

K oznámeniu č. 144/2012 Z. z.

AGREEMENT ON THE ESTABLISHMENT OF FUNCTIONAL AIRSPACE BLOCK CENTRAL EUROPE

THE REPUBLIC OF AUSTRIA,
BOSNIA AND HERZEGOVINA,
THE REPUBLIC OF CROATIA,
THE CZECH REPUBLIC,
THE REPUBLIC OF HUNGARY,
THE SLOVAK REPUBLIC,
THE REPUBLIC OF SLOVENIA,
hereinafter called “the Contracting States”,

Preamble

HAVING REGARD that the Single European Sky (SES) initiative was launched in order to enhance current air traffic safety standards, to contribute to the sustainable development of the air transport system and to improve the overall performance of air traffic management and air navigation services for general air traffic in Europe, with a view to meeting the requirements of all airspace users;

WHEREAS the SES objectives are to be inter alia implemented through functional airspace blocks based on operational requirements and established regardless of State boundaries, with the air navigation services being performance-driven and optimised with a view to introducing enhanced cooperation among air navigation service providers;

ACKNOWLEDGING that the Central Europe airspace is of significant importance in the European air traffic management and any improvements achieved in its design, management or in the provision of air navigation services will contribute to a better flow of traffic not only in Central Europe;

DESIRING not to limit implementation of the SES to EU Member States only and to support its application to countries which are not members of the European Union;

RECOGNIZING that the conclusion of an Agreement regarding the establishment and implementation of a Functional Airspace Block shall not prejudice the principle that every State has complete and exclusive sovereignty over the airspace above its territory or the capacity of every State to exercise its prerogatives with regard to security and defence in its national airspace;

RECOGNISING that the national supervisory authority (NSA) of each Contracting State shall establish appropriate arrangements for a close cooperation with each other to ensure an adequate

supervision of air navigation service providers that hold a valid certificate and that provide air navigation services in the airspace that falls under the responsibility of Contracting States;

RECOGNISING each Contracting State’s discretion in delineating the scope of airspace and in determining air navigation services to be covered under this Agreement;

EXPRESSING their will to cooperate in the implementation of the SES so that its objectives can be achieved and airspace users may benefit from its implementation;

RESPECTING the conditions stemming from regional agreements concluded with the International Civil Aviation Organization (ICAO) and respecting regional agreements in existence on the date of entry into force of the Service Provision Regulation;

AIMING at the creation of the legal and institutional basis for a Functional Airspace Block Central Europe (FAB CE) to be established between the Contracting States;

RESPECTING that the FAB CE establishment is without prejudice to the flight information regions (FIRs) as recognized by the ICAO and that the Contracting States will retain the responsibilities towards the ICAO within the geographical limits of the FIRs entrusted to them by ICAO;

hereby agree as follows:

Article 1

Definitions

1. For the purposes of this Agreement, unless stated otherwise, the term;
 - (a) “FAB CE airspace” means the airspace encompassing the applicable airspace of each Contracting State;
 - (b) “FAB CE service” means any air navigation service as determined by Contracting States in Annex 2 to this Agreement to be provided with regard to their applicable airspace and not subject to any reservation in line with Article 20(l)(b);
 - (c) “applicable airspace” means, with respect to each Contracting State, the airspace under the Contracting State’s responsibility and determined by such Contracting State in Annex 1 to this Agreement and not subject to any reservation in line with Article 20(1)(a);

- (d) “certifying NSA” means, with respect to a particular air navigation service provider (ANSP), the national supervisory authority (NSA) nominated or established by any Contracting State that has certified that ANSP;
- (e) “territorial NSA” means, with respect to a particular portion of airspace, the NSA nominated or established by the Contracting State having responsibility over that portion of airspace;
- (f) “decisive date” means 30 June 2012 or the date of the entry into force of this Agreement, whichever is later.

2. Unless stated otherwise or the context otherwise requires, other terms and expressions used in this Agreement shall be construed in accordance with their use and interpretation in the relevant legislation adopted on the basis of the Treaty on the Functioning of the European Union and on the basis of the Convention on International Civil Aviation.

Article 2

Objective

The objective of this Agreement is to establish a functional airspace block, set forth rules and procedures for its implementation, operation and further development in order to achieve compliance with the SES and set up relevant governance and management structures.

