

**AGREEMENT
ON THE ESTABLISHMENT OF THE
DANUBE FUNCTIONAL AIRSPACE BLOCK
BETWEEN
ROMANIA AND THE REPUBLIC OF BULGARIA**

Preamble

Romania and the Republic of Bulgaria (hereinafter referred to as "the Parties"),

Desiring to conclude an Agreement in conformity with the Regulations on the single European sky of the European Parliament and the Council and the relevant implementing rules, for the purpose of establishing a Functional Airspace Block in the airspace under the responsibility of Romania and of the Republic of Bulgaria,

Considering the Memorandum of Understanding between the Ministry of Transport and Infrastructure of Romania and the Ministry of Transport, Information Technology and Communications of the Republic of Bulgaria on cooperation in air navigation services provision matters and on the establishment of a functional airspace block, comprising the national airspace of Romania, the national airspace of the Republic of Bulgaria and the airspace included in the scope of the international legal obligations of Romania and the Republic of Bulgaria, signed in Sofia on 26 February 2010,

Considering the Memorandum of Understanding on cooperation in air traffic management & air navigation services matters and on preparation for establishment and implementation of a functional airspace block – DANUBE FAB, between the Romanian Civil Aeronautical Authority (RCAA) and the Directorate General for Infrastructure and Air Transport, Ministry of Transport and Infrastructure of Romania (MTI/DGIAT) and the Directorate General "Civil Aviation Administration" of the Republic of Bulgaria, signed in Veliko Tarnovo on 19 October 2010,

Considering the Memorandum of Understanding between the Romanian Air Traffic Services Administration (ROMATSA) and the Bulgarian Air Traffic Services Authority (BULATSA) on cooperation in air navigation services provision matters and for the establishment of a functional airspace block, comprising the national airspace of Romania, the national airspace of the Republic of Bulgaria and the airspace included in the scope of the international legal obligations of Romania and the Republic of Bulgaria (DANUBE FAB), signed in Bucharest on 10 August 2010,

With a view to achieving optimum capacity, flight efficiency and cost efficiency of the air traffic management network in the airspace of Romania and of the Republic of Bulgaria respectively, while maintaining a high level of safety, regardless of existing national boundaries,

With a view to achieving a safety culture environment reflecting the concept of "Just Culture",

Convinced in the overall added value to be gained from the creation of the DANUBE FAB in terms of overall environmental protection and sustainable development,

Recognizing that an efficient air traffic management (ATM) / air navigation services (ANS) provision will enhance benefits for the stakeholders, and will therefore enhance economic growth,

Trusting that the close cooperation between the air navigation service providers will fulfil the needs of civil and military air traffic in this area,

Being Parties to the Convention on International Civil Aviation signed at Chicago on 7 December 1944, hereinafter referred to as the "Chicago Convention",

have agreed as follows:

CHAPTER I GENERAL PROVISIONS

ARTICLE 1 DEFINITIONS

Unless otherwise stated, the terms used in the Agreement shall have the same meaning attributed to them in the European Union legislation on the single European sky, currently in force, and in the Chicago Convention. In addition, the following definitions shall apply:

- a) "**Agreement**" shall mean the present Agreement and any amendment to it;
- b) "**DANUBE FAB**" shall mean the Functional Airspace Block established by the Parties under the Agreement;
- c) "**DANUBE FAB airspace**" shall mean the airspace comprising the airspace over the territory of Romania, the airspace over the territory of the Republic of Bulgaria and the airspace over those parts of the high seas where the Parties have accepted, pursuant to a regional agreement, the responsibility of providing air traffic services, referred to Bucharest FIR and Sofia FIR;
- d) "**Territory**" shall mean the land areas and territorial waters adjacent thereto under the sovereignty of Romania and, respectively, of the Republic of Bulgaria, according to international law;
- e) "**National Supervisory Authority (NSA)**" shall mean a body or bodies nominated by each Party as defined in Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) and its amendments;

- f) „**State authorities on transport and defence**” shall mean in the case of Romania – the Ministry of Transport and Infrastructure and the Ministry of National Defence, while in the case of the Republic of Bulgaria – the Ministry of Transport, Information Technology and Communications and the Ministry of Defence, or, in both cases, any person or body that may be authorised to perform any functions at present exercisable by the above-mentioned authorities or similar functions;
- g) “**cross-border sector**” shall mean a volume of airspace where cross-border services are provided as defined in the framework Regulation.
- h) “**State aircraft**” shall mean the aircraft defined in Article 3(b) of the Chicago Convention;
- i) “**EUROCONTROL**” shall mean the European Organisation for the Safety of Air Navigation;
- j) “**ICAO**” shall mean the International Civil Aviation Organisation;
- k) “**FIR**” shall mean an airspace of defined dimensions within which flight information service and alerting services are provided.

ARTICLE 2 SUBJECT AND APPLICABILITY OF THE AGREEMENT

2.1 By the Agreement the Parties are establishing the Functional Airspace Block DANUBE FAB.

2.2 The Agreement sets up the framework within which the Parties shall cooperate in the ATM/ANS provision to general air traffic within the DANUBE FAB airspace.

