

**Agreement relating to the establishment of the
Functional Airspace Block Europe Central
between
the Federal Republic of Germany, the Kingdom of Belgium, the French
Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands
and the Swiss Confederation**

DRAFT FOR APPROVAL

Important notice

The version 1.8 reflects a compromise between the 6 States. This compromise was adopted during the 6SFG meeting of February 23, 2010.

Articles 19 and 30 will be fine-tuned in specific meeting of TF Liability (regular meeting) and TFSA (extra meeting) in March 2010.

**AGREEMENT RELATING TO THE ESTABLISHMENT OF THE
FUNCTIONAL AIRSPACE BLOCK EUROPE CENTRAL
BETWEEN
THE FEDERAL REPUBLIC OF GERMANY, THE KINGDOM OF BELGIUM,
THE FRENCH REPUBLIC, THE GRAND DUCHY OF LUXEMBOURG,
THE KINGDOM OF THE NETHERLANDS AND THE SWISS CONFEDERATION**

Preamble

Having regard to the Regulations on the Single European Sky of the European Parliament and the Council, the relevant implementing rules, the statement by the Member States on military issues relating to the Single European Sky and the Agreement between the European Community and the Swiss Confederation on air transport;

Having regard to the feasibility study of the Functional Airspace Block Europe Central (FABEC) of 18 September 2008;

Considering the joint declaration of intent on the creation of a Functional Airspace Block "Europe Central" of the 18th of November 2008;

Considering that the airspace over the territory and under the responsibility of the Contracting States of FABEC is one of the most complex air traffic areas in Europe;

Considering that a more integrated approach to air traffic management is a major step towards fulfilling the needs of civil and military air traffic in this area;

Considering that the creation of FABEC necessarily involves the enhanced and increasing cross-border provision of air navigation services;

Considering that close cooperation by air navigation service providers fulfils the needs of civil and military air traffic in this area;

Considering the "Just Culture" environment as set out by the international and European legislation;

Whereas by creating FABEC regardless of existing boundaries, the Contracting States aim to achieve maximum capacity, effectiveness and efficiency of the air traffic management network while maintaining a high level of safety;

Convinced by the added value of the creation of FABEC for overall environmental sustainability;

The Contracting States have agreed as follows:

CHAPTER 1: GENERAL PRINCIPLES

Article 1 – Definitions

Unless otherwise stated, the terms used in this Agreement shall have the same meaning attributed to them as in the Regulations on the Single European Sky in force in the Contracting States. For the purpose of this Agreement, the following definitions shall apply:

- a. "Agreement" means the present Agreement and any amendments thereto, unless otherwise indicated.
- b. "airspace concerned" means the airspace over the territory of the Contracting States and under their responsibility in accordance with International Civil Aviation Organization (ICAO) rules, as defined in Article 3 of this Agreement.
- c. "Chicago Convention" means the Convention on International Civil Aviation, signed at Chicago on 7 December 1944, and shall include:
 - a. any amendment ratified by the Contracting States and applied under Article 94 a) of the Convention;
 - b. and any Annex or amendment adopted under Article 90 of the Convention, insofar as any international standards as referred to in Article 37 of the Convention and contained in such Annex or amendment are in force for all the Contracting States.
- d. "cross-border area" means the airspace over international boundaries reserved for the exclusive use of specific users for a defined duration.
- e. "Functional Airspace Block Europe Central (FABEC)" means the Functional Airspace Block established by the Contracting States under this Agreement.
- f. "operational air traffic" means the flights that do not comply with the provisions laid down for general air traffic and for which rules and procedures have been specified by the appropriate national authorities. operational air traffic may include civil flights such as test flights, which require some degree of deviation from International Civil Aviation Organization rules in order to satisfy their operational requirements.
- g. "State aircraft" shall be deemed to mean the aircraft used in the military, customs and police services.
- h. "tactical control service" means the military provision of support to Operational Air Traffic in order to accomplish the assigned mission and to ensure that sufficient spacing is maintained between aircraft at any time.
- i. "territory" means the land areas and territorial waters adjacent thereto under the sovereignty of a Contracting State according to international law.