Article 3

Sovereignty

1. This Agreement shall be without prejudice to the complete and exclusive sovereignty of the Contracting States over the airspace above their territory.

2. Nothing in this Agreement shall prejudice or affect the rights and obligations of the Contracting States either under the Convention on International Civil Aviation or under other international agreements to which either of them is a party.

Article 4

Security and Defence

The provisions of this Agreement shall be without prejudice to the Contracting States’ national requirements relating to public order, public security and defence interests and each Contracting State shall be entitled to apply any measure to the extent it is needed to safeguard essential security and defence policy interests. Furthermore, each Contracting State shall be entitled to safeguard military operations and trainings or other types of the operational air traffic in accordance with its national rules and regulations whenever the implementation of this Agreement will be detrimental to their safe and efficient performance.

Article 5

Establishment of a Functional Airspace Block

The Contracting States hereby establish the functional airspace block Central Europe (FAB CE). This Agreement shall apply to the FAB CE airspace to the extent of FAB CE services.

Article 6

FAB CE bodies

1. The Contracting States agree on the establishment of the following FAB CE bodies:

- (a) FAB CE Council;
- (b) Joint Civil Military Airspace Coordination Committee (JCMACC);
- (c) National Supervisory Authorities Coordination Committee (NSA CC);
- (d) Other bodies established by FAB CE Council to be necessary for implementation, operation and further development of the FAB CE.

2. The above mentioned bodies have no legal personality.

Article 7

FAB CE Council

1. The FAB CE Council is established as a joint decision-making body for the purposes of the implementation, operation and further development of this Agreement.

2. The FAB CE Council shall be composed of representatives of the Contracting States. Each Contracting State may appoint several delegates in order to allow the interests of both civil and military aviation to be represented. Each Contracting State shall have one vote.

3. Each air traffic service provider designated for any portion of the FAB CE airspace shall have the right to nominate a representative to participate at the meetings of the FAB CE Council as observer.

4. The FAB CE Council shall, within the scope of this Agreement, take the actions necessary to ensure the implementation, operation and further development of the FAB CE in order to ensure its compliance with the requirements and the achievement of the goals set out in the SES legislation, including compliance with the performance scheme and targets set forth thereunder.

5. The FAB CE Council shall consider, discuss and adopt decisions on the following matters:

- (a) the formulation and endorsement of the FAB CE principles, objectives and policy at the strategic level for inner and outer matters of the FAB CE, including but not limited to:
 - (i) airspace design;
 - (ii) airspace management (ASM);
 - (iii) air navigation services (ANS);
 - (iv) air traffic flow management (ATFM);

- (v) supervision and safety oversight concerning ANS, ATFM, ASM and training and licensing of staff;
- (b) proposals for amendments to or termination of this Agreement;
- (c) its own rules of procedure;
- (d) the establishment of other bodies referred to in Article 6(l)(d);
- (e) terms of reference of the bodies established pursuant to Article 6(l)(b)-(d) and their amendments;
- (f) any other matter of a similar nature with the aim to meet the objective of this Agreement.

6. The FAB CE Council shall also consider, discuss and adopt measures on the following matters:

- (a) the endorsement of overall plans and measures related to the implementation, further development and operation of FAB CE;
- (b) the contingency issues;
- (c) harmonisation of the charging scheme;
- (d) establishment of charging zone(s), extending across national borders;
- (e) harmonisation of rules on ANS, ATFM, ASM, training and licensing of related staff and rules of the air, including the harmonization of the notified differences with the ICAO standards;
- (f) the performance plans;
- (g) fostering and facilitating cooperation of ANSPs aiming at the improvement of their performance in the FAB CE;
- (h) any other matter of a similar nature, with the aim to meet the objective of this Agreement.

7. The measure as referred in paragraph 6 above shall be in line with already adopted decisions of FAB CE Council, unless otherwise provided herein.

8. The FAB CE Council shall meet when convened by its chairperson or at the request of any two Contracting States,

9. The FAB CE Council shall adopt decisions and measures by consensus. If consensus cannot be reached, the FAB CE Council shall adopt decisions and measures by voting in accordance with the following rules:

- (a) decisions shall require unanimity of the Contracting States and shall be amended or repealed by another decision only;
- (b) measures shall require the simple majority of the Contracting States and shall be amended or repealed by other measures only.