2.3 The Agreement shall apply to the DANUBE FAB airspace.

ARTICLE 3 SOVEREIGNTY

The Agreement shall be without prejudice to the Parties’ sovereignty as well as to their respective requirements relating to national defence and security matters as well as to international obligations pertaining to the maintenance of peace and international security.

ARTICLE 4 OBJECTIVE OF THE DANUBE FAB

The objective of the DANUBE FAB shall be to achieve optimal ATM/ANS provision in the areas relating to safety, environmental protection, sustainable development, capacity, cost-efficiency, civil–military cooperation.

ARTICLE 5 MAIN AREAS OF COOPERATION

To achieve the objective of the DANUBE FAB the Parties shall commit to cooperate and undertake the appropriate measures, in particular in the following domains:

- a) safety;
- b) airspace;
- c) harmonisation of rules and procedures as regards air traffic management and provision of air navigation services;
- d) provision of air navigation services;
- e) charging of air navigation services;
- f) ATM/ANS supervision;
- g) performance;
- h) search and rescue;
- i) accident and incident investigation;
- j) consultation of air navigation service providers (ANSPs) and all relevant stakeholders;
- k) civil-military cooperation;
- l) ATM/ANS contingency.

ARTICLE 6 DANUBE FAB SAFETY

6.1 In order to maintain a high and uniform level of safety within the DANUBE FAB, the Parties shall commit to cooperate and take the appropriate measures to ensure that the DANUBE FAB will be established and managed safely, in accordance with the relevant legal and safety requirements.

6.2 In particular the Parties shall jointly ensure:

- a) the development and establishment of a common safety policy, with due consideration to all relevant lines of responsibility and accountability for safety in the DANUBE FAB;
- b) the improvement of safety occurrence reporting and enhancement of an open reporting /Just Culture environment;
- c) the exchange of information concerning reported safety occurrences, safety data collection, investigation and analysis, harmonisation of safety occurrences severity assessment, integration and dissemination of safety data at European level;
- d) continuous safety oversight / survey and monitoring processes carried out at NSA / ANSP level in order to avoid degradation in safety performance within the DANUBE FAB;

- e) safety assessment, including hazard identification, risk assessment and mitigation concerning changes related to the DANUBE FAB establishment and modifications regarding ATM/ANS within the DANUBE FAB, before their implementation;
- f) setting-up of safety targets;
- g) development of a DANUBE FAB Safety Case.

ARTICLE 7 DANUBE FAB AIRSPACE

7.1 The Parties shall jointly ensure the design and the management of a seamless airspace, as well as coordinated air traffic flow and capacity management, taking due account of collaborative processes at the international level regardless of existing national boundaries.

7.2 The Parties shall ensure in particular:

- a) the development of a common airspace policy, in close cooperation between civil and military authorities;
- b) the examination of modifications concerning the airspace concerned affecting the performance at the DANUBE FAB level;
- c) coordination with the Network Manager;
- d) consultation of the airspace users, jointly if necessary;
- e) coordinated establishment of cross-border airspace.

ARTICLE 8 HARMONISATION OF RULES AND PROCEDURES

8.1 The Parties shall undertake to harmonise their relevant national rules and procedures for general air traffic and civil-military coordination within the DANUBE FAB.

8.2 The State authorities on transport and defence of the Parties and respectively, their national supervisory authorities, shall establish a consultation mechanism for regular identification and elimination of differences amongst those rules and regulations having an impact on the DANUBE FAB.

CHAPTER II DANUBE FAB GOVERNANCE

ARTICLE 9 DANUBE FAB GOVERNING BODIES

- 9.1 The governing bodies of the DANUBE FAB shall be the:
- a) Governing Council;
 - b) NSA Board;
 - c) ANSP Board.
- 9.2 None of the DANUBE FAB governing bodies shall have a legal personality.
- 9.3 In order to fulfil their tasks, the bodies referred to in Article 9.1 may set up specialized Standing Committees or other supporting bodies, in accordance with their respective Rules of Procedure.
- 9.4 The Standing Committees and the supporting bodies shall be composed, as the case may be, of experts nominated by the State authorities of the Parties, the NSAs and the ANSPs.

ARTICLE 10 DANUBE FAB GOVERNING COUNCIL

- 10.1 The DANUBE FAB Governing Council shall be composed of:
- a) one high level representative of the State authority on transport for each Party, duly mandated by the respective authority;
 - b) one representative of the authority responsible for military aviation for each Party, duly mandated by the respective authority;
 - c) the Heads of the NSAs of the Parties;
 - d) the Heads of the ANSPs of the Parties.
- 10.2 The State authorities on transport and defence of each Party may also nominate other representatives to participate in the DANUBE FAB Governing Council with consultative and advisory functions.
- 10.3 The DANUBE FAB Governing Council shall meet regularly but not less than twice in a calendar year.
- 10.4 The DANUBE FAB Governing Council shall adopt the Rules of Procedure for its work and the Terms of Reference of its respective Standing Committees.

