EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION

EUROCONTROL

- Measures of the Permanent Commission -

MEASURE No. 15/216

authorising the Agency to open negotiations for the conclusion of a special agreement with the Kingdom of the Netherlands concerning the provision by the Organisation of air traffic services for operational air traffic in the Amsterdam FIR

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 27 July 2015 from the Ministry of Defence of the Kingdom of the Netherlands 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 Amsterdam FIR as of 1 April 2016;

Considering that the Maastricht Coordination Group supports the provision by the Organisation of air traffic services for operational air traffic in the upper airspace of the Amsterdam FIR;

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

HEREBY TAKES THE FOLLOWING MEASURE:

Article 1

The Permanent Commission hereby authorises the Agency to open negotiations and conclude a special agreement with the Kingdom of the Netherlands concerning the provision by the Organisation of air traffic services for operational air traffic in the Amsterdam FIR.
Article 2

The Director General is authorised to sign the Agreement on behalf of the Organisation once it has been negotiated.

Done at Brussels on 9.12.2015

D. RÄTKOVICA
President of the Commission
ATTACHMENT TO DRAFT MEASURE

DRAFT AGREEMENT

between

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

Kingdom of The Netherlands relating to

the Provision by EUROCONTROL of Air Traffic Services to Operational Air Traffic in the Amsterdam FIR

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 Kingdom of The Netherlands acting through the Ministry of Defence, represented by job, Function/Title xxx, Name,

hereinafter referred to as "the Netherlands",

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 The Netherlands wishes to integrate civil-military air traffic services in the Amsterdam 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 Dutch airspace, The Netherlands has decided to entrust the Organisation with the provision of air traffic services for operational air traffic in the upper airspace of the Amsterdam 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 Netherlands.

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

The Netherlands shall entrust the Organisation with the provision and operation of air traffic services and facilities for operational air traffic in the upper airspace (i.e. above Flight Level 245) of the Amsterdam FIR as 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 the Netherlands shall remain unaffected.

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 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 The Netherlands before becoming effective.

3. At the request of the Netherlands, 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 The Netherlands via the appropriate body nominated by The Netherlands. The applicable provisions concerning the investigation of accidents shall remain unaffected.

ARTICLE 3
GENERAL RESPONSIBILITIES OF THE NETHERLANDS

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. The Netherlands 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 Articles 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 The Netherlands 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. The Netherlands 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, The Netherlands 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. The Netherlands 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 all the services pursuant to this Agreement. This staff must meet the national requirements of The Netherlands with regards to vetting to provide the services pursuant to this Agreement.

2. For the performance of liaison and coordination tasks The Netherlands may place staff members at MUAC. The organisation shall provide these staff members with the facilities necessary for the execution of their tasks.

3. 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 Dutch Ministry of Defence.

3. The Organisation shall obtain and maintain an approval to provide the required training for OAT service provision. The Netherlands 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 The Netherlands in accordance with the provisions of the Maastricht Agreement. The contributions to be borne by The Netherlands shall be established in accordance with Annex 2. 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

Articles 3 to 9 and 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.

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 noncontracting 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 [title of the authority] 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 2. 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 xxxx and not later than xxxx. 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 Kingdom of The Netherlands

For EUROCONTROL

Name

Frank Brenner

Title

DIRECTOR GENERAL
ANNEXES

ANNEX 1 – Service requirements (to be negotiated)

ANNEX 2 – Financial Annex (to be negotiated)