Such amending or repealing measure shall require the simple majority of the Contracting States. The Contracting State(s) having adopted the amending/repealing measure and the original measure shall be bound by the original measure in relation to the Contracting State(s) which have adopted the original measure only:

- (i) for the time period of application of the original measure; or
- (ii) for one year (transitional period) following

adoption of the amending/repealing measure if no time period for application has been stipulated in the original measure.

The Contracting State(s) which were bound by the original measure, but did not vote for the amending or repealing measure shall continue to be bound by the original measure, unless, in case (ii), any of them indicates otherwise for the time after the transitional period.

- (c) any Contracting State not represented at the meeting shall have the right to cast its vote in writing; if no response is received within 21 days after receiving the written proposal of the decision or the measure, such Contracting State's vote shall be deemed affirmative.

10. Unless otherwise provided hereunder or in the respective decision, decisions shall be binding on all Contracting States. Unless otherwise provided in the respective measure, measures shall be binding on all Contracting States having voted in favour of the measure. A Contracting State not having voted in favour of the measure shall not be bound by the measure unless it notifies the FAB CE Council at any point in time that it considers itself be bound by the measure from a particular date and in respect of all or particular portions of its applicable airspace and all or particular ANS provided in its applicable airspace.

11. The adoption of the measure shall not prevent two or more Contracting States, which have not voted in favour of the measure, to conclude and implement appropriate flexibility arrangement in line with Article 10 of this Agreement.

12. Any resolution adopted on matters listed under paragraph 6 shall be deemed a measure regardless of its denomination and regardless of whether it was actually adopted by consensus, unanimity or majority.

13. Each Contracting State shall implement any decision and measure binding on it in due time in its national legislation or otherwise ensure their effective implementation.

14. If a proposed decision or measure does not affect the applicable airspace of a Contracting State or the ANS a Contracting State has included in Annex 2, such Contracting State shall have no voting right and shall not be deemed a Contracting State under paragraph 9 and 10, provided that:

- (a) Such decision/measure does not include interfaces to applicable airspace of such Contracting State;
- (b) Such decision/measure is in line with the decisions/measures adopted by such Contracting State.

Such decision/measure shall not be binding for such Contracting State and shall not anyhow limit or restrict the right of such Contracting State to adopt a decision/measure on the issues and scope as listed in paragraph 5 and 6 above.

In case of a reservation under Article 20, the same

shall apply *mutatis mutandis* for a period after two years from the decisive date.

Article 8

Joint Civil-Military Airspace Coordination Committee (JC-MACC)

The Joint Civil-Military Airspace Coordination Committee shall be composed of the representatives of civil and military aviation of the Contracting States aiming at, *inter alia*, strategic coordination of national ASM and airspace design policies, ATFCM processes and Civil-Military cooperation of all FAB CE States. The JC-MACC reports to the FAB CE Council.

Article 9

National Supervisory Authorities Coordination Committee (NSA CC)

The National Supervisory Authorities Coordination Committee shall be composed of the representatives of national supervisory authorities (NSAs) exercising supervision tasks in the FAB CE airspace with the aim to exercise the tasks set out in Article 14. The NSA CC reports to the FAB CE Council. Such reporting is without prejudice to the exercise of powers of the individual NSAs impartially, independently and transparently.

Article 10

Flexibility Arrangements

1. Two or more Contracting States wishing to develop or implement further arrangements to increase the level of harmonization, performance or cooperation between themselves or the service providers providing FAB CE services in their applicable airspace may enter into flexibility arrangements in accordance herewith.

2. Such arrangements shall not affect the rights and obligations of those Contracting States not participating in such arrangements and shall not contradict the decisions already adopted by the FAB CE Council and the level of harmonization already established between the Contracting States participating in the individual arrangement and the other Contracting States.

Article 11

Air Navigation Services

1. Each Contracting State shall ensure that the FAB CE services are provided in its applicable airspace.

2. Unless otherwise expressly provided therein, nothing in this Agreement or the measures adopted hereunder shall be deemed to limit the capacity of ANSPs providing FAB CE services to cooperate.

