



**Initial Information**

**for**

**EU, other Member States and other**

**interested Parties**

**on the**

**Establishment of FABEC**

## DOCUMENT SUMMARY

<b>Objective :</b> To inform EU, other Member States and other interested Parties how FABEC will be established compliant with SES regulations and to give evidence how FABEC performance will be achieved over time.			
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## 1 OBJECTIVE

According to the amended Regulation (EC) 550/2004 (Service Provision Regulation) Article 9a 3. and 9a 4. the six FABEC States shall - before formal notification of the establishment of the Functional Airspace Block Europe Central (FABEC) - provide adequate information to the Commission, other Member States and other interested Parties on the mutual agreement to establish FABEC.

The objective of this Paper is to provide adequate information on:

- the status of institutional arrangements between the FABEC States, their National Supervisory Authorities and the Air Navigation Service Providers and
- FABEC activities to be compliant with SES regulatory requirements.

Reference to the related SES requirements is made by footnotes.

Work for FABEC establishment is ongoing and information is provided either by mature draft documents or by descriptions of activities demonstrating how FABEC will be compliant with SES legislation before 4 December 2012.

## 2 INTRODUCTION

### 2.1 *FABEC Basic Documents*

After assessment of the results of the FABEC Feasibility Study the FABEC States decided in 2008 to implement FABEC in the airspace (all FIRs and UIRs) of Belgium, France, Germany, Luxemburg, Switzerland and The Netherlands over continental Europe and to create an appropriate FABEC Implementation Programme Organization. The civil and military representatives of the governments signed a Declaration of Intent (DoI) in November 2008 demonstrating the will to jointly prepare the establishment of FABEC, to conclude a FABEC Agreement and to pursue performance objectives.

The 7 Civil Air Navigation Service Providers (ANSPs), Administration de la Navigation Aérienne Luxembourg (ANA), Belgocontrol, DFS Deutsche Flugsicherung, Direction des Services de la Navigation Aérienne, France (DSNA), Luchtverkeersleiding Nederland (LVNL), Swiss air navigation services Ltd.(skyguide) and the European Organization for the Safety of Air Navigation (Eurocontrol) concluded a Cooperation Agreement (Annex 5) to support the development and establishment of FABEC, to establish an adequate ANSP governance and to continuously improve the performance of Air Navigation Services.

Furthermore the States/ANSP FABEC High Level Implementation Board (HLIB) agreed on a guidance document comprising a FABEC Mission Statement, a FABEC Vision 2018 and FABEC Strategic Objectives and Ambitions 2018.

Relevant reference documents are listed in Annex 1.

### 2.2 *FABEC Implementation Programme Organization*

The FABEC programme organization is based on following principles:

- all States and ANSP FABEC activities are considered in one single FABEC programme;
- the programme involves all civil and military partners;
- coordination and information exchange is done at all levels of the programme structure;

The structure is built on a State pillar under the States Strategic Board (SSB) at DGCA level and an ANSP pillar under the ANSP Strategic Board (ASB) at CEO level. This ensures a clear and consistent allocation of responsibilities and accountabilities in respect of States and ANSPs Tasks.

The ANSP pillar is structured to fully include high level operational functions in project work. Each CEO took over championship for one of the FABEC performance areas, the work on which is assigned to dedicated Standing Committees headed by high level experts responsible for operation in the related performance area in his organization. This set up transferred the programme work into day-to-day business and proved to be effective during the volcano crisis.

The Programme Organization Chart is at Annex 6.

States and ANSPs monitoring, assessment and guidance of the Programme is done by the High Level Implementation Board (HLIB) and the FABEC Project Steering Group (FPSG). All FABEC activities receive similar support from the ANSP FABEC Group (AFG), which manages all ANSP programme and support processes and States activities. The AFG maintains one single programme management framework and one integrated States/ANSP 5 Year Work Plan.

Task Forces are managed in a matrix organization. States and ANSPs consult one another on deliverables.

Deliverables are approved by the FABEC National Supervisory Committee (NSAC) or National Supervisory Authority(ies) when required.

### **2.3 FABEC Performance Orientation**

At the beginning of the FABEC initiative States and ANSPs agreed on a performance driven approach. In the Declaration of Intent, provisional FABEC performance targets were defined and used as reference for all activities for FABEC implementation. A growing cooperation between ANSPs will lead to performance improvements which will be beyond the capabilities of the individual organizations.

As stated in Chapter 5.5, FABEC will in future apply performance targets laid down in a FABEC Performance Plan.<sup>1</sup>

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<sup>1</sup> REG (EC) No 1070/2009 Art 2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (d) “*Functional Airspace Blocks shall be justified by their overall added value, including optimal use of technical and human resources, on the basis of cost-benefit analyses.*”

### 3 SES REQUIREMENTS

(EC) 550/2004 Art 9 determines three steps for the establishment of FABs:

- Provision to EU, other Member States and other interested Parties of adequate information before the establishment of a FAB;
- Signature of the States Agreement and notification to the EU;
- Notification of the establishment of a FAB for Publication in the Official Journal of the European Union, after ratification of the States Agreement, by 2012.

**This information paper is related to step 1 of the establishment of FABEC.**

#### 3.1 ***SES Requirements for Information of EU, the other Member States and other interested Parties***

According to Regulation (EC) 550/2004 Art 9a 3. and 9a 4. States shall provide EU, the other Member States and other interested Parties adequate information on the planned establishment of FABEC. The information shall give addressees the opportunity to submit their observations before the EU is notified of the establishment of FABEC.

**The FABEC States comply with this SES requirement through providing the information contained in this paper.**

Civil and military ANSPs of FABEC are integrated into the project and are sufficiently informed. The EC, Eurocontrol, neighbouring States, other FABs and other ANSPs are informed through existing mechanisms, the EC FAB Focal Point meetings, the Eurocontrol meetings and meetings with other FAB organizations. The UK and NATS participate as cooperative partners in FABEC.

FABEC has a consultation program with AEA, IATA and the major airlines.<sup>2</sup>

#### 3.2 ***SES requirements to establish a FAB***

According to Regulation (EC) 1070/2009 of 21 October 2009 amending Regulation (EC) 550/2004, Functional Airspace Blocks shall be implemented by **4 December 2012** and shall meet following **nine basic requirements**:

1. A Safety Case
2. Optimum Use of Airspace taking into account air traffic flows
3. Ensure consistency with the European route network

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<sup>2</sup> REG (EC) No 1070/2009 amending REG (EC) No 549/2004 by Art 10.1: *“The Member states, acting in accordance with their national legislation, shall establish consultation mechanisms for appropriate involvement of stakeholders, including professional staff representatives, in the implementation of the single European sky.”*



4. Be justified by their overall added value
5. Ensure a smooth and flexible transfer of responsibility for air traffic control
6. Ensure the compatibility between the different airspace configurations
7. Comply with conditions stemming from regional agreements concluded within the ICAO
8. Respect regional agreements in existence, in particular those involving European third countries
9. Facilitate consistency with Community-wide performance targets

Additional SES legislation applicable to FABs such as Regulations (EC) 2096/2005, 2150/2005, 1794/2006, 1315/2007 and 29/2009 are also taken into account.

**In the notification file to the EU of the FABEC establishment, scheduled for 2012, FABEC States will demonstrate that the establishment of FABEC is compliant with SES requirements. Updated evidence of the added value of FABEC will be demonstrated in a Cost Benefit Analysis.**

## 4 INFORMATION ON THE ESTABLISHMENT OF FABEC

Basic documents for the establishment of FABEC are the States Agreement, the NSA Memorandum of Cooperation (MoC) on FABEC supervision and the ANSP Cooperation Agreement. These documents are cornerstones for an efficient development and operation of FABEC. The States Agreement and the NSA Memorandum of Cooperation are mature documents ready for signature by competent authorities. More detailed States and ANSP governance arrangements are still under development. The ANSP Cooperation Agreement has been signed by the ANSP CEOs.

Activities are part of the overall FABEC activities shown in the High Level Roadmap in Chapter 6.

### 4.1 States Agreement

The States Agreement is developed in compliance with REG (EC) No 1070/2009 amending REG (EC) No 550/2004 by Art. 9a Regulation (EC) 550/2004 Art. 9a 3. and 9a 4.<sup>3</sup> It is the foundation stone for the establishment of FABEC.

#### 4.1.1 Considerations

When developing the Agreement, States considered *inter alia* 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;
- 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;
- the creation of FABEC necessarily involves the enhanced and increasingly cross-border provision of air navigation services;
- close cooperation by air navigation service providers fulfils the needs of civil and military airspace users in this area;
- by creating FABEC regardless of existing boundaries, the Contracting States aim to achieve optimum capacity, flight efficiency and cost efficiency of the air traffic management while maintaining a high level of safety.

#### 4.1.2 Subject of the Agreement

The Agreement *inter alia*:

- establishes FABEC and the FABEC Council as its governing body;

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<sup>3</sup>REG (EC) No 1070/2009 amending REG (EC) No 550/2004 by Art. 9a “ A functional airspace block shall only be established by mutual agreement between all the Member States and, when appropriate, third countries who have responsibility for any part of the airspace included in the functional airspace block....”

- does not create an international organisation with international legal personality;
- 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;
- caters for FABEC modification e.g. accession or withdrawal of Contracting parties;
- complies with arrangements concluded with ICAO<sup>4</sup>
- respects the Maastricht UAC Multilateral Agreement and the bilateral agreement between EC and the Swiss Confederation<sup>5</sup>
- 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.

#### 4.1.3 Geographical Scope

All Flight Information Regions (FIRs) and Upper Flight Information Regions (UIRs) of contracting States over continental Europe.

#### 4.1.4 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.<sup>6</sup>

#### 4.1.5 Commitments of the Contracting States

To achieve the objective of FABEC, the Contracting States commit to cooperate and undertake the appropriate measures, in accordance with their national procedures, in particular in the following domains:

- airspace;
- harmonisation of rules and procedures;
- provision of air navigation services;
- civil – military cooperation;

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<sup>4</sup> REG (EC) No 1070/2009 Art 2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (g) “Functional Airspace Blocks shall comply with conditions stemming from regional agreements concluded with the ICAO.”

<sup>5</sup> REG (EC) No 1070/2009 Art 2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (h) “Functional Airspace Blocks shall respect regional agreements in existence on the date of entry into force of this Regulation, in particular those involving European third countries.”

<sup>6</sup> REG (EC) No 1070/2009 Art 2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (d) “Functional Airspace Blocks shall be justified by their overall added value, including optimal use of technical and human resources, on the basis of cost-benefit analyses”.

