COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 412 final

Brussels, 05.10.1994

94/ 0224(AVC)

Proposal

for a Council and Commission Decision

on the conclusion of the Partnership and Cooperation Agreement

between the European Communities and their Member States

of the one part, and the Kyrgyz Republic, of the other part

(presented by the Commission)

Explanatory memorandum

1. The attached proposal for a Council and Commission Decision constitutes the legal instrument for the conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States, on the one hand, and the Kyrgyz Republic, on the other.

2. Following the Council's adoption of the negotiating directives on 5 October 1992, negotiations with the Kyrgyz Republic were held in the course of 1993 and 1994. After two rounds of negotiations, the Agreement was initialed on 31 May 1994.

3. The Agreement is a mixed Agreement covering areas for which both the Communities and the Member States are competent, and is concluded for an initial period of ten years.

   It establishes a political dialogue. The Agreement covers also trade in goods, labour conditions, establishment and operation of companies, cross-border supply of services, payments and capital, competition, intellectual, industrial and commercial property protection, legislative cooperation, economic cooperation, cultural cooperation and financial cooperation.

   The Agreement contains a clause which allows it to be suspended, even unilaterally, if it is considered that there has been a breach of the essential elements underlying the Agreement i.e. respect for democracy, human rights and the principles of the market economy.

   The Agreement sets out an institutional framework for its implementation with a Cooperation Council, a Cooperation Committee and a Parliamentary Cooperation Committee.

   Customs cooperation is covered by a separate protocol.

4. The Agreement will, as far as relations between the Community and the Kyrgyz Republic are concerned, replace the Agreement on Trade and Commercial and Economic Cooperation between the European Economic Community and the European Atomic Energy Community, and the USSR, signed on 18 December 1989.

5. The procedures of the three Communities (EC, EAEC and ECSC) for signing and concluding the Agreement differ.

   For the purpose of concluding the Agreement :

   - the Council will conclude the Agreement, with the assent of the European Parliament, on behalf of the European Community in accordance with Articles 113 and 235 and in conjuction with Article 228 (2 and 3), second sub paragraph of the EC Treaty by adopting the attached decisions;

   - the Commission will conclude the Agreement on behalf of the ECSC in accordance with Article 95 of the ECSC, after consulting the Consultative Committee and with the unanimous assent of the Council;

- the Commission will conclude the Agreement (on behalf of the European Atomic Energy Community) after the Council has approved it in accordance with the second paragraph of Article 101 of the Euratom Treaty.

The conclusion of the Agreement will have to be ratified by all the Member States given the mixed nature of the Agreement.

6. In view of the above, the Commission asks the Council to adopt the annexed decision.

Proposal

for a Council and Commission Decision

on the conclusion of the Partnership and Cooperation Agreement

between the European Communities and their Member States

of the one part, and the Kyrgyz Republic, of the other part

(presented to the Council by the Commission)

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COUNCIL AND COMMISSION DECISION

OF .....

on the conclusion of the Partnership and Cooperation Agreement

between the European Communities and their Member States

of the one part, and the Kyrgyz Republic, of the other part

(../.../ECSC, EC, EURATOM)

THE COUNCIL OF THE EUROPEAN UNION,

THE COMMISSION, of the European Communities

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to the Treaty establishing the European Community, and in particular Articles 113 and 235 in conjunction with Article 228 (2 and 3), second sub paragraph 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,

Whereas, the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Kyrgyz Republic, of the other part, signed ....., should be approved,

Having consulted the Consultative Committee and with the unanimous agreement of the Council,

HAVE DECIDED AS FOLLOWS :

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Article 1

The Partnership and Cooperation Agreement between the European Communities and their Member States of the one part, and the Kyrgyz Republic, of the other part, together with the Protocol and the declarations are hereby approved on behalf of the European Community, the European Coal and Steel Community, and the European Atomic Energy Community.

These texts are attached to this Decision.

Article 2

1. The position to be adopted by the Community in the Cooperation Council 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 76 of the Partnership and Cooperation Agreement, the President of the Council shall preside over the Cooperation Council and shall present the Community's position. A representative of the Commission shall preside over the Cooperation Committee in accordance with its rules of procedure and shall present the Community's position.

Article 3

The President of the Council shall give the notification provided for in Article 92 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 Committee.

Done at Brussels,

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Final act

The plenipotentiaries of :

THE KINGDOM OF BELGIUM,
THE KINGDOM OF DENMARK,
THE 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 "the Member States", and of

the EUROPEAN COMMUNITY, THE EUROPEAN ATOMIC ENERGY COMMUNITY and the EUROPEAN COAL AND STEEL COMMUNITY, hereinafter referred to as "the Community",

of the one part, and

the plenipotentiaries of the Kyrgyz Republic,

of the other part,

meeting ..... in the year one thousand nine hundred and ninety-four for the signature of the Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Kyrgyz Republic, of the other part, hereinafter referred to as the Partnership and Cooperation Agreement, have adopted the following text :

the Partnership and Cooperation Agreement and the Protocol on mutual assistance in customs matters.

The plenipotentiaries of the Member States and of the Community and the plenipotentiaries of the Kyrgyz Republic have adopted the texts of the Joint declarations listed below and annexed to this Final Act :

Joint Declaration concerning Article 23 of the Agreement

Joint Declaration concerning the notion of "control" in Article 25(b) and Article 37 of the Agreement

Joint Declaration concerning Article 43 of the Agreement

Joint Declaration concerning Article 92 of the Agreement

Done at ..... in the year one thousand nine hundred and ninety four.

For the Council and the Commission of the European Communities.

For the Kyrgyz Republic.

PARTNERSHIP AND COOPERATION AGREEMENT

BETWEEN THE EUROPEAN COMMUNITIES AND THEIR

MEMBER STATES, AND THE KYRGYZ REPUBLIC

PARTNERSHIP AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES, ON THE ONE PART, AND THE KYRGYZ REPUBLIC, ON 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 Economic 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 ECONOMIC COMMUNITY, THE EUROPEAN ATOMIC ENERGY COMMUNITY AND THE EUROPEAN COAL AND STEEL COMMUNITY,

hereinafter referred to as "the Community",

of the one part,

AND THE KYRGYZ REPUBLIC

of the other part,

CONSIDERING the links between the Community, its Member States and the Kyrgyz Republic and the common values that they share,

RECOGNIZING that the Community and the Kyrgyz Republic wish to strengthen these links and to establish partnership and cooperation which would strengthen and widen the relations established 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,

CONSIDERING the commitment of the Community and its Member States and of the Kyrgyz Republic 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,

CONSIDERING the firm commitment of the Community and its Member States and of the Kyrgyz Republic 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, the Document of the CSCE Bonn Conference on Economic Cooperation, the Charter of Paris for a New Europe and the CSCE Helsinki Document 1992 "The Challenges of Change",

CONFIRMING the attachment of the Community and its Member States and of the Kyrgyz Republic to the European Energy Charter,

CONVINCED of the paramount importance of the rule of law and respect for human rights, particularly those of minorities, the establishment of a multiparty system with free and democratic elections and economic liberalisation aimed at setting up a market economy,

BELIEVING that full implementation of this Partnership and Cooperation Agreement will both depend on and contribute to continuation and accomplishment of the political, economic and legal reforms in the Kyrgyz Republic, as well as the introduction of the factors necessary for cooperation, notably in the light of the conclusions of the CSCE Bonn Conference,

DESIROUS of encouraging the process of regional cooperation in the areas covered by this agreement with the neighbouring countries in order to promote the prosperity and stability of the region,

DESIROUS of establishing and developing regular political dialogue on bilateral and international issues of mutual interest,

TAKING ACCOUNT of the Community's willingness to provide for economic cooperation and technical assistance as appropriate,

BEARING IN MIND the economic and social disparities between the Community and the Kyrgyz Republic and in particular the fact that the Kyrgyz Republic is a developing and landlocked country.

