

No. 12947

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## MULTILATERAL

**Arrangement between certain member States of the European Space Research Organisation and the European Space Research Organisation concerning the execution of an aeronautical satellite programme (with annexes). Done at Neuilly-sur-Seine on 9 December 1971**

*Authentic texts: French and English.*

*Registered by France on 1 January 1974.*

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## MULTILATÉRAL

**Arrangement entre certains États membres de l'Organisation européenne de recherches spatiales et l'Organisation européenne de recherches spatiales concernant l'exécution d'un programme de satellites aéronautiques (avec annexes). Fait à Neuilly-sur-Seine le 9 décembre 1971**

*Textes authentiques : français et anglais.*

*Enregistré par la France le 1<sup>er</sup> janvier 1974.*

# ARRANGEMENT<sup>1</sup> BETWEEN CERTAIN MEMBER STATES OF THE EUROPEAN SPACE RESEARCH ORGANISATION AND THE EUROPEAN SPACE RESEARCH ORGANISATION CONCERNING THE EXECUTION OF AN AERONAUTICAL SATELLITE PROGRAMME

The Governments of the Federal Republic of Germany, the Kingdom of Belgium, Spain, the French Republic, the Italian Republic, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland, the Kingdom of Sweden and the Swiss Confederation (hereinafter referred to as "the Participants") and the European Space Research Organisation (hereinafter referred to as "the Organisation"),

Considering that aeronautical traffic growth with an attendant need for improved air traffic services, in particular air-ground communications, is expected to require an operational aeronautical satellite capability in the Atlantic and Pacific Ocean areas by 1980 and that to meet the desired objective a preoperational capability is required as soon as possible, and in any event not later than the beginning of 1975;

Having considered the proposed Memorandum of Understanding between the Organisation, the Federal Aviation Agency (FAA) of the United States Department of Transportation, the Commonwealth of Australia, Canada and Japan (hereinafter referred to as "the Memorandum of Understanding");

Taking into account also the resolution of the European Space Conference, held in Brussels in July 1970, with regard to an aeronautical programme;

Having regard to the declaration made by the representatives on the Council of the Organisation of the Governments referred to above, dated 9 December 1971;

Having regard to the resolution of 9 December 1971 of the Council of the Organisation concerning the acceptance of the request for the Organisation's assistance in order to have the Integrated Programme executed within the framework of the Organisation;

Considering the need to define, on the one hand, the rights and obligations that exist among the Participants, and, on the other hand, those existing between the Participants and the Organisation,

<sup>1</sup> Came into force on 20 December 1971, the date when it had been signed on behalf of the European Space Research Organisation and on which States representing two thirds of the total contributions in the scale set out in annex B had signed it without reservation as to ratification or approval or, having signed it with such a reservation, had deposited their instrument of ratification or approval with the Government of France in accordance with article 14 (3). Definitive signatures, ratifications or approval were effected as follows:

<i>Organisation or State</i>	<i>Date of definitive signature (s) or deposit of the instrument of ratification or approval (A)</i>
European Space Research Organisation .....	9 December 1971 s
Germany, Federal Republic of .....	20 December 1971 s
France .....	20 December 1971 s
Spain .....	9 December 1971 s
United Kingdom of Great Britain and Northern Ireland .....	20 December 1971 s

Subsequently, an instrument of ratification was deposited with the Government of France on behalf of the following State on the date indicated:

Sweden ..... 11 January 1973

(Signature affixed on 9 December 1971.)

Have agreed as follows:

*Article 1.* 1. The Participants shall, in cooperation with states that are not members of the Organisation, embark on a programme aiming at the design, development, setting up and operation of a preoperational system for air traffic control by means of satellites, in order to make a significant contribution to the establishment of such a system serving the Atlantic Ocean and the Pacific Ocean, and to acquire the necessary experience for the setting up of an operational system.

2. The Organisation will, under the terms of article VIII of the Convention,<sup>1</sup> make available its assistance and the use of its facilities for the execution of the programme referred to in paragraph 1 of this article.

*Article 2.* 1. The preoperational programme mentioned in article 1, paragraph 1 (hereinafter referred to as "the Joint Aerosat Programme"), shall consist of an Integrated Programme and a Coordinated Programme, which are defined and described in annex A to this Arrangement.