10.5 The DANUBE FAB Governing Council shall, inter alia:

- a) Adopt and propose for endorsement by the State authorities on transport and defence the DANUBE FAB Strategic Program covering a minimum period of five years;
- b) Adopt and propose for endorsement by the State authorities on transport and defence the DANUBE FAB Annual Plan which shall detail the features of the DANUBE FAB Strategic Program and describe any modifications to it;
- c) Adopt and propose for endorsement by the State authorities on transport the DANUBE FAB Annual Report;
- d) Approve the DANUBE FAB common safety policy proposed by the ANSP Board and endorsed by the NSA Board;
- e) Approve the DANUBE FAB Safety Case proposed by the ANSP Board and endorsed by the NSA Board;
- f) Manage the process of modification of the DANUBE FAB in accordance with the Chapter X of the Agreement;
- g) Propose enforcement of measures in the cases covered by the Agreement;
- h) Facilitate civil-military cooperation within the DANUBE FAB;
- i) Facilitate the harmonization of relevant national rules and procedures for general air traffic and civil-military coordination within the DANUBE FAB;
- j) Analyse and approve the DANUBE FAB common charging policies as proposed by the ANSP Board and after consultation with the NSA Board;
- k) Facilitate communication and consultation between the Parties and assist the Parties in the performance of their obligations under Article 10 of the framework Regulation with regard to consultation of stakeholders;
- l) Monitor the application and propose amendments to the Agreement;
- m) Coordinate, upon request of the Parties, their positions with regard to the application of civil aviation-related international agreements and in their relations with the International Civil Aviation Organization, EUROCONTROL, the European Commission, the European Aviation Safety Agency and joint undertakings in the field of air traffic management;
- n) Adopt decisions on the establishment of cross-border sectors;
- o) Adopt and propose for endorsement by the State authorities on transport and defence, the strategic level decision on the DANUBE FAB airspace policy;
- p) Adopt and propose for endorsement by the State authorities on transport, the DANUBE FAB Performance Plan if proposed by the NSA Board.

10.6 The DANUBE FAB Governing Council may perform, in accordance with its Rules of Procedure, any other task in connection with the management of the DANUBE FAB.

10.7 The decisions of the DANUBE FAB Governing Council shall be taken unanimously, with each Party having a single vote.

10.8 Unless specifically agreed otherwise, the decisions of the DANUBE FAB Governing Council shall be binding on the Parties.

10.8.1 Should the Danube FAB Governing Council fail to reach unanimity upon a certain issue, the Council shall bring the issue for decision to the State authorities on transport and defence of the Parties.

10.8.2 The decisions of the State authorities on transport and defence shall be binding on the DANUBE FAB Governing Council.

10.8.3 Should the State authorities on transport and defence fail to reach a decision on the issue raised in accordance with Article 10.8.1, the provisions of Article 35 may be applied.

10.9 The DANUBE FAB Governing Council is the principal representing body of the DANUBE FAB. It represents the DANUBE FAB in relation to third parties, other Functional Airspace Blocks and in all cases where such representation or coordination at functional airspace block level is needed.

ARTICLE 11

DANUBE FAB NSA BOARD

11.1 The NSA Board shall be composed of the heads of the National Supervisory Authorities of Romania and the Republic of Bulgaria as well as by representatives nominated by them.

11.2 Representatives of national authorities and of the air navigation service providers / relevant stakeholders may be invited, as necessary, to attend the NSA Board meetings as observers.

11.3 The NSA Board shall adopt the Rules of Procedure for its work and the Terms of Reference and notify accordingly the DANUBE FAB Governing Council.

11.4 The NSA Board shall perform inter alia the following tasks:

- a) provide formal coordination and an interface forum between the NSAs involved in the ongoing compliance of the ANSPs and related matters as well as in the fulfilment of tasks related to the DANUBE FAB;
- b) assess and endorse the DANUBE FAB common safety policy and submit it to the DANUBE FAB Governing Council for approval;
- c) assess and endorse the DANUBE FAB Safety Case and submit it to the DANUBE FAB Governing Council for approval;
- d) establish a consultation mechanism for regular identification and elimination of differences amongst rules and regulations which have an impact on the DANUBE FAB;

- e) monitor the process of achieving convergence and a harmonized approach for the certification and on-going oversight of ANSPs and air traffic controllers training organizations;
- f) monitor the correct application of the processes related to safety assessment;
- g) monitor the process of achieving convergence and harmonization of the safety management systems of the designated ANSPs and support the creation of a common safety regulatory regime;
- h) ensure a uniform approach to the interpretation and application of international requirements, originating from ICAO, the European Union, EUROCONTROL or other authoritative agencies;
- i) establish a consultation mechanism for harmonisation and minimization of inconsistencies in ICAO differences filed by the Parties, including the ICAO Regional Air Navigation Plan and other agreements;
- j) ensure harmonised handling of cases involving non-compliance with the applicable common requirements;
- k) ensure, wherever possible, that in the course of preparation for international meetings associated with FAB issues, including the further development of a regional performance scheme, where the NSAs act on behalf of their States, a common line is agreed, so that the needs of the States involved are adequately represented;
- l) preparation of the Annual Plan and the Reports on the implementation of the SES legislation, in accordance with the European Union reporting requirements.

