

EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION

EUROCONTROL

- Measures of the Permanent Commission -

MEASURE No 20/249

authorising the Agency to conclude an Agreement and a related Contract relating to the execution of the Airspace Management Function in the Netherlands

THE PERMANENT COMMISSION FOR THE SAFETY OF AIR NAVIGATION:

Having regard to the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation, signed at Brussels on 13 December 1960, as amended by the Protocol signed at Brussels on 12 February 1981, and in particular to Articles 2.2 (b), 6.3, 7.2, 11 and 12 thereof;

Having regard to Article 2.1 (m), of the consolidated version of the Convention annexed to the Protocol consolidating the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation of 13 December 1960, as variously amended, done at Brussels on 27 June 1997, as early implemented by Decision No 71 of the Permanent Commission of 9 December 1997 on early implementation of certain provisions in the revised Convention, in particular in respect of the role and duties of the Organisation;

Whereas the Netherlands wish to reorganise the Dutch Airspace Management Cell (AMC) to be performed in two locations, with both locations manned by staff that are competent in both civil and military operations;

Whereas the Netherlands wish to entrust EUROCONTROL with the execution of the airspace management function including the tasks of the Airspace Management Cell for general and operational air traffic in the entire Amsterdam FIR at MUAC through the conclusion of an Agreement and a related Contract relating to the execution of the Airspace Management Function in the Netherlands;

On the proposal of the Director General and the Provisional Council

HEREBY TAKES THE FOLLOWING MEASURE:

Article 1

Following the completion of the negotiations, the Agency, on behalf of the Organisation, shall be authorised to conclude, on the basis of the draft agreements attached:

- [the Agreement between EUROCONTROL and the Kingdom of the Netherlands relating to the execution of the Airspace Management Function](#); and
- [the Contract between EUROCONTROL and the State of the Netherlands relating to the financial considerations](#) with regard to the execution of the Airspace Management Function.

Article 2

This Measure shall enter into force on the date of its signature.

Done at Brussels on 26.3.2020

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Gytis Mažeika
President of the Commission

AGREEMENT

between

EUROCONTROL

and

the Kingdom of the Netherlands

relating to

the Execution of the Airspace Management Function

The European Organisation for the Safety of Air Navigation (EUROCONTROL), hereinafter referred to as "EUROCONTROL",

and

the Kingdom of the Netherlands, hereinafter referred to as "the Netherlands",
hereinafter jointly referred to as "the Parties";

HAVING REGARD to the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation, signed at Brussels on 13 December 1960, as amended by the Protocol signed at Brussels on 12 February 1981 (hereinafter referred to as "the amended Convention"), and, in particular, to Articles 2 paragraph 2 (b), 6, paragraph 3, 11 and 12 thereof;

HAVING REGARD to Article 2, paragraph 1 (m), of the consolidated version of the Convention annexed to the Protocol consolidating the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation of 13 December 1960, as variously amended, done at Brussels on 27 June 1997 (hereinafter referred to as "the revised Convention"), as early implemented by Decision No 71 of the Permanent Commission of 9 December 1997 on early implementation of certain provisions in the revised Convention, in particular in respect of the role and duties of the Organisation;

HAVING REGARD to Decision No. 72 of the Permanent Commission of 9 December 1997 on early implementation of certain provisions in the revised Convention, in particular on the establishment of a Provisional Council;

HAVING REGARD to the Agreement relating to the Provision and Operation of Air Traffic Services and Facilities by EUROCONTROL at the Maastricht Area Control Centre, done at Brussels on 25 November 1986 (hereinafter referred to as "the Maastricht Agreement");

WHEREAS Commission Regulation (EC) No. 2150/2005 of 23 December 2005 laying down common rules for the Flexible Use of Airspace (hereinafter referred to as the "Commission Regulation (EC) No. 2150/2005") reinforces and harmonises the application of the concept of Flexible Use of Airspace within the Single European Sky in order to facilitate airspace management within the limits of the common transport policy and, in particular, sets out rules to ensure better coordination between civil and military entities responsible for airspace management;

