

# EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION

## EUROCONTROL

- Decisions of the enlarged Commission -

### DECISION N°117

**relating to the conclusion of a bilateral agreement with LVNL relating to the suspension of provision of air navigation services in the airspace of the Kingdom of the Netherlands for default in the payment of EUROCONTROL route charges**

THE ENLARGED COMMISSION:

Having regard to the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation, as amended by the Protocol signed at Brussels on 12 February 1981, and in particular Articles 2.1(l) and 5 thereof;

Having regard to the Multilateral Agreement relating to route charges of 12 February 1981 and in particular Article 12 thereof;

Having regard 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, which was opened for signature on 27 June 1997, and in particular Article 6.2 of Annex IV to the consolidated version annexed to the said Protocol,

On the proposal of the enlarged Committee and the Agency;

HEREBY TAKES THE FOLLOWING DECISION:

#### Sole Article

The Agency is authorised to conclude a bilateral agreement with LVNL relating to the suspension of provision of air navigation services in the airspace of the Kingdom of the Netherlands for default in the payment of EUROCONTROL route charges, on the basis of an Agreement, copy of which is at Annex.

Done at Brussels, on 1.10.12

*(submitted for signature)*

V. CEBOTARI  
President of the Commission

## **DRAFT**

### **Agreement between the European Organisation for the Safety of Air Navigation (EUROCONTROL) and Luchtverkeersleiding Nederland (LVNL) relating to the suspension of provision of air navigation services in the airspace of the Kingdom of the Netherlands for default in the payment of EUROCONTROL route charges**

The European Organisation for the Safety of Air Navigation (EUROCONTROL), having its headquarters in 1130 Brussels, Rue de la Fusée 96, represented by its Director General, hereinafter referred to as “EUROCONTROL”,

and

Air Traffic Control the Netherlands (Luchtverkeersleiding Nederland), a legal entity governed by Dutch public Law and instituted by the Dutch Aviation Act (Wet Luchtvaart) of 18 June 1992 (Staatsblad 1992, 368), having its seat at Schiphol, Stationsplein Zuid-West 1001, 1117 CV Schiphol, represented by its Chief Executive Officer, hereinafter referred to as “LVNL”.

hereinafter collectively referred to as “the Parties”;

Taking into consideration the following:

- Having regard to the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation, amended by the Protocol signed at Brussels on 12 February 1981, and in particular Articles 2.1(1) and 5, thereof;
- Having regard to the Multilateral Agreement relating to Route Charges of 12 February 1981, and in particular Article 12 thereof, which stipulates that measures may be taken to enforce recovery when a debtor has not paid the amount due in respect of route charges;
- Having regard 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, which was opened for signature on 27 June 1997, and in particular Article 6.2 of Annex IV to the consolidated version annexed to the said Protocol, these measures may also include, at EUROCONTROL’s request, the review by a Contracting Party or any competent body of the administrative authorization connected with air transport or air traffic management issued to a person liable to pay the charge, if the relevant legislation so provides;
- Having regard to Article 14 of Commission Regulation (EC) No. 1794/2006 of 6 December 2006 laying down a common charging scheme for air navigation services, provision 3, regarding the application of effective enforcement measures;
- Having regard to article 11.16a of the Dutch Aviation Act of 18 July 2009, published in the Bulletin of Acts and Decrees (Staatsblad 2010, number 26 and in force since 30 January 2010 according to which LVNL has the right to suspend the provision of air navigation services in case of non-payment by a user;

- Having regard to Decision No. ..., taken by the enlarged Commission on ... 2012, delegating authority to the Agency to conclude a bilateral agreement relating to effective enforcement measures;

The Parties have agreed as follows:

### **Article 1 - Route charges in arrears**

- 1.1 EUROCONTROL may request LVNL in writing to suspend the provision of air navigation services to a user in arrears in order to recover unpaid route charges.
- 1.2 Provided that part of the due route charges are intended for the Netherlands, EUROCONTROL may request LVNL to suspend the provision of air navigation services to a user in arrears in the following situations:
  - when one or more invoices in arrears of that particular user exceed EUR 50.000 (fifty thousand EURO) or,
  - when the invoices regarding route charges have not been paid by that particular user during a period of at least 3 (three) months.
- 1.3 LVNL is under no obligation to suspend the provision of air navigation services.
- 1.4 Procedural details will be addressed in a "Working Procedures" document. The Working Procedures may be amended in writing as appropriate further to the agreement of the Parties.

