

AGREEMENT**BETWEEN****THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA****AND****THE GOVERNMENT OF THE REPUBLIC OF KOSOVO****ON COOPERATION AND MUTUAL ASSISTANCE IN CUSTOMS MATTERS**

The Government of the Republic of Austria and the Government of the Republic of Kosovo, hereinafter referred to as “the Contracting Parties”,

Considering the necessity of developing the commercial and economic relations between the two countries;

Convinced that more effective cooperation between their Customs Administrations can be achieved through the exchange of information and that such exchange of information should be based on clear legal provisions;

Considering that offences against customs legislation are prejudicial to the economic, commercial, fiscal, social, cultural, industrial, agricultural interests and to public health, safety and security of their respective countries as well as to the legitimate trade;

Considering the importance of assuring the accurate assessment of customs duties, taxes, fees or charges on import or export of goods, as well as the proper implementation of provisions of prohibition, restriction and control, the latter including also those on the enforcement of the legal provisions and regulations on counterfeit goods, registered trademarks and intellectual property rights;

Convinced that actions against customs offences and efforts to ensure accurate collection of import and export duties, taxes, fees or other charges can be rendered more effectively through cooperation between their Customs Administrations;

Considering that trafficking of narcotic drugs and psychotropic substances represents a danger for public health and society;

Taking into account the provisions of the Single Convention on Narcotic Drugs of 1953 amended by the protocol of 1955 and the Convention on Psychotropic Substances of 1971 drawn up under the auspices of the United Nations Organization as well as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

Have agreed as follows:

Article 1 DEFINITIONS

For the purpose of this Agreement:

1. "Customs Administration" shall mean for the Republic of Austria, the Federal Ministry of Finance and its subordinate Customs Authorities; and for the Republic of Kosovo, the Kosovo Customs (Dogana e Kosovës).
2. "Customs legislation" shall mean any legal and administrative provisions applicable or enforceable by the Customs Administration of a Contracting Party in connection with the import, export, transit, storage and movement of goods as well as means of payment whether relating to customs duties and taxes or to measures of prohibition, restriction and control.
3. "Customs offence" 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 or which receives assistance on a Customs Administration's own initiative.

5. "Requested Customs Administration" shall mean the Customs Administration of a Contracting Party, which receives a request for assistance in customs matters or which provides such assistance on its own initiative.
6. "Information" shall mean any data, documents, reports, certified or authenticated copies thereof or other communications, whether computerized or not.
7. "Personal data" shall mean any information relating to an identified or identifiable individual.
8. "Narcotic drug" shall mean any substance, natural or synthetic, enumerated in Lists I and II of the 1961 United Nations Single Convention on Narcotic Drugs as amended by the Protocol of 1972.
9. "Psychotropic substances" shall mean any substance, natural or synthetic or any natural material enumerated in Lists I, II, III and IV of the 1971 United Nations Convention on Psychotropic Substances.
10. "Precursors" shall mean chemical substances under control used in the production of drugs and psychotropic substances, listed in Table 1 and Table 2 annexed to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988.
11. "Controlled delivery" shall mean the technique of allowing illicit or suspect consignment of narcotic drugs, psychotropic substances or substances substituted for them as well as other goods, considered to be subject of smuggling, to pass out of, through or into the territories of the States of Contracting Parties, with the knowledge and under the supervision of their competent Administrations with a view to identifying and detecting persons involved in the illicit trafficking of these goods.
12. "Controller" shall mean the private or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data.

Article 2

SCOPE OF THE AGREEMENT

1. The Contracting Parties shall, through their Customs Administrations and in accordance with the provisions set out in this Agreement, afford each other mutual assistance:
 - a) in order to ensure the proper application of customs legislation;

- b) in order to prevent, investigate, prosecute and combat offences against customs legislation;
 - c) in cases concerning delivery and notification of administrative decisions and documents regarding application of customs legislation.
2. Assistance mentioned in subparagraphs a) and b) of paragraph 1 of this Article can be provided for use in all proceedings, whether administrative or judicial, including investigations.
3. Assistance within the framework of this Agreement shall be rendered in accordance with the legislation in force in the territory of the State of the requested Contracting Party and within the competence and resources of the requested Customs Administration.
4. Mutual assistance under this Agreement shall not affect the provisions applicable regarding mutual assistance in criminal matters in effect between the Contracting Parties. However, requests for assistance in criminal cases falling under the scope of this Agreement and investigated by one or both Customs Administrations shall be carried out within the framework thereof.
5. Any request for the arrest or detention of persons shall be excluded from assistance under this Agreement. The collection and forced collection of customs duties, other taxes, fines and other monies shall also be excluded from such assistance.