2. The prime objective of the Joint Aerosat Programme is to supply a preoperational air traffic control service to all users concerned. Provided the requirements of this objective are met, the capacity of the Joint Aerosat Programme may be used for experimental purposes outside this prime objective.

*Article 3.* 1. The Participants shall set up a Programme Board, composed of their representatives, which shall be responsible for all European matters of the Joint Aerosat Programme and shall take all decisions relating to these matters.

2. For matters affecting several programmes of the Organisation, this Programme Board shall be advisory to the Council of the Organisation, to which it will, on such matters, make all necessary recommendations to enable the Council of the Organisation to resolve possible conflicts and to take a decision by a two-thirds majority of the Member States.

3. The Programme Board's tasks shall be, in particular:

- (a) to define joint positions and to establish any necessary instructions for the European Delegation on the Aerosat Council, established in conformity with the proposed Memorandum of Understanding;
- (b) to determine how the Participants shall be represented on the Aerosat Council;
- (c) to establish close links with the European Aeronautical Authorities and to assist in harmonising and coordinating their participation in the Coordinated Programme;
- (d) to give such directives as are necessary to the Director General of the Organisation regarding the execution of the European undertakings in the Integrated Programme;
- (e) to vote the annual Programme budget;
- (f) to monitor the application of the Memorandum of Understanding as far as the rights and obligations of the European Participants are concerned;
- (g) to express an opinion on any request presented by a Participant for use of the capacity of the Aeronautical Satellite system, as mentioned in article 2.2, for submission to the Aerosat Council;
- (h) in conformity with the rules of the Organisation, to advise the Director General on the filling of posts for the Joint Programme Office, in particular to

<sup>1</sup> See "Convention for the establishment of a European Space Research Organisation" in United Nations. *Treaty Series*, vol. 528, p. 33.

ensure that the aeronautical aspects of the programme are given appropriate weight.

*Article 4.* Decisions of the Programme Board shall be taken in accordance with the Rules of Procedure of the Council, which shall apply *mutatis mutandis* unless otherwise specified in this Arrangement.

*Article 5.* 1. The Integrated Programme shall be carried out under the responsibility of the Director General of the Organisation, in accordance with the provisions of this Arrangement.

2. Unless otherwise specified in this Arrangement, the Organisation shall execute this programme in conformity with the rules and procedures in force in the Organisation.

3. In particular, the Director General of the Organisation shall:

- (a) make available the necessary staff for participation in the work of the Aerosat Joint Programme Office referred to in article 6 of the Memorandum of Understanding;
- (b) assure, on behalf of the Participants, the placing and technical and administrative management of contracts and sub-contracts, in conformity with the rules and procedures of the Organisation; however, preference shall be given, wherever possible, to the execution of work in the territories of the Participants, with due consideration to the recommendations of the Council of the Organisation in the field of industrial policy and distribution of work.

*Article 6.* 1. The expenditure resulting from the execution of the Integrated Programme by the Organisation under this Arrangement shall be met by the Participants, in accordance with the detailed provisions set out in annex B to this Arrangement.

2. The Participants shall contribute to the financing of the said programme in accordance with the principles and the scale laid down in annex B to this Arrangement and within the limits of a total financial envelope of 100 MAU, covering the amounts mentioned in (a) and (b) of paragraph 1 of annex B.

3. The Programme Board shall approve the annual budgets of the Integrated Programme by a two-thirds majority.

*Article 7.* Subject to the provisions of the Memorandum of Understanding

(a) Intellectual property rights arising from the execution of the Integrated Programme, as well as access to technical information so arising, shall be reserved to the Participants, but the Organisation shall have the right to make use of them free of charge for its activities as a whole;

(b) The publication of, and access to, scientific information arising from the execution of the Integrated Programme shall be governed by the relevant rules of the Organisation.

*Article 8.* The Organisation shall make all necessary contractual arrangements in order to become, on behalf of the Participants, co-owner of the satellites developed under the Integrated Programme, as well as of facilities and equipments acquired for its execution, up to and including the preoperational phase. Any transfer of facilities or equipments belonging to the Organisation after the end of the Joint Aerosat Programme shall be decided by the Participants in consultation with the Council of the Organisation.

