

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2017 Nr. 152

A. TITEL

Overeenkomst tussen het Koninkrijk der Nederlanden en de Europese Organisatie voor de Veiligheid van de Luchtvaart inzake het verlenen van luchtvaartdiensten aan het operationele luchtverkeer; Breda/Brussel, 28 augustus 2017

Voor een overzicht van de verdragsgegevens, zie verdragsnummer 013328 in de Verdragenbank.

B. TEKST

Agreement between the Kingdom of the Netherlands and the European Organisation for the Safety of Air Navigation relating to the Provision of Air Traffic Services to Operational Air Traffic

The Kingdom of the Netherlands, hereinafter referred to as "the Netherlands", and the European Organisation for the Safety of Air Navigation (EUROCONTROL), hereinafter referred to as "the Organisation" and, hereinafter jointly referred to as "the Parties";

Having regard to the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation as amended at Brussels in 1981 ("the amended Convention");

Having regard to Article 2, paragraph 2 (b), Article 6, paragraph 3, Article 7, paragraph 2, Article 11 and Article 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;

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, signed at Brussels on 25 November 1986 (hereinafter referred to as "the Maastricht Agreement");

Whereas the Netherlands wishes to integrate civil-military air traffic services in the Amsterdam Flight Information Region 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 intends to entrust the Organisation with the provision of air traffic services for operational air traffic in the upper airspace of the Amsterdam Flight Information Region at Maastricht Upper Area Control Centre;

Whereas the purpose of this Agreement is to establish the conditions pursuant to which the Organisation shall provide air traffic services to OAT in the upper airspace of the Amsterdam FIR;

Having regard to Measure No. 15/216 of the Permanent Commission of 9 December 2015 authorising the Organisation to negotiate and conclude an agreement in this regard;

Whereas amendments of the Maastricht Agreement may have an impact on the present Agreement and that the present Agreement may therefore need to be amended;

Whereas the Parties commit to keep the present agreement aligned with the Maastricht Agreement to the fullest possible extent to ensure its proper functioning;

Have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement:

- a) the term Agency means: Agency of the European Organisation for the Safety of Air Navigation (EUROCONTROL);
- b) the term Agreement means: this Agreement, the contracts drawn up in application thereof under Articles 4 and 8, as well as any amendment to the Agreement or the contracts;
- c) the term Amsterdam FIR means: Amsterdam Flight Information Region;
- d) the term Director General means: Director General of the Agency of the European Organisation for the Safety of Air Navigation (EUROCONTROL)
- e) the term MAA means: Military Aviation Authority of the Netherlands;
- f) the term MUAC means: the Maastricht Upper Area Control Centre;
- g) the term 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;
- h) the term Ministry of Defense means: Ministry of Defense of the Netherlands;
- i) the term OAT means: operational air traffic, i.e. flights that are not conducted in accordance with the rules and procedures established by the International Civil Aviation Organization;
- j) the term TRA means: Temporary Restricted Area;
- k) the term NSA means: the National Supervisory Authority of the Netherlands.

Article 2

Mandate

1. The Netherlands shall entrust the Organisation pursuant to Article 2, paragraph 2 (b), of the amended Convention with the provision and operation of air traffic services and facilities for OAT in the Amsterdam FIR within the lateral and vertical limits mentioned in Annex I of the Maastricht Agreement, i.e. above Flight Level 245 in the Amsterdam FIR, to the extent and in the manner prescribed in this Agreement. For this purpose, the Organisation shall employ the facilities at MUAC, and shall provide the staff required for the operation and maintenance of the Centre.

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

3. Notwithstanding paragraph 1 of this Article, the Organisation shall not be responsible for the provision and operation of air traffic services and facilities for OAT in the TRA North Bravo area within the Amsterdam FIR.

Article 3

General responsibilities of the Organisation

1. The Organisation shall be responsible to provide air traffic services to OAT in the airspace mentioned in Article 2 of this Agreement in accordance with the service requirements defined pursuant to its Article 4, paragraph 1, and the regulations and instructions concerning the provision of the services pursuant to this Agreement.

2. The Organisation shall determine the operational and technical measures required for the operation of air traffic services under this Agreement, with the aim of ensuring the safety, efficiency and expeditious flow of OAT through the most cost-effective means. For this purpose, the Organisation shall:

- a) establish through its Agency the means required for the discharge of its task pursuant to Annex I of the amended Convention (Statute of the Agency);
- b) ensure maximum compatibility between the services provided by MUAC pursuant to the Maastricht Agreement and pursuant to this Agreement as well as with the services provided by the Netherlands in the airspace under its control;
- c) agree with the Netherlands on the manner in which the facilities referred to in Article 4, paragraph 5, of this Agreement shall be operated.