Article 2 – Subject of this Agreement

- 2.1 This Agreement establishes the FABEC and the FABEC Council for its governance.
- 2.2 This Agreement does not create an international organisation with international legal personality.
- 2.3 This Agreement defines the general conditions and the governance under which the Contracting States are to ensure air traffic management and the provision of air navigation services in the airspace concerned.
- 2.4 This Agreement defines the framework within which the specific technical and operational arrangements covering the fields of action of the air navigation service providers are to be established.

Article 3 – Geographical scope

- 3.1 This Agreement applies to the airspace concerned, which is composed of the following flight information regions (FIR) and upper information regions (UIR) of continental Europe:
- a. FIR Bremen
 - b. FIR Langen
 - c. FIR München
 - d. UIR Hannover
 - e. UIR Rhein
 - f. FIR/UIR Bruxelles
 - g. FIR Bordeaux
 - h. FIR Brest
 - i. FIR Marseille
 - j. FIR Paris
 - k. FIR Reims
 - l. UIR France
 - m. FIR/UIR Amsterdam
 - n. FIR/UIR Switzerland
- 3.2 For the French Republic, this Agreement applies only to the part of the Republic situated in Europe.
- 3.3 For the Kingdom of the Netherlands, this Agreement applies only to the part of the Kingdom situated in Europe.

Article 4 – Sovereignty

The provisions of this Agreement shall be without prejudice to the competencies of the Contracting States relating to security and military needs.

Article 5 – State aircraft

- 5.1 Unless otherwise agreed or regulated, Article 3 c) of the Chicago Convention remains fully applicable to State aircraft.
- 5.2 A facilitated procedure for diplomatic clearance or special permission should be established for military training activities within the airspace concerned.

Article 6 – Objective of FABEC

The objective of FABEC is to achieve optimal performance in the areas relating to safety, environmental sustainability, capacity, cost-efficiency, flight efficiency and military mission effectiveness, by the design of airspace and the organisation of air traffic management in the airspace concerned regardless of existing boundaries.

Article 7 – Commitments of the Contracting States

- 7.1 To achieve the objective of FABEC, the Contracting States shall cooperate with the view to undertake appropriate measures, in particular in the following domains:
- a. airspace;

- b. harmonisation of rules and procedures;
 - c. provisions of air navigation services;
 - d. civil – military cooperation;
 - e. charging;
 - f. supervision;
 - g. performance;
 - h. governance.
- 7.2 The Contracting States shall implement the decisions taken by the FABEC Council and commit to establish the necessary national rules and procedures.
- 7.3 The Contracting States shall ensure the implementation of the general framework defined by this Agreement.

CHAPTER 2: AIRSPACE

Article 8 – Airspace

- 8.1 The Contracting States shall jointly design and ensure the management of a seamless airspace and a coordinated air traffic flow and capacity management , taking due account of collaborative processes at international level regardless of existing boundaries.
- 8.2 The Contracting States shall cooperate in particular to:
- a. develop a common airspace policy, in close cooperation between civil and military authorities;
 - b. design the structure of the airspace concerned to allow defragmentation and dynamic sectorisation;
 - c. examine of airspace modifications affecting the performance at FABEC level;
 - d. coordinate with EUROCONTROL;
 - e. consult the airspace users, jointly if necessary;
 - f. establish cross-border areas.

Article 9 – Flexible use of airspace

- 9.1 The Contracting States shall establish cooperation at legal, operational and technical level for the efficient and consistent application of the flexible use of airspace taking into account both civil and military requirements.
- 9.2 The Contracting States shall ensure that common agreements and procedures are set up between civil and military air traffic service providers.
- 9.3 The Contracting States shall ensure that civil and military authorities coordinate over their territory at the strategic level of airspace management.
- 9.4 The Contracting States shall ensure that pre-tactical and tactical levels are managed respectively at air traffic service provider level by a common airspace management function and by coordination between the civil and military air traffic service units.