### **Article 2 - Indemnification**

- 2.1 EUROCONTROL shall indemnify LVNL and its staff against:
  - a) their legal liability which may arise in respect of loss, damage or injury to an aircraft (including the loss of use thereof) or to persons (including injury resulting in death) arising directly out of the suspension of the provision of air navigation services in the airspace of the Kingdom of The Netherlands as a consequence of default in the payment of EUROCONTROL route charges pursuant to a request from EUROCONTROL, and
  - b) the costs incurred by LVNL arising out of the suspension of the provision of air navigation services, to the extent agreed beforehand between the Parties. These include parking and other related costs which may be incurred as a result of aircraft being unable to depart the Netherlands, and
  - c) reasonable legal fees incurred by LVNL in defending any claim, legal action or proceedings that arise directly out of the suspension of the provision of air navigation services further to a request from EUROCONTROL, to the extent agreed beforehand between the Parties.
- 2.2 The indemnity provided for in 2.1 shall not apply where the loss, damage or injury to an aircraft and/or persons is caused due to gross negligence or willful default of LVNL or its staff.

### **Article 3 - Co-operation of the Parties**

- 3.1 The Parties shall fully co-operate and assist each other in connection with any claim, legal action or proceedings arising directly out of the suspension of the provision of air navigation services further to a request from EUROCONTROL.
- 3.2 If LVNL becomes aware of an actual or potential claim, legal action or proceedings against it, EUROCONTROL or any other party, arising out of the suspension of air navigation service further to a request of EUROCONTROL, LVNL shall inform EUROCONTROL in writing.
- 3.3 LVNL shall consult and discuss with EUROCONTROL the handling of any claim, legal action or proceedings against LVNL resulting from a request for the suspension of air navigation services from EUROCONTROL.

### **Article 4 - Costs**

- 4.1 The costs relating to the suspension of the provision of air navigation services that have to be paid by EUROCONTROL on the basis of article 2.1 (b) and which were incurred by an airport operator and/or an aircraft handling organisation and charged to LVNL shall be paid to LVNL within 30 days after a request for payment is received by EUROCONTROL from LVNL. Such request shall be submitted to EUROCONTROL once the suspension of provision of air navigation services is terminated.
- 4.2 When the provision of air navigation services is suspended by LVNL as a consequence of default of payment of charges other than the EUROCONTROL route charges in respect of which EUROCONTROL has requested suspension of air navigation services, the part of costs incurred by LVNL in respect of those other charges shall be borne by LVNL in proportion to the amount of those charges.

### **Article 5 - Applicable law and Jurisdiction**

- 5.1 This Agreement shall be governed by the provisions of Dutch law.
- 5.2 The Parties agree that any dispute which arises in connection with this Agreement and which cannot be settled by direct negotiation shall be brought before the competent judge of the Amsterdam court.

### **Article 6 - Amendments**

This Agreement may be amended only by an instrument in writing of equal formality signed by the duly authorised representatives of the Parties.

### **Article 7 - Confidentiality**

Except as shall be required by law or regulation, this Agreement and any working procedures agreed by the Parties shall be kept confidential and their contents only disclosed to third parties on a need to know basis. Any disclosure to a third party shall be on the same basis of strict confidence.

### **Article 8 - Entry into force**

The present Agreement shall enter into force on the day of it has been signed by both Contracting Parties.

In witness whereof, the undersigned, having been duly authorised, sign this Agreement.

Done in two originals in the English language.

For LVNL,	For EUROCONTROL,
P. Riemens Chief Executive Officer	D. McMillan Director General