- charging;
- supervision;
- performance;
- governance.

The major milestones for the implementation of the States Agreement are:

- Signature of the Agreement in 2010
- Ratification 2012
- Notification to the EU 2012

The draft States Agreement is attached at Annex 2.

## 4.2 States FABEC Governance

SES regulations do not envisage a specific regulatory requirement on this matter. Nevertheless, there is a requirement to govern FABEC at State level. The **FABEC Council** is the overarching body and is supported by 4 expert Committees: the **Airspace Committee**, the **Harmonisation and Advisory Committee**, the **Financial and Performance Committee** and the **National Supervisory Authorities Committee**.

An **Air Navigation Consultative Board** consisting of representatives from the FABEC Council and the ANSPs at CEO level will ensure consultation on matters relating to the provision of services within FABEC.

To exercise the new State governance, States intend to use "provisional" governance arrangements well before the formal establishment of FABEC. Rules of procedure for State governance are under development, building upon the processes being studied during the current implementation phase.

The rules will be in force when FABEC is established.

The future States FABEC Governance structure can be seen in Annex 4.

## 4.3 Memorandum of Cooperation between NSAs

SES regulations require<sup>7</sup> that NSAs conclude appropriate arrangements to cooperate, including mutual recognition with regard to the cross-border provision of air navigation services. According to Article 19 of the States Agreement (supervision), the 6 State NSAs conclude a Memorandum of Cooperation (MoC).

The Scope of the MoC is *inter alia*:

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<sup>7</sup> REG (EC) No 1070/2009 Art 2.1 amending REG (EC) No 550/2004 by Art 2.3 "In respect of functional airspace blocks that extend across the airspace falling under the responsibility of more than one Member State, the Member states concerned shall conclude an agreement on the supervision ...with regard to the air navigation services providers providing services to those blocks"

- Mutual recognition of the supervisory tasks carried out by the signatory national supervisory authorities and the results of these tasks, aiming at the harmonisation of the respective practices.
- Establishment of a common mechanism for the exchange of information, for the consultation on and the coordination of the supervision of cross-border service provision, including arrangements for the handling of cases involving non-compliances with the applicable common requirements.

Areas of cooperation are *inter alia*:

- the supervision of air navigation service providers in the case of cross-border provision of air navigation services,
- the supervision of air navigation service providers in case of any air navigation service provider holding a valid certificate from one of the 6 States also providing services relating to the airspace falling under the responsibility of at least one other of the 6 States,
- the review and advice on the acceptance of safety related changes where the airspace of more than one of the 6 States is concerned,
- the process for licensing of air traffic controllers, and the recognition and supervision of training courses and -organisations for air traffic controllers,
- the preparation of the intended FABEC performance plan,
- the harmonisation of oversight procedures and methodologies,
- the Support to the 6 States with regard to harmonisation of substantive national rules and procedures relevant to the intended FABEC.

An augmenting Manual for common NSA activities, detailing the arrangements for the supervision of ANSPs and the handling of non-compliances will be ready in 2012.

The intermediate draft version of the MoC is attached as Annex 3.

#### **4.4 ANSPs Cooperation Agreement**

Art. 10.2 of the Service Provision Regulation requires FABEC ANSPs "to formalise their working relationships by means of written agreements or equivalent legal arrangements, setting out the specific duties and functions assumed by each provider". FABEC ANSPs must comply with the States requirement (States Agreement Art. 16) to have written agreements or equivalent legal arrangements and must be able to interact with FABEC States governance arrangements.

The current ANSP Cooperation Agreement supports the development- and establishment processes of FABEC, the establishment of an adequate ANSP governance and a continuous improvement of the provision of Air Navigation Services. The Agreement will be updated as required to efficiently manage implementation and operation of common FABEC functions and services.

The further development will be based on guidance received from the States.

The current ANSP Cooperation Agreement for the FABEC Implementation Phase is attached as Annex 5.

#### **4.5 ANSPs Governance**

SES regulations do not envisage a specific regulatory requirement on this matter.

The current ANSP governance structure is adequate to efficiently initiate and work on activities for FABEC development and the formal establishment of FABEC.

An ANSP Governance Strategy incl. Mission and Vision Statement has been concluded as basis for further elaborations. ANSPs decided to apply a governance structure, enabling civil and military ANSPs to efficiently operate FABEC services and manage FABEC performance.

ANSP governance will be responsive to the States' governance and to possible provisional governance arrangements of the States.

Details for the long term ANSP governance will be available by end of 2010 (see Chapter 4.6 below).

#### **4.6 ANS Provision (longer term)**

States and ANSPs additionally debated end of May 2010 on the future of ANS provision within FABEC, including an initial proposal to create a single integrated service provider.

They agreed that a strong long term governance for FABEC Service Provision needs to be established which enables the unlocking of all potential FABEC performance benefits. The FABEC States Agreement offers the sound framework to develop such governance. A study on ANSP governance and the future of FABEC Service Provision is therefore being initiated as a cooperative partnership between FABEC States and ANSPs and will lead to proposals on FABEC ANSP Governance by November 2010.

Based on this study, FABEC States will decide on governance structures for future FABEC Service Provision and appropriate steps. The agreed way forward will be documented in a FABEC Declaration of Intent to be signed by end of 2010 together with the FABEC States Agreement.

## 5 INFORMATION ON FABEC ACTIVITIES TO MEET SES REQUIREMENTS

The general information contained in Chapter 5 gives an overview of activities critical to the establishment of FABEC (paragraphs 5.1 till 5.10), activities which complement or support the critical activities, and ANSP cooperation activities which improve FABEC performance in various domains.

Work is ongoing and studies or simulations are in progress. Some initiatives, e.g. in airspace design, are implemented or under implementation.

More advanced and detailed information on how FABEC will meet SES requirements and performance targets over time will be presented in the Notification File of the establishment of FABEC in 2012.

### 5.1 *Joint Designation of ANSPs*

EU and other Member States will be informed on the joint designation of the 7 Civil Air Navigation Service Providers (ANSPs) Administration de la Navigation Aérienne Luxembourg (ANA), Belgocontrol, DFS Deutsche Flugsicherung, Direction des Services de la Navigation Aérienne (DSNA), Luchtverkeersleiding Nederland (LVNL), Swiss air navigation services Ltd.(skyguide) and the European Organization for Safety in Air Navigation (Eurocontrol) in FABEC airspace in the period between the ratification of the FABEC States Agreement and the entry into force of the FABEC States Agreement in 2012.<sup>8</sup>

### 5.2 *FABEC Airspace Design*

FABEC Airspace Design initiatives<sup>9</sup> and related studies are a large activity which is divided into a number of distinct sub-activities to be managed with less risk.

First deliverables are implemented or under implementation:

#### AMRUFRA:

The Amsterdam-Ruhr-Frankfurt airspace and route structure project to better separate civil and military air traffic, lower ATC workload, decrease potential conflicts and to enhance capacity for Amsterdam and Frankfurt departures is implemented since March 2010.

Night Network: The aim is to make it possible for airspace users to plan tactical direct routings at night, thereby reducing flight distance, increasing fuel predictability and contingency fuel uplift.

Implementation is a continuous process across the entire FABEC airspace in 2010/2011.

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<sup>8</sup> REG (EC) No 1070/2009 Art 2.4 amending REG (EC) No 550/2004 by Art 8 5.: "In respect of functional airspace blocks established in accordance with Art 9a that extend across the airspace under the responsibility of more than one Member State, the Member States concerned shall jointly designate.....one or more air traffic service providers, at least one month before implementation of the airspace block".

<sup>9</sup> REG (EC) No 1070/2009 Art 2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (b) "Functional Airspace Blocks shall enable optimum use of airspace, taking into account air traffic flows"

City Pairs: The aim is to improve city pairs in the FABEC area with the highest route extension. Solutions are explored with EUROCONTROL and continuously introduced through a periodic publication.

Airspace-design work addresses "historical" bottlenecks in European airspace. Their resolution is paramount from a network perspective.

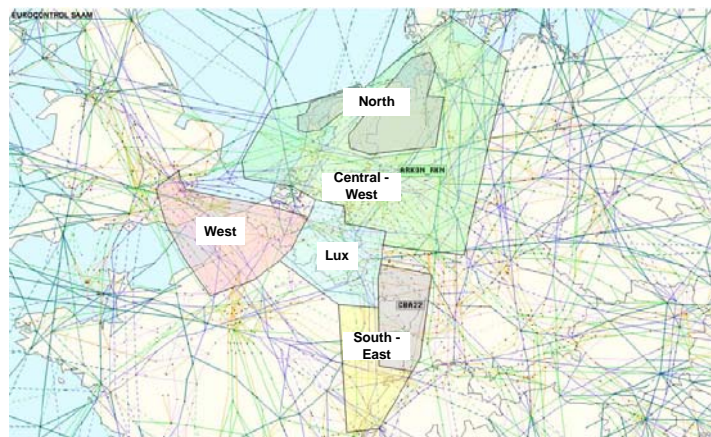
Ongoing work also defines FABEC Airspace Design principles.

Airspace Design change proposals include a description of changes for civil ATS route structures, military training areas including cross-border areas and related flexible use of airspace arrangements, for interfaces with other FABs and for cross border sectorization. Airspace-design work is fully aligned with the European Network requirements<sup>10</sup> and takes into account local developments such as the 4th runway at Frankfurt airport, the OPERA project in Paris, the fourth initial approach fix for Schiphol airport and other European or national developments.

Airspace Design is done in close cooperation with EUROCONTROL and uses existing arrangements and working groups.<sup>11</sup>

Consultation with stakeholders and staff is an integral part of the airspace development and implementation process.<sup>12</sup>

The following priority areas for airspace-design work were defined for medium term implementation:



**Figure 1 – Priority areas for airspace design**

<sup>10</sup> REG (EC) No 1070/2009 Art 2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (c) “Functional Airspace Blocks shall ensure consistency with the European route network in accordance with Article 6 of the airspace Regulation.”

<sup>11</sup> REG (EC) No 1070/2009 Art 3.6 amending REG (EC) No 551/2004 by Art. 6.4. (d) “Detailed arrangements for cooperative decision-making between the Member States, the air navigation service providers and the network management function for the design of the European route network.”

<sup>12</sup> REG (EC) No 1070/2009 Art 3.6 amending REG (EC) No 551/2004 by Art. 6.5 “Aspects of airspace design other than the European route network shall be dealt with at national level or at the level of the functional airspace block. This design process shall ... include full consultation of relevant airspace users ...”