CHAPTER 3: HARMONISATION

Article 10 – Harmonisation of rules and procedures

- 10.1 The Contracting States shall cooperate to harmonise the substantive national rules and procedures relevant to FABEC.
- 10.2 To this end, the Contracting States shall consult one another on a regular basis with a view to identifying differences between their respective regulations having an impact on FABEC. The Contracting States shall ensure that any difference that remains shall under no circumstances compromise safety or efficiency.
- 10.3 The Contracting States shall coordinate the classification of the various bands of airspace in accordance with the European specifications applicable to them, ensuring that differences existing in practice between them are reduced.

CHAPTER 4: PROVISION OF AIR NAVIGATION SERVICES

Article 11 – Air navigation services

The Contracting States shall ensure the provision of the following air navigation services:

- a. air traffic services;
- b. communication, navigation and surveillance services;
- c. aeronautical information service;
- d. meteorological services.

Article 12 – Air traffic services

- 12.1 The Contracting States shall jointly designate by a common instrument the air traffic service providers of the airspace concerned.
- 12.2 Notwithstanding Article 12.1, air traffic service providers of the airspace concerned providing aerodrome flight information service, air traffic services limited to a control zone of aerodromes and air traffic services under military supervision are jointly designated by the Contracting States upon notification of the Contracting State concerned.
- 12.3 Articles 12.1 and 12.2 shall apply without prejudice to arrangements or agreements related to the provision of air traffic services between Contracting States or any Contracting State and a third party existing prior to the entry into force of this Agreement.
- 12.4 The FABEC Council shall ensure the appropriate exchange of information between the Contracting States concerning the rights and obligations of the designated air traffic service providers at national level.
- 12.5 The Contracting States shall inform one another immediately of any change in the terms of certification or in the legal status of the designated air traffic service providers.

- 12.6 The Contracting States shall jointly inform the European Commission and the other Member States of any decision taken under the present Article concerning the designation of air traffic service providers.
- 12.7 The Contracting States shall encourage close cooperation between air traffic service providers.

Article 13 – Communication, navigation and surveillance services

The Contracting States shall work towards common technical systems and the cost efficient deployment of infrastructure for the provision of communication, navigation and surveillance services by civil air navigation service providers.

Article 14 – Aeronautical information service

The Contracting States shall coordinate the provision of aeronautical information service.

Article 15 – Meteorological services

- 15.1 The Contracting States shall ensure cooperation among providers of aeronautical meteorological information and services.
- 15.2 Each Contracting State shall designate the providers of the meteorological services on an exclusive basis and notify the FABEC Council.

Article 16 – Relations between service providers

- 16.1 The Contracting States shall ensure that air navigation service providers formalise the working relationships deemed necessary for the coordination of their services in the airspace concerned by means of written agreements or equivalent legal arrangements.
- 16.2 The written agreements or equivalent legal arrangements between air traffic service providers concerning cross-border services in the airspace concerned shall be approved by the Contracting States concerned after consultation of the FABEC Council. Once approved, they shall be notified to the FABEC Council.
- 16.3 In case of written agreements or equivalent legal arrangements concerning the provision of air traffic services by designated air traffic service providers outside the airspace concerned with neighbouring States, the respective Contracting States shall ensure that such written agreements or equivalent legal arrangements do not affect this Agreement and are notified to the FABEC Council.

CHAPTER 5: PRINCIPLES GOVERNING CIVIL – MILITARY COOPERATION

Article 17 – Military activities

- 17.1 With due regard to the flexible use of airspace principles and in accordance with national existing arrangements and applicable international agreements, the Contracting States concerned shall conclude, where and when appropriate, the written arrangements to enable military training activities in the airspace concerned regardless of existing boundaries.
- 17.2 The Contracting States concerned shall allow the provision of cross-border air traffic services to State aircraft operating as general air traffic as well as operational air traffic by a military or civil air traffic service provider of the other Contracting State concerned pursuant to appropriate written arrangements notified to the FABEC Council.
- 17.3 The Contracting States concerned shall allow the provision of tactical control services to operational air traffic by the air defence organisations and tactical air command and control service organisations of the other Contracting State concerned pursuant to appropriate written arrangements notified to the FABEC Council.
- 17.4 For the provision of cross-border services in the airspace concerned, the Contracting States shall encourage close cooperation between the civil and military air navigation service providers and the respective air defence and tactical air command and control service organisations.
- 17.5 The Contracting States shall strive to harmonise the relevant civil and military arrangements to facilitate civil-military cooperation, in particular in the field of security.