*Article 9.* 1. The Participants agree, for the purpose of any revision of the total financial envelope specified in article 6 in the event of changes in price level, to apply the procedure in force in the Organisation at that time.

2. If the sum specified in article 6.2 has to be revised for reasons other than a

change in price levels, the Programme Board shall decide on the additional expenditure of the Organisation by a two-thirds majority of the Participants, provided that the cumulative total cost does not exceed the 155 million U.S. dollars mentioned in article 13 of the Memorandum of Understanding.

3. If such a total cumulative cost exceeds the 155 million U.S. dollars mentioned in article 13 of the Memorandum of Understanding, those Participants who, nevertheless, wish to continue the execution of the Integrated Programme shall consult among themselves and determine the arrangements for its continuation. They shall inform accordingly the Council of the Organisation, which will take any necessary decisions. The other Participants shall withdraw from the programme subject to the provisions of article 15.

*Article 10.* 1. The Participants shall indemnify the Organisation in respect of any liability it may incur should its international responsibility be involved as a result of the execution of the Integrated Programme.

2. Any compensation for damage received by the Organisation with respect to this programme shall be credited to the annual budgets of the Integrated Programme.

*Article 11.* The arrangements for the execution and operation of the Coordinated programme shall be examined by the Programme Board in liaison with the Aeronautical Authorities of the Participants in the said programme. Should functions with respect to the Coordinated Programme be entrusted to the Organisation, the rules mentioned in this Arrangement would be applicable, subject to any special provisions that may be laid down by the Programme Board.

*Article 12.* The Participants have noted the provisions of the proposed Memorandum of Understanding and their rights and obligations arising therefrom, and they agree to the Council of the Organisation authorising the Director General to sign it.

*Article 13.* 1. Any dispute which arises between two or more of the Participants, or between any of them and the Organisation, concerning the interpretation or application of this Arrangement, and which cannot be settled amicably, shall be submitted, at the request of any party to the dispute, to a single arbitrator appointed by the President of the International Court of Justice. The arbitrator may not be a national of a State which is a party to the dispute.

2. Those parties to the Arrangement which are not parties to the dispute shall have the right to join in the proceedings and the arbitrator's decision shall be binding on all the Participants and the Organisation, whether or not they have joined in the proceedings.

*Article 14.* 1. This Arrangement shall be open for signature by the Participants until 31 December 1971.

2. They shall become parties to this Arrangement:

- upon signature not subject to ratification or approval;
- upon depositing an instrument of ratification or approval with the Government of France, if the Arrangement was signed subject to ratification or approval.

3. This Arrangement shall come into force when it has been signed by the Organisation and when the aggregate contribution payable—on the basis of the scale set out in annex B—by the States that have become parties to the Arrangement in accordance with the terms of paragraph 2 of this article amount to two-thirds of the total contributions payable.

4. For the purposes of paragraph 3 of this article, the deposit of a declaration of intention to apply the Arrangement provisionally and to seek ratification or approval as soon as possible shall be considered as the deposit of an instrument of ratification or approval.

5. The Government of any Member State of the Organisation which has not signed the Arrangement by 31 December 1971 may become party to it as soon as it comes into force provided that:

- (a) the other Governments party to the Arrangement agree;
- (b) the Government in question deposits an instrument of accession with the Government of France.

6. Unless the Programme Board unanimously decides otherwise, a Government that becomes a party to this Arrangement after its entry into force shall pay a contribution equal to that which it would have paid if it had been a party to the Arrangement at the moment of its entry into force, and this contribution shall be credited to the other parties in the programme budget pro rata to their contributions.

7. The Government of a non-member State may present a request to the Council of the Organisation to accede to the programme; a Council decision to grant such a request shall require unanimity and must be taken in agreement with the Programme Board, which shall unanimously determine the terms of accession.

*Article 15.* 1. Any Participant who withdraws from the Integrated Programme under the provisions of article 9.3 of this Arrangement shall remain bound to contribute to the expenditure under the commitments whose funding has already been agreed.