WHEREAS it is recognised that there is an increased need for improved flexible use of airspace in light of the significant growth of air traffic in the Netherlands and Europe;

WHEREAS the air current and expected traffic requires enhancements of Airspace Management and Airspace Management Cell processes and procedures to improve airspace availability by upgrading airspace planning and traffic flow predictability;

WHEREAS Flexible Use of Airspace as described by the International Civil Aviation Organization also aims at a more efficient use of the airspace and increasing capacity for civil air traffic whilst at the same time maintaining military mission effectiveness;

WHEREAS the Netherlands wishes to reorganise the Dutch AMC to be performed in two locations (Luchtverkeersleiding Nederland (Air traffic Control of the Netherlands, hereinafter referred to as "LVNL") at Amsterdam and Maastricht Upper Area Control Centre (hereinafter

referred to as “MUAC”) at Maastricht), with both locations manned by staff that are competent in both civil and military operations;

WHEREAS the creation of more usable airspace – and more efficient use of that airspace – for civil air traffic and sufficient availability of airspace for the military component, while being compliant with the Commission regulation (EC) No. 2150/2005 requires the implementation of a fully operational multi-side ASM level 2 functionality for the Amsterdam Flight Information Region (hereinafter referred to as “the Amsterdam FIR”);

WHEREAS the Netherlands, therefore, entrust EUROCONTROL with the execution of the airspace management function including the tasks of the AMC in order to allocate airspace in accordance with the conditions and procedures set out in Commission Regulation (EC) No. 2150/2005 for general and operational air traffic in the entire Amsterdam FIR at MUAC;

WHEREAS the purpose of this Agreement is to establish the conditions, pursuant to which EUROCONTROL shall execute the airspace management function in the Amsterdam FIR;

HAVING REGARD to Measure No. XX of the Permanent Commission of XX authorising the negotiation and conclusion of an Agreement in this regard;¹

HAVE AGREED AS FOLLOWS:

ARTICLE 1 DEFINITIONS

For the purpose of this Agreement:

- a. the term the Agreement means: this Agreement, the contract drawn up in application thereof under Article 8, as well as any amendment to the Agreement;
- b. the term the amended Convention means: the EUROCONTROL International Convention relating to co-operation for the Safety of Air Navigation, signed at Brussels on 13 December 1960, as variously amended;
- c. The term the revised Convention means: the Protocol consolidating the EUROCONTROL International Convention relating to co-operation for the safety of air navigation of 13 December 1960, as variously amended, signed at Brussels on 27 June 1997;
- d. the term the Maastricht Agreement means: the Agreement relating to the Provision and Operation of Air Traffic Services and Facilities by EUROCONTROL at the Maastricht Area Control Centre, signed at Brussels on 25 November 1986;
- e. the term Ministry of Defence means: Ministry of Defence of the Netherlands;
- f. the term Orange Slot means: a timeslot during which the civil Air Navigation Service Provider (ANSP) has constraints in accordance with their optimum strategy of sector configuration and may ask for priority within the required military used airspace based on Collaborative Decision Making (CDM);
- g. the term AUP means: Airspace Use Plan, i.e. an ASM message of NOTAM status notifying the daily decision of an AMC on the temporary allocation of the airspace within its jurisdiction for a specific time period, by means of a standard message format;
- h. the term UUP means: Updated Use Plan, i.e. an ASM message of NOTAM status issued by an AMC to update and supersede AUP/previous UUP information;
- i. the term NOTAM means: Notice to Airmen, i.e. a notice distributed by means of telecommunication containing information concerning the establishment, condition or change in any aeronautical facility, service, procedure or hazard, the timely knowledge of which is essential to personnel concerned with flight operations;
- j. the term ASM means: Airspace Management in accordance with Article 2, paragraph 7, of the Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation);
- k. the term AMC means: Airspace Management Cell, i.e. a joint military and civil cell responsible for the day-to-day management of the airspace under the responsibility of one or more Member States;
- l. the term FUA means: Flexible Use of Airspace in accordance with Commission Regulation (EC) No 2150/2005 of 23 December 2005 laying down common rules for the flexible use of airspace;
- m. the term FUA-Cell means: a sub-division of the joint civil/military AMC The Netherlands responsible for the day-to-day management and temporary allocation of national or sub-regional airspace under the jurisdiction of the Netherlands;
- n. the term AIP means: Aeronautical Information Publication;
- o. the term LVNL means: Luchtverkeersleiding Nederland (Air traffic Control of the Netherlands);
- p. the term MUAC means: Maastricht Upper Area Control Centre;
- q. the term the Amsterdam FIR means: the Amsterdam Flight Information Region.