11.5 The NSA Board shall be co-chaired by the heads of the National Supervisory Authorities of Romania and the Republic of Bulgaria or by officials designated by them.

11.6 For the performance of its tasks the NSA Board shall issue decisions, reports and opinions, approved unanimously, with each Party having a single vote.

11.6.1 The decisions of the NSA Board shall be considered as decisions of the Directors General of the NSAs, having a binding character.

11.6.2 Within their competence, the NSAs of the Parties shall ensure the implementation of the NSA Board decisions.

11.7 If the NSA Board fails to reach consensus upon a certain issue, the Board will bring the issue to the competent State authorities on transport for assessment and recommendations.

11.8 The decisions of the NSA Board shall be taken in an impartial, objective and transparent manner and shall be without prejudice to the rights and obligations of the NSAs at national level.

ARTICLE 12

DANUBE FAB ANSP BOARD

12.1 In order to achieve the objective of the Agreement with regard to the provision of air navigation services, the air navigation service providers of the Parties shall establish the ANSP Board.

12.2 The ANSP Board shall be composed of representatives of civil air navigation service providers from the Parties. Representatives of the State authorities on transport and defence and of the NSAs may be invited, as necessary, to attend the ANSP Board meetings as observers.

12.3 The ANSP Board shall adopt its own Rules of Procedure for its work and notify accordingly the DANUBE FAB Governing Council.

12.4. The ANSP Board shall be co-chaired by the heads of the designated civil air navigation service providers.

12.5 The ANSP Board shall perform inter alia the following tasks:

- a) Ensure the cooperation between the ANSPs for the provision of air navigation services;
- b) Develop the DANUBE FAB common safety policy and propose it for assessment and endorsement to the NSA Board;
- c) Develop the DANUBE FAB Safety Case and propose it for assessment and endorsement to the NSA Board;
- d) Propose, upon endorsement by the NSA Board, the establishment of cross-border sector(s) to the Governing Council for decision;
- e) Adopt and propose to the DANUBE FAB Governing Council for approval the DANUBE FAB common charging policies after consultation with the NSA Board;
- f) Inform the DANUBE FAB Governing Council upon amendments to the ANSP Cooperation Agreement;
- g) Provide strategic guidance for the development of common systems and the deployment of cost-efficient infrastructure for the provision of communication, navigation and surveillance services;
- h) Approve the measures for achieving optimum airspace utilization proposed by the respective ANSP(s);
- i) Decide on the joint application of enforced recovery measures against aircraft operators or aircraft owners who have not paid the due charges for air navigation services rendered in the DANUBE FAB airspace.

12.6 For the performance of its tasks the ANSP Board shall issue decisions, reports and opinions, as the case may be, approved unanimously, with each Party having a single vote.

12.6.1 Unless specifically agreed otherwise, the decisions of the ANSP Board shall be binding on the ANSPs of the Parties.

12.6.2 Within their competence, the ANSPs of the Parties shall ensure the implementation of the ANSP Board decisions.

12.7 If the ANSP Board fails to reach consensus upon a certain issue, the Board will bring the issue to the competent State authorities on transport for assessment and recommendations.

12.8 The decisions of the ANSP Board shall be taken in an impartial, objective and transparent manner and shall be without prejudice to the rights and obligations of the ANSPs at national level.

CHAPTER III SERVICE PROVISION

ARTICLE 13 DANUBE FAB AIR NAVIGATION SERVICES PROVISION

13.1 The Parties shall ensure the provision of the following air navigation services within the DANUBE FAB:

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

13.2 The Parties shall ensure that the air navigation services in the DANUBE FAB airspace are provided by certified and/or designated ANSPs in accordance with the relevant national and international rules and procedures.

ARTICLE 14 ANSP COOPERATION AGREEMENT

14.1 The ANSPs of the Parties shall commit to the fullest extent possible to achieving the objectives of the Agreement.

14.2 The ANSPs shall conclude a Cooperation Agreement (ANSP Cooperation Agreement) for all cooperation issues.

14.3 The ANSP Cooperation Agreement and any amendments to it shall be approved by a decision of the ANSP Board. The DANUBE FAB Governing Council and the NSA Board will be appropriately informed.

14.4 The Agreement or the measures adopted hereunder shall not prejudice or limit the ANSPs providing services in the DANUBE FAB to engage in further cooperation.

ARTICLE 15 AIR TRAFFIC SERVICES

The designated air traffic service providers shall cooperate within the ANSP Board in order to ensure the achievement of the objectives of the Agreement.

ARTICLE 16 COMMUNICATION, NAVIGATION AND SURVEILLANCE SERVICES

The Parties shall work within the ANSP Board towards common systems and the deployment of cost-efficient infrastructure for the provision of communication, navigation and surveillance services by the civil air navigation service providers.