### 5.3 FABEC ATFCM/ASM Function

As a strategic FABEC initiative, the development of a FABEC Air Traffic Flow Control and Capacity Management/Airspace Management function is necessary to reach FABEC performance targets in the areas of capacity, environment, flight efficiency and military mission effectiveness.<sup>13</sup>

The FABEC Feasibility Study Report identified the introduction of a regional FABEC ATFCM/ASM function as a way of providing:

- an improved balance of demand and capacity;
- improved airspace management - including all flexible use of airspace elements - to meet both civil/military user needs.

The ANSPs defined an initial concept for that function and evaluated it during an off-line Field Trial end 2009.

In view of the positive outcome of the Field Trial the ANSPs decided to organize a Live Trial in the first half of 2011, planned for 6 months.

Some objectives of a planned operational validation of the ATFCM/ASM FAB function are to:

- prove enhancement of flight efficiency and military mission effectiveness through a FAB function, implementing closer civil/military operation;
- establish a solid Collaborative Decision Making process;
- optimise capacity through use of better tools and improved demand/capacity balancing techniques.

The validation will offer a solid base for a future ANSP decision to put a FABEC ATFCM/ASM function into permanent operation.<sup>14</sup>

The proposed approach supports the requirement to urgently create a joint FABEC ASM cell as expressed by the FABEC High-Level Civil/Military Conference held on 21 January 2010.

### 5.4 Airspace Policy and Priority Rules, FUA

States will develop cooperation for the efficient and consistent application of the concept of Flexible Use of Airspace (FUA) across national borders and/or the boundaries of flight information regions, and will in particular address cross-border activities. The development of common airspace booking principles and priority rules will serve to support this. Article 9 of the FABEC States Agreement

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<sup>13</sup> REG (EC) No 1070/2009 Art 2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (b) *“Functional Airspace Blocks shall enable optimum use of airspace, taking into account air traffic flows”*

<sup>14</sup> REG (EC) No 1070/2009 Art 2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (e) *“Functional Airspace Blocks shall ensure a smooth and flexible transfer of responsibility for air traffic control between air traffic service units.”*

mandates cooperation at legal, operational and technical level for the efficient and consistent application of FUA.

This cooperation will be achieved through the establishment of the FABEC Airspace Committee. The Airspace Committee will develop a FABEC Airspace Policy.

Dependent on the creation of a new FABEC Cross-Border Area, a legal and institutional basis will be established for Cross-Border/FIR Boundary Operations (CBO) through a CBO Agreement between States concerned.<sup>15</sup>

## **5.5 FABEC Performance Plan**

The FABEC States decided to develop a single “provisional” Performance Plan at FABEC level to be approved by mid 2011. FABEC States intend to make use of this Plan at national level when communicating to the Commission.

The FABEC programme pursues ambitious FABEC performance targets or aspirational goals laid down in the FABEC Declaration of Intent signed in 2008 until European Union-Wide Targets<sup>16</sup> are published.

States and ANSPs are building the process together, sharing information and developing a mutual review process. This guarantees continuity and consistency.

The Performance Plan includes specific KPIs per KPA, a performance baseline, specific targets per KPI and associated incentives.

The States Financial and Performance Committee will support the FABEC Council in its task of setting and monitoring performance targets.

## **5.6 Charging Regime**

FABEC develops a charging regime complying with Regulation (EC) 1794/2006.<sup>17</sup>

States will define the charging zone(s) applicable within FABEC airspace. Article 18.2 of the States Agreement clarifies that States intend to apply a single unit rate for en-route traffic and a common charging zone, subject to appropriate conditions.

The FABEC Council will decide – for the airspace concerned – on the introduction of a Single Unit Rate for en-route traffic and the establishment of a common charging zone. A FABEC Charging Regime shall be agreed by mid 2011 and afterwards become “operational” in accordance with the national legislation of the 6 States concerned.

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<sup>15</sup> REG (EC) No 1070/2009 Art 2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (b) “*Functional Airspace Blocks shall enable optimum use of airspace, taking into account air traffic flows*”

<sup>16</sup> REG (EC) No 1070/2009 Art 2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (i) “*Functional Airspace Blocks shall facilitate consistency with Community-wide performance targets.*”

<sup>17</sup> REG (EC) 1794/2006 Art. 4. : Establishment of charging zones; recital 13: “*Member States should be able to set their unit rates collectively, in particular when charging zones extend across airspace of more than one Member State...*”

## 5.7 ANSP Performance Management System and CBA

FABEC ANSPs decided to develop and put in place a FABEC Performance Management System (PMS) to provide data to the States to assess the achievement of the FABEC performance targets. This PMS will be "operational" before the formal establishment of FABEC, thus ensuring its usability at the start of the first reference period for performance management.

Under the SES legislation, FABEC also has a formal obligation to deliver an updated FABEC Cost-Benefit Analysis (CBA)<sup>18</sup> demonstrating added value when establishing a Functional Airspace Block. Such a CBA has to give a correct image of benefits which will realistically and reasonably materialize within FABEC and which can be used during the consultation process with airspace users.

An updated CBA is under development in the light of changes in key assumptions since completion of the Feasibility Study Report phase CBA in July 2008. The changes will e.g. include changes in traffic forecasts. Furthermore, performance benefits resulting from already implemented improvements will also be taken into account.

## 5.8 FABEC Safety Case

In accordance with the Service Provision Regulation 550/2004, Art. 9a 2, each FAB which is established will be supported by a Safety Case<sup>19</sup>.

The safety claim for FABEC will be that FABEC airspace will be safer than before. This means that the absolute number of accidents or risk bearing incidents will remain equal or will even decrease, despite the rise in traffic numbers, thus improving the safety per flight. FABEC will provide a number of arguments and evidence to the arguments why this claim is highly probable.

All FABEC changes will be introduced safely and evidenced by records showing the approval of the FABEC NSAs.

## 5.9 FABEC Stakeholder Consultation Mechanism

The High Level Implementation Board established a stakeholder consultation process in 2009 at State (strategic), CEO (tactical) and SC (operational) level which fulfils SES requirements.

Involvement of stakeholders is ensured through regular stakeholder forums, user workshops and round table meetings scheduled in the yearly FABEC communication plan<sup>20</sup>.

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<sup>18</sup> REG (EC) No 1070/2009 Art B2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (d) "Functional Airspace blocks shall be justified by their overall added value, including optimal use of technical and human resources, on the basis of cost-benefit analyses."

<sup>19</sup> REG (EC) No 1070/2009 Art 2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (a) "Functional Airspace Blocks shall be supported by a safety case"

<sup>20</sup> REG (EC) No 1070/2009 amending REG (EC) No 549/2004 by Art 10.1: "The Member states, acting in accordance with their national legislation, shall establish consultation mechanisms for appropriate involvement of stakeholders, including professional staff representatives, in the implementation of the single European sky."

## 5.10 Social Dialogue

ANSPs created a FABEC social dialogue framework as part of the FABEC Stakeholder Consultation Mechanism.<sup>21</sup>

As part of the arrangements a Social Dialogue Manager was assigned as focal point for common FABEC related social dialogue activities facilitating the involvement of staff representatives in the implementation of FABEC. Social acceptance of FABEC project activities with social impact is supported through regular information and consultation at FABEC and national level.

***The information in the following paragraphs relates either to activities which complement or support the critical activities above, or to ANSP cooperation activities which improve FABEC performance in various domains.***

## 5.11 Manual for common Activities of NSAs

NSAs are developing detailed arrangements for the exchange of information, the consultation and coordination procedures, and also with regard to corrective actions and enforcement, including detailed procedural arrangements.<sup>22</sup>

## 5.12 ANSP FABEC Business Plan

Performance Plan(s) have to be based on the respective business plan(s) of the FABEC ANSPs. The FABEC civil ANSPs decided to develop over time one common FABEC Business Plan.

FABEC ANSPs decided to set up a structured process for business planning at FABEC level by 2011. A FABEC Business Plan based on harmonised data is targeted for 2013.<sup>23</sup>

## 5.13 FABEC Safety Management System

ANSPs within FABEC have very different Safety Management Systems (SMSs).

For future effective cooperation between the seven ANSPs within a FABEC framework, it is essential that existing Safety Management will become highly similar in order to be able to consistently report safety performance and incidents, and to perform safety change management.

The integration of existing Safety Management Systems is approached in a phased manner.<sup>24</sup>

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<sup>21</sup> REG (EC) No 1070/2009 amending REG (EC) No 549/2004 by Art 10.1: “The Member states, acting in accordance with their national legislation, shall establish consultation mechanisms for appropriate involvement of stakeholders, including professional staff representatives, in the implementation of the single European sky.”

<sup>22</sup> REG (EC) No 1070/2009 Art 2.1 amending REG (EC) No 550/2004 by Art 2.4: “National supervisory authorities shall cooperate closely to ensure adequate supervision.....”

<sup>23</sup> Supporting: REG (EC) No 1070/2009 Art 2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (d) “Functional Airspace Blocks shall be justified by their overall added value, including optimal use of technical and human resources, on the basis of cost-benefit analyses”.

## 5.14 FABEC Safety Assessment Methodology

One of the tasks of the program is to support and consult on safety assessment activities.

The FABEC safety assessment methodology under development is considered as an important step in the development of a FABEC Safety Management System and will be available in 2011.<sup>25</sup>

## 5.15 Communication, Navigation and Surveillance Services.

These services are currently organized in a fragmented manner between FABEC partners.

ANSPs initiated a CNS services study to:

- Optimize at FABEC level the cost efficiency of CNS services (by reduction of investment and operating cost);
- Optimize the Quality of Service of CNS services.

The study has to explore opportunities from the effect of scale at FABEC level.<sup>26</sup>

## 5.16 Border Triangle Feasibility Study

The Director Generals of Civil Aviation from France, Germany and Switzerland decided to launch a feasibility study considering a common control centre in the southern part of FABEC at the border triangle between these 3 States.

The activity studies the concept of controlling the entire Swiss airspace and part of German and French airspace.<sup>27 28</sup> The Feasibility Study Report will lead to a decision at the highest political and ANSP level by the end of 2010.

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<sup>24</sup> Supporting: REG (EC) No 1070/2009 Art 2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (a) "Functional Airspace Blocks shall be supported by a safety case"

<sup>25</sup> Supporting: REG (EC) No 1070/2009 Art 2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (a) "Functional Airspace Blocks shall be supported by a safety case"

<sup>26</sup> REG (EC) No 1070/2009 Art 2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (d) "Functional Airspace Blocks shall be justified by their overall added value, including optimal use of technical and human resources, on the basis of cost-benefit analyses".