ARTICLE 2 SCOPE

1. The Netherlands entrusts EUROCONTROL with the execution of the airspace management function in the Amsterdam FIR and shall appoint EUROCONTROL as the

MUAC FUA-Cell to the extent and in the manner prescribed in this Agreement. For this purpose, EUROCONTROL shall employ the facilities at MUAC and shall provide the staff required for the operation and maintenance of the MUAC FUA-Cell.

2. Article 1, paragraph 2, of the Maastricht Agreement with regard to certain competences and obligations of the Netherlands shall remain unaffected.

ARTICLE 3 GENERAL RESPONSIBILITIES OF EUROCONTROL

1. EUROCONTROL shall be responsible, on behalf of the Netherlands, to execute the airspace management function within the Amsterdam FIR in accordance with the requirements pursuant to Article 6 of this Agreement and the regulations and instructions concerning the execution of the airspace management function pursuant to this Agreement.
2. EUROCONTROL shall ensure maximum compatibility between the services provided by MUAC pursuant to the Maastricht Agreement and the airspace management function pursuant to this Agreement as well as with the other services provided on behalf of the Netherlands in the airspace under its control.
3. EUROCONTROL sees to it that any planning by MUAC which may have a significant impact on the execution of the airspace management function under this Agreement, as well as the air traffic and reporting services, shall be agreed in a timely manner with the Netherlands before becoming effective.
4. At the request of the Netherlands, EUROCONTROL shall make available all documents concerning the airspace management function executed pursuant to this Agreement.
5. The applicable national and international provisions concerning the investigation of accidents shall remain unaffected.

ARTICLE 4 GENERAL RESPONSIBILITIES OF THE NETHERLANDS

1. The Netherlands shall ensure the required nomination and publication of MUAC as the MUAC FUA-Cell in the Amsterdam FIR.
2. The Netherlands shall inform EUROCONTROL of any developments which could have an effect on the tasks and responsibilities of EUROCONTROL under this Agreement and to ensure that EUROCONTROL is involved prior to decision making. The Netherlands shall notify EUROCONTROL of regulations and instructions concerning the execution of the airspace management function pursuant to this Agreement.
4. EUROCONTROL shall become a member with all applicable rights and obligations of any coordinating body set-up by the Netherlands concerning airspace structure and civil and military service provision in the airspace referred to in Article 2 of this Agreement.
5. In order to enable EUROCONTROL to execute the tasks under this Agreement, the Netherlands shall make available to EUROCONTROL for joint use free of charge the necessary installations, equipment and air-ground and ground-ground communication facilities.

ARTICLE 5 MANAGEMENT

EUROCONTROL shall ensure the day-to-day operation of the MUAC FUA-Cell, including management of staff and equipment. For this purpose, it shall maintain close consultation and coordination in the operational and technical fields with the air traffic services agencies of the Netherlands and other relevant stakeholders concerned.