Article 12

Joint Designation

1. Each Contracting State shall be entitled to designate, and repeal or amend such designation of, one or more air traffic service provider(s) to provide air traffic services in its applicable airspace, wholly or partially. Such designation, repeal or amendment shall be notified to the Depositary in writing.

2. The Contracting States concerned shall implement the FAB CE Council measures establishing cross border sectors by either:

- (a) agreeing, on a bilateral or multilateral basis, on the allocation in accordance with paragraph 1 of this Article of an air traffic service provider for the respective cross border sector(s); or
- (b) ensuring that appropriate agreements are entered into between the air traffic service providers concerned for the provision of air traffic services in the respective cross border sector(s), and approved by the Contracting States concerned.

3. Any air traffic service provider designated under paragraph 1 shall be deemed jointly designated by all Contracting States as from the date of notification of the designation to the Depositary until any amendment or repealing as defined in paragraph 1.

4. The Contracting States whose airspace is concerned by agreements between air traffic services providers, either designated or not designated under this Agreement, on the provision of ATS shall remain solely responsible for approval of such agreements. Any two or more neighbouring Contracting States shall be free to enter into appropriate arrangements or agreements with respect to granting such approval.

5. Each Contracting State intending to delegate the responsibility for establishing and/or providing air traffic services in the FAB CE airspace to other than the Contracting States shall ensure that it continues to comply with all provisions of this Agreement.

Article 13

Airspace

1. The FAB CE airspace is subject to governance by the Contracting States as determined hereunder.

2. This Agreement does not affect the right of each Contracting State to apply the flexible use of airspace concept when reserving, restricting or otherwise organizing defined volumes of airspace not extending across its applicable airspace, for exclusive or specific use of military users and/or aircrafts operated as operational air traffic. Nevertheless, these airspace restrictions and reservations, having significant impact on civil traffic flows, shall be coordinated through JC MACC in line with the coordination process to be defined by the JC- MACC.

Article 14 Supervision

1. The certifying NSA shall carry out all supervision and safety oversight in respect of the provision by the ANSP concerned of any FAB CE service in such portion of the FAB CE airspace, which does not fall under responsibility of the Contracting State which nominated the certifying NSA.

2. The territorial NSA shall have the right to request audits and direct participation in all supervision tasks carried out by the certifying NSA to the extent the tasks are exercised in relation to the provision of the FAB CE services in the FAB CE airspace under the territorial NSA's responsibility. The certifying NSA shall take due account of the proposals or comments made by the territorial NSA. The ANSP subject to supervision by the certifying NSA shall enable the territorial NSA to exercise its rights hereunder.

3. The territorial NSA shall inform the certifying NSA of all rules and procedures applicable for the provision of FAB CE services in the airspace falling under its responsibility.

4. The Contracting States mutually recognise any finding, conclusion or decision made by the certifying NSA with regard to provision of FAB CE service by the ANSP concerned in the portion of the FAB CE airspace which does not fall under responsibility of the Contracting State which nominated the certifying NSA. In case the certifying NSA makes a finding, conclusion or decision without taking due account of the relevant rules and procedures disclosed to it by the territorial NSA under paragraph 3, the Contracting State which nominated the territorial NSA shall have the right not to recognise such finding, conclusion or decision and, if so deemed necessary, suspend application of this Article and resume supervision and safety oversight responsibility accordingly.

5. The Contracting States shall ensure that a written NSA Co-operation Agreement is concluded providing for the detailed conditions of the exercise of the rights and obligations of their NSAs under this Article and for the exchange and dissemination of safety-related information.

6. Paragraph 1 to 5 shall apply *mutatis mutandis* to the safety oversight on ATFM and ASM. The NSA responsible for safety oversight shall be the NSA of the Contracting State in whose territory the organisation providing ATFM or ASM at the tactical level has its principal place of business.

7. Each licensing NSA responsible for any portion of cross border sector shall have the right to issue a unit endorsement for the whole cross border sector, once the relevant requirements and procedures are agreed and fulfilled by all licensing NSAs concerned. The concerned Contracting States mutually recognise such unit endorsements.