CHAPTER 6: CHARGING

Article 18 – Charging

- 18.1 The Contracting States shall develop and apply common principles governing charging policy within the airspace concerned, taking into account the possibility of national exemptions.
- 18.2 The Contracting States intend to apply a single unit rate for en-route traffic in the airspace concerned and strive to establish a common charging zone in the airspace concerned.
- 18.3 The FABEC Council shall decide on the introduction of, the conditions for and the application of a single unit rate for en-route traffic in the airspace concerned and the establishment of a common charging zone in the airspace concerned.
- 18.4 The jointly proposed single unit rate for en-route traffic in the airspace concerned shall be submitted following a decision by the FABEC Council to the relevant EUROCONTROL body for determination.
- 18.5 Prior to the introduction and the application of a single unit rate for en-route traffic in the airspace concerned, the Contracting States shall coordinate their unit rates for en-route traffic in the airspace concerned at FABEC Council level.
- 18.6 The Contracting States shall in particular:
- a. execute jointly the necessary obligations associated with a common charging zone for en-route traffic in the airspace concerned;

- b. make appropriate arrangements to ensure consistency and uniformity in the application of the rules and regulation(s) on charging;
- c. ensure as appropriate the joint coordination with EUROCONTROL.

CHAPTER 7: SUPERVISION

Article 19 – Supervision Fine-tuning March 18, 2010 (TFSA)

- 19.1 The Contracting States shall ensure that the national supervisory authorities closely cooperate on the supervision of the air navigation service providers within FABEC and that their practices are harmonised.
- 19.2 The Contracting States mutually recognise the supervisory tasks and the results of the tasks of their national supervisory authorities.
- 19.3 The Contracting States shall ensure that their national supervisory authorities conclude an agreement for the cooperation referred to in Article 19.1, including an arrangement for the handling of cases involving non-compliances with the applicable common requirements and the mutual recognition of supervisory tasks and the results of these tasks. The agreement shall be notified by the national supervisory authorities concerned to the FABEC Council.
- 19.4 The national supervisory authority that certified the air navigation service provider providing cross-border services in the airspace concerned is in charge of the supervision of that air navigation service provider in close cooperation with the national supervisory authority(s) of the other Contracting State(s) concerned.
- 19.5 In case the Contracting State over the territory of which the air navigation services referred to in Article 19.4 are provided requires that its own national supervisory authority exercises supervision, the national supervisory authorities concerned shall agree on the terms and conditions of the supervision.
- 19.6 The Contracting States concerned shall ensure that their national supervisory authorities set up a common mechanism for exchange of information, consultation and coordination for cross border service provision to ensure that necessary corrective action will be taken without delay.
- 19.7 The Contracting States shall ensure that the decisions taken in accordance with Article 19.6 will be enforced.
- 19.8 As a measure of last resort, each Contracting State retains the right to revoke the approval given in accordance with Article 16.2 after due notification to the Contracting State concerned and the FABEC Council.

CHAPTER 8: PERFORMANCE

Article 20 – Performance

- 20.1 The Contracting States shall implement a FABEC performance scheme and apply a FABEC performance plan consistent with the community-wide performance targets

and taking into account military needs. This performance plan shall be approved by the FABEC Council.

- 20.2 The performance plan shall include FABEC performance targets for at least the following key performance areas:
- a. safety;
 - b. environment;
 - c. capacity;
 - d. cost-efficiency;
 - e. flight efficiency;
 - f. military mission effectiveness.
- 20.3 The performance plan shall define a set of clear and measurable key performance indicators for the key performance areas for a defined reference period.
- 20.4 The performance plan shall include a FABEC incentive scheme.
- 20.5 The FABEC Council shall decide on the implementation and elements of the FABEC performance plan.
- 20.6 Prior to the application of the FABEC performance plan, the FABEC Council shall set performance targets at FABEC level and shall coordinate the national performance plans.
- 20.7 The performance plan shall be subject to consultation with the stakeholders concerned.
- 20.8 The Contracting States shall perform regular reviews of the implementation of the FABEC performance targets and shall take corrective measures as necessary.
- 20.9 The Contracting States shall perform periodical assessments of the design and functioning of the FABEC performance scheme and shall take corrective measures as necessary.

