MEASURE No.15/215

authorising the Agency to conclude an agreement with the Federal Republic of Germany concerning the provision by the Organisation of air traffic services for operational air traffic in the Hannover UIR

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 of 13 December 1960 as amended by the Protocol signed at Brussels on 12 February 1981 and in particular Articles 2.2(b), 6.3, 7.2, 11 and 12 thereof;

Having regard to 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 request dated 31 October 2014 from the Federal Republic of Germany that the Agency pursues the necessary steps with the EUROCONTROL decision making bodies in order to implement the provision by the Organisation of air traffic services for operational air traffic in the Hannover UIR;

Considering that the Maastricht Coordination Group supports the provision by the Organisation of air traffic services for operational air traffic in the Hannover UIR;

On the proposal of the Director General and the Provisional Council,

HEREBY TAKES THE FOLLOWING MEASURE:

Article 1

The Agency is delegated authority to conclude the Agreement with the Federal Republic of Germany concerning the provision by the Organisation of air traffic services for operational air traffic in the Hannover UIR, on the basis of the draft agreement attached.
Article 2

The Director General is authorised to sign the Agreement on behalf of the Organisation.

Done at Brussels on 9.12.2015

D. RATKOVICA
President of the Permanent Commission
ATTACHMENT TO DRAFT MEASURE

DRAFT
AGREEMENT

between

The European Organisation for the Safety of Air Navigation (EUROCONTROL)
and

The Federal Republic of Germany

relating to

the Provision by EUROCONTROL of Air Traffic Services to Operational Air Traffic
in the Hannover UIR

The European Organisation for the Safety of Air Navigation (EUROCONTROL) established
by the EUROCONTROL International Convention relating to Co-operation for the Safety of
Air Navigation as amended at Brussels in 1981 ("the amended Convention"), represented by
its Director General, Mr Frank BRENNER,

hereinafter referred to as "the Organisation",

and

The Federal Republic of Germany acting through the Federal Ministry of Defence,
represented by State Secretary, Mr Gerd HOOFE,

hereinafter referred to as "Germany",
hereinafter jointly referred to as "the Parties",

HAVING REGARD to Articles 2.2 (b), 6.3, 7.2, 11 and 12 of the amended Convention,

HAVING REGARD to 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;

WHEREAS Germany wishes to integrate civil-military air traffic management services in the
Hannover UIR with the objective to improve the overall performance of the air traffic
management system for the benefit of both civil and military airspace users;

WHEREAS, in order to achieve the desired integration of civil-military air traffic management
services in the entire German airspace, Germany has decided to entrust the Organisation
with the provision of air traffic services for operational air traffic in the Hannover UIR at its
Maastricht Upper Area Control Centre (MUAC);
WHEREAS the purpose of this Agreement is to establish the conditions pursuant to which the Organisation shall provide air traffic services to operational air traffic (OAT service provision) in the North-western part of Germany.

HAVING REGARD to Measure No. [XXXX] of the Permanent Commission of [date] authorising the Agency to conclude an agreement in this regard,

HAVE AGREED AS FOLLOWS:

ARTICLE 1
MANDATE

1. Germany shall entrust the Organisation with the provision and operation of air traffic services and facilities for operational air traffic in the German airspace mentioned in Annex I of 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 ("Maastricht Agreement"), to the extent and in the manner prescribed in this Agreement. Article 1.2 of the Maastricht Agreement with regard to certain competences and obligations of Germany shall remain unaffected.

2. The Organisation may avail itself of the services of DFS Deutsche Flugsicherung GmbH ("DFS") in order to provide air traffic services to operational air traffic in the area of responsibility of the Organisation in the German airspace in accordance with the Maastricht Agreement (Hannover UIR). The Organisation may accept to provide cross-border air traffic services to operational air traffic on behalf of DFS in areas in the German airspace where the DFS provides air navigation services (Rhein UIR, Langen FIR, Bremen FIR).