<sup>27</sup> REG (EC) No 1070/2009 Art 2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (b) "Functional Airspace Blocks shall enable optimum use of airspace, taking into account air traffic flows"

<sup>28</sup> REG (EC) No 1070/2009 Art 2.5 amending REG (EC) No 550/2004 by Art. 9a 2. (e) "Functional Airspace Blocks shall ensure a smooth and flexible transfer of responsibility for air traffic control between air traffic service units."

## 6 HIGH LEVEL ROADMAP – SES REQUIREMENTS

The High Level Roadmap demonstrates how FABEC will meet all intermediate milestones to establish FABEC in accordance SES legislation.

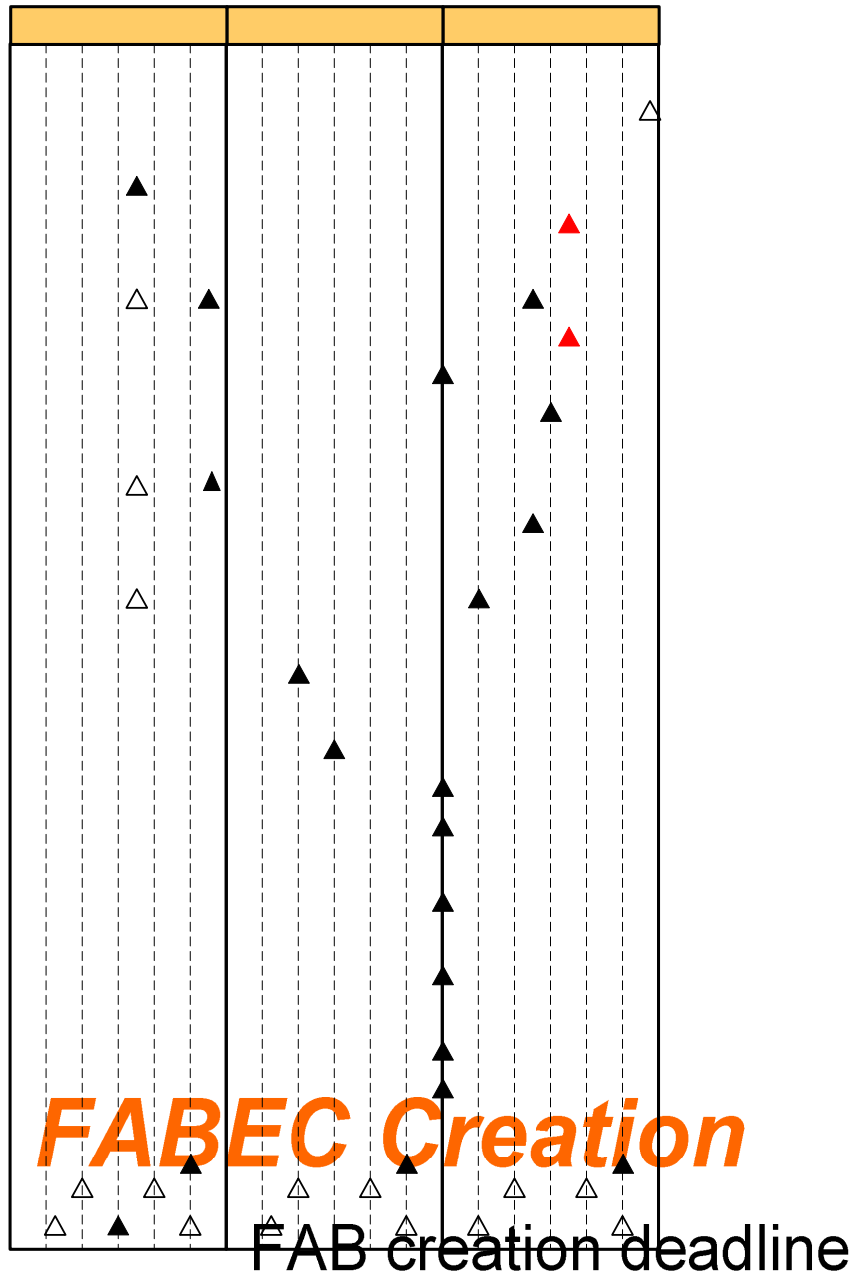


Figure 2 – FABEC High Level Roadmap

**Information to EC**

Information

Additional information

**State arrangements**

## **7 LIST OF ANNEXES**

- Annex 1 Main Reference Documents
- Annex 2 Draft States Agreement
- Annex 3 Draft NSA Memorandum of Cooperation
- Annex 4 Future State FABEC Governance Structure
- Annex 5 ANSP Cooperation Agreement
- Annex 6 FABEC Implementation Programme Organization
- Annex 7 Abbreviations

## **Annex 1      MAIN REFERENCE DOCUMENTS**

1.    SES Regulations:
  - (EC) 549/2004, Framework Regulation
  - (EC) 550/2004, Service Provision Regulation
  - (EC) 551/2004, Airspace Regulation
  - (EC) 552/2004, Interoperability Regulation
  - (EC) 1070/2009, Regulation amending Regulations (EC) 549 – 552/2004
  - (EC) 2159/2005, Flexible Use of Airspace Regulation
  - (EC) 1794/2006, Common Charging Scheme Regulation
  - (EC) 1315/2007, Safety Oversight in Air Traffic Management, amending (EC) 2096/2005
  - (EC) 29/2009, Air Ground Data Link Regulation
2.    States Declaration of Intent, 18 .11.2008
3.    FABEC Strategic Orientations, V 1.0
4.    Draft States Agreement, V 2.0
5.    Draft NSA Memorandum of Cooperation, V 0.9a
6.    EU Declaration of Madrid, 26.02.2010
7.    Current FABEC ANSP Cooperation Agreement
8.    FABEC PMO 5-Year Work Plan 2010 – 2014
9.    SESAR documents
10.   Feasibility Study Report, V 2.0
11.   Project Charter FABEC Implementation Phase, V 2.0



**Annex 2      DRAFT STATES AGREEMENT V 2.0**

**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**

**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 18 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 meaning given to them in the applicable definitions of 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:
  - any amendment ratified by the Contracting States and applied under Article 94 a) of the Convention,
  - 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 specific period of time;
- 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 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 have 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 European Départements of the French Republic.
- 3.3 For the Kingdom of the Netherlands, this Agreement applies only to the part of the Kingdom of the Netherlands 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 simplified 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 commit to cooperate and to take the appropriate measures, in accordance with their national procedures, in particular in the following domains:
- a. airspace;
  - b. harmonisation of rules and procedures;
  - c. provision 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 ensure in particular:
  - a. the development of a common airspace policy, in close cooperation between civil and military authorities;
  - b. the design of the structure of the airspace concerned to facilitate defragmentation and dynamic sectorisation;
  - c. the examination of airspace modifications affecting the performance at FABEC level;
  - d. coordination with EUROCONTROL;
  - e. consultation of the airspace users, jointly if necessary;
  - f. the coordinated establishment of cross-border areas.

### **Article 9 – Flexible use of airspace**

- 9.1 The Contracting States shall cooperate 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 commit 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 and eliminating differences between their respective regulations.
- 10.3 The Contracting States shall ensure that the air traffic service providers of the airspace concerned develop and implement a common overall Safety Management System.

- 10.4 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 Contracting States shall inform one another on the rights and obligations of the designated air traffic service providers at national level and of any change in the terms of certification or in the legal status of the designated air traffic service providers.
- 12.5 The Contracting States shall jointly inform the European Commission and the other Member States of any decision taken under this Article concerning the designation of air traffic service providers.
- 12.6 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 provider 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**

- 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 agreements 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 for the mutual recognition of supervisory tasks and the results of these tasks. Such agreements may include an arrangement regarding the division of responsibilities regarding supervisory tasks. The agreements 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 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 provision of services 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 this Article will be enforced.
- 19.8 As a measure of last resort, each Contracting State retains the right to suspend or 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 contain 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. adopt the charging policy applicable in the airspace concerned and set the single unit rate for en-route traffic in the airspace concerned;
- h. support the development and the implementation of a common overall Safety Management System;
- i. define strategic objectives for the development of FABEC, assess the results achieved and take appropriate measures if required;
- j. approve the performance plan and the related performance targets;
- k. adopt its rules of procedure and those of the committees, working groups and the Air Navigation Services Consultative Board;
- l. 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;
- m. ensure the coordination of FABEC with adjacent functional airspace blocks, including efficient interfaces;
- n. 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;
- o. facilitate the settlement of disputes arising between Contracting States;
- p. take the necessary measures required by an accession of a State to this Agreement;
- q. take the necessary measures required in case of withdrawal of a Contracting State;
- r. assess the consistency between this Agreement and any changes to Regulations on the Single European Sky;
- s. propose amendments to this Agreement;
- t. 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 at the invitation of its Chair, at least twice a year and as and when required. 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**

- 30.1 Within the airspace concerned, a Contracting State shall compensate any damage as referred to in Article 30.4 resulting from an event in a cross-border situation:
- 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.
- 30.2 No direct action may be brought against the effective air traffic service provider or its agents or any other person acting on its behalf.
- 30.3 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 judicial decisions as provided for in Article 30.4.
- 30.4 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.
- 30.5 Claims for compensation as provided for in Article 30.1 shall be filed with the Contracting State concerned. The claim shall be considered and ruled on by the competent authority in accordance with the relevant substantive national laws and regulations of this Contracting State. If no consensus is reached on the claim, the dispute shall be ruled on by the competent court of this Contracting State in accordance with its relevant substantive national laws and regulations.
- 30.6 The effective air traffic service provider shall reimburse 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.
- 30.7 In case of dispute concerning the reimbursement foreseen in Article 30.6, 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 substantive laws and regulations referred to in Article 30.5. Articles 32.3 and 32.4 shall be applicable.
- 30.8 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.
- 30.9 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.
- 30.10 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.
- 30.11 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 30.6 to reimburse the Contracting State referred to in Article 30.1.
- 30.12 This Article 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.
- 30.13 This Article shall supersede the provisions governing liability in any existing bilateral agreements between any two Contracting States related to the provision of air traffic services.

## **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 be used only for the purpose for which it was given and shall 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.
- 31.11 This Article shall supersede the provisions governing investigation of accidents and serious incidents in any existing bilateral agreements between any two Contracting States related to the provision of air traffic services

## **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, 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 case 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 accordance 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 effectuated 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 possible 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 Depositary.