CHAPTER 9: GOVERNANCE

Article 21 – FABEC Council

- 21.1 The FABEC Council is composed of:
- a. one representative from the authority responsible for civil aviation in each Contracting State, and
 - b. one representative from the authority responsible for military aviation in each Contracting State.
- 21.2 Other participants may also attend as observers by invitation of the FABEC Council.

Article 22 – Functions of the FABEC Council

- 22.1 The FABEC Council governs the FABEC.
- 22.2 In order to meet the commitments of the Contracting States under this Agreement, the FABEC Council is tasked with taking decisions in order to:

- a. ensure the implementation of this Agreement and the fulfilment of the objectives of FABEC in general;
- b. define the development of the civil and military cooperation;
- c. agree on a common design and policy for the airspace concerned;
- d. define the cooperation on the application of the flexible use of airspace;
- e. support the harmonisation of the substantive national rules and procedures;
- f. facilitate the joint designation process of the air traffic service providers;
- g. approve the arrangements for the provision of air traffic services in the airspace concerned;
- h. adopt the charging policy applicable in the airspace concerned and set the single unit rate for en-route traffic in the airspace concerned;
- i. ensure the implementation of a common overall Safety Management System;
- j. approve the arrangements for the supervision of the air navigation service providers by the national supervisory authorities;
- k. define strategic objectives for the development of FABEC, assess the results achieved and take appropriate measures if required;
- l. approve the performance plan and the related performance targets;
- m. adopt its rules of procedure and those of the committees, working groups and the Air Navigation Services Consultative Board;
- n. set up committees other than those established by this Agreement and working groups to assist it in specific matters and approve the proposals of the committees and working groups;
- o. ensure the coordination of FABEC with adjacent functional airspace blocks, including efficient interfaces;
- p. coordinate the positions of the Contracting States with regard to the application of international agreements regarding in particular the work of the International Civil Aviation Organization, EUROCONTROL, the European Commission, the European Aviation Safety Agency and joint undertakings in the field of air traffic management;
- q. facilitate the settlement of disputes arising between Contracting States;
- r. propose the accession of a State to this Agreement and take the necessary measures;
- s. take the necessary measures in the event of the withdrawal of a Contracting State;
- t. propose amendments to this Agreement;
- u. ensure consultation of the air navigation service providers, airspace users and other stakeholders where appropriate.

Article 23 – Functioning

- 23.1 The FABEC Council shall be alternately chaired by one of the Contracting States.
- 23.2 The decisions of the FABEC Council shall be taken by a unanimous vote. Each Contracting State shall have one vote.
- 23.3 Decisions shall become effective two months after the day of their adoption, unless a Contracting State informs the other Contracting States within two months of the adoption that it can implement the decision only with the agreement of its legislative bodies. In such case, the decision shall become effective one day after the last Contracting State has informed the other Contracting States that the agreement of the legislative bodies has been obtained.
- 23.4 The rules of procedure, adopted by the FABEC Council, shall set out the arrangements in particular for the convening of meetings, the prior dispatch of the

agenda, the appointment and term of office of the Chair, the voting procedure, including the possibility of taking decisions by correspondence.

- 23.5 The FABEC Council shall meet as and when required at least twice a year at the invitation of its Chair. Each Contracting State shall be entitled to request the convening of a meeting.

Article 24 – Committees and working groups

- 24.1 In order to meet the objective of FABEC and to assist the FABEC Council, the Airspace Committee, the Harmonisation and Advisory Committee, the Financial and Performance Committee and the National Supervisory Authorities Committee are hereby established. Other committees and working groups may be established by the FABEC Council.
- 24.2 The committees and working groups shall be composed of civil and military experts appointed by the Contracting States.
- 24.3 Other participants may attend meetings of the committees and working groups as observers by invitation.
- 24.4 Unless otherwise provided for the rules of procedure or by decision of the FABEC Council, committees and working groups shall report directly and exclusively to the FABEC Council.