ARTICLE 2
GENERAL RESPONSIBILITIES OF THE ORGANISATION

1. The Organisation shall be responsible to provide air traffic services to operational air traffic (hereinafter referred to as 'OAT') in the airspace referred to in Article 1 of the present agreement in accordance with the service requirements defined pursuant to Article 3.1 and the regulations and instructions concerning the provision of the services pursuant to this Agreement.

2. Any planning by MUAC which will have a significant impact on military air traffic, OAT service provision, as well as the radar control and reporting service shall be agreed in a timely manner with Germany before becoming effective.

3. At the request of Germany, the Organisation shall make available all documents concerning the handling of military air traffic pursuant to this Agreement.

4. In the case of investigations into specific incidents involving military air traffic, all investigation documents shall be made available to Germany via the appropriate body nominated by Germany. The applicable provisions concerning the investigation of accidents shall remain unaffected.
ARTICLE 3
GENERAL RESPONSIBILITIES OF GERMANY

1. As MUAC has aligned its business planning process with the performance reference periods of the Single European Sky (SES) legislation, the integrated civil-military service provision and the resources required thereto need to follow the same planning cycles. Germany shall therefore establish its service requirements in accordance with these reference periods to allow the Organisation to take the necessary measures to ensure the provision of the services pursuant to Article 1.1 and 2.1 of this Agreement. The service requirements for the respective reference periods shall be communicated to the Organisation at least two years in advance of the start of the respective reference period, beginning with the reference period starting on 1.1.2020.

2. The service requirements shall be set out at Annex 1. Changes thereto may be requested by Germany in writing at any time. The implementation of the requested changes shall be agreed between the Parties. The Annex shall be modified accordingly without the requirement of an amendment to this Agreement.

3. Germany undertakes to advise the Organisation of any developments which could have an effect on the tasks and responsibilities of the Organisation under this Agreement and to ensure that the Organisation is involved prior to decision making. The Organisation shall become a member with all applicable rights and obligations of any coordinating body set-up concerning airspace structure and civil and military service provision in the airspace referred to in Article 1 of this Agreement.

4. In order to enable the Organisation to execute the tasks under this Agreement, Germany shall make available to the Organisation for joint use free of charge the necessary installations, equipment and air-ground and ground-ground communication facilities.

5. Germany shall notify the Organisation of regulations and instructions concerning the provision of the service pursuant to this Agreement.

ARTICLE 4
PERSONNEL

1. The Organisation shall ensure it has sufficient staff available to provide the services pursuant to this Agreement. This staff must meet the national requirements of Germany with regards to vetting to provide the services pursuant to this Agreement.

2. For the performance of liaison and coordination tasks Germany may second to the Organisation soldiers on special leave of absence from the German Ministry of Defence for a defined period. These staff members shall have a direct reporting line to Director MUAC and be part of the Organisations crisis management team established at MUAC. The Organisation shall establish the relevant functions and positions in agreement with Germany. The principles governing their employment by the Organisation and their administrative situation related to their leave of absence from the German Ministry of Defence are set out in Annex 2.

3. The Organisation shall open a number of posts corresponding to the number of staff of the DFS Centre Upper Maastricht (DFS-CCUM) organisational unit of the DFS who would have been assigned to this unit on the date of entry into force of the present agreement had Germany not decided to entrust the Organisation with the service provision in accordance with Article 1 of this Agreement. The maximum number of posts shall be set out in Annex 2.
4. In the event of lawful strikes by the Organisation's personnel, the Organisation shall ensure military flights and State flights as well as the possibility of operations in the event of emergencies and disasters.

ARTICLE 5
TRAINING

1. The training of personnel shall be provided by the Organisation. Training with military/tactical content shall be provided by the Organisation in addition to ATM training in order to set in place and maintain the pre-requisites for military deployment levels.

2. Course requirements and contents shall be agreed between the Organisation and the German Ministry of Defence.

3. The Organisation shall obtain and maintain an approval to provide the required training for OAT service provision. Germany shall take the necessary measures to ensure such approval can be granted by the responsible authorities.