Article 3

SPONTANEOUS EXCHANGE OF INFORMATION AND COOPERATION

The Contracting Parties shall assist each other, at their own initiative and in accordance with their domestic legislation, if they consider that to be necessary for the correct application of customs legislation and the accurate assessment of customs duties and taxes, particularly by providing all relevant information about:

- activities which are or appear to be an offence of customs legislation within the territory of the State of the other Contracting Party;
- new means and methods used in committing customs offence;
- goods known to be subject to a severe 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;
- cross-border transportation of currency values between the territories of the Contracting Parties.

Article 4 ASSISTANCE ON REQUEST

1. The Customs Administrations shall assist each other in the areas within their competences, in the manner and under the conditions laid down in this Agreement, to ensure that customs legislation is correctly applied and the customs duties and taxes are assessed accurately.
2. The Customs Administrations shall upon request supply any information showing that:
 - a) Goods and currency values imported into the territory of the State of one Contracting Party have been lawfully exported from the territory of the State of the other Contracting Party, specifying where appropriate, the customs procedure applied to the goods;
 - b) goods and currency values exported from the territory of the State of one Contracting Party have been lawfully imported into the territory of the State of the other Contracting Party, specifying where appropriate, the customs procedure applied to the goods;
 - c) goods in transit have passed customs clearance in the territory of the State of one Contracting Party.
3. The Customs Administrations of the Contracting Parties shall, if not contrary to their national legislation, also seek to cooperate in:
 - a) Initiating, developing or improving specific training programmes for their personnel,
 - b) exchanging information and experience regarding the use of new equipment and procedures.

Article 5 SPECIAL FORMS OF ASSISTANCE

The Customs Administration of one Contracting Party shall upon request, within the framework of national legislation and its competence and abilities carry out necessary surveillance measures in particular regarding:

- a) persons known or suspected of committing or having committed offences against the customs legislation in force in the territory of the State of other Contracting Party;
- b) goods known to be subject of illicit traffic and smuggling;
- c) means of transport and containers, known to be or suspected of being used in committing offences against customs legislation in force in the territory of the State of the other Contracting Party.

Article 6 INFORMATION RELATING TO CUSTOMS OFFENCES

1. The Customs Administration of the one Contracting Party shall, on its own initiative or upon request, within the framework of national legislation and its competence and abilities, supply to the Customs Administration of the other Contracting Party all available information on activities, detected or planned, which constitute or appear to constitute an offence against the customs legislation in force in the territory of the State of that Contracting Party.
2. Original files and documents shall be requested only in cases where certified copies would be insufficient. Originals, which have been transmitted, shall be returned without delay as soon as the reason for which they had been provided to the Customs Administration of the other Contracting Party ceases to exist.
3. All information for the interpretation or utilization of the relevant documents should be supplied at the same time.
4. The use of electronic information as evidence shall be determined in accordance with the national legislation of the Contracting Parties.

Article 7 DELIVERY OF DOCUMENTS

1. At the request of the requesting Customs Administration the requested Customs Administration shall, in accordance with its national legislation take all necessary measures in order to deliver any documents or to notify any

decisions emanating from the requesting Administration and falling within the scope of this Agreement, to an addressee residing or established in the territory of the State 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 State of the requested Contracting Party or in a language acceptable to the requested Administration. Additionally, the content of the official document to be notified shall be accompanied by an authenticated translation in an official language of the State of the requested Contracting Party or in English or in a language acceptable to the requested 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 the delivery.

Article 8 CONTROLLED DELIVERY

1. The Contracting Parties shall take the necessary measures, within the framework of national legislation and their competence and abilities, to permit the appropriate use of controlled delivery for the purpose of criminal investigations.
2. The Customs Administrations may, by mutual consent and within their competence determined by national legislation, use controlled delivery of goods in case of customs offences in order to identify and detect persons involved.
3. Decisions to use controlled delivery shall be made always on a case-by-case basis.
4. 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 Administrations intact or removed or replaced in whole or in part.