Article 25 – Airspace Committee

The Airspace Committee shall assist the FABEC Council on the implementation of Articles 8 and 9 and execute other tasks entrusted to it by the FABEC Council.

Article 26 – Harmonisation and Advisory Committee

The Harmonisation and Advisory Committee shall assist the FABEC Council on the implementation of Articles 10 and 12 and execute other tasks entrusted to it by the FABEC Council.

Article 27 – Financial and Performance Committee

The Financial and Performance Committee shall assist the FABEC Council on the implementation of Articles 18 and 20 and execute other tasks entrusted to it by the FABEC Council.

Article 28 – National Supervisory Authorities Committee

Without prejudice to Article 24.4 and the specific responsibility directly entrusted to the National Supervisory Authorities, the National Supervisory Authorities Committee shall assist the FABEC Council on the implementation of the Articles 19 and 20 and execute other tasks entrusted to it by the FABEC Council.

CHAPTER 10: CONSULTATION OF AIR NAVIGATION SERVICE PROVIDERS

Article 29 – Air Navigation Services Consultative Board

- 29.1 An Air Navigation Services Consultative Board is established to ensure the consultation of the air navigation service providers on matters relating to the provision of services within FABEC.
- 29.2 The Air Navigation Services Consultative Board is composed of:
- a. representatives from the FABEC Council, and
 - b. representatives from the air navigation service providers.
- 29.3 Other participants may also attend as observers by invitation of the FABEC Council.
- 29.4 Reports of discussions shall be forwarded to the FABEC Council.

CHAPTER 11: LIABILITY

Article 30 – Liability Fine-tuning March 16-17, 2010 (TF Liability)

- 30.1. Within the airspace concerned, a Contracting State shall compensate any damage as referred to in Article 30.3 resulting from an event:
- a) occurred in the airspace over its territory or under its responsibility according to ICAO and,
 - b) caused by the fault of an air traffic service provider designated in accordance with Article 12 or that of its agents or any other person acting on its behalf other than the provider(s) whose principal place of operation is located on the territory of the said Contracting State.

The air traffic service provider mentioned in b) shall hereinafter be referred to as the effective air traffic service provider.

Without prejudice to Article 30.5, no direct action may be brought against the effective air traffic service provider or that of its agents or any other person acting on its behalf.

- 30.2. The right to compensation under Article 30.1 shall be extinguished if an action is not brought within a period of two years as from the date of the definitive decisions as provided for in Article 30.3.
- 30.3. Compensation on the basis of Article 30.1 may be claimed only for damage which has not been compensated under definitive judicial decisions taken according to specific national or international laws and regulations. A decision shall be considered as definitive if there is no judicial remedy against it under national or international laws and regulations.
- 30.4. Claims for compensation as provided for in Article 30.1 shall be filed with the Contracting State. The claim shall be considered and ruled on by the competent authority in accordance with the relevant national laws and regulations of the Contracting State concerned. If no consensus is reached on the claim, the dispute shall be ruled on by the competent court of that Contracting State in accordance with its relevant national laws and regulations.

30.5. The effective air traffic service provider shall reimburse to the Contracting State referred to in Article 30.1 any compensation paid or costs incurred as the result of damage caused by its own fault or that of its agents or any other person acting on its behalf. The Contracting State of the effective air traffic service provider shall ensure the enforcement of this obligation [and, in case of default of the effective air traffic service provider, shall take its place at first call as to reimburse the Contracting State referred to in Article. 30.1] .

30.6. In case of dispute concerning the reimbursement in accordance with Article 30.5, the Contracting State referred to in Article 30.1 is entitled to refer this dispute with the Contracting State of the effective air traffic service provider to arbitration under the “Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States”.

The arbitral tribunal shall apply the relevant laws and regulations referred to in Article 30.4.

Articles 31.3 and 31.4 shall be applicable.

30.7. Nothing in this Agreement shall prevent the Contracting State referred to in Article 30.1 and the Contracting State of the effective air traffic service provider from agreeing to share costs resulting from damage as referred to in Article 30.1.