ARTICLE 6 SPECIFIC RESPONSIBILITIES OF EUROCONTROL

1. The airspace management function shall be executed between 08:00LCL and 18:00LCL, from Monday till Friday and excluding official Dutch holidays. Extension of these proposed opening hours can be discussed if necessary.
2. In particular, EUROCONTROL shall provide the following:
 - a. attendance to the bi-annual airspace planning meetings prepared by the Ministry of Defence. Civil requests to adapt the military planning may be forwarded which may result in a revised airspace plan;
 - b. collect and process all relevant airspace bookings and requests, ascertain completeness of information;
 - c. assess local impact of requests and bookings;
 - d. propose and discuss alternatives for requests and bookings if necessary;
 - e. process Orange Slot requests;
 - f. facilitate and finalize the CDM process for Military Training Area and Orange Slot requests;
 - g. adapt local planning to commonly agreed airspace configuration;
 - h. ensure that NOTAMs are issued by the NOTAM office, whenever necessary;
 - i. publish AUP / UUP for the Amsterdam FIR;
 - j. contribute to Post-Ops Analysis for the Amsterdam FIR, as necessary;
 - k. act as contingency cell for the FUA-LVNL;
 - l. any other function falling in the scope of this Agreement pursuant to Article 2, paragraph 1, of this Agreement.
3. The MUAC FUA-Cell is responsible for the nominal situation, i.e. all airspace requests referring to areas as presented in the AIP the Netherlands, whose approval will be published in the AUP/UUP and via a NOTAM, where necessary. Only when acting as contingency for the LVNL FUA-Cell, shall it be for non-nominal situations, i.e. all airspace requests referring to areas in the AIP the Netherlands whose approval will not be published in the AUP/UUP or airspace requests that require approval of the Netherlands and whose approval will be published in a Decree and/or exemption and NOTAM.

ARTICLE 7 PERSONNEL

1. EUROCONTROL shall ensure it has sufficient staff available to execute the airspace management function pursuant to this Agreement. This staff must meet the national requirements of the Netherlands with regard to vetting to execute the airspace management function pursuant to this Agreement.
2. The Netherlands may place personnel at MUAC for the performance of liaison and coordination tasks. EUROCONTROL shall provide this personnel with the facilities necessary for the execution of their tasks.

3. In the event of lawful strikes by EUROCONTROL's personnel, EUROCONTROL shall ensure the unrestricted and unlimited execution of the airspace management function pursuant to this Agreement.

ARTICLE 8 COSTS

Costs incurred by EUROCONTROL for the execution of the airspace management function pursuant to this Agreement shall be borne by the Netherlands. EUROCONTROL shall determine the required personnel for the execution of the airspace management function under this Agreement based on MUAC's concept of operations. The detailed financial compensation agreement shall be set out in a separate contract to be agreed between EUROCONTROL and the State of the Netherlands prior to the entry into force of this Agreement.

ARTICLE 9 JOINT WORKING PROCEDURES

The National Contracting Parties to the Maastricht Agreement shall be consulted as required for matters falling under their remit concerning the execution of the airspace management function pursuant to Article 2 and Article 3, paragraph 1, of this Agreement.

ARTICLE 10 RELATIONS ESSENTIAL FOR THE EXECUTION OF THE AIRSPACE MANAGEMENT FUNCTION

To the extent required for the execution of the airspace management function pursuant to this Agreement, EUROCONTROL shall be entrusted to conclude contracts of purely administrative, technical or commercial nature with the public or private technical services of the Parties, of third States or of international organisations. The EUROCONTROL Contract Regulations shall apply.

ARTICLE 11 LIABILITY

1. The Netherlands shall be liable for any damage arising from, or in connection with, the execution of the airspace management function by EUROCONTROL in accordance with the provisions of this Agreement to the extent to which such damage is attributable to the Netherlands.
2. Except as provided in paragraph 1 of this Article, EUROCONTROL shall indemnify the Netherlands against any claim arising on account of damage sustained as a result of, or in connection with, the execution of the airspace management function in virtue of Article 2 and Article 3, paragraph 1, of this Agreement.
3. EUROCONTROL's liability may be invoked pursuant to Article 25, paragraph 2, of the amended Convention. In the cases referred to in paragraph 1 of this Article, EUROCONTROL has a right of recourse against the Netherlands for any indemnification due in this respect.
4. EUROCONTROL shall take out insurance in its own name to cover all or some of the risks incurred in connection with this Agreement.