8. This Article shall not apply to supervision and

safety oversight in respect of the provision of any FAB CE service by any ANSP other than those certified by an NSA of a Contracting State.

Article 15 Financial arrangements

Each Contracting State shall bear its own expenses regarding implementation, operation and further development of the FAB CE.

Article 16 Accession of a State to the FAB CE Agreement

1. This Agreement is open for accession by any EU Member State or any contracting party to the European Common Aviation Area Agreement, provided that their airspace is adjacent to the FAB CE airspace.

2. Any accession shall be subject to mutual written consent of all Contracting States.

Article 17 Amendments

This Agreement may be amended by mutual written consent of all Contracting States.

Article 18 Withdrawal of a Contracting State from the FAB CE Agreement

1. Each Contracting State may withdraw from this Agreement by written notification to the Depository.

2. The withdrawal shall take effect one year following the date on which the notification has been received by the Depository. During such period, the other Contracting States shall take the necessary measures to reconfigure the FAB CE airspace and the provision of FAB CE services. The withdrawing Contracting State shall bear the costs of the withdrawal incurred by the other Contracting States in course of the transition period and in connection with the reconfiguration of the FAB CE airspace and the provision of the FAB CE services, which the other Contracting States would not have otherwise incurred.

Article 19 Termination

1. This Agreement may be terminated by mutual written consent of all Contracting States.

2. The termination shall not become effective earlier than all mutual obligations of the Contracting States under this Agreement have been settled.

Article 20
Reservation

1. Each Contracting State may, upon the signature of this Agreement or together with the deposit of its instrument of ratification, acceptance or approval, submit the following reservations:

- (a) this Agreement shall not apply to one or more specified portion(s) of its applicable airspace other than en-route controlled airspace; and/or
- (b) this Agreement shall not apply to one or more services (or parts thereof) provided with regard to its applicable airspace and listed in Annex 2 other than:
 - (i) en-route air traffic services,
 - (ii) communication, navigation and surveillance services needed for en-route air traffic services,
 - (iii) interfaces between en-route air traffic services and aeronautical information services,
 - (iv) interfaces between en-route air traffic services and meteorological services and
 - (v) interfaces between en-route air traffic services and search and rescue services.

2. Each Contracting State may withdraw its reservation wholly or in part at any time after the Agreement enters into force in respect of such Contracting State.

3. The reservation or a withdrawal thereof is effective upon receipt by the Depositary.

Article 21
Suspension

1. In order to safeguard essential public order, public security and defence interests or if otherwise provided in this Agreement, each Contracting State has the right to suspend the application of the Agreement or parts thereof. It shall immediately notify the Depositary of the suspension.

2. The suspending Contracting State shall terminate the suspension immediately once the reasons for suspension have ceased to exist and notify the Depositary of the termination of suspension.

Article 22
Dispute Resolution

1. Any dispute between two or more Contracting States as to the interpretation, application or performance of this Agreement, including its existence, validity or termination, shall be settled through negotiations between the parties to the dispute. If a dispute cannot be settled through negotiations between the parties to the dispute within six months from the date of any party's written request to hold such negotiations, any party to the dispute may submit the dispute to final and binding arbitration in accordance with the Permanent Court of Arbitration

Optional Rules for Arbitrating Disputes between Two States.

2. The number of arbitrators shall be three. If more than two Contracting States are parties to the dispute, those parties shall agree on the appointment of the three arbitrators; the parties to the dispute share the costs of the arbitral tribunal equally. If within sixty days after the receipt of the notice of arbitration the parties have not agreed on the three arbitrators, any party may request the Secretary-General of the Permanent Court of Arbitration to appoint the arbitrators.

3. The language to be used in the arbitral proceedings shall be English. The place of arbitration shall be The Hague. The International Bureau of the Permanent Court of Arbitration shall serve as Registrar, and shall provide such administrative services as the Permanent Court of Arbitration shall direct.

Article 23
Entry into force

1. This Agreement is subject to ratification, approval or acceptance by the Contracting States. Instruments of ratification, approval or acceptance shall be deposited with the Republic of Slovenia, which is hereby designated as Depositary.