30.8. Nothing in this Agreement shall prejudice the question whether a Contracting State or an effective air traffic service provider has a right of recourse against any other person or operational entity.

30.9. The Contracting States shall inform one another as soon as they receive any information about any claim as referred to in Article 30.1 and as soon as a claim has been definitively settled.

30.10. The designated air traffic service providers shall maintain adequate coverage for the liability incurred under this Agreement so to make effective the obligation imposed to them under Article 30.5 to reimburse the Contracting State referred to in Article 30.1.

30.11. The present chapter is applicable without prejudice to international agreements relating to damage caused by the armed forces of one Contracting State on the territory of another Contracting State.

CHAPTER 12: ACCIDENTS AND SERIOUS INCIDENTS

Article 31 – Investigation of accidents and serious incidents

31.1 In the event of an accident or a serious incident according to the Chicago Convention within the airspace concerned, occurring in the airspace over the territory of a Contracting State or under its responsibility in accordance with ICAO rules (hereinafter referred to as the Contracting State of occurrence) and controlled by an air navigation service provider other than the provider(s) whose principal place of operations is/are located on the territory of the Contracting State of occurrence (hereinafter referred to as the effective air navigation service provider), the Contracting State of the effective air navigation service provider shall notify without delay the competent authorities of the Contracting State of occurrence by the most

suitable and quickest means. The notification shall have at least the same content as the notification in Annex 13 to the Chicago Convention.

- 31.2 At its request, the Contracting State of occurrence or the State conducting the investigation according to Annex 13 to the Chicago Convention shall be provided with and have access to the necessary materials by all relevant air navigation service providers and competent authorities of the Contracting States in order to enable an investigation of the accident or the serious incident to be conducted. The Contracting State of the effective air navigation service provider shall therefore grant, in accordance with its national laws and regulations, the State conducting the investigation access to the premises, facilities and materials of the effective air navigation service providers and of its own competent authorities. The information provided shall to be used only for the purpose for which it was given and must not be made public without the consent of the Contracting State which provided the information.
- 31.3 The Contracting States shall ensure that all the institutions concerned by Articles 31.1 and 31.2 are familiar with the relevant communication channels.
- 31.4 The Contracting State of the effective air navigation service provider shall be given the opportunity to appoint an observer to be present during the investigation.
- 31.5 Any Contracting State which at the request of the State conducting the investigation provided information or access to its competent authorities or an air navigation service provider shall be entitled to appoint an accredited representative to participate in the investigation.
- 31.6 Where the State conducting the investigation specifically requests the participation of the Contracting State of the effective air navigation service provider, the latter shall appoint an accredited representative.
- 31.7 The competent authorities of the State conducting the investigation shall provide the competent authorities of the Contracting State of the effective air navigation service provider with the final investigation report based on its national laws.
- 31.8 Upon request the final investigation report and the safety recommendations arising out of the investigation shall be communicated to the other Contracting States.
- 31.9 If the State conducting the investigation identifies shortcomings at FABEC level, it shall immediately inform the FABEC Council thereof.
- 31.10 Communications, notifications and reports shall be in one of the national languages of the Contracting States with a translation into English.

CHAPTER 13: INSTITUTIONAL PROVISIONS

Article 32 – Settlement of disputes

- 32.1 All disputes arising between Contracting States relating to the interpretation or application or performance of this Agreement, including its existence, validity or termination, which cannot be settled within a period of six months through direct negotiations between the Contracting States concerned or by any other means shall be referred to the FABEC Council.

- 32.2 If a dispute cannot be settled by the FABEC Council within three months of its referral to the FABEC Council, either of the Contracting States concerned shall be entitled to refer the dispute to arbitration under the “Permanent Court of Arbitration optional rules for arbitrating disputes between two States”.
- 32.3 The costs of the arbitration, including fees and expenses, shall be shared equally by the Contracting States parties to the arbitration procedure.
- 32.4 The decisions of the arbitral tribunal shall be binding on the Contracting States parties to the dispute.

