

KL-2008-1230

HungaroControl Zrt. – Központi Ügykezelés

2008 NOV. 24

Érkeztető szám: B-10092/08/1  
Megjegyzés:

**AGREEMENT**

between

**the European Organisation for the Safety of Air Navigation (EUROCONTROL)**

and

**Austro Control Österreichische Gesellschaft für Zivilluffahrt mit beschränkter Haftung,**

and

**Řízení letového provozu ČR, s.p.,**

and

**Bosnia and Herzegovina Directorate of Civil Aviation,**

and

**Croatia Control Ltd,**

and

**Hungarocontrol Pte.Ltd.Co.,**

and

**Letové prevádzkové služby SR, štátny podnik**

and

**Slovenia Control Ltd**

**relating to the Provision by EUROCONTROL of support  
to the FAB CENTRAL EUROPE Implementation Plan**

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 David McMILLAN,

hereinafter referred to as "EUROCONTROL",

and

Austro Control Österreichische Gesellschaft mit beschränkter Haftung, represented by its Chief Executive Officer, Mr. Christoph Baubin, and its Managing Director, Mr Johann ZEMSKY,

and

Řízení letového provozu ČR, s.p., represented by its Director General, Mr Jan Klas,

and

Bosnia and Herzegovina Directorate of Civil Aviation, represented by its Director General, Mr. Đorđe RATKOVICA,

and

Croatia Control Ltd, represented by its Director General, Mr. Dražen Ramljak,

and

Hungarocontrol Pte.Ltd.Co., represented by its Chief Executive Officer, Mr Laszlo KISS,

and

Letové prevádzkové služby SR, štátny podnik, represented by its Director General, Mr Roman BIRO,

and

Slovenia Control Ltd, represented by its Chief Executive Officer, Mr. Franc Željko ŽUPANIČ,

hereinafter referred to as "The Participating ANSPs in FAB Central Europe",

individually referred to as the "Party" and collectively, including EUROCONTROL as the "Parties"

SP 14

D. B. M. R. A.

HAVING REGARD to Articles 6.1(b), 7.3, and 13 of the amended Convention,

HAVING REGARD to Directive No. 04/65 of the Permanent Commission of 8 October 2004 authorising the Agency to conclude, on the Organisation's behalf, agreements which may contribute to the implementation of the uniform European air traffic management system, with public or private services of Member States, non-Member States which are Members of ECAC, or of International Organisations,

WHEREAS a 'FAB CE Feasibility Study' was conducted by the Participating ANSPs in FAB Central Europe and its outcome subsequently approved at the 20<sup>th</sup> meeting of the CEATS Coordination Group (hereinafter "CCG") of 28 March 2008 by the States and agreed there is a need to continue without delay with the development of the FAB Central Europe Implementation plan,

CONSIDERING the "Memorandum of Cooperation for the FAB CE Implementation plan signed on 30 May 2008 between the Participating ANSPs in FAB Central Europe" (hereinafter "MoC") to create a framework for cooperation which is without prejudice to States' decision making regarding the implementation of the FAB Central Europe,

CONSIDERING the reference in Article V of the above mentioned MoC to the contribution of EUROCONTROL to the FAB Central Europe Project and agreements to be concluded between the Participating ANSPs in FAB Central Europe and EUROCONTROL,

CONSIDERING the request by CCG/20, and therefore the Participating ANSPs in FAB Central Europe, for EUROCONTROL to provide support in the elaboration of a FAB Central Europe,

CONSIDERING the decisions of CCG/20 of 28 March 2008 regarding the settling of obligations resulting from CEATS activities and related financial proposals regarding the establishment of support to the FAB Central Europe Project,

CONSIDERING the Declaration of the Ministers of Transport of the Republic of Austria, Bosnia and Herzegovina, the Republic of Croatia, the Czech Republic, the Republic of Hungary, the Slovak Republic and the Republic of Slovenia of 12 June 2008, which invited the EUROCONTROL Agency to provide support to the FAB Central Europe preparation and implementation, on terms and conditions to be agreed between EUROCONTROL, the States concerned and their ANSPs,

CONSIDERING the support given by the States/CAA of all Participating ANSPs in the FAB Central Europe for the assistance from EUROCONTROL requested by the Participating ANSPs in FAB Central Europe.

**HAVE AGREED AS FOLLOWS:**

## ARTICLE 1 - SCOPE

- 1.1. The subject of the present Agreement is the provision of support by EUROCONTROL to the Participating ANSPs in FAB Central Europe to elaborate and deliver a FAB Central Europe Implementation Plan for submission to States, on the basis of the FAB Central Europe Master Plan.
- 1.2. The Support is detailed in the specifications attached in Annex 1.
- 1.3. EUROCONTROL shall not, however, be held responsible for any decision in the operational, technical, financial, legal and/or managerial field taken by the Participating ANSPs in FAB Central Europe in execution of their duties and/or prerogatives.

## ARTICLE 2 - SUB-CONTRACTS

EUROCONTROL shall be empowered to conclude any contracts required for the execution of the present Agreement including outsourcing or sub-contracting in accordance with the Contract Regulations for the EUROCONTROL Organisation in force at that time.