**Article 39 – Depositary and its function**

- 39.1 The Government of the Kingdom of Belgium is the Depositary of this Agreement. The instruments of ratification shall be deposited with the Government of the Kingdom of Belgium.
- 39.2 The Depositary 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 Ministers]



## **Annex 3 INTERMEDIATE DRAFT NSA MEMORANDUM OF COOPERATION**

Cooperation Agreement (draft 0.9a[DE]),

Between the:

Civil Aviation Authority of Belgium,  
Direction de la sécurité de l'Aviation Civile of France,  
Bundesaufsichtsamt für Flugsicherung of Germany,  
Direction de l' Aviation Civile of Luxembourg,  
National Supervisory Authority for ANS of the Netherlands, and  
Division Sécurité des Infrastructures de l'OFAC of Switzerland.

### **Preamble**

Article 2 of the Service Provision Regulation (Regulation (EC) No 550/2004) requires the national supervisory authorities to closely cooperate in case of air navigation service providers holding a valid certificate from one Member State also providing services relating to the airspace falling under the responsibility of another Member State, in the case of cross-border provision of air navigation services, and also in respect of functional airspace blocks extending across the airspace falling under the responsibility of more than one Member State.

The Directors General for Civil Aviation of Belgium, France, Germany, Luxembourg, the Netherlands and Switzerland have signed, on 18 November 2008, a Declaration of Intent to create a Functional Airspace Block Europe Central. This Declaration of Intent also provides for the elaboration of arrangements for the cooperation between the respective national supervisory authorities.

### **Article 1**

#### **Definitions**

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

"agreement" means the present agreement and any amendments thereto, unless otherwise indicated,

"6 States" means the states having signed the Declaration of Intent of 18 November 2008 to create a Functional Airspace Block Europe Central,

"6 States' NSAs" means the national supervisory authorities concluding this agreement,

"6 States' airspace" means the airspace under the responsibility of the 6 states and situated in Europe,

„supervisory tasks“ means all inspections, audits, data collections, monitoring and similar tasks, in particular tasks in accordance with Regulations (EC) 2096/2005 and 1315/2007 and tasks in accordance with Article 7 (7) of Regulation (EC) 550/2004,

„results of supervisory tasks“ means any results of such tasks, in particular findings of non-compliance under Regulation (EC) 1315/2007,

„corrective action“ means, in particular, corrective actions and safety directives under Regulation (EC) 1315/2007,

“enforcement” means any enforcement measures under national law and within the responsibility of the respective national supervisory authority.

## Article 2

### Scope and Aims

(1) This agreement contains the arrangements for the cooperation between the 6 States' NSAs under Article 2 of the Service Provision Regulation (Regulation (EC) No 550/2004), with the perspective to establish and govern such cooperation in the framework of the Functional Airspace Block Europe Central (FABEC).

(2) It is based on the mutual recognition of the supervisory tasks carried out by the signatory national supervisory authorities and the results of these tasks, and it aims at the harmonisation of the respective practices.

(3) It establishes a common mechanism for the exchange of information, for the consultation on and the coordination of the supervision for cross-border service provision, including arrangements for the handling of cases involving non-compliances with the applicable common requirements.

(4) It aims at ensuring that necessary corrective action will be taken without delay and that the decisions taken in accordance with this agreement will, if necessary, be enforced.

## Article 3

### General principles and areas of cooperation

(1) The 6 States' NSAs cooperate in the areas described in Article 2 Service Provision Regulation, in particular with regard to

the supervision of air navigation service providers in the case of cross-border provision of air navigation services,

the supervision of air navigation service providers in case of any air navigation service provider holding a valid certificate from one of the 6 States also providing services relating to the airspace falling under the responsibility of at least another of the 6 States,

the review and advice on the acceptance of safety related changes where the airspace of more than one of the 6 States is concerned,

the supervision within the framework of Regulation (EC) 552/2004 (the Interoperability Regulation),

the process for licensing of air traffic controllers, and the recognition and supervision of training courses and -organisations for air traffic controllers,

the preparation of the intended FABEC performance plan,

the harmonisation of oversight procedures and methodologies,

the Support to the 6 States with regard to harmonisation of substantive national rules and procedures relevant to the intended FABEC.

(2) The cooperation shall be governed by the following principles:

The vested sovereign interests of the involved States are observed.

Effective exchange of information as well as full consultation and co-ordination are ensured.

The NSAs mutually ensure the opportunity for participation of each NSA concerned in all supervisory tasks, including joint supervisory tasks.

The sufficient commitment and factual input of all participating NSAs is ensured.

Commonly agreed positions and decisions between all participating NSAs are created.

Swift and timely decision-making in case of situations that require immediate action in the interest of one or more of the States involved is ensured.

Supervisory tasks are, if necessary, enforced effectively.

#### **Article 4**

Responsibility for supervisory tasks, applicable law

(1) The primary responsibility for the supervision of a certified air navigation service provider providing cross-border services lies with the national supervisory authority having certified this provider. In case the state over the territory of which such air navigation services are provided requires that its own national supervisory authority exercises supervision, the primary responsibility for such supervision lies with this national supervisory authority.

(2) Insofar as supervisory tasks are not regulated by European law, in particular with regard to the execution and enforcement of such tasks, the national law of the state where such tasks are executed or enforced shall apply.

#### **Article 5**

Bilateral, multilateral and common supervisory tasks

(1) Each of the 6 States' NSAs shall inform any other of the 6 States' NSAs concerned of the planned supervisory tasks and of their performance in a timely manner. In particular, each of the 6 States' NSAs shall transmit, at the latest at the time of the handover to the service provider concerned, the excerpt of the annual inspection and examination plan relevant to the service provider, including information on the dates and periods of time of the planned supervisory tasks. Each NSA concerned may take the opportunity to participate or collaborate in such tasks and nominate, at their own assessment, persons for such participation or collaboration.

(2) As far as necessary, two or more of the 6 States' NSAs may perform supervisory tasks jointly. For the responsibility for and lead of such joint supervisory tasks, article 4 section 1 applies.

(3) At the substantiated request of one of the 6 States' NSAs, any NSA responsible under article 4 Section 1 shall ensure that, according to the specific circumstances, ad-hoc supervisory tasks are carried out with the participation of the requesting NSA.

(4) Each of the 6 States' NSAs informs all other of the 6 States' NSAs concerned of the results of their supervisory tasks. The results of the joint supervisory tasks are established by the NSA responsible, in consultation with the NSAs concerned.

(5) Safety directives under article 12 of Regulation (EC) 1315/2007 may, in urgent cases, be issued without prior consultation with the NSAs concerned. The NSAs concerned shall be informed without delay.

#### **Article 6**

Safety related changes

The 6 States' NSAs shall provide each other with information on proposed new functional systems or changes to existing functional systems. The 6 States' NSAs ensure the opportunity for participation, of

all other of the 6 States' NSAs concerned, in the review procedure. For detailed arrangements, article 11 shall apply.

## **Article 7**

### Incidents reporting

Without prejudice to the provisions in force on the investigation of accidents and incidents in civil aviation, the 6 States' NSAs exchange information available to them on occurrences to be reported in accordance with Annex II of Directive 2003/42/EC. The exchange of information shall include at least the records of such occurrences and notification of the respective corrective actions taken.

## **Article 8**

### Provision of information

(1) The 6 States' NSAs shall provide each other with all information relevant to the subject matters of this agreement, including their respective contact points or persons or any change thereof. In particular, they undertake to make available the relevant air traffic data in the case of cross-border provision of air navigation services.

(2) The 6 States' NSAs shall inform each other without delay in writing on changes of national regulations which have an impact on the subject matters of this agreement.

(3) Annual reports to the public as well as any formal reports to European or international organisations relating to cross-border provision of air navigation services within the 6 States' airspace shall be subject to prior consultation.

## **Article 9**

### Cooperation between less than 6 NSAs

(1) Where appropriate and taking into account the opinion of the 6 States NSA Committee, NSAs may conclude bilateral or multilateral agreements, in particular where only part of the 6 States' airspace is concerned.

(2) Existing cooperation agreements between NSAs remain valid. In such case, the participating NSAs ensure that the existing agreements will be in line with the principles of this cooperation agreement.

(3) Agreements under paragraph 1 or 2 are notified to the NSAC and the FABEC council by the NSAs concerned.

(4) In case of paragraph 1 or 2, the NSAs involved inform the other NSAs on a regular basis through the 6 States NSA Committee.

(5) Where this agreement provides for cooperation the decision on participation in such cooperation lies with the participating state or NSA.

## **Article 10**

### 6 States NSA Committee

(1) A 6 States' NSA Committee (6 States' NSAC) is created, consisting of one member for each participating NSA, to be nominated by each respective Head of NSA, and an alternate member. The chairperson is to be elected between the members of the 6 States' NSAC.

(2) The members of the 6 States' NSAC shall be fully mandated to act on behalf of their respective NSAs, and, according to national arrangements, can be assisted by a military representative.

- (3) The 6 States' NSAC is entrusted to generally oversee the carrying out of the cooperation under this agreement and to take appropriate decisions. Such decisions are subject to endorsement by the individual NSAs concerned.
- (4) The 6 States' NSAC acts as point of contact for matters under the responsibility of NSAs in respect of the Declaration of Intent of 18 November 2008 to create a Functional Airspace Block Europe Central.
- (5) The 6 States' NSAC adopts its own Terms of Reference and procedures.

## **Article 11**

### Implementational and procedural arrangements

For the implementation and execution of this agreement, detailed arrangements for the common mechanism under article 1 section 3 with regard to the exchange of information, the consultation and coordination procedures, and also with regard to corrective actions and enforcement, including detailed procedural arrangements, shall be elaborated. These arrangements shall be compiled in a 'Manual for the common activities of the 6 States' NSAs' or in separate agreements for a particular area of cooperation, whichever is appropriate, and are to be agreed upon between the Heads of the 6 States' NSAs.

## **Article 12**

### Entry into force

This agreement enters into force on the 20<sup>th</sup> day following the signing by all Heads of the participating NSAs.

## **Article 13**

### Revision and evaluation

- (1) This agreement can be revised by consensus between the Heads of the signatory NSAs based on an evaluation according to the following provisions.
- (2) An evaluation under section 1 takes place  
18 Months after the agreement has become valid, or when the FABEC States Agreement enters into force, whichever is earlier,  
on unanimous decision of the 6 States' NSAC,  
on request from one or more of the 6 States, in particular, if such request is based on the opinion that one or more provisions of the agreement conflict with Single European Sky or EASA-related arrangements, or any other arrangements including the intended FABEC States Agreement,  
after the establishment of the FABEC, also on request of the FABEC Council.
- (3) The 6 States' NSAC makes arrangements for such evaluation.