RECOGNIZING that one of the major aims of this agreement should be to facilitate the elimination of these disparities through Community assistance to the development and restructuring of the Kyrgyz economy,

BEARING IN MIND the utility of the Agreement in favouring a gradual rapprochement between the Kyrgyz Republic and a wider area of cooperation in Europe and neighbouring regions and its progressive integration into the open international system,

CONSIDERING the commitment of the Parties to liberalise trade, based on the principles contained in the General Agreement on Tariffs and Trade,

CONSCIOUS of the need to improve conditions affecting business and investment, and conditions in areas such as establishment, labour, provision of services and capital movements,

CONVINCED that this Agreement will create a new climate for economic relations between the Parties and in particular for the development of trade and investment, which are essential to economic restructuring and technological modernization,

DESIROUS of establishing close cooperation in the area of environment protection taking into account the interdependence existing between the Parties in this field,

BEARING in mind the intention of the Parties to develop their cooperation in the field of space research in view of the complementary of their activities in this area,

DESIROUS of establishing cultural cooperation and improving the flow of information,

Have agreed as follows :

Article 1

A Partnership is hereby established between the Community and its Member States of the one part, and the Kyrgyz Republic of the other part. The objectives of this partnership are :

- to provide an appropriate framework for the political dialogue between the Parties allowing the development of political relations;

- to support Kyrgyz efforts to consolidate its democracy and to develop its economy and to complete the transition into a market economy,

- to promote trade and investment and harmonious economic relations between the Parties and so to foster their sustainable economic development,

- to provide a basis for legislative, economic, social, financial civil scientific, technological and cultural cooperation.

TITLE I : GENERAL PRINCIPLES

Article 2

Respect for democracy, principles of international law and human rights as defined in particular in the United Nations Charter, the Helsinki Final Act and the Charter of Paris for a New Europe, as well as the principles of market economy, including those enunciated in the documents of the CSCE Bonn Conference, underpin the internal and external policies of the Parties and constitute an essential element of partnership and of the present Agreement.

Article 3

The Parties consider that it is essential for the future prosperity and stability of the region of the former Soviet Union that the newly independent states which have emerged from the dissolution of the Union of Soviet Socialist Republics, hereinafter called "Independent States", should maintain and develop cooperation among themselves in compliance with the principles of the Helsinki Final Act and with international law and spirit of good neighbourly relations and will make every effort to encourage this process.

TITLE II : POLITICAL DIALOGUE

Article 4

A regular political dialogue shall be established between the Parties which they intend to develop and intensify. It shall accompany and consolidate the rapprochement between the Community and the Kyrgyz Republic, support the political and economic changes underway in that country and contribute to the establishment of new forms of cooperation. The political dialogue :

- will strengthen the links of the Kyrgyz Republic with the Community and its Member States, and thus with the Community of democratic nations as a whole. The economic convergence achieved through this Agreement will lead to more intense political relations;

- will bring about an increasing convergence of positions on international issues of mutual concern thus increasing security and stability.

Such dialogue may take place on a regional basis.

Article 5

At ministerial level, political dialogue shall take place within the Cooperation Council established in Article 75 and on other occasions by mutual agreement.

Article 6

Other procedures and mechanisms for political dialogue shall be set up by the Parties, and in particular in the following forms :

- regular meetings at senior official level between representatives of the Community and its Member States on the one hand, and representatives of the Kyrgyz Republic on the other hand;

- taking full advantage of diplomatic channels between the parties including appropriate contacts in the bilateral as well as the multilateral field, such as United Nations, ECSC meetings and elsewhere;

- any other means, including the possibility of expert meetings which would contribute to consolidating and developing this dialogue.

Article 7

Political dialogue at parliamentary level shall take place within the framework of the Parliamentary Cooperation Committee established in Article 80.

TITLE III : TRADE IN GOODS

Article 8

1. The Parties shall accord to one another most-favoured-nation treatment in all areas in respect of :

   - customs duties and charges applied to imports and exports, including the method of collecting such duties and charges,

   - provisions relating to customs clearance, transit, warehouses and transhipment,

   - taxes and other internal charges of any kind applied directly or indirectly to imported goods,

   - methods of payment and the transfer of such payments,

   - the rules relating to the sale, purchase, transport, distribution and use of goods on the domestic market.

2. The provisions of paragraph 1 shall not apply to :

   (a) advantages granted with the aim of creating a customs union or a free-trade area or pursuant to the creation of such a union or area;

   (b) advantages granted to particular countries in accordance with the General Agreement on Tariffs and Trade and with other international arrangements in favour of developing countries;

   (c) advantages accorded to adjacent countries in order to facilitate frontier traffic.

3. The provisions of paragraph 1 shall not apply, during a transitional period expiring on the date of the Kyrgyz Republic acceding to GATT or on the 31st December 1998, whichever is earlier, to advantages defined in Annex I granted by the Kyrgyz Republic to other states which have emerged from the dissolution of the USSR.

Article 9

1. The Parties agree that the principle of free transit is an essential condition of attaining the objectives of this Agreement. In this connection each Party shall secure unrestricted transit via or through its territory of goods originating in the customs territory or destined for the customs territory of the other Party.

2. The rules described in the Article 5, paragraphs 2, 3, 4 and 5 of the GATT are applicable between the two parties.

3. The rules contained in this Article are without prejudice to any special rules relating to specific sectors, in particular such as transport, or products agreed between the Parties.

Article 10

Without prejudice to the rights and obligations stemming from international conventions on the temporary admission of goods which bind both Parties, each Party shall furthermore grant the other Party exemption from import charges and duties on goods admitted temporarily, in the instances and according to the procedures stipulated by any other international convention on this matter binding upon it, in conformity with its legislation. Account shall be taken of the conditions under which the obligations stemming from such a convention have been accepted by the Party in question.

Article 11

1. Goods originating in the Kyrgyz Republic shall be imported into the Community free of quantitative restrictions without prejudice to the provisions of Articles 13, 16 and 17 and to the provisions of Articles 77, 81, 244, 249 and 280 of the Acts of Accession of Spain and Portugal to the European Community.

2. Goods originating in the Community shall be imported into the Kyrgyz Republic free of all quantitative restrictions and measures of equivalent effect.

Article 12

Goods shall be traded between the Parties at market-related prices.

Article 13

1. Where any product is being imported into the territory of one of the Parties in such increased quantities or under such conditions as to cause or threaten to cause injury to domestic producers of like or direct competitive products, the Community or the Kyrgyz Republic, which ever is concerned, may take appropriate measures in accordance with the following procedures and conditions.

2. Before taking any measures, or in cases to which paragraph 4 applies as soon as possible thereafter, the Community or the Kyrgyz Republic as the case may be shall supply the Cooperation Council with all relevant information with a view to seeking a solution acceptable to both Parties as provided for in Title IX.

3. If, as a result of the consultations, the Parties do not reach agreement within 30 days of referral to the Cooperation Council on actions to avoid the situation, the Party which requested consultations shall be free to restrict imports of the products concerned to the extent and for such time as is necessary to prevent or remedy the injury, or to adopt other appropriate measures.

4. In critical circumstances where delay would cause damage difficult to repair, the Parties may take the measures before the consultations, on the condition that consultations shall be offered immediately after taking such action.

5. In the selection of measures under this Article, the Contracting Parties shall give priority to those which cause least disturbance to the achievement of the aims of this Agreement.

6. Nothing in this Article shall prejudice or affect in any way the taking, by either Party, of anti-dumping or countervailing measures in accordance with Article VI of the GATT, the Agreement on implementation of Article VI of the GATT, the Agreement on interpretation and application of Articles VI, XVI and XXIII of the GATT or related internal legislation.

Article 14

The Parties undertake to consider development of the provisions in this Agreement on trade in goods between them, as circumstances allow, including the situation arising from the accession of the Kyrgyz Republic to the General Agreement on Tariffs and Trade. The Cooperation Council referred to in Article 75 may make recommendations on such developments to the Parties which could be put into effect, where accepted, by virtue of agreement between the Parties in accordance with their respective procedures.

Article 15

The Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of natural resources; the protection of national treasures of artistic, historic or archaeological value or the protection of intellectual, industrial and commercial property or rules relating to gold and silver. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

Article 16

This Title III shall not apply to trade in textile products falling under chapters 50 to 63 of the Combined Nomenclature. Trade in these products shall be governed by a separate agreement, initialed on 15 October 1993 and applied provisionally since 1st January 1994.

Article 17

1. Trade in products covered by the Treaty establishing the European Coal and Steel Community shall be governed by the provisions of this Title III, with the exception of Article 11.

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2. A contact group on coal and steel matters shall be set up, comprising representatives of the Community on the one hand, and representatives of the Kyrgyz Republic on the other.