Article 9 EXECUTION OF REQUEST

1. The requested Customs Administration shall take all reasonable measures to execute the request and, if required, shall initiate any official or judicial measure necessary to carry out the request. The requested Customs Administration shall proceed, within the limits of its competence and available resources, as though it were acting on its own account.
2. The Customs Administration of either Contracting Party shall, at the request of the Customs Administration of the other Contracting Party, conduct any necessary investigation, 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.
3. The requested Administration may allow appointed officials of the requesting Administration to be present in the territory of the State of the requested Contracting Party, when its officers are carrying out inquiries of interest to the requesting Administration, 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 Administration by their national legislation. They shall, however, for the sole purpose of the inquiry being carried out and in the presence of and through officials of the requested Administration, have access to the same premises and same documents as those officials of the requested Administration.
4. The officials of the requesting Customs Administration, authorized to investigate customs offences, may ask that officials of the requested Administration review relevant books, registers and other documents or data-media and supply copies thereof or provide any information relating to the offences.
5. When representatives of the Customs Administration of one of the Contracting Parties are present in the territory of the State of the other Contracting Party, pursuant to this Agreement, they must at all times be able to furnish proof of their official capacity. They shall not be in uniform nor carry arms.
6. Officials, while in the territory of the other Contracting Party under the terms of this Agreement, shall be responsible for any offence they might commit, and

shall enjoy to the extent provided by that Party's legal and administrative provisions the same protection as accorded to its own Customs officers.

7. The requesting Customs Administration 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 coordinated.
8. 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 10 EXPERTS AND WITNESSES

1. Upon request, officials of the requested Contracting Party may be authorized to appear within the limitations of the authorization granted as experts or witnesses in judicial trials or administrative proceedings regarding matters covered by this Agreement in the territory of the requesting Contracting Party and produce files, deeds and other documents or certified copies of the latter needed for the proceedings. Such officials shall give evidence regarding facts established by them in the course of their duties.
2. The request for appearance must clearly indicate the type of the proceeding as well as the status in which the official is called to testify.

Article 11 CONFIDENTIALITY AND USE OF INFORMATION

1. Any information communicated in whatever 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 protection extended to the same kind of information under the national legislation in force in the territory of the State of the Contracting Party that received it.
2. Where 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. Any information received under this Agreement shall be used solely for the purposes of this Agreement including the use in judicial or administrative proceedings concerning the respective customs offence.
4. The information received shall not be used for purposes other than those specified in this Agreement, without the written consent of the Customs Administration, which provided that. These provisions are not applicable to information concerning offences relating to narcotic drugs, psychotropic substances and precursors. Such information may be directly communicated to other state authorities involved in the combating of illicit drug trafficking.
5. Furthermore, due to the obligations deriving to the Republic of Austria as a Member State of the European Union, the provisions referred to in paragraph 4 do not exclude that the information received may, if so required, be conveyed to the European Commission and to the other Member States of the European Union.

Article 12

FORM AND SUBSTANCE OF REQUESTS FOR ASSISTANCE

1. Requests pursuant to the present 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 be accepted, but shall be confirmed in writing without delay.
2. Requests pursuant to paragraph 1 of this Article shall include the following information:
 - a) the requesting administration,
 - b) the action requested,
 - c) the object of and the reason for the request,
 - d) the legal or administrative provisions involved,
 - e) indications as exact and comprehensive as possible on the natural or legal persons being the target of the inquiries.
3. Requests shall be submitted in English language or in an official language of the requested Contracting Party.

4. The Customs Administrations inform each other to which single point of contact requests should be sent.

Article 13
EXEMPTIONS FROM THE OBLIGATION TO RENDER ASSISTANCE

1. If the requested Customs Administration considers that the assistance requested may infringe upon the sovereignty, public order, security, or any other essential national interests of the State of the requested Contracting Party or would involve violation of any commercial or professional as well as state or official secrecy in the territory of the State of that Contracting Party, it may refuse to provide such assistance, provide it partly or provide it subject to certain conditions or requirements.
2. If a request for assistance cannot be complied with, the requesting Customs Administration shall be notified without delay and shall be informed of the reasons for the refusal to provide assistance.
3. Assistance may be postponed by the requested Customs Administration on the grounds that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested Customs Administration shall consult with the requesting Customs Administration to determine if assistance can be given subject to such terms and conditions as the requested Customs Administration may specify. Where assistance is postponed, reasons for postponement shall be given.
4. Where the requesting Customs Administration asks for assistance which it would itself be unable to provide if so asked by the Customs Administration of the State of the other Contracting Party, 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.