## **Article 14**

### Termination of cooperation

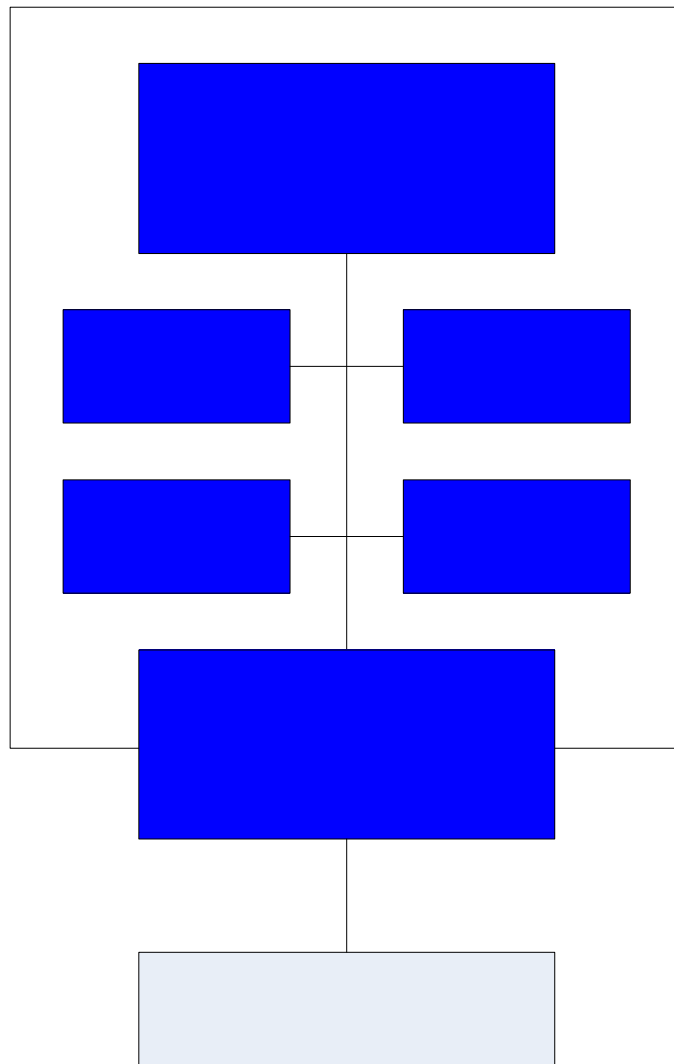
- (1) The Heads of the signatory NSAs may unanimously decide to terminate this agreement at any time.
- (2) In case that one of the signatory NSAs intends to terminate its involvement in this agreement, such termination becomes effective six months after notification to all other signatory NSAs.
- (3) In case of section 2, the agreement remains valid between the other signatory NSAs.

**Article 15**

Depositing

Each of the 6 States' NSAs receives a signed copy of the agreement.

## Annex 4 FUTURE FABEC STATES ORGANIZATION



**Figure 3 – States FABEC Organization**

## Annex 5 ANSP COOPERATION AGREEMENT

Consolidated version  
Cooperation agreement between 7 ANSPs  
for the implementation and operation of FABEC  
with Amendment n° 1  
AGREEMENT

between

BELGOCONTROL, Tervuursesteenweg 303, 1820 Steenokkerzeel, hereinafter referred to as "Belgocontrol", represented by its Chief Executive Officer, Mr Jean-Claude Tintin;

DFS Deutsche Flugsicherung GmbH, Am DFS-Campus 10, D-63225 Langen, hereinafter referred to as "DFS", represented by the Chairman of its Board of Directors, Mr Dieter Kaden;

the French Republic, acting via the Direction Générale de l'Aviation Civile represented by the Direction des Services de la Navigation Aérienne, hereinafter referred to as "DSNA", represented by its Director, Mr Maurice Georges, whose principal place of business is 50 rue Henry-Farman 75720 Paris Cedex 15;

Luchtverkeersleiding Nederland, a legal entity governed by public law and established by the Aviation Act (*Wet Luchtverkeer*) of 18 June 1992 (*Staatsblad* 1992, 368), hereinafter referred to as Air Traffic Control The Netherlands "ATC-NL", domiciled at (1117 CV) Stationsplein Zuid-West 1001, Schiphol-Oost, the Netherlands;

Administration de la navigation aérienne, BP 273, L-2012 Luxembourg, hereinafter referred to as "ANA", represented by its Director, Mr Ender Ulcun;

Skyguide, Swiss air navigation services Ltd, route de Pré-Bois 15-17, Case Postale 796, 1215 Genève 15, Switzerland, hereinafter referred to as "Skyguide", represented by its Chief Executive Officer, Mr Daniel Weder; and

the European Organisation for the Safety of Air Navigation (EUROCONTROL), Rue de la Fusée, 96, 1130 Bruxelles, hereinafter referred to as "EUROCONTROL", represented by its Director General, Mr David McMillan;

hereinafter individually or collectively referred to as the Party or the Parties.



PREAMBLE

Having regard to the Detailed Feasibility Study for the “Functional Airspace Block – FAB – Europe Central (hereinafter referred to as FABEC) launched by the High-Level Group in June 2006 in line with the Single European Sky legislation I (SES I) of 2004, concerning the airspace of Belgium, the Netherlands, Germany, Luxembourg, France and Switzerland (6 States) and the interfaces with neighbouring service providers;

whereas the High-Level Policy Group concluded on 26 June 2008 that FABEC is feasible and necessary and invited the air navigation service providers (civil and military) to conclude the cooperation agreements necessary for the implementation of FABEC;

whereas the civil and military representatives of the governments of the 6 States agreed in a Joint Declaration of Intent to jointly prepare for the construction and implementation of a functional airspace block covering the airspace under their responsibilities and to intensify their activities with a view to finalising a FABEC States Agreement;

whereas FABEC is justified by its overall added value, including an optimum use of financial, technical, environmental and human resources as described in Article 5 of Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation);

whereas the Single European Sky legislation II (SES II), as proposed by the European Commission, should set out a performance framework with quantified target-setting to assure better integration of service provision while strengthening the overall network management function;

whereas the Parties have identified the need to reinforce their cooperation for the realisation of FABEC;

whereas the Parties consider that the implementation of cooperation models between them should be carried out in a step-by-step approach;

whereas the aim of this Agreement is to provide a first contractual framework to progressively develop and facilitate the implementation and operation of FABEC;

the Parties hereby agree as follows:

## Article 1 – DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

ANSP:	air navigation service provider
ANSP FABEC Group:	staff organ in the FABEC structure, composed of different subgroups (depicted in annex to the Project Charter) responsible for the following functions the FABEC Program: project management, strategy and policy, performance management and business development. The ANSP FABEC Group is responsible towards the ANSP Strategic Board
ANSP Strategic Board:	board established at the level of the CEOs of the civil ANSPs and at the appropriate level of the representatives of the military ANSPs of FABEC, with a view to developing and improving ANSP cooperation and information-sharing. The ANSP Strategic Board is entrusted with the executive powers under this Agreement.
Background information:	intellectual property rights owned by a Party or third party, existing before the entry into effect of or developed outside this Agreement
Budget:	the total sum dedicated by the Parties to the realisation of FABEC for one calendar year
Contract(s):	contract(s) concluded between the Contracting Authority and a third party or between the Contracting Authority and a Party to this Agreement
Contracting Authority:	Belgocontrol, which will be responsible for the management of the contract(s)
Contractor:	any person, company(ies) or Party(ies) to this Agreement contracted by the Contracting Authority to carry out a specific task or to provide a service or product within the scope of this Agreement
Costs:	all costs incurred for the management and execution of the contract(s) and to cover travel expenses and expenses for communication activities
Detailed Feasibility Study Phase:	initial project launched by the High-Level Group and carried out between June 2006 and July 2008 to study the feasibility of FABEC
External contract:	contract concluded between the Contracting Authority and a third party for the purpose of this Agreement
FABEC:	Functional Airspace Block Europe Central
FABEC Program	refers to the different activities necessary for the implementation of FABEC:
Foreground information:	intellectual property rights created in connection with this Agreement by a Party directly via in-house development and/or indirectly via developments made under contract
High-Level Group:	group created for the Detailed Feasibility Study Phase and composed of the Directors General of Civil Aviation (DGCAs) of Belgium, the Netherlands, Luxembourg, Germany, France and Switzerland (the six States), military representatives of those countries, and the Director General (DG) of EUROCONTROL in an advisory role
High-Level Implementation Board:	board composed of the DGCAs of the six States, the DG of EUROCONTROL, the relevant military representatives of those countries and the CEOs of the civil and military ANSPs, which

	bears overall responsibility for organising the implementation of the FABEC Project
High-Level Policy Group:	group created for the Detailed Feasibility Study Phase comprising the DGCA's of the six States, the DG of EUROCONTROL (in an advisory role), the relevant military representatives of those countries, and the CEOs of the seven ANSPs.
Nominated Members of the	members of the ANSP FABEC Group appointed by the ANSP Strategic Board who support the FABEC Program
Project Charter:	document drawn up by the Parties at the request of the High-Level Implementation Board laying down the principles for the organisation and structure of the FABEC Project, the tasks and cooperation of the project units, the expected deliverables and their contribution to the FABEC performance targets, the decision criteria and the provision of resources
Selection Committee:	the committee established by the ANSP Strategic Board at the proposal of the chairman of the ANSP FABEC Group, responsible for selecting tenders
Service contract:	contract concluded between the Contracting Authority and one or more Party(ies)
Strategy and Policy Group:	subgroup of the ANSP FABEC Group that proposes and maintains the overall ANSP Strategic Framework. The Strategy and Policy Group is responsible towards the ANSP Strategic Board
Technical Manager:	manager responsible for preparing the dossier allowing the Contracting Authority to issue calls for tender, and select and award the contract(s), and also responsible for the technical follow-up of the Contract(s). The Technical Manager will be appointed by the ANSP Strategic Board on proposal of the chairman of the ANSP FABEC Group..
Work Plan:	document describing in a structured way what will be developed within the FABEC Program, and the planning of the various elements, including the expected resources.

## Article 2 – SCOPE

2.1 The Parties hereby agree to cooperate with a view to achieving the continuous improvement of the provision of air navigation services in the airspace of Belgium, Germany, France, Luxembourg, the Netherlands and Switzerland, and to support the establishment of FABEC.

2.2 Such improvements should aim to enhance the safety, environmental sustainability, capacity, cost-effectiveness, flight efficiency and military mission-effectiveness of air navigation in the six States.

2.3 The Parties hereby agree to cooperate in the development, implementation and operation of FABEC in order to achieve the objectives specified in 2.1 and 2.2.