3. The Organisation sees to it that any planning by MUAC, which may have a significant impact on 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.
4. At the request of the Netherlands, the Organisation shall make available all documents concerning the handling of OAT pursuant to this Agreement.
5. Incidents involving military air traffic shall be reported by the Organisation to the MAA.
6. In the case of investigations into specific incidents involving OAT, all investigation documents shall be made available to the Netherlands in an anonymised manner via the appropriate body nominated by the Netherlands.
7. The applicable national and international provisions concerning the investigation of accidents shall remain unaffected.
8. The provision of data related to OAT flights under this Agreement to third parties is subject to prior approval by the Ministry of Defense.

Article 4

General responsibilities of the Netherlands

1. The Netherlands shall establish its service requirements for the OAT service provision at least two years in advance to allow the Organisation to take the necessary measures to ensure the provision of the services to OAT pursuant to Article 2 and Article 3, paragraph 1, of this Agreement starting on 1 January 2020.
2. The service requirements shall be set out in a Contract between the Organisation and the State of the Netherlands. Notwithstanding paragraph 1 of this Article, The Netherlands shall establish their service requirements for the OAT service provision starting on 27 April 2017 and covering the period until 1 January 2020 in this Contract.
3. The Netherlands informs 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 Netherlands shall notify the Organisation of regulations and instructions concerning the provision of the services pursuant to Article 2 and Article 3, paragraph 1, of this Agreement.
4. The Organisation 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 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.
6. The Netherlands shall entrust the MAA to be in charge of the supervision of the provision and operation of air traffic services and facilities for OAT by the Organisation in accordance with Article 2 and Article 3, paragraph 1, of this Agreement.
The Netherlands shall ensure that MAA and the NSA set up a common mechanism for exchange of information, consultation and coordination for the supervision of the service provision by MUAC to ensure that necessary corrective action shall be taken without delay.

Article 5

Management

1. The Agency's Committee of Management shall, on the proposal of the Agency's Director General, establish the operational and technical measures referred to in Article 3, paragraph 2, of this Agreement on the basis of the provisions in Article 5 of the Maastricht Agreement, as well as the corresponding budgetary appropriations.
2. The Director General shall ensure the day to day operation of the air traffic services, including management of staff and equipment. For this purpose:
 - a) he shall observe the Organisation's internal rules and staff service regulations, as well as any measures taken by the Committee of Management and the Commission pursuant to the provisions of Articles 3, paragraph 2, of this Agreement and Article 5 of the Maastricht Agreement;

- b) he 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

Personnel

1. The Organisation shall ensure it has sufficient staff available to provide the services pursuant to Article 2 and Article 3, paragraph 1, of this Agreement. This staff must meet the national requirements of the Netherlands with regards to vetting to provide the services pursuant to this Agreement. The staff serving at MUAC shall be subject to the provisions governing the Organisation's staff.
2. The Netherlands may place personnel at MUAC for the performance of liaison and coordination tasks. The Organisation shall provide this personnel 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 the unrestricted and unlimited execution of all military flights and State flights as well as the possibility of operations in the event of emergencies and disasters.

Article 7

Training and licensing

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 the standard Air Traffic Management training in order to set in place and maintain the pre-requisites for military deployment levels.
2. Requirements and contents for training with military/tactical content shall be agreed between the Organisation and the Netherlands on a proposal submitted by the Netherlands.
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 promote issuance of such approval by the responsible authorities.
4. The Netherlands shall take the necessary steps to promote issuance by the responsible authorities of the required proof of qualification for handling of OAT traffic by the Organisation's personnel.

Article 8

Cost

Costs incurred by the Organisation for the service provision pursuant to Article 2 and Article 3, paragraph 1, of this Agreement shall be borne by the Netherlands. The methodology to determine the costs to be borne by the Netherlands shall be established in a Contract between the Organisation and the State of the Netherlands pursuant to Article 4.2. This Contract shall be reviewed regularly and in case of changes to the service requirements submitted by the Netherlands in accordance with Article 12, paragraph 3, of this Agreement. The initial Contract shall be submitted by the Organisation to the Maastricht Coordination Group for approval.