ARTICLE 12 AMENDMENTS

1. This Agreement may be amended only through an exchange of diplomatic notes between the Parties and after a positive opinion of the National Contracting Parties to the Maastricht Agreement. Any amendment to this Agreement shall enter into force on a date to be agreed upon by the Parties.
2. In case of amendments to the Maastricht Agreement, the representatives of the Parties shall amend this Agreement accordingly, unless otherwise agreed between the Parties.

ARTICLE 13 DISPUTE SETTLEMENT

In the event of a dispute arising between the Parties concerning the interpretation, the application or the performance of this Agreement, which cannot be settled by direct negotiation or by any other means, the provisions of Article 31 of the amended Convention shall apply *mutatis mutandis*.

ARTICLE 14 ENTRY INTO FORCE – DURATION – TERMINATION

1. This Agreement shall enter into force on the day of its signature by both Parties. The provisions on the execution of the airspace management function shall not be applicable earlier than 26 March 2020.
2. This Agreement shall remain in force for an undetermined period. Either Party may terminate this Agreement by written notice with a termination period of two years.
3. In addition, either Party may terminate this Agreement through an exchange of diplomatic notes if this Agreement is no longer in line with the Maastricht Agreement. The termination shall become effective when a new agreement replacing this Agreement enters into force or, failing that, at the expiry of two years from the date of the termination notice.
4. In case of a state of tension or defence, the provisions of this Agreement may be suspended by either Party.
5. As regards the Kingdom of The Netherlands, this Agreement shall only apply to the European part of the Netherlands.

DONE in two originals drawn up in the English language.

For the Kingdom of the Netherlands

For EUROCONTROL

Name

Eamonn BRENNAN

Title

Director General

(date)

(date)

Name

Title

(date)

CONTRACT

between

EUROCONTROL

and

the State of the Netherlands

relating to

**the financial considerations with regard to
the Execution of the Airspace Management Function**

EUROCONTROL¹, hereinafter referred to as "EUROCONTROL",

and

the State of the Netherlands, hereinafter referred to as "the Netherlands";

HAVING REGARD to the "Agreement between EUROCONTROL and the Kingdom of the Netherlands relating to the Execution of the Airspace Management Function" dated XX.XX.XXXX;

HAVING REGARD to Article 8 of said Agreement whereby the Netherlands bears all costs incurred by EUROCONTROL for the execution of the airspace management function pursuant to said Agreement, in particular its Articles 2 and 3;

HAVE COME TO THE FOLLOWING ARRANGEMENT²:

Article 1

General principles

1. The Netherlands bears all costs related to the execution of the airspace management function incurred by EUROCONTROL, including the costs related to setting up the Maastricht Upper Area Control Centre Flexible Use of Airspace-Cell (hereinafter referred to as: MUAC FUA-Cell), as depicted hereunder.
2. The costs established by EUROCONTROL are based on cost-recovery principles and are established in accordance with the EUROCONTROL charging policy, i.e. they consist of the average daily rate of a Flow Controller. Furthermore, any software development will be charged on the basis of costs incurred.

Article 2

Establishment costs

To set up the MUAC FUA-Cell, an initial training of MUAC personnel is required, targeting 17 individual staff members:

Type	Course content	Effort	Estimated costs
Firm cost	NL Specific course	17 participants x 4 days (missions)	75.555 €
	ASM-OPS course	17 participants x 2 days	37.778 €
	Software establishment costs		100.000 €
Total			213.333 €
Optional cost	Familiarisation visits	17 participants x 2 days (missions)	37.778 €
			251.111 €

¹ EUROCONTROL – European Organisation for the Safety of Air Navigation

² AG-259-19-NL-FIN-XX

Article 3
Operating costs

Type	Course content	Effort	Estimated costs
Firm cost	MUAC FUA-Cell staffing	1.5 FTE	375.000 €
	Refresher training	17 individuals + trainer(s)	19.000 €
	Software maintenance costs		10.000 €
	Insurance costs		50.000 €
Total			454.000 €
Optional cost	Software development		50.000 €
	Organisational missions and meetings	Applicable daily rate, approximately 6 days/year	1.111 €
			510.666 €

The invoicing will be based on the actual costs incurred by EUROCONTROL.