2.4 The Parties shall actively contribute to the FABEC Program and jointly strive to optimise its results by means of:

- monitoring and guidance of the progress of project deliverables intended for implementation by the ANSPs;
- joint acceptance of the deliverables and coordinated implementation and operation;
- delivery of the necessary financial and human resources;

cooperation in the development of the FABEC strategy and policy, the performance management and the business planning.

2.5 This Agreement shall not prevent cooperation between certain Parties, or between certain Parties and third parties. If such cooperation is of direct relevance to the achievement of the objectives described in 2.1 and 2.2, it shall be communicated to the other Parties to the Agreement and open to their participation, subject to the approval of the Parties who initiated such cooperation.

### **Article 3 – AGREEMENT AND ANNEXES**

3.1 This Agreement shall constitute a framework contract providing for the basic principles of cooperation and setting out the main governing and financial mechanisms. The specific aspects of the cooperation shall be approved by the governing bodies and shall be laid down in annexes, at least where they create binding obligations.

3.2 This Agreement and its annexes shall constitute the entire agreement and understanding between the Parties. In the event of any contradiction between the terms and conditions of the Agreement and those of the annexes, the terms and conditions of the Agreement shall prevail, unless specified otherwise in the annex(es).

3.3 The following annexes shall constitute an integral part of the Agreement:

Annex I: Project Charter in its latest version;

Annex II: Terms of Reference of the ANSP Strategic Board in their latest version;

Annex III: The FABEC AFG Organization in its latest version;

Annex IV: practical arrangements for financial contributions;

Annex V: Common tendering.

3.4 Annexes may be added or removed with the approval of the ANSP Strategic Board.

3.5 This Agreement (including its annexes) and any subsequent amendments thereto shall be administered by the Contracting Authority.

### **Article 4 – GOVERNANCE**

4.1 The ANSP Strategic Board shall be established at the level of the CEOs of the Parties and shall hold the executive powers for cooperation under the present Agreement.

4.2 The ANSP Strategic Board shall decide on the establishment, under its authority, of dedicated subgroups, such as standing committees or temporary task forces.

4.3 Decisions applicable to all ANSPs shall be reached by consensus within the ANSP Strategic Board and shall be binding on the Parties.

4.4 Decisions applicable to and affecting only certain Parties shall be reached unanimously by the ANSPs concerned. Other Parties shall be duly informed of such decisions.

4.5 The Strategy and Policy Group shall support decision-making within the ANSP Strategic Board and shall report to the latter. The members of the Strategy and Policy Group shall be composed of representatives of appropriate seniority from each Party.

### **Article 5 – LIMITS OF COOPERATION**

5.1 Unless otherwise agreed in this Agreement or its annexes, no Party shall have authority to act on behalf of, or legally bind, any other Party, and no Party shall present itself as having such authority.

5.2 This Agreement and its annexes shall not prejudice the application of internal or national rules on social dialogue.

### **Article 6 – FINANCIAL ARRANGEMENTS**

6.1 General provisions

6.1.1 The ANSP Strategic Board shall approve the Budget for the FABEC Program for the following year at the proposal of the chairman of the ANSP FABEC Group on the basis of the approved Work Plan.

6.1.2 The Budget, expressed in euros, shall be established in a separate document signed by all Parties, after approval by the ANSP Strategic Board..

6.1.3 Costs exceeding the respective part of the Budget shall be submitted for approval to the ANSP Strategic Board, prior to being committed.

6.1.4 The Parties hereby irrevocably and unconditionally guarantee, without offset or deduction, the due and punctual payment of their contributions.

6.1.5 Each Party shall bear the costs relating to its internal staff, including travel expenses, except for the travel expenses of the Nominated Members of the ANSP FABEC Group.

## 6.2 Management of the Budget

6.2.1 Budget follow-up shall be the responsibility of the chairman of the ANSP FABEC Group, who shall prepare all dossiers for approval and keep a list of all expenditure.

6.2.2 If the estimated cost of an item of expenditure or contract is less than EUR 50,000, excluding VAT, the chairman of the ANSP FABEC Group shall directly coordinate with the Contracting Authority.

6.2.3 If the estimated cost of an item of expenditure or contract is more than EUR 50,000, excluding VAT, the chairman of the ANSP FABEC Group shall request the approval of the Strategy and Policy Group and propose the establishment of a Selection Committee.

6.2.4 If the estimated cost of an item of expenditure or contract is such that a European tendering procedure is required, the chairman of the ANSP FABEC Group shall request the approval of the ANSP Strategic Board and propose the establishment of a Selection Committee.

6.2.5 The chairman of the ANSP FABEC Group shall report twice a year to the ANSP Strategic Board on Budget take-up.

## Article 7 – PROCEDURES FOR COMMITMENT OF THE BUDGET

### 7.1 Contracts

7.1.1 Any body or activity pursuant to Article 2 may be supported via contracting, in accordance with the following clauses.

7.1.2 Contracts may be signed with a third party (hereinafter referred to as external contract(s)) or with a Party to this Agreement whose services as approved by the ANSP Strategic Board exceed its normal participation (referred to as service contract(s)).

7.1.3 Payment for a service contract shall be made at cost to the Party providing the service, in accordance with the cost-sharing principles set out in Article 8.

7.1.4 The Contracting Authority shall closely coordinate with the Technical Manager(s) when managing contracts. The Technical Manager shall be the chairman of the ANSP FABEC Group, or its delegate, unless otherwise decided by the ANSP Strategic Board.

7.1.5 Every contract shall be initiated by the Technical Manager, in accordance with the Work Plan(s) approved by the ANSP Strategic Board.

7.1.6 The Technical Manager shall prepare a complete dossier containing the following general information: the scope, functional objectives and estimated cost of the contract.

7.1.7 The Technical Manager shall discuss the dossier with the Contracting Authority to prepare an appropriate proposal for the tendering procedure.

7.1.8 After the requested approval is obtained, the Technical Manager shall submit the complete dossier together with the technical specifications to the Contracting Authority, which shall take the necessary steps to formally issue calls for tender and award the contract.

7.1.9 The Parties hereby agree to mandate the Contracting Authority, subject to the terms of this Agreement, to act on their behalf as the Contracting Authority to:

(1) manage the contract(s) to be concluded for the realisation of the FABEC Project, including the organisation of the tendering procedures, the formal negotiations with the candidates, the awarding of the contract(s), and the management of the formal contractual relations with the contractor;

(2) act in accordance with Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, and the applicable Belgian Law;

(3) subsequently redistribute the financial obligations resulting from the external contract(s) and the service contract(s) between the Parties, in accordance with the agreed cost-sharing principles and the annexed “Practical arrangements for financial contributions”.

7.1.10 At the request of any Party, the Contracting Authority shall provide a copy of all relevant existing documentation related to the contracts.

## 7.2 Travel expenses

The Contracting Authority shall organise the travel facilities of the Nominated Members of the ANSP FABEC Group. In addition, the Contracting Authority shall pay a “per diem” to the Nominated Members of the ANSP FABEC Group to cover their additional travel expenses.

This “per diem” shall be calculated in the same way as the one applicable for the personnel of the Contracting Authority.

Subsequently, the travel expenses and the “per diem” shall be redistributed twice a year between the Parties, in accordance with the agreed cost-sharing principles and the annexed “Practical arrangements for financial contributions”.

## 7.3 Expenses for communication activities

7.3.1 Each Party may contract individually for expenditure related to communication activities as agreed in the Budget.

7.3.2 For the execution of Article 6.2.1 and Article 6.3, each Party shall provide the chairman of the ANSP FABEC Group as appropriate with information on such expenditure.

7.3.3 In order to be eligible for reimbursement, the expenses incurred by a Party during a calendar year shall be submitted to the Contracting Authority not later than 1 March of the following year, together with supporting documents.

7.3.4 The Contracting Authority shall calculate twice a year, on 1 April and 1 October the sum total of all eligible expenses related to communications activities, as transmitted in accordance with the previous paragraph, apply the cost-sharing principles as agreed in Article 8, and issue separate invoices to the Parties whose contribution to the communication activities is below their participation in the cost-sharing arrangements, in accordance with the annexed “Practical arrangements for financial contributions”.

7.3.5 Upon receipt of all contributions, the Contracting Authority shall reimburse the Parties whose contribution to the communication activities exceeds their participation in the cost-sharing arrangements.

## Article 8 – COST-SHARING PRINCIPLES

8.1 The Parties shall provide their contributions to the overall Costs in accordance with following cost-sharing principles:

ATC-NL:	14%
Belgocontrol:	14%
DFS:	21.5%
DSNA:	21.5%
EUROCONTROL:	14%
ANA:	1%
Skyguide:	14%

8.2 The practical arrangements for the financial contributions of the Parties shall be as detailed in Annex IV.

8.3 If the management of the procedures provided for in Article 7 above significantly increases the overall workload of the Contracting Authority, the Contracting Authority shall submit in due time a proposal to the ANSP Strategic Board to be reimbursed at cost. The additional costs arising from such increased workload shall be borne in accordance with the cost-sharing principles.

#### **Article 9 – INTELLECTUAL PROPERTY RIGHTS**

9.1 Background information shall remain the property of the Party or third party owning it.

9.2 Ownership of foreground information resulting from the execution of this Agreement may be subject to special arrangements between the Parties.

#### **Article 10 – ACCESS RIGHTS**

10.1 Access rights by the Parties to foreground information shall be unlimited and royalty-free. Each Party hereby agrees to grant the other Parties access rights to the background information owned by the Parties and required for the execution of this Agreement.

10.2 The granting of access rights to background information owned by one or more Party(ies) may be made conditional on the acceptance of specific conditions ensuring that these rights are used only for the intended purpose and that appropriate confidentiality obligations are in place. Access rights to background information shall be granted on a royalty-free non-exclusive basis, unless otherwise agreed.

10.3 Any access rights granted shall not include rights to sublicense, unless expressly stated otherwise.

#### **Article 11 – EXCHANGE OF INFORMATION, SECURITY AND CONFIDENTIALITY**

11.1 Without prejudice to the application of national laws, all information which is disclosed by a Party to any other Party in connection with this Agreement and which has been explicitly marked as “confidential” shall be treated as such.

11.2 No Party shall disclose any confidential information acquired in connection with this Agreement to any person other than one employed by them or officially entitled by the Parties or by law to handle such information without the prior written consent of the Party which owns this information.

11.3 Any confidential information disclosed to any person authorised under this clause shall be labelled confidential and such confidentiality shall extend as far as is necessary for the purpose of this Agreement.

11.4 Each Party shall promptly advise the other Parties in writing of any unauthorised disclosure or misuse of confidential information as soon as it becomes aware of any such unauthorised disclosure or misuse.