ARTICLE 6
COST

1. Costs incurred by the Organisation for the service provision pursuant to this Agreement shall be borne by Germany in accordance with the provisions of the Maastricht Agreement. The contributions to be borne by Germany shall be established in accordance with Annex 3. The Annex shall be reviewed after each period of five years which shall coincide with the periods mentioned in Article 3. The Annex may be modified by written agreement between the Parties without the requirement of an amendment to this Agreement.

2. In the case of a decision of the Permanent Commission changing the allocation of certain costs which are currently charged to Part I of the Organisation's budget, the new allocation principles so adopted shall apply to the provision of the services provided pursuant to this Agreement as from their date of entry into force.

ARTICLE 7
APPLICATION OF RELATED AGREEMENTS

1. Articles 3 to 11 of the Maastricht Agreement shall apply mutatis mutandis to the provision of the services pursuant to this Agreement to the extent that they concern the obligations of the Parties, with the exception of Article 10 concerning the application of the "Agreement between the Federal Republic of Germany and EUROCONTROL relating to the colocation of the Air Force at MUAC" concluded on 3 November 1977.

2. The "Agreement between the Federal Republic of Germany and EUROCONTROL relating to the colocation of the Air Force at MUAC" concluded on 3 November 1977 as amended by the Protocol of 2 September 1996 is hereby terminated.

ARTICLE 8
RELATIONS ESSENTIAL FOR THE OPERATION OF THE SERVICES

To the extent required for the operation of the services pursuant to this Agreement, the Agency shall be empowered to conclude contracts of a purely administrative, technical or commercial nature with the public or private technical services of the Parties, of non-contracting States or of international organisation, subject to a favourable common position of the National Contracting Parties to the Maastricht Agreement.
ARTICLE 9
AMENDMENTS

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

2. The Annexes to this Agreement may be modified by exchange of letters between the Head of Armed Forces Command Unit I 5 (FüSK I 5) and the Director General of the Organisation.

3. Without prejudice to Article 6, the Parties may change the financing arrangements as set out at Annex 4. An Annex modified accordingly shall be submitted to the Provisional Council for information.

ARTICLE 10
DISPUTE SETTLEMENT

In the event of a dispute arising between the Parties to the present Agreement concerning the interpretation, application or performance thereof 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 11
ENTRY INTO FORCE – DURATION – TERMINATION

1. The present Agreement shall enter into force on the day of its signature by both Parties. The effective date of the OAT service provision shall be no earlier than October 1, 2016 and not later than January 1, 2017. The effective date will be agreed mutually by the Parties.

2. The present Agreement shall remain in force in accordance with the provisions of Article 15 of the Maastricht Agreement and termination shall be governed by said Article.

3. In case of state of tension or defence the provisions of the present Agreement may be suspended by either Party.

4. The Annexes form an integral part of the Agreement.

Done at ....... on ....... in two originals drawn up in the English language

For the Federal Republic of Germany For EUROCONTROL

Mr Gerd HOOFE Frank Brenner
State Secretary DIRECTOR GENERAL
ANNEXES

Annex 1 – Service requirements

Annex 2 – Principles governing the employment of former DFS-CCUM staff employed by the Organisation in accordance with Article 4 of the Agreement

Annex 3 – Financial Annex
Annex 1 to the draft agreement

Service Requirements as of the effective date of the OAT service provision

1. Services

The Organisation is required to ensure the following services can be provided to OAT traffic when requested:

<table>
<thead>
<tr>
<th>Service</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>OAT Transit Flights</td>
<td></td>
</tr>
<tr>
<td>En-route refuelling</td>
<td></td>
</tr>
<tr>
<td>Scrambles</td>
<td></td>
</tr>
<tr>
<td>Formation flights without complex split or join-up operations</td>
<td></td>
</tr>
<tr>
<td>OAT specific airspace structure</td>
<td>Navigation Aids and Significant Points</td>
</tr>
<tr>
<td></td>
<td>TACAN routes</td>
</tr>
<tr>
<td></td>
<td>Military aerodromes</td>
</tr>
<tr>
<td></td>
<td>Exercise and special use areas</td>
</tr>
<tr>
<td></td>
<td>AAR areas etc.</td>
</tr>
<tr>
<td>OAT specific basic background knowledge</td>
<td>Military aircraft types</td>
</tr>
<tr>
<td></td>
<td>Special terms and abbreviations</td>
</tr>
<tr>
<td></td>
<td>Weather information and colour codes</td>
</tr>
<tr>
<td></td>
<td>Types of approach and landing.</td>
</tr>
<tr>
<td>Introduction to OAT General Procedures and Phraseology</td>
<td>Air-to-Air refuelling en-route</td>
</tr>
<tr>
<td></td>
<td>Air-to-Air refuelling in pattern</td>
</tr>
<tr>
<td></td>
<td>Handling and procedures for formation flights</td>
</tr>
<tr>
<td></td>
<td>including formation split</td>
</tr>
<tr>
<td></td>
<td>Supersonic flights</td>
</tr>
<tr>
<td></td>
<td>Emergencies of military aircraft</td>
</tr>
<tr>
<td>OAT Local Procedures</td>
<td>Co-operation with TFDO</td>
</tr>
<tr>
<td></td>
<td>Internal Coordination and Control Procedures</td>
</tr>
<tr>
<td></td>
<td>Coordination Procedures with external units (LOAs)</td>
</tr>
<tr>
<td></td>
<td>OAT specific system features and flight plan</td>
</tr>
<tr>
<td></td>
<td>handling</td>
</tr>
<tr>
<td>NATO Early Warning (NAEW)</td>
<td></td>
</tr>
<tr>
<td>Flights using Military Training Areas [MTA] (except transition flights)</td>
<td></td>
</tr>
<tr>
<td>Supersonic Flights</td>
<td></td>
</tr>
<tr>
<td>Function</td>
<td>Number of FTEs</td>
</tr>
<tr>
<td>---------------------------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Air Traffic Controller</td>
<td>21</td>
</tr>
<tr>
<td>Executive Operational Support</td>
<td>8</td>
</tr>
<tr>
<td>Training &amp; Competency Expert</td>
<td>1</td>
</tr>
<tr>
<td>Airspace Design and Procedures</td>
<td>1</td>
</tr>
</tbody>
</table>

2. Staff requirement

To provide the above services, the Organisation shall maintain the following staff levels:
Annex 2 to the draft agreement

Principles governing the employment of former DFS-CCUM staff employed by the Organisation in accordance with Article 4 of the Agreement

1. In accordance with Article 4 of the Agreement, the Organisation shall open a number of posts corresponding to the number of staff of the DFS-CCUM organisational unit of the DFS who would have been assigned to this unit on the date of entry into force of the present agreement had Germany not decided to entrust the Organisation with the service provision in accordance with Article 1 of this Agreement. His provision shall not apply to the Head of DFS-CCUM. The maximum number of posts shall be as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Maximum number of posts</th>
</tr>
</thead>
<tbody>
<tr>
<td>01.10.2016</td>
<td>58</td>
</tr>
<tr>
<td>01.11.2016</td>
<td>57</td>
</tr>
<tr>
<td>01.12.2016</td>
<td>56</td>
</tr>
<tr>
<td>01.01.2017</td>
<td>55</td>
</tr>
</tbody>
</table>

2. The German Ministry of Defence (MoD) shall place military staff selected by EUROCONTROL to perform the tasks as laid down in this agreement on special leave as of the date at which the Organisation is entrusted with these tasks. The Organisation shall conclude and terminate the letters of employment of this staff in agreement with the MoD.

The military staff placed on special leave by the MoD shall continue to be subject to the personnel management and cooperation regulations of the MoD ("Personalführungs- und Mitwirkungsbestimmungen").

3. The Organisation and the MoD shall work jointly in good faith on personnel matters in respect of the military staff placed on special leave. Organisational measures which have a significant impact on the military staff placed on special leave shall be discussed in a timely manner with the Organisation. The MoD and the Organisation shall inform each other of changes in the career of military staff.