   The contact group shall exchange, on a regular basis, information on all coal and steel matters of interest to the Parties.

Article 18

Trade in nuclear materials shall be subject to the provisions of a specific Agreement to be concluded between the European Atomic Energy Community and the Kyrgyz Republic.

TITLE IV : PROVISIONS AFFECTING BUSINESS AND INVESTMENT

Chapter I : Labour conditions

Article 19

1. Subject to the laws, conditions and procedures applicable in each Member State, the Community and the Member States shall endeavour to ensure that the treatment accorded to Kyrgyz nationals, legally employed in the territory of a Member State shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, as compared to its own nationals.

2. Subject to the laws, conditions and procedures applicable in the Kyrgyz Republic, the Kyrgyz Republic shall ensure that the treatment accorded to nationals of a Member State, legally employed in the territory of the Kyrgyz Republic shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, as compared to its own nationals.

Article 20

The Cooperation Council shall examine which joint efforts can be made to control illegal immigration, taking into account the principle and practice of readmission.

Article 21

The Cooperation Council shall examine which improvements can be made in working conditions for business people consistent with the international commitments of the Parties, including those set out in the document of the CSCE Bonn Conference.

Article 22

The Cooperation Council shall make recommendations for the implementation of Articles 19, 20 and 21.

Chapter II : Conditions affecting the establishment and operation of companies

Article 23

1. The Community and its Member States shall grant treatment no less favourable than that accorded to any third country for the establishment of Kyrgyz companies as defined in Article 25 by means of the setting up of subsidiaries and branches and shall grant to subsidiaries and branches of Kyrgyz companies established in their territory treatment no less favourable than that accorded to any third country company or branch respectively, in respect of their operations, and this in conformity with their legislation and regulations.

2. Without prejudice to the provisions of Articles 35 and 84, the Kyrgyz Republic shall grant to Community companies and their branches treatment no less favourable than that accorded to Kyrgyz companies and their branches or to any third country companies and their branches whichever is the better, in respect of their establishment and operations, as defined in Article 25, on its territory, and this in conformity with its legislation and regulations.

Article 24

The provisions of Article 23 shall not apply to air transport, inland waterways and maritime transport.

Article 25

For the purpose of this Agreement :

a) A "Community company" or a "Kyrgyz company" respectively shall mean a company set up in accordance with the laws of a Member State or of the Kyrgyz Republic respectively and having its registered office or central administration, or principal place of business in the territory of the Community or the Kyrgyz Republic respectively. However, should the company, set up in accordance with the laws of a Member State or the Kyrgyz Republic respectively, the company shall be considered a Community or Kyrgyz company respectively if its operations possess a real and continuous link with the economy of one of the Member States or the Kyrgyz Republic recpectively.

b) "Subsidiary" of a company shall mean a company which is effectively controlled by the first company.

c) "Branch" of a company shall mean a place of business not having legal personality which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that the latter, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension.

d) "Establishment" shall mean the right of Community or Kyrgyz companies as referred to in Article 23, to take up economic activities by means of the setting up and management of subsidiaries and branches in the Kyrgyz Republic or in the Community respectively.

e) "Operation" shall mean the pursuit of economic activities.

f) "Economic activities" shall mean activities of an industrial, commercial and professional character.

g) With regard to international maritime transport, including inter modal operations involving a sea leg, shall also be beneficiaries of the provisions of this Chapter and Chapter III nationals of the Member States or of the Kyrgyz Republic established outside the Community or the Kyrgyz Republic respectively, and shipping companies established outside the Community or the Kyrgyz Republic and controlled by nationals of a Member State or Kyrgyz nationals respectively, if their vessels are registered in that Member State or in the Kyrgyz Republic respectively in accordance with their respective legislation.

Article 26

1. Notwithstanding any other provisions of the Agreement, a Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the obligations of a Party under the Agreement.

2. Nothing in the Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

Article 27

The provisions of the present Agreement shall not prejudice the application by each of any measure necessary to prevent the circumvention of its measures concerning third country access to its market, through the provisions of this Agreement.

Article 28

1. Notwithstanding the provisions of Chapter I of this Title, a Community company or a Kyrgyz company established in the territory of the Kyrgyz Republic or the Community respectively shall be entitled to employ, or have employed by one of its subsidiaries or branches, in accordance with the legislation in force in the host country of establishment, in the territory of the Kyrgyz Republic and the Community respectively, employees who are nationals of Community Member States and Kyrgyz Republic respectively, provided that such employees are key personnel as defined in paragraph 2 of this Article, and that they are employed exclusively by companies, or branches. The residence and work permits of such employees shall only cover the period of such employment.

2. Key personnel of the above mentioned companies herein referred to as "organisations" are "intracorporate transferees" as defined in (c) of this Article in the following categories, provided that the organisation is a juridical person and that the persons concerned have been employed by it or have been partners in it (other than majority shareholders), for at least the year immediately preceding such movement :

   (a) Persons working in a senior position with an organisation, who primarily direct the management of the establishment, receiving general supervision or direction principally from the board of directors or stockholders of the business or their equivalent, including :
   - directing the establishment or a department or subdivision of the establishment,
   - supervising and controlling the work of other supervisory, professional or managerial employees,
   - having the authority personally to hire and fire or recommend hiring, firing or other personnel actions;

(b) Persons working within an organisation who possess uncommon knowledge essential to the establishment's service, research equipment, techniques or management. The assessment of such knowledge may reflect, apart from knowledge specific to the establishment, a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession;

(c) An "intra-corporate transferee" is defined as a natural person working within an organisation in the territory of a Party, and being temporarily transferred in the context of pursuit of economic activities in the territory of the other Party ; the organisation concerned must have its principal place of business in the territory of a Party and the transfer be to an establishment (branch, subsidiary) of that organisation, effectively pursuing like economic activities in the territory of the other Party.

Article 29

The Parties recognise the importance of granting each other national treatment with regard to the establishment and operation of each other's companies in their territories and agree to consider the possibility of movement towards this end on a mutually satisfactory basis, and in the light of any recommendations by the Cooperation Council.

Article 30

1. The Parties shall use their best endeavours to avoid taking any measures or actions which render the conditions for the establishment and operation of each other's companies more restrictive than the situation existing on the day preceding the date of signature of the Agreement.

2. The provisions of this Article are without prejudice to those of Article 38 : the situations covered by such Article 38 shall be solely governed by its provisions to the exclusion of any other.

3. Acting in the spirit of partnership and cooperation and in the light of the provisions of Article 44 the Government of the Kyrgyz Republic shall inform the Community of its intentions to submit new legislation or adopt new regulations which may render the conditions for the establishment or operation in the Kyrgyz Republic of subsidiaries and branches of Community companies more restrictive than the situation existing on the day preceding the date of signature of the Agreement. The Community may request the Kyrgyz Republic to communicate the drafts of such legislation or regulations and to enter into consultations about those drafts.

4. Where new legislation or regulations introduced in the Kyrzyz Republic would result in rendering the conditions for operation of subsidiaries and branches of Community companies established in the Kyrgyz Republic more restrictive than the situation existing on the day of signature of the Agreement, such respective legislation or regulations shall not apply during three years following the entry into force of the relevant act to those subsidiaries and branches already established in the Kyrgyz Republic at the time of entry into force of the relevant act.

Chapter III : Cross Border Supply of services between the Community and the Kyrgyz Republic

Article 31

1. The Parties undertake in accordance with the provisions of this Chapter to take the necessary steps to allow progressively the supply of services by Community or Kyrgyz companies who are established in a Party other than that of the person for whom the services are intended taking into account the development of the services sectors in the Parties.

2. The Cooperation Council shall make recommendations for the implementation of paragraph 1 of this article.

Article 32

The Parties shall cooperate with the aim of developing a market oriented service sector in the Kyrgyz Republic.

Article 33

1. The Parties undertake to apply effectively the principle of unrestricted access to the international maritime market and traffic on a commercial basis :

   a) the above provision does not prejudice the rights and obligations arising from the United Nations Convention and Code of Conduct for Liner Conferences, as applicable to one or other Contracting Party to the present Agreement. Non-conference lines will be free to operate in competition with a conference as long as they adhere to the principle of fair competition on a commercial basis;

   b) the Parties affirm their commitment to a freely competitive environment as being an essential feature of the dry and liquid bulk trade.