Article 33 – Accession of a State to this Agreement

- 33.1 This Agreement is open to accession. Any State desiring to become a party to this Agreement shall submit its application to the Depository.
- 33.2 The conditions of accession and any resultant adjustments necessary to this Agreement shall be the subject of an agreement between the Contracting States and the applicant State. The agreement of accession shall be submitted for ratification by all Contracting States in accordance with their respective constitutional requirements.
- 33.3 The agreement of accession shall enter into force on the first day of the second month following the deposit of the last instrument of ratification with the Depository.
- 33.4 The FABEC Council shall take all necessary measures required by such accession.

Article 34 – Withdrawal of a Contracting State from this Agreement

- 34.1 In the event of the withdrawal of a Contracting State from this Agreement, the Contracting State concerned shall inform the FABEC Council and the Depository of its decision.
- 34.2 The withdrawal shall become effective one year after notification to the Depository.
- 34.3 The FABEC Council shall take all necessary measures required by such withdrawal.
- 34.4 The Contracting State withdrawing from this Agreement shall in principle bear the costs resulting from such withdrawal. The financial consequences resulting from withdrawal shall be determined in a special agreement concluded between the withdrawing Contracting State and the other Contracting States. The Contracting State’s right of withdrawal shall remain unaffected.
- 34.5 The withdrawal does not exonerate the withdrawing Contracting State to comply with Article 34.4.

Article 35 – Amendment of this Agreement

- 35.1 If a Contracting State wishes to amend this Agreement, it shall duly inform the FABEC Council.
- 35.2 Any amendment of this Agreement shall be agreed in accord with Article 35.3 at the proposal of the FABEC Council.

- 35.3 The amendment of this Agreement shall be submitted for ratification by all the Contracting States in accordance with their respective constitutional requirements.
- 35.4 The amendment of this Agreement shall enter into force on the first day of the second month following the deposit of the last instrument of ratification with the Depository.

Article 36 – Termination and suspension

- 36.1 The Contracting States may unanimously decide to terminate this Agreement at any time.
- 36.2 Termination shall be effected by a written declaration to the Depository by all Contracting States that this Agreement shall cease on a specified date to be decided by the Contracting States.
- 36.3 The Contracting States shall jointly determine and allocate the costs resulting from termination.
- 36.4 Each Contracting State has the right to immediately suspend the application of this Agreement or parts thereof for national security reasons. It shall notify the other Contracting States immediately.
- 36.5 The Contracting State shall endeavour to terminate the suspension as soon as practicable and notify the Contracting States accordingly.
- 36.6 The Contracting State suspending this Agreement shall in principle bear the costs resulting from such suspension. The financial consequences resulting from suspension shall be determined in a special agreement. The rule set out in Articles 34.4 and 34.5 shall be applicable mutatis mutandis.

Article 37 – International Civil Aviation Organization registration

This Agreement and any subsequent amendment thereto shall be registered with the International Civil Aviation Organization in accordance with the provisions of Article 83 of the Chicago Convention.

Article 38 – Entry into force

This Agreement shall enter into force on the first day of the second month following the deposit of the last instrument of ratification with the Depository.

Article 39 – Depository and its function

- 39.1 The Government of the Kingdom of Belgium is the Depository of this Agreement. The instruments of ratification shall be deposited with the Government of the Kingdom of Belgium.
- 39.2 The Depository shall:
- a. inform all Contracting States of:
 - each deposit of an instrument of ratification or accession with the date thereof;

- the date of entry into force of this Agreement;
 - the acceptance and entry into force of any amendment to this Agreement;
 - any application by a State to accede to this Agreement;
 - any withdrawal by a Contracting State from this Agreement.
- b. register this Agreement and any subsequent amendment with the International Civil Aviation Organization and inform the European Commission of the date of entry into force of this Agreement and any subsequent amendment.
- c. inform the International Civil Aviation Organization and the European Commission of:
- any accession to or withdrawal from this Agreement with the date thereof,
 - the suspension or termination of this Agreement with the date thereof.
- d. transmit certified true copies of this Agreement to all Contracting States.
- e. perform any other functions customary for depositaries.

In witness whereof the undersigned, being duly authorised, have signed this Agreement on behalf of their respective governments.

DONE at on this.....day of in one original in the Dutch, French and German languages, all language versions being equally authentic.

[Signatures at level of Ministries]