2. Such withdrawal shall take effect on the date when the participant concerned ceases to contribute to the expenditure commitments relating to the programme and decided by the Programme Board.

3. A withdrawing Participant shall enjoy the rights vested in the Participants up to the effective date of his withdrawal. Thereafter, no further right or obligation shall arise from the part of the programme in which he no longer participates.

*Article 16.* Annexes A and B to this Arrangement form an integral part thereof.

*Article 17.* 1. Without prejudice to the relevant provisions of the Memorandum of Understanding this Arrangement may be amended at the request of one or more of the Participants. Similarly, the Organisation has the right to initiate amendments of provisions creating rights and obligations in its respect. Any amendments shall come into force when all parties have notified their approval to the depositary Government.

2. Without prejudice to the relevant provisions of the Memorandum of Understanding the annexes to the Arrangement may be revised by the Programme Board in accordance with the special provisions contained in the revision clauses of those annexes.

*Article 18.* Upon entry into force of the Arrangement, the Government of the French Republic shall register it with the Secretariat of the United Nations, in accordance with Article 102 of the United Nations Charter.

*Article 19.* The Government of the French Republic shall be the depositary of this Arrangement and shall notify the Governments of the Member States of the Organisation of all signatures, ratifications and accessions, and of the date of entry into force of the Arrangement and any amendments thereto.

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

DONE in Neuilly-sur-Seine, this ninth day of December nineteen hundred and seventy-one, in the English and French languages, both texts being equally authoritative, in a single copy, which shall be deposited in the archives of the

Government of the French Republic, which shall transmit certified copies to each of the Governments and to the Organisation.

For the European Space Research Organisation:

[Signed]

A. HOCKER

For the Government of the Federal Republic of Germany:

[Signed]

RUETE

[Signed]

SCHRAMM

For the Government of the Kingdom of Belgium:

[Signed]

J. BOUHA

*Sous réserve de ratification<sup>1</sup>*

For the Government of Spain:

[Signed]

LUIS DE AZCARRAGA

For the Government of the French Republic:

[Signed]

BOISGELIN

For the Government of the Italian Republic:

[Signed]

UGO MORABITO

*Sous réserve de ratification<sup>1</sup>*

For the Government of the Kingdom of the Netherlands:

[Signed]

G. W. BENTINCK

*Subject to approval*

For the Government of the United Kingdom of Great Britain  
and Northern Ireland:

[Signed]

J. HOSIE

<sup>1</sup> Subject to ratification.

For the Government of the Kingdom of Sweden:

[Signed]

INGEMAR HAEGLOEFF

*Subject to ratification*

For the Government of the Swiss Confederation:

## ANNEX A

TO THE ARRANGEMENT BETWEEN CERTAIN MEMBER STATES OF THE EUROPEAN SPACE RESEARCH ORGANISATION AND THE EUROPEAN SPACE RESEARCH ORGANISATION CONCERNING THE EXECUTION OF AN AERONAUTICAL SATELLITE PROGRAMME

### 1. *Objectives of the Joint Aeronautical Satellite (Aerosat) Programme*

The Joint Aerosat Programme shall provide for the development and utilisation of a preoperational aeronautical capability over the Atlantic and Pacific Oceans with the aims described in paragraph 2 (a-f) of article 1 of the Memorandum of Understanding referred to in the Preamble of this document.

### 2. *Description of the Joint Aerosat Programme*

The Joint Aerosat Programme shall consist of an Integrated Programme and a Coordinated Programme.

The Integrated Programme, which is covered by this arrangement between the Participants and the Organisation, shall comprise the basic elements described in paragraphs a-d of article 2 of the Memorandum of Understanding, i.e.:

- satellite development and production;
- launches;
- satellite control facilities;
- programme management.

The Coordinated Programme shall comprise the basic elements, described in article 3 (a) and (b) of the Memorandum of Understanding, i.e.:

- users' ground facilities;
- aircraft avionics.