The personal military files of the staff placed on special leave shall be maintained by the MoD. The Organisation shall make available to the MoD copies of all relevant staff documents (e.g. appraisals, permits, ratings) to be included in their personal files.

The MoD shall be informed in the event of unfitness for the assignment (e.g. aeronautical medical examinations), training gaps or if ratings expire or are withdrawn. The MoD and the Organisation may decide to terminate the special leave in these instances.

4. Where military staff on special leave (career soldiers, soldiers on temporary duty) is required to contribute to the mandatory German social security schemes, the Organisation undertakes to pay the contributions to the national schemes in
accordance with the relevant provisions of the General Conditions of Employment. These contributions form part of the cost of the service provision to be borne by Germany in accordance with Article 6 of the present Agreement.

5. Should Germany decide to alter the rules applicable to military staff on special leave after the entry into force of the present agreement, the Organisation is not bound to implement these changes with regards to the staff recruited under the present Agreement.
Annex 3 to the draft agreement

FINANCIAL ANNEX
RELATING TO THE FINANCING OF THE OAT PART OF THE COSTS
IN RESPECT OF THE MAASTRICHT CENTRE

Article 1
Remuneration and operating cost

The special contribution to be paid by the Federal Republic of Germany to EUROCONTROL in respect of the military part of the remuneration and operating budgetary costs at the Maastricht Centre shall be calculated on the basis of the following principles:

a) 100% of the costs which are exclusively attributable to German Operational Air Traffic (OAT) shall be allocated to the Federal Ministry of Defence (MOD).

b) 10% of the costs which are attributable to those portions of installations, services and facilities including simulator facilities, used jointly by civil and military air traffic shall be allocated to the Federal Ministry of Defence (MOD).

c) General support and overhead expenses are proportionally distributed over the different cost categories

The aggregated result of this cost allocation is the OAT cost sharing key for operating expenses and shall be applied to the Maastricht operating budget.

Article 2
Investment cost

Starting 1st January 2020, the special contribution to be paid by the Federal Republic of Germany to EUROCONTROL in respect of the military part of the investments at the Maastricht Centre shall be calculated on the basis of the same principles as described in Article 1 above.

The aggregated result of this cost allocation is the OAT cost sharing key for investments and shall be applied to the Maastricht depreciation and interest costs.

Article 3
Transitional arrangements

Whereas the current agreement between the Organisation and Germany relating to the financing of the military part of the expenditure in respect of the Maastricht Centre foresees a pre-financing of the investments by the MoD while the other MUAC parties are contributing to these costs through depreciation cost, the latter shall also be applicable to the MoD in accordance with Article 2 above.

To compensate for the pre-financing of the investment cost borne by Germany until the entry into force of the present Agreement, the Maastricht Coordination Group agreed to exempt the Federal Republic of Germany from the special contribution to be paid to EUROCONTROL in respect of the military part of the investments at the Maastricht Centre as of the effective date of the OAT service provision under the present agreement and until 31 December 2019.
Where the OAT service provision under the present agreement becomes effective on a date other than the 1\textsuperscript{st} of January, the provision of the previous sentence shall only be applicable as of the next 1\textsuperscript{st} of January following the effective date of the service provision. Until such time, the agreement of September 2013 between the Organisation and Germany relating to the financing of the military part of the expenditure in respect of the Maastricht Centre shall continue to be applicable.

Article 4
Amendments

The present Agreement, including the cost-sharing arrangements referred to in Article 1 above may be subject to revision where drastic changes of circumstances would so require, such as but not limited to:

- the modification of the legal and institutional framework of the EUROCONTROL Maastricht Centre;
- the extension of the responsibility for military service provision to other States than the Federal Republic of Germany

Article 5

The present Annex shall supersede the Agreement of September 2013 between the Organisation and Germany relating to the financing of the military part of the expenditure in respect of the Maastricht Centre with the exceptions provided for under Article 3 of the present Annex.