ARTICLE 17 AERONAUTICAL INFORMATION SERVICES AND AERONAUTICAL INFORMATION MANAGEMENT

The Parties shall coordinate, within the ANSP Board, the provision of aeronautical information services and aeronautical information management.

ARTICLE 18 METEOROLOGICAL SERVICES

18.1 Each Party, represented by its State authority on transport, shall designate the provider(s) of meteorological services in the airspace under its responsibility and notify the DANUBE FAB Governing Council accordingly.

18.2 The designated providers of meteorological services shall cooperate, within the ANSP Board, aiming at harmonization of the services based on best practices and adherence to the international standards in the domain, increased efficiency and high performance.

ARTICLE 19 JOINT DESIGNATION

19.1 The Agreement shall be without prejudice to the right of each Party, represented by the State authorities on transport, to designate, repeal or amend the designation of one or more air traffic service providers for air traffic services provision in the airspace under the responsibility of the respective Party.

19.2 Each Party shall notify the DANUBE FAB Governing Council and also the other Party with regard to any designation, repeal or amendment of designation of an air traffic service provider for air traffic services provision in the airspace under its responsibility. This notification shall include:

- a) information on the legal status of the designated air traffic service provider;
- b) the certification status of the designated air traffic service provider;
- c) the rights and obligations of the designated air traffic service provider at national level;
- d) any other conditions attached to the designation.

19.3 After any notification in accordance with Article 19.2 the Parties, represented by their State authorities on transport, shall issue the joint designation act. The joint designation act, including the conditions attached to the designation, shall be notified in accordance with the European Union legislation on the single European sky and also to the Governing Council.

19.4 The procedure under this Article shall apply in all cases of change in the designation status of a jointly designated air traffic service provider and in cases of joint designation of an air traffic service provider in a cross-border sector.

ARTICLE 20

CROSS-BORDER AIR NAVIGATION SERVICES PROVISION

20.1 Based on operational needs, the ANSP Board may propose to the Governing Council, after endorsement by the NSA Board, the establishment of cross-border sectors within the DANUBE FAB airspace. The decision of the DANUBE FAB Governing Council shall apply upon the approval by each Party following the respective national rules and procedures.

20.2 The ANSP Cooperation Agreement shall contain all the appropriate arrangements between the certified air navigation service providers concerned for the provision of air navigation services in the established cross-border sector(s).

20.3 In the cross-border sector(s) established in accordance with Article 20.1, the air navigation services shall be provided based on specific written arrangements concluded between the certified air navigation service providers and endorsed by the NSA Board.

20.4 The cross-border sector(s) shall be established by the signature of the joint designation act(s) provided for in Article 19.3.

20.5 The NSA Cooperation Agreement shall contain all the appropriate arrangements between the NSAs concerned for the supervision of ANS provided in the established cross-border sectors.

CHAPTER IV OTHER AREAS OF COOPERATION

ARTICLE 21 JOINT UNDERTAKINGS

21.1 For enhancing cooperation and the efficiency of the provided services the designated ANSPs may establish entities with or without legal personality. No third parties can acquire shares or stock, or assets in the jointly established entities.

21.2 The establishment of entities referred to in Article 21.1 shall be carried out in accordance with the national legislation of each Party, after approval by the DANUBE FAB Governing Council, at the proposal of the ANSP Board.

21.3 The Parties may provide state property to the entities under Article 21.1.

ARTICLE 22 JOINT PROCUREMENT

22.1. With the intention of enhancing cooperation and improving further the capacity and efficiency of the DANUBE FAB the designated ANSPs may conduct joint procurement.

22.2 For the purpose of conducting joint procurement the DANUBE FAB designated ANSPs may select and apply any of the national public procurement regimes.

22.3. The ANSP whose national procurement law is applied shall be considered the Contracting Authority. The ANSPs shall enjoy equal rights and obligations during the development of the joint procurement.

CHAPTER V SUPERVISION

ARTICLE 23 NSA COOPERATION

23.1. The National Supervisory Authorities of the Parties shall cooperate on ATM/ANS related supervision issues and on the harmonization of specific applicable rules and procedures within the DANUBE FAB.

23.2 In order to fulfil their obligation referred to in Article 23.1; the NSAs of the Parties shall conclude a NSA Cooperation Agreement.

23.3 The NSA Cooperation Agreement and any amendments to it shall be approved by the NSA Board. The DANUBE FAB Governing Council and the ANSP Board shall be appropriately notified.

ARTICLE 24 GENERAL PRINCIPLES FOR SUPERVISION

24.1 Each NSA shall certify the ANSP(s) having its principal place of business and, if any, its registered office on the territory of the State nominating the certifying NSA.

24.2 The certificates issued in accordance with the applicable European Union legislation, without derogation, shall be mutually recognized.

24.3 The results of safety oversight activities in respect to the certified ANSPs shall be notified to the State authorities on transport of the Parties.

24.4 In the case of ANS being provided in a cross-border sector, the supervision of the ANSP providing services in that airspace shall be ensured by the certifying NSA. The NSA Agreement shall establish the requirements to share all necessary data needed to ensure that all NSAs concerned are able to fully carry out their oversight responsibilities related to such cross-border service provision.