Article 14
COSTS

1. The Customs Administrations of the Contracting Parties shall not claim the reimbursement of costs incurred in the execution of this Agreement, with the

exception of expenses for experts, witnesses, interpreters and translators other than State employees.

2. If expenses of a substantial and extraordinary nature are or will be required to execute the request, 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.

Article 15 IMPLEMENTATION

1. Implementation of this Agreement shall be entrusted directly to the Customs Administrations of the Contracting Parties. These Customs Administrations shall mutually agree on detailed arrangements for the implementation of the provisions of this Agreement.
2. 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.
3. The Customs Administrations undertake by mutual accord to resolve problems or doubts arising from the application of this Agreement. This does not exclude the settlement of such disputes by diplomatic means.
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 Kosovo and the European Union.

Article 16 AMENDMENTS

Amendments and supplements to this Agreement may be made by the initiative of either of the Contracting Parties and by mutual consent, which shall be drawn up by separate Protocols. These Protocols shall enter into force in accordance with the procedures provided for entering into force of this Agreement and shall be the integral part of it.

Article 17
ENTRY INTO FORCE AND TERMINATION OF THE AGREEMENT

1. This Agreement shall enter into force on the first day of the third month following the date of receipt of the last notification by which the Contracting Parties have notified each other through diplomatic channels that the internal procedures for entry into force of this Agreement have been met.
2. This Agreement is concluded for an unlimited period of time. Either Contracting Party may at any time terminate this Agreement by notification through diplomatic channels to the other Contracting Party. The termination of this Agreement shall take effect six months after such notification has been received by the other Contracting Party.
3. Ongoing proceedings at the time of termination of the Agreement shall nonetheless be completed in accordance with the provisions of this Agreement.

Done at Vienna, on 14th of September 2012, in two originals, each in the German, Albanian and English languages, all texts are equally authentic.

In case of divergences of interpretation of the provisions of this Agreement, the English text shall prevail.

For the Government
of the Republic of Austria

Andreas Schieder m.p.

For the Government
of the Republic of Kosovo

Naim Huruglica m.p.

ANNEX BASIC PRINCIPLES OF DATA PROTECTION

1. The Administration 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 national legislation of the communicating Contracting Party, the recipient Administration shall be informed immediately thereof. It shall be obliged to correct such data or have them erased.
3. If the recipient Administration has reason to believe that communicated data are inaccurate or should be erased, it shall immediately inform the communicating Contracting Party.
4. The Contracting Parties shall ensure that personal data are only communicated through communication media, which offer an adequate level of protection against unauthorized acquaintance or modification of the data concerned during the communication.
5. Both the communicating Administration and the receiving Administration shall be obliged to effectively protect the received personal data against accidental or unauthorised destruction, accidental loss, unauthorised access, unauthorised or accidental modification and unauthorised disclosure.
6. Both, the communicating Administration, and the receiving Administration shall be obliged to register purpose, subject and time of any communication of personal data as well as the communicating and receiving Administration. The documentation data shall be stored for at least three years and may only be used for the purpose of ensuring supervision of compliance with the applicable provisions on data protection.
7. The responsible controller shall take appropriate measures in order to protect the documentation data against uses for other purposes or any other misuse.
8. According to national legislation the data communicated shall be kept in a database for a period not exceeding that necessary for the purposes for which they are communicated.
9. Personal data communicated shall be deleted, if found to be incorrect, or unlawfully obtained or communicated, or if lawfully communicated data have to be deleted at a later date pursuant to the legal provisions of the communicating

Party, or if data are no longer needed for the fulfilment of the task stated by the applicant Administration.

10. The controller shall provide every data subject, who proves his identity in an appropriate manner, with information about the data being processed and relating to him, the available information about their origin, the recipients or categories of recipients of transmissions, the purpose of the use of data as well as its legal basis in an intelligible form. The information shall be given without undue delay and - in principle - free of charge.
11. Moreover the data subject shall have the right to rectification of incomplete or inaccurate data and to erasure of illegally processed data. Further procedural details relating to the enforcement of these rights are to be dealt with in the national legislation.
12. An Administration of one Contracting Party having received personal data under this agreement may not plead that the communicating Administration of the other Contracting Party had communicated inaccurate data or had unlawfully communicated data in order to avoid its liability under its national legislation concerning an injured Party.
13. If the receiving Party is granting compensation for damage caused through the use of inaccurately communicated personal data the communicating Party shall be bound to refund, on request, the total amount paid as compensation.