2. The Depositary shall notify each Contracting State in particular of:

- (a) each deposit of an instrument of ratification, approval or acceptance;
- (b) the date of entry into force of this Agreement;
- (c) any withdrawal from or suspension of this Agreement or part thereof together with the date thereof and the date on which it takes effect;
- (d) any reservation together with the date thereof and the date of its withdrawal;
- (e) the termination of this Agreement.

3. This Agreement shall enter into force on the sixtieth day following the day of the deposit of the instrument of ratification, approval or acceptance of at least two neighbouring Contracting States.

4. With respect to any other Contracting State, this Agreement shall enter into force on the sixtieth day following the day of the deposit of its instrument of ratification, approval or acceptance.

Article 24
Provisional application

1. The Contracting States hereby agree, subject to the mandatory provisions of their national laws, that save for the provisions of Articles 5, 12, 14, 16 – 19, 21 and 22, the Agreement shall be provisionally applied among all signatories from the date of its signature until the decisive date.

2. Decisions adopted prior to the decisive date shall become binding upon each individual signatory upon entry into force of the Agreement for such signatory.

3. Measures adopted prior to the decisive date shall become binding upon each individual signatory upon entry into force of the Agreement for such signatory, provided that the signatory voted in favour of the measure.

4. Signatories not having ratified the Agreement on the decisive date at the latest shall have the right to participate at the meetings of the FAB CE Council and other bodies as observers without voting rights.

5. With regard to any individual signatory with the observer status, decisions adopted by the FAB CE Council after the decisive date shall become binding on it upon entry into force of the Agreement for such

signatory unless otherwise notified by such signatory prior to, or together with, the deposit of its ratification instruments with respect to the Agreement.

Article 25

Annexes to the Agreement

The provisions contained in the Annexes to this Agreement shall form an integral part thereof.

Article 26

ICAO Registration

This Agreement and any amendments thereto shall be registered by the Depositary with the ICAO.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Agreement.

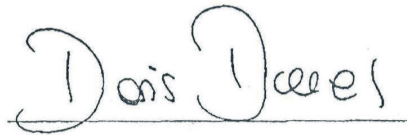
List of Annexes:

Annex 1: Airspace Delineation


Annex 2: Air Navigation Services

Done at Brdo pri Kranju this 5th day of May 2011 in the English language.

For the Republic of Austria



For Bosnia and Herzegovina



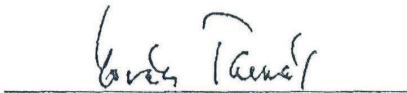
For the Republic of Croatia



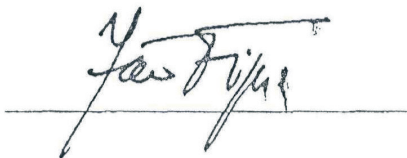
For the Czech Republic



For the Republic of Hungary



For the Slovak Republic



For the Republic of Slovenia



ANNEX 1

Airspace Delineation

This Agreement shall, unless otherwise provided in the Agreement, apply in the airspace under the Contracting States' responsibility, which shall be defined as the airspace determined as follows:

Contracting State	Lateral limits	Vertical Limits
The Republic of Austria	FIR Vienna	GND - UNLIMITED
Bosnia and Herzegovina	FIR Sarajevo	FL165 - UNLIMITED
The Republic of Croatia	FIR Zagreb	FL205 - UNLIMITED
The Czech Republic	FIR Prague	GND - UNLIMITED
The Republic of Hungary	FIR Budapest	GND - UNLIMITED
The Slovak Republic	FIR Bratislava	FL195 - UNLIMITED
The Republic of Slovenia	FIR Ljubljana	FL175 - UNLIMITED

ANNEX 2

Air Navigation Services

Unless otherwise provided in the Agreement, the Agreement shall apply to the provision of the following air navigation services in the applicable airspace of the respective Contracting State as listed hereunder.

Contracting State	Air Navigation Services
The Republic of Austria	ATS, CNS, AIS, SAR, MET
Bosnia and Herzegovina	Mandatory services from article 20
The Republic of Croatia	Mandatory services from article 20
The Czech Republic	ATS, CNS, AIS, SAR, MET
The Republic of Hungary	ATS, CNS, AIS, SAR, MET
The Slovak Republic	Mandatory services from article 20
The Republic of Slovenia	Mandatory services from article 20