Article 9

Joint working procedures

The joint working procedures established pursuant to Article 6 of the Maastricht Agreement shall be used to coordinate, where necessary, with the National Contracting Parties to the Maastricht Agreement concerning the service provision pursuant to Article 2 and Article 3, paragraph 1, of this Agreement.

Article 10

Relations essential for the operation of the services

To the extent required for the operation of the services pursuant to this Agreement, the Organisation shall be empowered 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, subject to a favourable common position of the National Contracting Parties to the Maastricht Agreement.

Article 11

Claims

1. The Netherlands shall be liable for any damage arising from, or in connection with, the services made available to the Organisation in accordance with the provisions of Article 4, paragraph 5, 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, the Organisation shall indemnify the Netherlands against any claim arising on account of damage sustained as a result of, or in connection with, the services provided in virtue of Article 2 and Article 3, paragraph 1, of this Agreement.
3. The Organisation's liability may be invoked pursuant to Article 25.2 of the amended Convention. However, in the cases referred to in paragraph 1 of this Article, the Organisation has a right of recourse against the Netherlands for any indemnification due in this respect.
4. The Organisation shall take out insurance in its own name to cover all or some of the risks incurred in connection with this Agreement, including damage due to revenue loss, and in particular risks arising in connection with:
 - a) liability towards third parties (airlines, users, passengers, etc.)
 - b) liability towards States, and
 - c) damage to, or loss of its installations.

Article 12

Amendments

1. This Agreement may be amended only by written agreement between the Parties and after a positive opinion of the Maastricht Coordination Group. Any amendment to the Agreement shall enter into force on a date to be agreed upon by the Parties.
2. Without prejudice to Article 8, first sentence, of this Agreement, the Parties may modify the Contract established in accordance with Articles 4, paragraph 2, and 8 of this Agreement by written agreement between their duly authorised representatives without the requirement of an amendment to this Agreement.
3. Changes to the service requirements referred to in Article 4, paragraph 1, of this Agreement may be submitted by the Netherlands in writing at any time. The terms for the implementation of the changes shall be agreed between the Parties in writing, taking due account of the impact of the changes on the required staff and the financial considerations. The implementation of the changes shall not be later than two years after their submission.
4. In case of amendments to the Maastricht Agreement the Parties shall amend the present 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 of this Agreement or the 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 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 OAT service provision shall not be applicable earlier than 27 April 2017. These provisions will be applicable on the date mutually agreed by the Parties.
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 four years. In addition, either Party may terminate this Agreement by written notice if this Agreement is no longer in line with the Maastricht Agreement. The termination shall become effective when a new agreement replacing the present one enters into force or, failing that, at the expiry of four years from the date of the termination notice.

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

4. 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:

Lt-Gen D.J. LUYT
Commander Royal Netherlands Air Force

Place: Breda
Date: 28-08-2017

For EUROCONTROL:

FRANK BRENNER
Director General

Place: Brussels
Date: 28-08-2017

D. PARLEMENT

De Overeenkomst behoeft ingevolge artikel 7, onderdeel b, van de Rijkswet goedkeuring en bekendmaking verdragen niet de goedkeuring van de Staten-Generaal.

G. INWERKINGTREDING

De bepalingen van de Overeenkomst zijn ingevolge artikel 14, eerste lid, op 28 augustus 2017 in werking getreden.

Wat betreft het Koninkrijk der Nederlanden, geldt de Overeenkomst voor Nederland (het Europese deel).

Koninkrijk der Nederlanden

| Land | Voorlopige toepassing | In werking | Terugwerkende kracht | Buiten werking |
|----------------------------|-----------------------|------------|----------------------|----------------|
| Nederland (in Europa) | | 28-08-2017 | | |
| Nederland (Bonaire) | | | | |
| Nederland (Sint Eustatius) | | | | |
| Nederland (Saba) | | | | |
| Aruba | | | | |
| Curaçao | | | | |
| Sint Maarten | | | | |

In overeenstemming met artikel 19, tweede lid, van de Rijkswet goedkeuring en bekendmaking verdragen heeft de Minister van Buitenlandse Zaken bepaald dat de Overeenkomst zal zijn bekendgemaakt in Nederland (het Europese deel) op de dag na de datum van uitgifte van dit Tractatenblad.

Uitgegeven de eerste september 2017.

De Minister van Buitenlandse Zaken,

A.G. KOENDERS