2. In applying the principles of paragraph 1, the Parties shall :

   a) not apply, as from entry into force of this agreement, any cargo sharing provisions of bilateral agreements between any Member States of the Community and the former Soviet Union;

   b) not introduce cargo sharing clauses into future bilateral agreements with third countries, other than in those exceptional circumstances where liner shipping companies from one or other Party to the present agreement would not otherwise have an effective opportunity to ply for trade to and from the third country concerned;

   c) prohibit cargo sharing arrangements in future bilateral agreements concerning dry and liquid bulk trade;

   d) abolish upon entry into force of this Agreement, all unilateral measures, administrative, technical and other obstacles which could have restrictive or discriminatory effects on the free supply of services international maritime transport.

Article 34

With a view to assuring a co-ordinated development of transport between the Parties, adapted to their commercial needs, the conditions of mutual market access and provision of services in transport by road, rail and inland waterways and, if applicable, in air transport may be dealt with by specific agreements where appropriate negotiated between the Parties after entry into force of this Agreement.

Chapter IV : General Provisions

Article 35

1. The provisions of this Title shall be applied subject to limitations justified on grounds of public policy, public security or public health.

2. They shall not apply to activities which in the territory of either Party are connected, even occasionally, with the exercise of official authority.

Article 36

For the purpose of Title IV of this Agreement, nothing in the Agreement shall prevent the Parties from applying their laws and regulations regarding entry and stay, work, labour conditions and establishment of natural persons and supply of services, provided that, in so doing, they do not apply them in a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific provision of the Agreement. The above provision does not prejudice the application of Article 35.

Article 37

Companies which are controlled and exclusively owned by Kyrgyz companies and Community companies jointly shall also be beneficiaries of the provisions of Chapters II, III and IV of this Title.

Article 38

Treatment granted by either Party to the other thereunder shall, as from the day one month prior to the date of entry into force of the relevant obligations of the GATS, in respect of sectors or measures covered by the GATS, in no case be more favourable than that accorded by such first Party under the provisions of GATS and this in respect of each service sector, sub-sector and mode of supply.

Article 39

For the purposes of Chapters II, III and IV of this Title, no account shall be taken of treatment accorded by the Community, its Member States or the Kyrgyz Republic pursuant to commitments entered into in economic integration agreements in accordance with the principles of Article V of the GATS.

Article 40

1. The Most Favoured Nation treatment granted in accordance with the provisions of this Title shall not apply to the tax advantages which the Parties are providing or will provide in the future on the basis of agreements to avoid double taxation, or other tax arrangements.

2. Nothing in this Title shall be construed to prevent the adoption or enforcement by the Parties of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation and other tax arrangements, or domestic fiscal legislation.

3. Nothing in this Title shall be construed to prevent Member States or the Kyrgyz Republic from distinguishing, in the application of the relevant provisions of their fiscal legislation, between tax payers who are not in identical situations, in particular as regards their place of residence.

Article 41

Without prejudice to Article 28, no provision of Chapters II, III and IV shall be interpreted as giving the right to :

- nationals of the Member States or of the Kyrgyz Republic respectively to enter, or stay in, the territory of the Kyrgyz Republic or the Community respectively in any capacity whatsoever, and in particular as a shareholder or partner in a company or manager or employee thereof or supplier or recipient of services;

- Community subsidiaries or branches of Kyrgyz companies to employ or have employed in the territory of the Community nationals of the Kyrgyz Republic;

- Kyrgyz subsidiaries or branches of Community companies to employ or have employed in the territory of the Kyrgyz Republic nationals of the Member States;

- Kyrgyz companies or Community subsidiaries or branches of Kyrgyz companies to supply Kyrgyz persons to act for and under the control of other persons by temporary employment contracts;

- Community companies or Kyrgyz subsidiaries or branches of Community companies to supply workers who are nationals of the Member States by temporary employment contracts.

Chapter V : Current payments and capital

Article 42

1. The Parties undertake to authorise in freely convertible currency, any payments on the current account of balance of payments between residents of the Community and of the Kyrgyz Republic connected with the movement of goods, services or persons made in accordance with the provisions of the present Agreement.

2. With regard to transactions on the capital account of balance of payments, from entry into force of the Agreement, the free movement of capital relating to direct investments made in companies formed in accordance with the laws of the host country and investments made in accordance with the provisions of Chapter II of this Title IV, and the liquidation or repatriation of these investments and of any profit stemming therefrom shall be ensured.

3. Without prejudice to Paragraph 2 or to Paragraph 5, as from entry into force of this Agreement, no new foreign exchange restrictions on the movement of capital and current payments connected therewith between residents of the Community and the Kyrgyz Republic shall be introduced and the existing arrangements shall not become more restrictive.

4. The Parties shall consult each other with a view to facilitate the movement of forms of capital other than those referred to in paragraph 2 above between the Community and the Kyrgyz Republic in order to promote the objectives of the present Agreement.

5. With reference to the provisions of this Article, until a full convertibility of the Kyrgyz currency within the meaning of Article VIII of the articles of agreement of the International Monetary Fund is introduced, the Kyrgyz Republic may in exceptional circumstances apply exchange restrictions connected with the granting or taking up of short and medium-term financial credits to the extent that such restrictions are imposed on the Kyrgyz Republic for the granting of such credits and are permitted according to the Kyrgyz's status under the IMF. The Kyrgyz Republic shall apply these restrictions in a non-discriminatory manner. They shall be applied in such a manner as to cause the least possible disruption to this Agreement. The Kyrgyz Republic shall inform the Cooperation Council promptly of the introduction of such measures and of any changes therein.

6. Without prejudice to paragraph 1 and 2, where, in exceptional circumstances, movement of capital between the Community and the Kyrgyz Republic cause, or threaten to cause, serious difficulties for the operation of exchange rate policy or monetary policy in the Community or the Kyrgyz Republic, the Community and the Kyrgyz Republic, respectively, may take safeguard measures with regard to movements of capital between the Community and the Kyrgyz Republic for a period not exceeding six months if such measures are strictly necessary.

Chapter VI : Intellectual, industrial and commercial property protection

Article 43

1. Pursuant to the provisions of this Article and of Annex III, the Kyrgyz Republic shall continue to improve the protection of intellectual, industrial and commercial property rights in order to provide, by the end of the fifth year after the entry into force of the Agreement, for a level of protection similar to that existing in the Community, including effective means of enforcing such rights. The Cooperation Council may decide to extend the above period, in the light of particular circumstances prevailing in the Kyrgyz Republic.

2. By the end of the fifth year after entry into force of the Agreement, the Kyrgyz Republic shall accede to the multilateral conventions on intellectual, industrial and commercial property rights referred to in paragraph 1 of Annex III to which Member States are parties or which are de facto applied by Member States, according to the relevant provisions contained in these conventions.

TITLE V : LEGISLATIVE COOPERATION

Article 44

1. The Parties recognise that an important condition for strengthening the economic links between the Kyrgyz Republic and the Community is the approximation of Kyrgyz Republic's existing and future legislation to that of the Community. The Kyrgyz Republic shall endeavour to ensure that its legislation will be gradually made compatible with that of the Community.

2. The approximation of laws shall extend to the following areas in particular: customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, public procurement, protection of health and life of humans, animals and plants, the environment, consumer protection, indirect taxation, technical rules and standards, nuclear laws and regulations and transport.

3. The Community shall provide the Kyrgyz Republic with technical assistance for the implementation of these measures, which may include i.e. :

   - the exchange of experts;
   - the provisions of early information specially on relevant legislation;
   - organisation of seminars;
   - training activities;
   - aid for translation of Community legislation in the relevant sectors.

4. The Parties agree to examine ways to apply their respective competition laws on a concerted basis in such cases where trade between them is affected.

TITLE VI : ECONOMIC COOPERATION

Article 45

1. The Community and the Kyrgyz Republic shall establish economic cooperation aimed at contributing to the process of economic reform and recovery and sustainable development of the Kyrgyz Republic. Such cooperation shall strengthen existing economic links, to the benefit of both parties.

2. Policies and other measures will be designed to bring about economic and social reforms and restructuring in the Kyrgyz Republic and will be guided by the requirements of sustain ability and harmonious social development; they will also fully incorporate environmental considerations.

