FORCE AND TERMINATION OF THE AGREEMENT

1. This Agreement is intended to be of unlimited duration and shall enter into force on the first day of the third month following the date of the last written notification through diplomatic channels that the Contracting Parties have fulfilled all internal requirements necessary for its entry into force.

2. Either Contracting Party may terminate this Agreement at any time by written notification of the other Contracting Party through diplomatic channels. This Agreement shall cease to be in force after expiration of six months following the date when the other Contracting Party has received such notification.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Minsk on 15 September 2014, in duplicate, each in the German, Russian and English languages, all texts being equally authentic. In case of divergence of interpretation of the provisions of this Agreement the English text shall prevail.

**For the Government
of the Republic of Austria**

Jan Kickert

**For the Government
of the Republic of Belarus**

Alexander Franzewitsch Shpilewski

ANNEX

to the Agreement between the Government of the Republic of Austria and the Government of the Republic of Belarus on Cooperation and Mutual Assistance in Customs Matters

BASIC PRINCIPLES OF DATA PROTECTION

1. The Customs Administration communicating data shall ensure their accuracy and actuality.

2. If it emerges that a communication of inaccurate data took place or of data that should not have been communicated, or when lawfully communicated data are required in a later stage to be erased in accordance with the national legislation of the State of the Contracting Party, which Customs Administration has carried out its transmission, the Customs Administration, recipient of such data, shall be informed immediately thereof and obliged to correct such data or erase them.

3. If the Customs Administration receiving the data has reasons to believe that communicated data are inaccurate or should be erased, it shall immediately inform the Customs Administration having communicated these data.

4. The Contracting Parties shall ensure that personal data are only transmitted through communication media, which offer an adequate level of protection against unauthorized access or alteration during data transmission.

5. The Customs Administration receiving the data shall be obliged to protect effectively the received personal data against accidental or unauthorised destruction, accidental loss, unauthorised access, unauthorised or accidental alteration and unauthorised dissemination.

6. The Customs Administration communicating the data and the Customs Administration receiving the data shall be obliged to register the purpose, subject and time of any transmission of personal data as well as the communicating and receiving administrative unit or authority. The documentation shall be stored for at least three years and may only be used for the purpose of ensuring supervision of compliance with the provisions applicable to data protection.

7. The controller shall undertake appropriate measures in order to protect the documentation against their usage for other purposes or any other misuse.

8. According to national legislation the communicated data shall be stored in a database for a period not exceeding that necessary for the purposes for which they are communicated.

9. Communicated personal data are to be erased, if found to be incorrect, illegally obtained or communicated, or if lawfully communicated data are to be erased because of expiration of storage time according to the national legislation of the State of the Contracting Party, which Customs Administration has carried out their transmission, or as soon as the need of data for performance of the task set by the requesting Customs Administration ceased to exist.

10. The controller shall provide every data object, which proves his identity in a proper manner, with information about the data being processed and relating to him, the available information about their origin, the recipients or categories of recipients, the purposes of their use as well as legal basis in an intelligible form. This information shall be given without excessive delay or expense.

11. Moreover the data object shall have the right to correct incomplete or inaccurate data and to erase illegally processed data. Further procedural details relating to the protection of these rights are to be dealt with by national legislation.

12. The Customs Administration having received personal data under this Agreement may not plead that the data communicated by the other Customs Administration are inaccurate or illegally communicated in order to escape responsibility in accordance with the national legislation of the injured party.

13. If the Customs Administration receiving the data is granting compensation for damage caused through the use of personal data communicated incorrectly, the Customs Administration having communicated the data shall provide upon request reimbursement for the total amount paid as compensation.