## ARTICLE 3 - COST

- 3.1. Costs incurred by EUROCONTROL for the implementation of the present Agreement shall be borne by the Participating ANSPs in FAB Central Europe in accordance with the sharing key provided in Annex 2, and the necessary funds shall be made available to EUROCONTROL as provided for in Article 4 below.
- 3.2. The cost to be charged to the Participating ANSPs in FAB Central Europe for the implementation of the present Agreement has been estimated at EUR 962,850 (nine hundred and sixty-two thousand, eight hundred and fifty euro). This estimate is based on the most realistic information available at the time of drawing up the present Agreement and upon the currently applicable rules governing the costing of provision of support by EUROCONTROL. The cost estimate is detailed in Annex 2.
- 3.3. EUROCONTROL shall be free to modify the allotment of funds laid down in Annex 2 whenever required for the implementation of the present Agreement.
- 3.4. The above-mentioned cost estimate shall be subject to revision in accordance with the conditions set out in paragraph 3.5. below.
- 3.5. The following charging arrangements based on the principle of non-profit making shall apply:
  - a) Costs in respect of the provision of Support under the present Agreement shall be calculated in accordance with the rules governing the costing of the provision of support by EUROCONTROL applicable at the date of signature of the present Agreement. In the event of any modifications of these rules by EUROCONTROL's competent authorities during the operation of the present Agreement, the modified rules shall apply and the present Agreement shall be modified consequently, in accordance with the provisions of Article 9 below.
  - b) The cost shall not include staff expenditure for support provided by the EUROCONTROL staff working at the CSPDU, CRDS and CMO. This cost will be covered by the funds settling the obligations from the CEATS

decision by the Member States in CCG/20 (see Annex 3) through a Special Annex to EUROCONTROL's budget.

- c) The cost shall include all staff expenditure for support provided by other EUROCONTROL units as classified and approved by the competent authorities and calculated in accordance with the provisions of the Staff Regulations governing Officials of the EUROCONTROL Agency.
- d) All costs related to the supply of equipment and / or effort and services by third parties under contract shall be charged accordingly. The cost shall be determined inclusive of value added tax, where applicable.
- e) Where applicable, overhead charges of 5% will be added to the cost listed above.

#### ARTICLE 4 - PAYMENT

- 4.1. The funds shall be made available by the Participating ANSPs in FAB Central Europe to EUROCONTROL through a Special Annex to EUROCONTROL's Budget.
- 4.2. EUROCONTROL shall request instalments every three months based on the advancement of work from the Participating ANSPs in FAB Central Europe as the implementation of the present Agreement progresses. Payment shall be made within a period of 30 (thirty) calendar days beginning from the date the invoice has been issued.
- 4.3. Any delay in the payment of the amounts according to paragraph 4.2. above shall give rise to the payment of interest on arrears calculated on the basis of the EURO interest rate. Each day's delay beyond the periods defined in paragraph 4.2 above shall be calculated as 1/360 of a year. The EURO interest rate shall be that applicable to 3 month term deposits published by the European Central Bank.
- 4.4. The Participating ANSPs in FAB Central Europe shall communicate to EUROCONTROL the appropriate payment services and EUROCONTROL shall communicate to the Participating ANSPs in FAB Central Europe the appropriate bank details.
- 4.5. The financial management of the present Agreement shall be executed in accordance with the provisions of the Financial Regulations of the EUROCONTROL Agency. Upon specific written request to EUROCONTROL, a final statement of account shall be submitted to the Participating ANSPs in FAB Central Europe within a period of 6 (six) months after the completion of the work under the present Agreement.
- 4.6. The Participating ANSPs in FAB Central Europe shall be authorised to scrutinise the relevant accounts on request.

#### ARTICLE 5 - STAFF SUPPORT

EUROCONTROL staff assigned to the Participating ANSPs in FAB Central Europe for the execution of the present Agreement shall remain subject to the Staff Regulations governing the Officials of the EUROCONTROL Agency.

## ARTICLE 6 - LIABILITY

- 6.1. Parties shall hold harmless the other Parties from all civil liability arising from loss, damage or bodily injury suffered by its staff as a result of the performance of the present Agreement, unless such loss, damage or bodily injury is due to gross negligence or deliberate omission or wrongful act on the part of the another Party or its staff.
- 6.2. The Participating ANSPs in FAB Central Europe shall indemnify EUROCONTROL against any and all claims from third parties arising from the performance of the present Agreement, unless such loss, damage or bodily injury is due to gross negligence, deliberate omission or wrongful act on the part of EUROCONTROL or its staff.
- 6.3. Staff of the Parties to the present Agreement shall observe the laws of the respective host country and the rules relating to the conduct of foreigners.

## ARTICLE 7 - PROPERTY AND INTELLECTUAL PROPERTY RIGHTS

- 7.1. Any copyrights, royalties and present or future legal rights relating to property - whether tangible or intellectual - accruing from the performance of the present Agreement shall be the exclusive property of all Parties who shall not dispose of them without the prior and written consent of the other Parties.
- 7.2. All modifications to existing software and/or new software which may be developed as well as all documentation produced and/or modified, together with all general results and expert knowledge acquired during the implementation of the present Agreement, shall be the property of all Parties who shall be free to use them in the fulfilment of their proper tasks.