11.5 These provisions shall remain valid for a period of two years following termination or expiry of this Agreement.

#### **Article 12 – LIABILITY**

12.1 Each Party shall hold the other Parties harmless in respect of any liability arising from loss, damage or bodily injury suffered by itself or by its employees as a result of the performance of this Agreement, unless such loss, damage or bodily injury is due to gross negligence or deliberate omission or wrongful act on the part of the other Party or its employees.

12.2 However, the Parties hereby agree to compensate the Contracting Authority, in accordance with the cost-sharing key referred to in Article 8.1, for any claims, liability, loss or damage arising directly or indirectly from its role as defined in Article 7 and Article 8, unless such claim, liability loss or damage is due to gross negligence or deliberate omission on the part of the Contracting Authority.

12.3 The Contracting Authority shall be at liberty to define any rights, powers and remedies as deemed necessary to defend itself in its contractual relationship with any contractor, after consultation of the other Parties. If there are financial implications for the Parties, the Contracting Authority shall seek their written approval.

12.4 Whenever any attorney is employed to collect any obligation or enforce any right of the Contracting Authority vis-à-vis any contractor, whether by legal action or other means, the Parties shall agree to share all reasonable costs of the attorney and those related to the legal action in accordance with the cost-sharing key referred to in Article 8.1 above.

### **Article 13 – ACCESSION, MEMBERSHIP AND PARTIES**

13.1 Accession to the present Agreement shall be open to other ANSPs having an interest in the objectives of this Agreement and shall be subject to the unanimous prior approval of the ANSP Strategic Board.

13.2 In duly justified cases, to be approved by the ANSP Strategic Board, a new Party may be exempted from the application of certain provisions of this Agreement.

### **Article 14 – TERMINATION**

14.1 Non-compliance by any Party (defaulting Party) with its obligations under this Agreement shall be considered as a breach of contract and may lead to the termination of this Agreement for the defaulting Party.

14.2 The defaulting Party, upon receipt of a written notice of termination jointly signed by the other Parties, sent by registered post, shall have a period of grace of 30 (thirty) days to remedy the default.

14.3 If the defaulting Party remedies the default within the above-mentioned period of grace, the notice of termination shall be revoked. If the default is not remedied within the period of grace, this Agreement shall be terminated automatically and immediately for the defaulting Party.

14.4 Any Party may voluntarily withdraw from this Agreement subject to six months' prior notice in writing to the other Parties sent by registered post and after due payment of its contribution towards the financial obligations arising up to such time as the termination becomes effective.

14.5 Unless otherwise agreed, the defaulting or withdrawing Party shall bear the costs of any additional directly and indirectly attributable costs incurred by the other Parties as a result of its default or withdrawal.

### **Article 15 – LANGUAGE**

15.1 The English version and the French version of the present Agreement shall be equally authentic.

15.2 For the execution of this Agreement, the Parties shall use the English language.

15.3 Whenever a translation of relevant documentation is required, it shall be provided by the Party requiring it.

### **Article 16 – AMENDMENTS**

16.1 The provisions of this Agreement and its annexes may be amended by written agreement between the Parties.

16.2 All amendments shall be subject to the prior approval of the ANSP Strategic Board. Different arrangements may apply to the annexes.

### **Article 17 – SETTLEMENT OF DISPUTES**

17.1 As a condition precedent to a Party filing any suit for breach of this Agreement, the Party concerned must first notify the defaulting Party in writing of the nature of the alleged breach, and also inform all the other Parties. The Parties shall seek in good faith to resolve the dispute through negotiation.

17.2 The existence of any dispute shall not excuse the Parties from performance pursuant to this Agreement.



17.3 If a dispute cannot be settled between the Parties, the Brussels courts shall have exclusive jurisdiction for any disputes relating to this Agreement.

**Article 18 – APPLICABLE LAW**

This Agreement shall be governed by Belgian law.

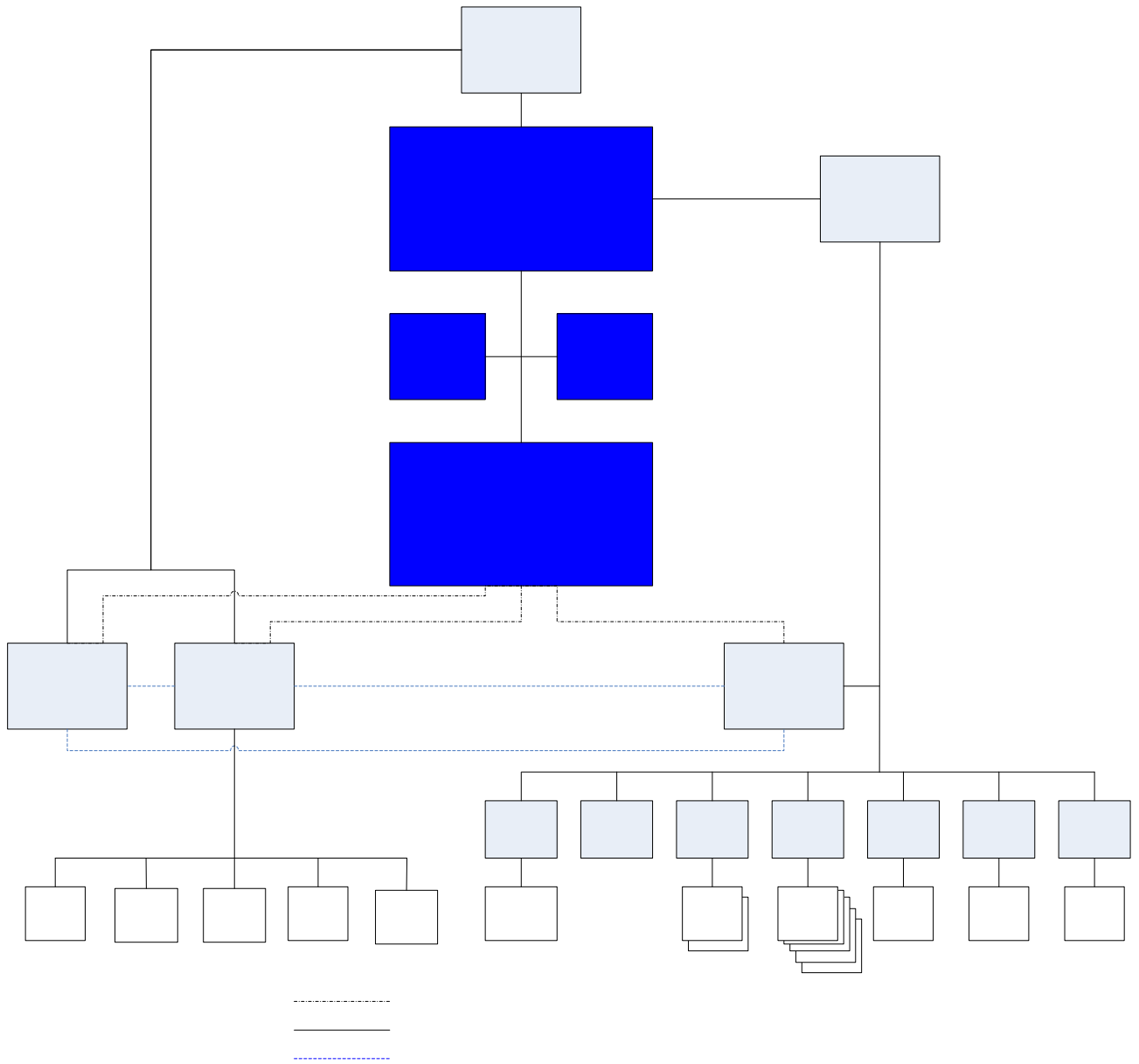
**Article 19 – ENTRY INTO FORCE**

This Agreement shall enter into force on the day of its signature by all the Parties.

In witness whereof the representatives of the Parties agree to execute this Agreement, signed at Bordeaux on 18 November 2008.

DRAWN UP ACCORDINGLY AND SIGNED IN SEVEN ORIGINALS IN ENGLISH AND FRENCH

## Annex 6 FABEC IMPLEMENTATION PROGRAMME ORGANIZATION



**Figure 4 – FABEC Programme Organization**

## **Annex 7 ABBREVIATIONS**

5YWP	Five Year Work Plan
6 SFG	Six States FABEC Group
AD	Airspace Design
AFG	ANSP FABEC Group
AGDL	Air-Ground Data Link
ANSP	Air Navigation Service Provider
ARTAS	ATM Surveillance (Radar) Tracker And Server
ASB	ANSP Strategic Board
ASM	Airspace Management
ATFCM	Air Traffic Flow and Capacity Management
CATS	Common ARTAS Track Server
CBA	Cost Benefit Analysis or Cross-Border Area
CBO	Cross-Border/FIR Boundary Operations
CDS	Common Data Services
CEO	Chief Executive Officer
CM	Chairman
CNS	Communication, Navigation and Surveillance
COM	Communication
CoMSAW	Common Minimum Safe Altitude Warning
CWT	Community Wide Targets
DoI	Declaration of Intent
EC	European Commission
EU	European Union
Eurocontrol	European Organization for the Safety of Air Navigation
FAB	Functional Airspace Block

FABEC	FAB Europe Central
FIN	Financial
FINE	FABEC IP Network
FIR	Flight Information Region
FPSG	FABEC Project Steering Group
FUA	Flexible Use of Airspace
HLIB	High-Level Implementation Board
HR	Human Resources
HSAD	Hot Spots and Airspace Design
IRL	Institutional – Regulatory – Legal
KPA	Key Performance Area
KPI	Key Performance Indicator
Md	Man Day
MilCG	Military Coordination Group
MoC	Memorandum of Cooperation
MSAW	Minimum Safe Altitude Warning (system)
NSA	National Supervisory Authority
NSAC	NSA Committee
OLDI	On-Line Data Interchange
OPS	Operational
PERF	Performance
PM	Project Manager or Performance Management
PMO	Project Management Office
PMP	Project Management Plan
PMS	Performance Management System
SA	States Agreement
SAF	Safety

SAG	Stakeholder Advisory Group
SC	Standing Committee
SD	Social Dialogue
SDC	Social Dialogue Committee
SES I + II	Single European Sky Regulation Packages
SESAR	SES Air Traffic Management Research
SMS	Safety Management System
SPR	SES Service Provision Regulation
SRAP	Safety Risk Assessment Process
SSB	States Strategic Board
SUR	Surveillance
TECH	Technical
TF	Task Force
ToR	Terms of Reference
TRG	Training
UIR	Upper Flight Information Region
VCS	Voice Communication System
WG	Working Group
WP	Work Plan