3. To this end the cooperation will concentrate, in particular, on economic and social development, human resources development, support for enterprises (including privatisation, investment and development of financial services), agriculture and food, energy and civil nuclear safety, transport, tourism, environmental protection and regional cooperation.

4. Special attention shall be devoted to measures capable of fostering cooperation between the Independent States with a view to stimulating a harmonious development of the region.

5. Where appropriate, economic cooperation and other forms of cooperation provided for in this Agreement may be supported by technical assistance from the Community, taking into account the Community's relevant Council regulation applicable to technical assistance in the Independent States, the priorities agreed upon in the indicative programme related to European Community technical assistance to the Kyrgyz Republic and its established coordination and implementation procedures.

Article 46

Industrial cooperation

1. Cooperation shall aim at promoting the following in particular :

   - the development of business links between economic operators of both sides;
   - Community participation in Kyrgyzstan's efforts to restructure its industry;
   - the improvement of management;
   - the development of appropriate commercial rules and practices;
   - environmental protection.

2. The provisions of this article shall not affect the enforcement of Community competition rules applicable to undertakings.

Article 47

Investment promotion and protection

1. Bearing in mind the respective powers and competencies of the Community and the Member States, cooperation shall aim to establish a favourable climate for private investment, both domestic and foreign, especially through better conditions for investment protection, the transfer of capital and the exchange of information on investment opportunities.

2. The aims of cooperation shall be in particular :

   - the conclusion, where appropriate, between the Member States and the Kyrgyz Republic of agreements for the promotion and protection of investment;

   - the conclusion, where appropriate, between the Member States and the Kyrgyz Republic of agreements to avoid double taxation;

   - the creation of favourable conditions for attracting foreign investments into the Kyrgyz economy;

   - to establish stable and adequate business law and conditions, and to exchange information on laws, regulations and administrative practices in the field of investment;

   - to exchange information on investment opportunities in the form of inter alia trade fairs, exhibitions, trade weeks and other events.

Article 48

Public Procurement

The Parties shall cooperate to develop conditions for open and competitive award of contracts for goods and services in particular through calls for tenders.

Article 49

Cooperation in the field of standards and conformity assessment

1. Cooperation between the Parties shall promote alignment with internationally agreed criteria, principles and guidelines followed in the field of quality. The required actions will facilitate progress towards mutual recognition in the field of conformity assessment, as well as the improvement of Kyrgyz product quality.

2. To this end they shall seek to cooperate in technical assistance projects which will :

   - promote appropriate cooperation with organisations and institutions specialised in these fields;

   - promote the use of Community technical regulations and the application of European standards and conformity assessment procedures;

   - permit the sharing of experience and technical information in the field of quality management.

Article 50

Mining and raw materials

1. The Parties shall aim at increasing investment and trade in mining and raw materials.

2. The cooperation shall focus in particular on the following areas :

   - exchange of information on the prospects of the mining and non-ferrous metals sectors,
   - the establishment of a legal framework for cooperation,
   - trade matters,
   - the adoption and implementation of environmental legislation,
   - training;
   - safety in the mining industry.

Article 51

Cooperation in science and technology

1. The Parties shall promote cooperation in civil scientific research and technological development (RTD) on the basis of mutual benefit and, taking into account the availability of resources, adequate access to their respective programmes and subject to appropriate levels of effective protection of intellectual, industrial and commercial property rights (IPR).

2. Science and technology cooperation shall cover :

- the exchange of scientific and technical information;
- joint RTD activities;
- training activities and mobility programmes for scientists, researchers and technicians engaged in RTD on both sides.

Where such cooperation takes the form of activities involving education and/or training, it should be carried out in accordance with the provisions of article 52.

The Parties, on the basis of mutual agreement, can engage in other forms of cooperation in science and technology.

In carrying out such cooperation activities, special attention shall be devoted to the re deployment of scientists, engineers, researchers and technicians which are or have been engaged in research and/or production of weapons of mass destruction.

3. The Cooperation covered by this article shall be implemented according to specific arrangements to be negotiated and concluded in accordance with the procedures adopted by each party, and which shall set out, inter alia, appropriate IPR provisions.

Article 52

Education and training

1. The Parties shall cooperate with the aim of raising the level of general education and professional qualifications in the Kyrgyz Republic, both in the public and private sectors.

2. The cooperation shall focus in particular on the following areas :

- updating higher education and training systems in the Kyrgyz Republic including the system of certification of higher educational establishments and diplomas of higher education;
- the training of public and private sector executives and civil servants in priority areas to be determined;
- cooperation between educational establishments and between educational establishments and firms;
- mobility for teachers, graduates, administrators, young scientists and researchers, and young people;
- promoting teaching in the field of European Studies within the appropriate institutions;
- teaching Community languages;
- post-graduate training of conference interpreters;
- training of journalists;
- training of trainers.

3. The possible participation of one Party in the respective programmes in the field of education and training of the other Party could be considered in accordance with their respective procedures and, where appropriate, institutional frameworks and plans of cooperation will then be established building on participation of the Kyrgyz Republic in the Community's TEMPUS programme.

Article 53

Agriculture and the agro-industrial sector

The purpose of cooperation in this area shall be the pursuance of agrarian reform, the modernisation, privatisation and restructuring of agriculture, the agro-industrial and services sectors in the Kyrgyz Republic, development of domestic and foreign markets for the Kyrgyz products, in conditions that ensure the protection of the environment, taking into account the necessity to improve security of food supply as well as the development of agri-business, the processing and distribution of agricultural products. The Parties shall also aim at the gradual approximation of Kyrgyz standards to Community technical regulations concerning industrial and agricultural food products including sanitary and phytosanitary standards.

Article 54

Energy

1. Cooperation shall take place within the principles of the market economy and the European Energy Charter, against a background of the progressive integration of the energy markets in Europe.

2. The cooperation shall include among others the following areas :

   - the environmental impact of energy production supply and consumption, in order to prevent or minimise the environmental damage resulting from these activities;
   - improvement of the quality and security of energy supply, including diversification of supply, in an economic and environmentally sound manner;
   - formulation of energy policy;
   - improvement in management and regulation of the energy sector in line with a market economy;
   - the introduction of the range of institutional, legal, fiscal and other conditions necessary to encourage increased energy trade and investment;
   - promotion of energy saving and energy effectiveness;
   - modernisation of energy infrastructure;
   - improvement of energy technologies in supply and end use across the range of energy types;
   - management and technical training in the energy sector;
   - security in energy supply, transportation and transit of energy and energy materials.

Article 55

Environment

1. Bearing in mind the European Energy Charter, the Parties shall develop and strengthen their cooperation on environment and human health.

2. Cooperation shall aim at combating the deterioration of the environment and in particular:

- effective monitoring of pollution levels and assessment of environment; system of information on the state of the environment;
- combating local, regional and transboundary air and water pollution;
- ecological restoration;
- sustainable, efficient and environmentally effective production and use of energy; safety of industrial plants;
- classification and safe handling of chemicals;
- water quality;
- waste reduction, recycling and safe disposal, implementation of the Basle Convention;
- the environmental impact of agriculture, soil erosion, and chemical pollution;
- the protection of forests;
- the conservation of biodiversity, protected areas and sustainable use and management of biological resources;
- land-use planning, including construction and urban planning;
- use of economic and fiscal instruments;
- global climate change;
- environmental education and awareness;
- technical assistance concerning rehabilitation of zones affected by radio-activity and addressing related health and social problems;
- implementation of the Espoo Convention on Environmental Impact Assessment in a transboundary context.

3. Cooperation shall take place particularly through :

- disaster planning and other emergency situations;
- exchange of information and experts, including information and experts dealing with the transfer of clean technologies and the safe and environmentally sound use of biotechnologies;
- joint research activities;
- improvement of laws (Community standards);
- cooperation at regional level (including cooperation within the framework of the European Environment Agency) and at international level;
- development of strategies, particularly with regard to global and climatic issues and also in view of achieving sustainable development;
- environmental impact studies.

Article 56

Transport

The Parties shall develop and strengthen their cooperation in the field of Transport.

This cooperation shall, inter alia, aim at restructuring and modernising transport systems and networks in the Kyrgyz Republic, and developing and ensuring, where appropriate, compatibility of transportation systems in the context of achieving a more global transport system.