24.5 The NSA Cooperation Agreement shall include, inter alia, provisions regarding the handling of non-compliance with the applicable requirements and with the conditions set out in Annex II to Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation).

24.6 Each ANSP providing cross-border services shall submit to its certifying NSA all the required documentation both in the national language and in English.

CHAPTER VI PERFORMANCE

ARTICLE 25 PERFORMANCE

25.1 The NSA Board may propose the application of performance plans at either national or DANUBE FAB level in accordance with the European Union legislation.

25.2 The NSA Board shall coordinate the development of the performance plans and shall ensure the appropriate relations with the European Commission on the matters related to the implementation of the performance plan(s).

25.3 The NSA Board shall perform regular reviews of the implementation of the DANUBE FAB performance plan as adopted by the DANUBE FAB Governing Council and shall propose the application of corrective measures as necessary.

CHAPTER VII CHARGING PRINCIPLES

ARTICLE 26 PRINCIPLES FOR CHARGING OF AIR NAVIGATION SERVICES

26.1. The Parties shall develop and apply common principles governing the charging policy in the DANUBE FAB, taking into account the European Union legislation currently in force.

26.2 The Parties shall establish the en-route charging zones in the airspace of the DANUBE FAB at the proposal of the DANUBE FAB Governing Council.

26.3 The DANUBE FAB Governing Council shall ensure that the relevant stakeholders are consulted on a regular basis on the charging policy within each en-route charging zone.

26.4. The DANUBE FAB charging policy shall be established on the basis of Harmonized Charging Rules adopted by the DANUBE FAB Governing Council.

26.5 The DANUBE FAB Harmonized Charging Rules shall apply to all en-route charging zones within the DANUBE FAB Airspace.

26.6. The ANSP Board may propose the introduction and the application of a single en-route unit rate in the DANUBE FAB and the establishment of a single en-route charging zone in the DANUBE FAB airspace.

26.7. The proposal for the introduction of an en-route single unit rate in the DANUBE FAB and the establishment of a single en-route charging zone in the DANUBE FAB airspace shall be submitted, following a decision by the ANSP Board, for consultations with the airspace users and other stakeholders.

26.8. After the consultations referred to in Article 26.7, the proposal regarding the introduction of an en-route single unit rate in the DANUBE FAB and the establishment of a single en-route charging zone in the airspace concerned shall be submitted for approval to the DANUBE FAB Governing Council.

26.9. The Parties, represented by the State authorities on transport, shall jointly inform the European Commission about any decision taken in accordance with Article 26.8.

26.10. The ANSP Board shall in particular:

- a) develop and propose the appropriate arrangements to ensure consistency and uniformity in the application of charging rules and regulation(s);
- b) ensure joint coordination with EUROCONTROL and consultation with airspace users according to the European Union legislation.

26.11 The DANUBE FAB Governing Council shall in particular:

- a) ensure the execution of the necessary obligations associated with a DANUBE FAB Charging Zone, including submission of the appropriate information to the European Commission;
- b) develop and propose the appropriate arrangements to ensure consistency and uniformity in the application of charging rules and regulation(s);

26.12.1 The Parties to the Agreement may jointly refuse the provision of air navigation services to aircraft operated or owned by users who have not paid the due charges for ANS provided in the DANUBE FAB airspace.

26.12.2 The joint application of the enforced recovery measures under Article 26.12.1 shall be approved by the ANSP Board upon request by any of the ANSPs. The ANSPs concerned shall notify the ANSP Board decision to the respective State authorities on transport, EUROCONTROL and the debtor.

26.12.3 Unless another decision on the matter is taken, the joint enforced recovery measure under Article 26.12.1 shall remain in force until the respective debt is paid in full.

CHAPTER VIII

FLEXIBLE USE OF AIRSPACE AND CIVIL-MILITARY COOPERATION

ARTICLE 27

FLEXIBLE USE OF AIRSPACE

27.1. The Parties shall establish a legal framework of cooperation at operational and technical level for the efficient and consistent application of the flexible use of airspace concept, taking into account both civil and military requirements.

27.2. Pursuant to Article 27.1 the Parties shall ensure that agreements and harmonized procedures are set up between civil air traffic service providers and the respective military authorities.

27.3. The Parties shall ensure that coordination between civil and military authorities is organized at strategic, pre-tactical and tactical levels.

27.4. With due regard to the flexible use of airspace principles and in accordance with national existing arrangements and applicable international agreements, the Parties shall conclude, where and when appropriate, written arrangements to enable military training activities in the airspace concerned regardless of existing national-boundaries.

ARTICLE 28
CIVIL-MILITARY COOPERATION

28.1. Each Party shall ensure priority and unrestricted airspace access for air defence flights conducting air policing missions within the airspace concerned.

28.2. The Parties shall ensure harmonized relevant civil and military arrangements are in place to facilitate civil-military cooperation for military training activities and air defence flights conducting air policing missions.

28.3. The Parties shall establish a simplified procedure for diplomatic clearance or special permission for military training activities within the airspace concerned.