## ARTICLE 8 - CONFIDENTIALITY

- 8.1. Except with the prior consent of each and every Party, no Party shall disclose any technical or financial detail of the present Agreement, or any specification, document and/or any other information acquired in connection with its implementation to any person other than a person employed or engaged by the Parties to the present Agreement, or to any other persons officially entitled to handle such information.
- 8.2. Any disclosure to any person permitted under paragraph 8.1. above shall be in strict confidence and shall extend so far only as may be necessary for the purpose of the present Agreement.

## ARTICLE 9 - AMENDMENTS

- 9.1. The present Agreement may be modified only by an instrument in writing of equal formality, signed by the duly authorised representatives of each and every Party.
- 9.2. The Annexes to the present Agreement may be modified by exchange of letters between all Directors-General / Chief Executive Officers of the Participating ANSPs in FAB Central Europe and the Director General of EUROCONTROL.



#### **ARTICLE 10 - ENTIRE AGREEMENT**

- 10.1. The present Agreement, including its Annexes, forms the entire agreement between the Participating ANSPs in FAB Central Europe and EUROCONTROL on the provision of support by EUROCONTROL to the Participating ANSPs in FAB Central Europe to elaborate and deliver FAB Central Europe Implementation Plan for submission to States
- 10.2. In case of divergence between the Annexes and the present Agreement, the present Agreement shall prevail.

#### **ARTICLE 11 - DISPUTE SETTLEMENT**

- 11.1 Any dispute arising concerning the present Agreement between the Participating ANSPs in FAB Central Europe only, shall be settled according to the arrangements made by them in the context of the MoC.
- 11.2 Any dispute arising collectively between the Participating ANSPs in FAB Central Europe and EUROCONTROL relating to the interpretation, application or performance of the present Agreement, including its existence, and which cannot be settled by direct negotiation or by any other means, shall be settled by final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration between International Organisations and Private Parties, as in effect on the date of the present Agreement.
- 11.3 The number of arbitrators shall be three.
- 11.4 The language to be used in the arbitral proceedings shall be English.
- 11.5 Participating ANSPs in FAB Central Europe shall collectively appoint one arbitrator and EUROCONTROL shall appoint another. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal.
- 11.6 The agreement to arbitrate constitutes a waiver of any right to immunity from execution to which a Party might otherwise be entitled with respect to the enforcement of any award rendered by an arbitral tribunal constituted pursuant to the present Article.

#### **ARTICLE 12 - ENTRY INTO FORCE - DURATION - TERMINATION**

- 12.1. The present Agreement shall enter into force on the day of its signature by all Parties. It is agreed that EUROCONTROL costs incurred for the purpose of the present Agreement prior to the signature of the present Agreement shall be also treated as eligible cost associated with the present Agreement and shall be charged to the Participating ANSPs in FAB Central Europe. (Starting date for eligible cost: 1 July 2008).
- 12.2. The present Agreement shall remain in force until declaration by all Parties that its objective has been met successfully. The termination of the present Agreement following such a declaration shall only be effective upon an exchange of letters duly signed by each and every Party.
- 12.3. Notwithstanding the provision of paragraph 12.2. above, the present Agreement may be denounced by any Party subject to giving 6 (six) months' prior written notice to each and every Party. This denunciation will result in the termination of the present Agreement. The Party denouncing the present

Agreement shall be liable for the cost incurred further to the termination of the present Agreement, including for full payment of all costs incurred by EUROCONTROL up to the date of expiry of the present Agreement. If the remaining Parties wish to continue receiving support from EUROCONTROL for the elaboration of a FAB Central Europe Implementation Plan, a new Agreement shall be drafted and signed:

If the present Agreement is denounced jointly by the Participating ANSPs in FAB Central Europe before the objective of the present Agreement is achieved, the Participating ANSPs in FAB Central Europe shall remain liable for full payment of all costs incurred by EUROCONTROL up to the date of expiry of the present Agreement so denounced.

- 12.4. In case of emergency or war the provisions of the present Agreement may be suspended by any Party.

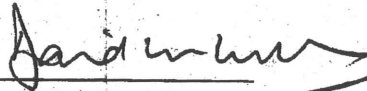
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Done in eight (8) originals in the English language in Brussels on 14 November 2008.

For EUROCONTROL  
The Director General

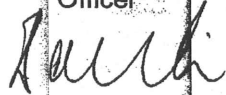


David McMILLAN

**For the Participating ANSPs in FAB Central Europe:**

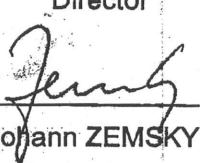
For Austro Control Österreichische Gesellschaft für Zivilluftfahrt mit beschränkter Haftung For BOSNIA and HERZEGOVINA Directorate of Civil Aviation

Chief Executive  
Officer



Christoph BAUBIN

Managing  
Director



Johann ZEMSKY

The Director General



Dorde RATKOVICA

For Croatia Control Ltd  
The Director General

  
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