The cooperation shall include, inter alia :

- the modernising of management and operations of road transport, railways, ports and airports;
- modernisation and development of railways, waterways, roads, ports, airports and air navigation infrastructure including the modernisation of major routes of common interest and the trans-European links for the above modes;
- promotion and development of multi-modal transport;
- the promotion of joint research and development programmes;
- preparation of the legislative and institutional framework for policy development and implementation including privatisation of the transport sector.

Article 57

Postal services and telecommunications

Within their respective powers and competences the Parties shall expand and strengthen cooperation in the following areas :

- the establishment of policies and guidelines for the development of the telecommunications sector and postal services;
- development of principles of a tariff policy and marketing in telecommunications and postal services;
- carry out transfer of technology and know how, including on European Technical standards and certification systems;
- encourage the development of projects for telecommunications and postal services and attracting investment;
- enhancing efficiency and quality of the provision of telecommunications and postal services, amongst others through liberalisation of activities of sub-sectors;
- advanced application of telecommunications, notably in the area of electronic funds transfer;
- management of telecommunications networks and their "optimisation";
- an appropriate regulatory basis for the provision of telecommunication and postal services and for the use of the radio frequency spectrum;
- training in the field of telecommunications and postal services for operations in market conditions.

Article 58

Financial Services

Cooperation shall in particular aim at facilitating the involvement of the Kyrgyz Republic in universally accepted systems of mutual settlements. Technical assistance shall focus on:

- the development of banking and financial services, the development of common market of credit resources, the involvement of the Kyrgyz Republic in universally accepted systems of mutual settlements;

- the development of fiscal system, institutions in the Kyrgyz Republic, exchange of experience and personnel training;

- the development of insurance services, which would inter alia create a favourable framework for Community companies participation in the establishment of joint ventures in the insurance sector in the Kyrgyz Republic, as well as the development of export credit insurance.

- this cooperation shall in particular contribute to foster the development of relations between the Kyrgyz Republic and the EC Member States in the financial services sector.

Article 59

Money laundering

1. The Parties agree on the necessity of making efforts and co-operating 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).

Article 60

Regional development

1. The Parties shall strengthen cooperation on regional development and land-use planning.

2. To this end, they shall encourage exchange of information by national, regional and local authorities on regional and land-use planning policy and on methods of formulation of regional policies with special emphasis on the development of disadvantaged areas.

   They shall also encourage direct contacts between the respective regions and public organisations responsible for regional development planning with the aim, inter alia, to exchange methods and ways of fostering regional development.

Article 61

Social cooperation

1. With regard to health and safety, the parties shall develop cooperation between them with the aim of improving the level of protection of the health and safety of workers.

   The cooperation shall include notably :

   - education and training on health and safety issues with specific attention to high risk sectors of activity;
   - development and promotion of preventive measures to combat work related diseases and other work related ailments;
   - prevention of major accidents hazards and the management of toxic chemicals;
   - research to develop the knowledge base in relation to working environment and the health and safety of workers.

2. With regard to employment, the cooperation shall include notably technical assistance to :

   - optimization of the labour market;
   - modernisation of the job-finding and consulting services;
   - planning and management of the restructuring programmes;
   - encouragement of local employment development;
   - exchange of information on the programmes of flexible employment, including those stimulating self-employment and promoting entrepreneur ship.

3. The Parties shall pay special attention to cooperation in the sphere of social protection which, inter alia, shall include cooperation in planning and implementing social protection reforms in the Kyrgyz Republic.

   These reforms shall aim to develop in the Kyrgyz Republic methods of protection intrinsic to market economies and shall comprise all directions of social protection.

Article 62

Tourism

The Parties shall increase and develop cooperation between them, which shall include :

- facilitating the tourist trade;
- increasing the flow of information;
- transferring know-how;
- studying the opportunities for joint operations;
- cooperation between official tourism bodies;
- training for tourism development.

Article 63

Small and medium-sized enterprises

1. The Parties shall aim to develop and strengthen small and medium-sized enterprises and their associations and cooperation between SMEs in the Community and the Kyrgyz Republic.

2. Cooperation shall include technical assistance, in particular in the following areas :

   - the development of a legislative framework for SMEs;
   - the development of an appropriate infrastructure (an agency to support SMEs, communications, assistance to the creation of a fund for SMEs);
   - the development of technology parks.

Article 64

Information and communication

The Parties shall support the development of modern methods of information handling, including the media, and stimulate the effective mutual exchange of information. Priority shall be given to programmes aimed at providing the general public with basic information about the Community and the Kyrgyz Republic, including, where possible, access to databases, in full respect of intellectual property rights.

Article 65

Consumer Protection

The Parties will enter into close cooperation aimed at achieving compatibility between their systems of consumer protection. This cooperation may include the exchange of information on legislative work and institutional reform, establishment of permanent systems of mutual information on dangerous products, the improvement of information provided to consumers especially on prices, characteristics of products and services offered, the development of exchanges between the consumer interest representatives, and increasing the compatibility of consumer protection policies, and the organization of seminars and training period.

Article 66

Customs

1. The aim of cooperation shall be to guarantee compliance with all the provisions scheduled for adoption in connection with trade and fair trade and to achieve the approximation of customs system to that of the Community.

2. Cooperation shall include the following in particular :

   - the exchange of information;
   - the improvement of working methods;
   - the introduction of the Combined Nomenclature and the single administrative document;
   - the interconnection between the transit systems of the Community and the Kyrgyz Republic;
   - simplification of inspections and formalities in respect of the carriage of goods;
   - the support in the introduction of modern customs information systems;
   - the organisation 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 Article 69 the mutual assistance between administrative authorities in customs matters of the Parties shall take place in accordance with the provisions of Protocol nr. 1.

Article 67

Statistical cooperation

Cooperation in this area shall have as its aim the development of an efficient statistical system to provide the reliable statistics needed to support and monitor the process of economic reform and contribute to the development of private enterprise in the Kyrgyz Republic.

The Parties, in particular, shall cooperate in the following fields :

- adaptation of Kyrgyz statistical system to international methods, standards and classification;
- exchange of statistical information;
- provision of necessary statistical macro and microeconomics information to implement and manage economic reforms.

To this end the Community shall contribute through rendering technical assistance to the Kyrgyz Republic.

Article 68

Economics

The Parties shall facilitate the process of economic reform and the coordination of economic policies by co-operating to improve understanding of the fundamentals of their respective economies and the design and implementation of economic policy in market economies. To this end, the Parties shall exchange information on macro-economic performance and prospects.

The Community shall provide technical assistance as to :

- assist the Kyrgyz Republic in the process of economic reform by providing expert advisory and technical assistance;
- encourage cooperation among economists in order to expedite the transfer of know-how for the drafting of economic policies, and provide for wide dissemination of policy-relevant research.

Article 69

Drugs

Within the framework of their respective powers and competencies the Parties shall cooperate in increasing the effectiveness and efficiency of policies and measures to counter the illicit production, supply and traffic of narcotic drugs and psycho tropic substances, including the prevention of diversion of precursor chemicals, as well as in promoting drug demand prevention and reduction. The cooperation in this area shall be based on mutual consultation and close coordination between the Parties over the objectives and measures on the various drug-related fields.

TITLE VII : CULTURAL COOPERATION

Article 70

The Parties undertake to promote, encourage and facilitate cultural cooperation. Where appropriate, the Community's cultural cooperation programmes or those of one or more Member States may be the subject of cooperation and further activities of mutual interest may be developed.

TITLE VIII : FINANCIAL COOPERATION IN THE FIELD OF TECHNICAL ASSISTANCE

Article 71

In order to achieve the objectives of this Agreement and in accordance with Articles 72, 73 and 74 the Kyrgyz Republic shall benefit from temporary financial assistance from the Community by way of technical assistance in the form of grants to accelerate the economic transformation of the Kyrgyz Republic.

Article 72

This financial assistance shall be covered within the framework of TACIS foreseen in the Community's relevant Council Regulation.

Article 73

The objectives and the areas of the Community's financial assistance shall be laid down in an indicative programme reflecting established priorities to be agreed between the two Parties taking into account the Kyrgyz Republic's needs, sectoral absorption capacities and progress with reform. The Parties shall inform the Cooperation Council thereof.