CHAPTER IX
INCIDENT AND ACCIDENT INVESTIGATION,
ALERTING SERVICE AND SEARCH AND RESCUE COOPERATION

ARTICLE 29
ACCIDENT AND INCIDENT INVESTIGATION

29.1 In the case of accidents or serious incidents according to the Chicago Convention and relevant European Union legislation occurring in the airspace over the territory or under the responsibility of one Party (hereinafter referred to as the Party of occurrence) and controlled by an ANSP whose principal place of operations is/are not located on the territory of the Party of occurrence (hereinafter referred to as the effective ANSP), the Party of the effective ANSP shall notify without delay the competent authorities of the Party of occurrence by the most suitable and quickest means. The notification shall have at least the same content as the notification stipulated in Annex 13 to the Chicago Convention.

29.2 The Party of occurrence shall conduct the investigation according to Annex 13 of the Chicago Convention and the relevant European Union legislation. The Party of the effective ANSP shall facilitate, in accordance with its national laws and regulations, the access of the competent authorities of the Party conducting the investigation to the premises, facilities and materials of the effective ANSP. The information provided shall be used only for the purpose for which it was given.

29.3 The Party of the effective ANSP shall be entitled to appoint an accredited representative and advisors with rights in accordance with the provisions of Annex 13 to the Chicago Convention and the relevant European Union legislation.

29.4 The competent authorities of the Party conducting the investigation shall provide the competent authorities of the Party of the effective ANSP with the draft final investigation report for comments. When requesting comments the Party conducting the investigation shall follow the international standards and recommended practices laid down in Annex 13 to the Chicago Convention.

29.5 The competent authorities of the Party conducting the investigation shall provide the competent authorities of the Party of the effective ANSP with the final investigation report based on the provisions of Annex 13 to the Chicago Convention and the relevant European Union legislation in force.

29.6 If the Party conducting the investigation identifies shortcomings at DANUBE FAB level, it shall immediately inform the DANUBE FAB Governing Council thereof.

29.7 The communications, notifications and reports shall be in English.

29.8 To safety recommendations, arising from safety investigations and related to the DANUBE FAB, all the provisions of Annex 13 to the Chicago Convention and of the relevant European Union legislation in force shall be applied. The responsibility for monitoring the implementation of safety recommendations at the DANUBE FAB level lies with the NSA Board.

ARTICLE 30 SEARCH AND RESCUE

The Parties shall establish a close cooperation between their national SAR Coordination Centres, in accordance with the specific requirements of the Chicago Convention.

CHAPTER X MODIFICATION OF THE DANUBE FAB

ARTICLE 31 ACCESSION OF THIRD COUNTRIES TO THE DANUBE FAB

31.1 The DANUBE FAB is open for accession to any third country. The application for accession shall be addressed to the DANUBE FAB Governing Council.

31.2 The accession shall be carried out in compliance with the general provisions for DANUBE FAB modification.

31.3 Unless the Parties agree otherwise, the applicant shall bear all costs for fulfilling the prerequisites of the European Union legislation.

31.4 The negotiations for accession of a third country shall be carried out by the competent authorities of the Parties.

ARTICLE 32 GENERAL MODIFICATION PROVISIONS

32.1 The DANUBE FAB shall be modified by amendment of the horizontal and vertical dimensions of the airspace by the Parties resulting from the accession of third Parties to the Agreement.

32.2 Any modification of the DANUBE FAB shall be carried out by amendment of the Agreement and in conformity with the principles laid down in the European Union legislation.

32.3 Any modification of the DANUBE FAB shall go through a transitional period agreed between the Parties. In any case the transitional period shall not be less than 6 months after the entry into force of the amendment to the Agreement.

32.4 The transition shall be carried out following a phased approach. The transition phases shall be determined and endorsed by the DANUBE FAB Governing Council. The modification transition shall not compromise the safety and continuity of the DANUBE FAB operations and shall entail minimum impact on all necessary FAB arrangements.

32.5 The DANUBE FAB Governing Council shall closely monitor all DANUBE FAB operations during the transition period. Should any negative impact of the modification on the safety and continuity of the DANUBE FAB operation be observed, the DANUBE FAB Governing Council shall decide on the suspension of the transitional period and on the appropriate corrective measures.

32.6 The modification of the DANUBE FAB shall become effective on the day following the expiration of the transitional period.

ARTICLE 33 SUSPENSION

33.1 Each Party shall have the right to unilaterally suspend the application of the Agreement, partially or as a whole, in any case related to safeguarding the essential public order, national security and national defence.

33.2 The application of the Agreement by a Party may also be suspended in the following cases:

- a) war;
- b) revolution or uprising;
- c) acts of terror jeopardizing the safety of air transport;
- d) natural disasters jeopardizing the safety of air transport.

33.3 The suspending Party shall immediately notify the other Party by diplomatic channel. In such a case the Parties shall endeavour to conclude specific temporary arrangements taking into consideration the contingency plans referred to in Article 33.7.