Article 4
Additional costs

1. Where manpower effort in addition to Articles 2 and 3 of this contract is required, it will be invoiced in accordance with the applicable daily rate, established at 1.111 € for 2020 and subject to adjustments as set out in Article 6 of this contract.
2. The costs of the insurance taken out by EUROCONTROL in accordance with Article 11, paragraph 4, of the Agreement between EUROCONTROL and the Kingdom of the Netherlands relating to the Execution of the Airspace Management Function will be invoiced to the Netherlands on the basis of the actual costs incurred by EUROCONTROL.
3. Any extra cost in addition to those set out in Articles 2 and 3 of this contract will be subject to prior written approval by the Netherlands.

Article 5
Payment scheme

1. The Netherlands will make annual financial contributions to the MUAC budget for the fixed costs established in accordance with Articles 2 and 3 of this contract.
2. The contributions will be payable in euros, and be paid in four instalments due on 20 January, 20 April, 20 July and 20 October of each year. For the year 2020, no call up will be made in January. The establishment costs will be called up on 20 April 2020 together with the relevant contributions of the approved budget. For the fourth quarter, the call-up will be based on the anticipated actual financial needs including the optional costs incurred by EUROCONTROL.
3. As of 2021, for the first three quarters of the year, the contributions of the approved budget will be called up. For the fourth quarter, the call-up will be based on the anticipated actual financial needs including the optional costs incurred by EUROCONTROL.

4. Any delay in the transfer of contributions due will give rise to the payment, by the Member State concerned, of interest on arrears, calculated on the basis of the euro rate.

Each day's delay beyond 60 days after the date of despatch of the letter calling up contributions will be calculated as 1/360 of a year. The euro interest rate used will be that applicable to 3-month term deposits for the months referred to in paragraph 1 of this Article as published by the European Central Bank.

Article 6 Costs adjustments

The staff costs established by EUROCONTROL will be subject to annual adjustments in accordance with the EUROCONTROL charging policy, i.e. they will follow the annual salary adaptations that MUAC staff are subject to in accordance with the agreed salary method.

Article 7 Intellectual Property Rights

1. Any intellectual property rights in tangible or intangible deliverables resulting from the development of tools covered by the present contract and the Agreement will be the exclusive property of EUROCONTROL.
2. Any software tools developed by EUROCONTROL for the MUAC FUA-Cell under this contract and the Agreement will remain the ownership of EUROCONTROL.

Article 8 Amendments

With the exception of Article 1, paragraph 1, of this contract, the arrangements set out in this contract may be modified by exchange of letters between the duly authorised representatives of EUROCONTROL and the State of the Netherlands.

Article 9 Coming into effect and termination

1. This contract will come into effect on the day of its signature by EUROCONTROL and the State of the Netherlands. The provisions on the charging of costs will not be applicable earlier than 26 March 2020.
2. The present contract will be automatically terminated in case the "Agreement between EUROCONTROL and the Kingdom of the Netherlands relating to the Execution of the Airspace Management Function" dated **XX.XX.2020** is terminated.

Article 10 Applicable law and dispute settlement

This contract will be subject to the national law of the Netherlands. In the event of disputes the dispute settlement provisions of the "Agreement between EUROCONTROL and the Kingdom of the Netherlands relating to the Execution of the Airspace Management Function" dated **XX.XX.2020** will apply.

Done on XX.XX.2020 in two original copies in the English language.

For the State of the Netherlands

For EUROCONTROL

Name

Eamonn BRENNAN

Function

Director General