Article 74

In order to permit optimum use of the resources available, the Parties shall ensure that Community technical assistance contributions are made in close coordination with those from other sources such as the Member States, other countries, and international organisations such as the International Bank for Reconstruction and Development and the European Bank for Reconstruction and Development.

TITLE IX : INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

Article 75

A Cooperation Council is hereby established which shall supervise the implementation of this Agreement. It shall meet at ministerial level once a year. It shall examine any major issues arising within the framework of the Agreement and any other bilateral or international issues of mutual interest for the purpose of attaining the objectives of this Agreement. The Cooperation Council may also make appropriate recommendations, by agreement between the two Parties.

Article 76

1. The Cooperation Council shall consist of the members of the Council of the European Communities and members of the Commission of the European Communities, on the one hand, and of members of the Government of the Kyrgyz Republic, on the other.

2. The Cooperation Council shall establish its rules of procedure.

3. The office of President of the Cooperation Council shall be held alternately by a representative of the Community and by a member of the Government of the Kyrgyz Republic.

Article 77

1. The Cooperation Council shall be assisted in the performance of its duties by a Cooperation Committee composed of representatives of the members of the Council of the European Communities and of members of the Commission of the European Communities on the one hand and of representatives of the Government of the Kyrgyz Republic on the other, normally at senior civil servant level. The office of President of the Cooperation Committee shall be held alternately by the Community and by the Kyrgyz Republic.

In its rules of procedure the Cooperation Council shall determine the duties of the Cooperation Committee, which shall include the preparation of meetings of the Cooperation Council, and how the Committee shall function.

2. The Cooperation Council may delegate any of its powers to the Cooperation Committee, which will ensure continuity between meetings of the Cooperation Council.

Article 78

The Cooperation Council may decide to set up any other special committee or body that can assist it in carrying out its duties and shall determine the composition and duties of such committees or bodies and how they shall function.

Article 79

When examining any issue arising within the framework of this Agreement in relation to a provision referring to an article of the GATT, the Cooperation Council shall take into account to the greatest extent possible the interpretation that is generally given to the article of the GATT in question by the Contracting Parties to the General Agreement.

Article 80

A Parliamentary Cooperation Committee is hereby established. It shall be a forum for Members of the Kyrgyz Parliament and the European Parliament to meet and exchange views. It shall meet at intervals which it shall itself determine.

Article 81

1. The Parliamentary Cooperation Committee shall consist of members of the European Parliament, on the one hand, and of members of the Kyrgyz Parliament, on the other.

2. The Parliamentary Cooperation Committee shall establish its rules of procedure.

3. The Parliamentary Cooperation Committee shall be presided in turn by the European Parliament and the Kyrgyz Parliament respectively, in accordance with the provisions to be laid down in its rules of procedure.

Article 82

The Parliamentary Cooperation Committee may request relevant information regarding the implementation of this Agreement from the Cooperation Council, which shall then supply the Committee with the requested information.

The Parliamentary Cooperation Committee shall be informed of the recommendations of the Cooperation Council.

The Parliamentary Cooperation Committee may make recommendations to the Cooperation Council.

Article 83

1. Within the scope of this Agreement, each Party undertakes to ensure that natural and legal persons of the other Party have access free of discrimination in relation to its own nationals to the competent courts and administrative organs of the Parties to defend their individual rights and their property rights, including those concerning intellectual, industrial and commercial property.

2. Within the limits of their respective powers, the Parties :

   - shall encourage the adoption of arbitration for the settlement of disputes arising out of commercial and cooperation transactions concluded by economic operators of the Community and those of the Kyrgyz Republic;

   - agree that where a dispute is submitted to arbitration, each party to the dispute may, except where the rules of the arbitration centre chosen by the parties provide otherwise, choose its own arbitrator, irrespective of his nationality, and that the presiding third arbitrator or the sole arbitrator may be a citizen of a third State;

   - will recommend their economic operators to choose by mutual consent the law applicable to their contracts;

   - shall encourage recourse to the arbitration rules elaborated by the United Nations Commission on International Trade Law (Uncitral) and to arbitration by any centre of a State signatory to the Convention on Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958.

Article 84

Nothing in the Agreement shall prevent a Party from taking any measures :

a) which it considers necessary to prevent the disclosure of information contrary to its essential security interests;

b) which relate to the production of, or trade in arms, munitions or war materials or to research, development or production indispensable for defence purposes, provided that such measures do not impair the conditions of competition in respect of products not intended for specifically military purposes;

c) which it considers essential to its own security in the event of serious internal disturbances affecting the maintenance of law and order, in time of war or serious international tension constituting threat of war or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.

d) which it considers necessary to respect its international obligations and commitments in the control of dual use industrial goods and technology.

Article 85

1. In the fields covered by this Agreement and without prejudice to any special provisions contained therein:

   - the arrangements applied by the Kyrgyz Republic in respect of the Community shall not give rise to any discrimination between the Member States, their nationals or their companies or firms;

- the arrangements applied by the Community in respect of the Kyrgyz Republic shall not give rise to any discrimination between Kyrgyz nationals, or its companies or firms.

2. The provisions of Paragraph 1 are without prejudice to the right of the Parties to apply the relevant provisions of their fiscal legislation to tax payers who are not in identical situations as regards their place of residence.

Article 86

1. Each of the two Parties may refer to the Cooperation Council any dispute relating to the application or interpretation of this Agreement.

2. The Cooperation Council may settle the dispute by means of a recommendation.

3. In the event of it not being possible to settle the dispute in accordance with paragraph 2 of this Article, either Party may notify the other of the appointment of a conciliator ; the other Party must then appoint a second arbitrator within two months. For the application of this procedure, the Community and the Member States shall be deemed to be one Party to the dispute.

   The Cooperation Council shall appoint a third conciliator.

   The conciliators' recommendations shall be taken by majority vote. Such recommendations shall not be binding upon the Parties.

Article 87

The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or implementation of this Agreement and other relevant aspects of the relations between the Parties.

The provisions of this Article shall in no way affect and are without prejudice to Articles 13, 86 and 92.

Article 88

Treatment granted to the Kyrgyz Republic thereunder shall in no case be more favourable than that granted by the Member States to each other.

Article 89

For the purposes of this Agreement, the term "Parties" shall mean the Kyrgyz Republic on the one part, and the Community, or the Member States, or the Community and the Member States, in accordance with their respective powers, on the other part.

Article 90

Insofar as matters covered by this Agreement are covered by the Energy Charter Treaty and Protocols thereto, such Treaty and Protocols shall upon entry into force apply to such matters but only to the extent that such application is provided for therein.

Article 91

This Agreement is concluded for an initial period of 10 years. The Agreement shall be automatically renewed year by year provided that neither Party gives the other Party written notice of denunciation of the Agreement six months before it expires.

Article 92

1. The Parties shall take any general or specific measures required to fulfil their obligations under the Agreement. They shall see to it that the objectives set out in the Agreement are attained.

2. If either Party considers that the other Party has failed to fulfil an obligation under the Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Cooperation Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

   In the selection of these measures, priority must be given to those which least disturb the functioning of the Agreement. These measures shall be notified immediately to the Cooperation Council if the other Party so requests.

Article 93

Annexes I and II together with Protocol nr. 1 shall form an integral part of this Agreement.

Article 94

This Agreement shall not, until equivalent rights for individuals and economic operators have been achieved thereunder, affect rights assured to them through existing Agreements binding one or more Member States on the one hand and the Kyrgyz Republic on the other except in areas falling within Community competence and without prejudice to the obligations of Member States resulting from this Agreement in areas falling within their competence.

Article 95

This Agreement shall apply, on the one hand, to the territories in which the treaties establishing the European Economic Community, the European Atomic Energy Community and the European Coal and Steel Community are applied and under the conditions laid down in those Treaties and, on the other hand, to the territory of the Kyrgyz Republic.

Article 96

The Secretary-General of the Council of the European Union shall be the depository of this Agreement.

Article 97

This Agreement is drawn up in the Danish, Dutch, English, French, German, Italian, Spanish, Greek, Portuguese, Kyrgyz and Russian languages, each of these texts being equally authentic.

Article 98

This Agreement will be approved by the Parties in accordance with their own procedures.