### 3. *Time Scale*

Under the assumption that the Memorandum of Understanding will be signed by the Organisation and the United States Federal Aviation Administration by end 1971/beginning 1972, the following tentative time scale has been established for the Integrated Programme:

- award of Aerosat contract; second half of 1972;
- satellite launch dates (see also article 9 of the Memorandum of Understanding):
  - launch of satellite n° 1: over Atlantic Ocean as soon as practicable, but not later than April 1975;
  - launch of satellite n° 2: over Pacific Ocean at a date to be decided by the Aerosat Council;
  - launch of satellite n° 3: over Atlantic Ocean not later than end 1976;
  - launch of satellite n° 4: over Pacific Ocean not later than end 1977;
- completion of Joint Aerosat Programme: as described in article 13 of the Memorandum of Understanding.



#### 4. *Revision of clause*

The provisions of this annex may be revised by unanimous decision of the Programme Board.

### ANNEX B

TO THE ARRANGEMENT BETWEEN CERTAIN MEMBER STATES OF THE EUROPEAN SPACE RESEARCH ORGANISATION AND THE EUROPEAN SPACE RESEARCH ORGANISATION CONCERNING THE EXECUTION OF AN AERONAUTICAL SATELLITE PROGRAMME

#### 1. *Cost of Integrated Programme*

The total financial envelope of 100 millions of Accounting Units laid down in article 6.2 of the foregoing Arrangement is based on the following estimates:

(a) the direct expenditure for the Integrated Programme during the period 1972-1979 is estimated at:

	<i>In millions of Accounting Units at 1971 price level</i>
1. Personnel:	
Organisation and Joint Programme Office .....	4.850
2. Running:	
Travel expenses for the Organisation and its contribution to the running of the Joint Programme Office .....	2.225
3. Establishment of Facilities:	
One Spacecraft Control Earth Terminal (SCET) and one Spacecraft Control Centre (SCC) .....	2.750
4. Operation and maintenance of Facilities:	
Operation and maintenance of one Spacecraft Control Earth Terminal (SCET) and of one Spacecraft Control Centre (SCC) .....	3.150
5. Development:	
Satellite development and manufacturing of 6 spacecraft flight units .....	37.000
5 launchers at 7.5 MAU* .....	18.750
Studies and Experiments .....	1.000
	<hr/> 56.750
	TOTAL <u><u>69.725</u></u>

(b) indirect expenditure, i.e. the Integrated Programme's share of the Organisation's common and support cost which will depend on the size of the overall programme of the Organisation; this share is presently estimated at 19.3 MAU.

#### 2. *Scale of Contributions*

Each Participant shall contribute to the expenditure resulting from the execution of the Integrated Programme by the Organisation under the foregoing Arrangement in accordance with the following scale:

\* Although the cost estimates included in the Memorandum of Understanding refer to six launchers for the four satellites, the Organisation's budgetary arrangements contain specific provision for only five launchers.

<i>States</i>	<i>Scale of contributions %</i>
Germany .....	23.67
Belgium .....	3.75
Spain .....	5.24
France .....	21.87
Italy .....	13.90
Netherlands .....	4.71
United Kingdom .....	19.01
Sweden .....	4.64
Switzerland .....	3.21
TOTAL	<u>100.00</u>

### 3. *Reports by the Organisation on financial and contracts situation*

The Director General of the Organisation shall establish the necessary instructions for the reports to be given on the progress and geographical distribution of the work, on the call-ups of contributions, the expenditure to date and latest estimates of cost to completion of the Integrated Programme, in accordance with the relevant provisions of the Organisation's Financial Rules dealing with accounts (chapter III, section VI of the Financial Rules) and with the provisions adopted by the Council of the Organisation concerning the periodical reports to be presented (document ESRO/C/306, add. 2, rev. 1).

### 4. *Financial rules to be observed*

The direct expenditure resulting from the execution of the Integrated Programme by the Organisation under the foregoing Arrangement shall be charged to a Programme Output Account which shall be established and administered by the Organisation in accordance with the relevant provisions of its Financial Rules. The Integrated Programme's share of the Organisation's common and support cost shall be established and allocated to the Programme Output Account in accordance with the relevant principles and procedures adopted by the Organisation.

### 5. *Revision clause*

The provisions of paragraphs 1 and 2 of this annex may be revised by unanimous decision of the Programme Board. The provisions of paragraphs 3 and 4 of this annex may be revised by the Programme Board by a two-thirds majority.