33.4 The Party which had suspended the application of the Agreement shall bear the costs resulting from the suspension. It shall endeavour to terminate the suspension as soon as practicable.

33.5 The suspending Party shall notify the other Party immediately once the reasons for suspension have ceased to exist.

33.6 The Governing Council shall issue a decision regarding the termination of suspension as per Article 37.5. Unless transitional measures are envisaged by the decision, the termination shall have immediate effect.

33.7 Each Party shall develop contingency plans in order to ensure the continuity of the air navigation services provision in its airspace in case of suspension or termination of the Agreement.

CHAPTER XI OTHER PROVISIONS

ARTICLE 34 SECONDMENT OF STAFF

34.1 The NSAs or the ANSPs respectively, of one of the Parties may temporarily second employees, following their written consent, to its counterpart, for the purpose of performing work in certain activities or projects of common interest, in relation with FAB matters.

34.2 For the period of the secondment the seconded employee shall preserve its position and its employment contract with the seconding employer.

34.3 For the period of the secondment the seconded employee shall be subject to the interests of the entity or body the employee is seconded to and shall not perform work for his main employer. The body or entity, to which the secondment was ordered, shall compensate the seconded employee for the work performed during the period of secondment as per the Rules of Secondment referred to in Article 34.5.

34.4 The secondment may be terminated at any time if the interest of the seconding employer so requires or for duly justified reasons. After the expiration of the secondment period as well as in the cases of preliminary termination of the secondment the employee shall be reinstated to its original position within a term of 15 days. If the original position is terminated the seconded employee shall be reinstated to another equal position.

34.5 The ANSP and NSA Board will develop, as the case may be, Rules of Secondment within the timeframe set out by the Agreement.

**ARTICLE 35
SETTLEMENT OF DISPUTES**

35.1 Any dispute arising between the Parties relating to the interpretation, application or performance of the Agreement, including its existence, validity or termination, shall be initially referred to the DANUBE FAB Governing Council.

35.2 If the Parties fail to reach an amicable resolution of the dispute with the assistance of the DANUBE FAB Governing Council or by any other means within a period of six months, either Party may submit the dispute for final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States of the said Court, as in effect on the date of the Agreement.

35.3 The language to be used in the arbitral proceedings shall be English.

35.4 The appointing authority shall be the Secretary General of the Permanent Court of Arbitration.

35.5 The place of arbitration shall be The Hague.

35.6 The decisions of the Permanent Court of Arbitration shall be binding on the Parties to the dispute.

35.7 For the purpose of interpretation and application of the Agreement, should any discrepancy or major terminological difference occur between the European Union legislation and the ICAO legislation or other documents, the provisions of the European Union legislation shall prevail.

**ARTICLE 36
AMENDMENT OF THE AGREEMENT**

36.1 The DANUBE FAB Governing Council and any of the Parties may propose amendments to the Agreement.

36.2 All amendments shall come into force on the day of receipt by diplomatic note of the last written notification confirming that the Parties have fulfilled all the respective internal procedures required for the entry into force.

**ARTICLE 37
TERMINATION**

37.1 Each Party may at any time give notice in writing to the other Party of its decision to terminate the Agreement. Such notice shall be simultaneously communicated to the DANUBE FAB Governing Council, the ICAO and the European Commission.

37.2 The Agreement shall terminate one year after the date of receipt of the notice by the other Party, unless the notice is withdrawn by agreement before the end of this period. In the absence of acknowledgement of receipt by the other Party, the notice shall be deemed to have been received 14 (fourteen) days after receipt of the notice by the ICAO.

37.3 The Parties shall jointly determine and allocate the costs resulting from the termination of the Agreement.

37.4 The financial consequences resulting from the termination shall be determined in a special agreement concluded between the Parties. A Party's right of termination shall remain unaffected.

37.5 The DANUBE FAB Governing Council shall decide on the appropriate transitional measures necessary to ensure that the FAB operations continue unaffected.

ARTICLE 38 REGISTRATION

The Agreement and any subsequent amendments thereto shall be submitted by the Parties to the ICAO.

ARTICLE 39 COMMUNICATION

All communications and documents exchanged between the Parties in relation with the DANUBE FAB shall be in English.

ARTICLE 40 ENTRY INTO FORCE AND TERM OF APPLICABILITY

40.1 The Agreement shall enter into force on the day of receipt by diplomatic note of the last written notification confirming that the Parties have fulfilled all the respective internal procedures required for the entry into force of the Agreement.

40.2 The Agreement shall not be time-restricted.

CHAPTER XII TRANSITIONAL PROVISIONS

Unless a specific term is provided in the Agreement, all Rules of Procedure or other documents envisaged herein shall be adopted by the competent bodies not later than sixty days following the entry into force of the Agreement.

IN WITNESS WHEREOF the undersigned being duly authorized thereto, have signed the Agreement.

Done on in , in duplicate in Romanian, Bulgarian and English languages, all texts being equally authentic. In the event of any divergence of interpretation, the English text shall prevail.

**FOR
ROMANIA**



**FOR
THE REPUBLIC OF BULGARIA**