This Agreement shall enter into force on the first day of the second month following the date on which the Parties notify the Secretary-General of the Council of the European Union that the procedures referred to in the first paragraph have been completed.

Upon its entry into force, and as far as relations between the Kyrgyz Republic and the Community are concerned, this Agreement shall replace the Agreement between the European Economic Community, the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and economic and commercial cooperation signed in Brussels on 18 December 1989.

Article 99

In the event that, pending the completion of the procedures necessary for the entry into force of this Agreement, the provisions of certain parts of this Agreement are put into effect in 1994 by means of an interim agreement between the Community and the Kyrgyz Republic, the Contracting Parties agree that, in such circumstances, the term "date of entry into force of the Agreement" shall mean the date of entry into force of the interim Agreement.

List of Annexes

Annex I — Exceptions to MFN for advantages granted among Independent States (Article 8).

Annex II — IPR conventions (Article 43).

Protocol nr. I on the mutual assistance in customs matters.

Joint Declaration concerning Article 23.

Joint Declaration concerning the notion of "control" in Article 25(b) and Article 37.

Joint Declaration concerning Article 43.

Joint Declaration concerning Article 92.

ANNEX I

Indicative list of advantages granted by the Kyrgyz Republic to the Independent States in accordance with Article 8, paragraph 3.

1. All Independent States -
   No import duties are implemented except for alcohol and tobacco products.
   No export duties are implemented as regards goods delivered under clearing and interstate agreements within the volumes stipulated in these agreements.
   No VAT is applied on export and import. No excise is applied on export.
   No export quotas are implemented.

2. All Independent States which did not introduce their national currency -
   Payments could be made in roubles.
   All Independent States -
   Special system of non-commercial operations, including payments resulting from these operations.

3. All Independent States -
   Special system of current payments.

4. All Independent States -
   Special conditions of transit.

5. All Independent States -
   Special conditions of customs procedures.

ANNEX II

IPR conventions (Article 43)

1. Paragraph 2 of Article 43 concerns the following multilateral conventions :

   - Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971);

   - International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, 1961);

   - Protocol relating to the Madrid Agreement concerning the International Registration of Marks (Madrid, 1989);

   - Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks (Geneva 1977 and amended in 1979);

   - Budapest Treaty on the International Recognition of the Deposit of Micro organisms for the purposes of Patent Procedures (1977, modified in 1980);

   - International Convention for the Protection of New Varieties of Plants (UPOV) (Geneva Act, 1991);

   2. The Cooperation Council may recommend that paragraph 2 of Article 43 shall apply to other multilateral conventions. If problems in the area of intellectual, industrial and commercial property affecting trading conditions were to occur, urgent consultations will be undertaken, at the request of either party, with a view to reaching mutually satisfactory solutions.

3. The Parties confirm the importance they attach to the obligations arising from the following multilateral conventions :

   - Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967 and amended in 1979);

   - Madrid Agreement concerning the International Registration of Marks (Stockholm Act, 1967 and amended in 1979);

   - Patent Cooperation Treaty (Washington, 1970, amended in 1979 and modified in 1984).

4. From entry into force of this Agreement, the Kyrgyz Republic shall grant to Community companies and nationals, in respect of the recognition and protection of intellectual, industrial and commercial property, treatment no less favourable than that granted by it to any third country under bilateral agreements.

5. The provisions of paragraph 3 shall not apply to advantages granted by the Kyrgyz Republic to any third country on an effective reciprocal basis and to advantages granted by the Kyrgyz Republic to another country of the former USSR.

PROTOCOL

ON MUTUAL ASSISTANCE

BETWEEN ADMINISTRATIVE AUTHORITIES

IN CUSTOMS MATTERS

Article 1

Definitions

For the purposes of this Protocol :

a) "customs legislation" shall mean provisions applicable in the territories of the Parties 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 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 noted or planned which contravene or would contravene 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) place 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 legislation of the other Party;

   (c) movements of goods notified as possibly giving rise to substantial contraventions of customs legislation;

   (d) means of transport for which there are reasonable grounds for believing that they have been, are or may be used in the contravening of customs legislation.

Article 4

Spontaneous assistance

The Parties shall provide each other, in accordance with their laws, rules and other legal instruments, with assistance if they consider that to be necessary for the correct application of customs legislation, particularly when they obtain information pertaining to :

- operations which have contravened, contravene or would contravene such legislation and which may be of interest to other Parties;

- new means or methods employed in realizing such operations;

- goods known to be subject to substantial contravention of customs legislation.

Article 5

Delivery/Notification

At the request of the applicant authority, the requested authority shall in accordance with its legislation take all necessary measures

- in order to deliver all documents,
- to notify all decisions,

falling within the scope of this Protocol to an addressee, residing or established in its territory. In such a case Article 6, point 3 is applicable.

Article 6

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 and of the enquiries already carried out, except in cases provided for in Article 5.

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 7

Execution of requests

1. In order to comply with a request for assistance, the requested authority or, when the latter can not act on its own, the administrative department to which the request has been addressed by this 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.

2. Requests for assistance will be executed in accordance with the laws, rules and other legal instruments of the requested Party.

3. Duly authorised 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, 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.

Article 8

Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries to the applicant authority in the form of documents certified copies of documents, reports and the like.

2. The documents provided for in paragraph 1 may be replaced by computerized information produced in any form for the same purpose.

Article 9

Exceptions to the obligation to provide assistance

1. The Parties may refuse to give assistance as provided for in this Protocol, where to do so would :

   (a) be likely to prejudice sovereignty, public policy, security or other essential interests; or

   (b) involve currency or tax regulations other than regulations concerning customs duties; or

   (c) violate an industrial, commercial or professional secret.

2. 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 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 to the applicant authority without delay.

Article 10

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 laws of the Party which received it and the corresponding provisions applying to the Community authorities.

2. Nominative data shall not be transmitted whenever there are reasonable grounds to believe that the transfer or the use made of the date transmitted would be contrary to the basic legal principles of one of the Parties, and, in particular, if the person concerned would suffer undue disadvantages. 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 authorisation 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 11

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 12

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 13

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 14

Implementation

1. The management of this Protocol shall be entrusted to the central customs authorities of the Kyrgyz Republic on the one hand and the competent services of the Commission of the European Communities and, where appropriate, the customs authorities of the Member States of the European Union 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 competent bodies amendments which they consider 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 15

Complementarity

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

2. Without prejudice to Article 11, 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 CONCERNING ARTICLE 23

Without prejudice to the provisions of Articles 38 and 41, the Parties agree that the words "in conformity with their legislation and regulations" mentioned in paragraphs 1 and 2 of Article 23 mean that each Party may regulate the establishment and operation of companies on its territory, provided that these regulations do not create for the establishment and operations of companies of the other Party any reservations to the treatment no less favourable than that accorded to their own companies or to companies, branches or subsidiaries of companies of any third country.

JOINT DECLARATION CONCERNING THE NOTION OF "CONTROL" IN ARTICLE 25(b) AND ARTICLE 37

1. The Parties confirm their mutual understanding that the question of control shall depend on the factual circumstances of the particular case.

2. A company shall, for example, be considered as being "controlled" by another company, and thus a subsidiary of such other company if :

   - the other company holds directly or indirectly a majority of the voting rights, or

   - the other company has the right to appoint or dismiss a majority of the administrative organ, of the management organ or of the supervisory organ and is at the same time a shareholder or member of the subsidiary.

3. Both Parties consider the criteria in paragraph 2 to be non-exhaustive.

JOINT DECLARATION CONCERNING ARTICLE 43

The Parties agree that for the purpose of the Agreement, intellectual, industrial and commercial property includes in particular copyright, including the copyright in computer programs, and neighbouring rights, the rights relating to patents, industrial designs, geographical indications, including appellations of origin, trademarks and service marks, topographies of integrated circuits as well as protection against unfair competition as referred to in Article 10 bis of the Paris Convention for the protection of Industrial Property and protection of undisclosed information on know-how.

JOINT DECLARATION CONCERNING ARTICLE 92

The Parties agree, for the purpose of its correct interpretation and its practical application, that the term "cases of special urgency" included in Article 92 of the Agreement mean cases of material breach of the Agreement by one of the Parties. A material breach of the Agreement consists in

a) repudiation of the Agreement not sanctioned by the general rules of international law

or

b) violation of the essential elements of the Agreement set out in Article 2.

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