

No. 18838

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**UNITED STATES OF AMERICA  
and  
NETHERLANDS**

**Exchange of letters constituting an agreement concerning the prefinancing of NATO projects (with administrative arrangements dated 20 May 1975). Heidelberg, 30 May 1975, and The Hague, 24 July 1975**

*Authentic text: English.*

*Registered by the United States of America on 30 May 1980.*

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**ÉTATS-UNIS D'AMÉRIQUE  
et  
PAYS-BAS**

**Échange de lettres constituant un accord relatif au préfinancement de projets de l'OTAN (avec arrangements administratifs en date du 20 mai 1975). Heidelberg, 30 mai 1975, et La Haye, 24 juillet 1975**

*Texte authentique : anglais.*

*Enregistré par les États-Unis d'Amérique le 30 mai 1980.*

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT<sup>1</sup>  
BETWEEN THE UNITED STATES OF AMERICA AND THE  
NETHERLANDS CONCERNING THE PREFINANCING OF  
NATO PROJECTS

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HEADQUARTERS  
UNITED STATES ARMY  
EUROPE AND SEVENTH ARMY  
OFFICE OF THE ENGINEER

MINISTRY OF DEFENSE  
THE HAGUE, NETHERLANDS

30 May 1975

AEAEN-CN

Dear Sir,

This letter responds to your letter 451.258/A, dated 20 February 1975, concerning Infrastructure/Recoupment Arrangement and your message JD Number 451.258/S, dated 201630Z May 75.

This headquarters agrees to the procedures of exchange of letters to put in effect the attached agreement which is essentially the draft agreement in our letter to you of 7 November 1974 with slight corrections (which are underlined).

This letter constitutes our official acceptance of the attached agreement.

We sincerely regret that the response to you was delayed which was caused by additional review and administrative requirements.

Sincerely,

[Signed]

JOSEPH S. C. SMITH  
Colonel, CE  
Chief, Constr. Prog. Div.

1 enclosure as stated (2 copies)

20 May 1975

ADMINISTRATIVE ARRANGEMENTS PERTAINING TO PREFINANCED  
NATO COMMON INFRASTRUCTURE PROJECTS

These arrangements set forth the procedure that will apply to NATO Infrastructure Projects that are prefinanced by the U.S. and to the recoupment from NATO for sums expended by the U.S. on such projects.

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<sup>1</sup> Came into force on 24 July 1975 by the exchange of the said letters.

*Article I. PROJECTS THAT MAY BE PREFINANCED*

Projects that the United States may desire to prefinance due to urgent military considerations are:

- A. Projects that are under study by the United States, or a NATO military command, the eligibility of which for NATO common funding has not yet been established.
- B. Projects eligible for NATO common funding being considered by NATO Military Commands for inclusion in a future Infrastructure Slice.
- C. In exceptional cases, projects programmed in an approved NATO Infrastructure Slice.

*Article II. PREFINANCING PROCEDURES*

A. The Ministry of Defense of the Netherlands (MOD), upon the request of the United States, will prepare and submit a prefinancing statement to the NATO Payments and Progress Committee (hereinafter referred to as the Committee). The request will contain a description of the project, its military purpose and urgency, and a statement of intent to prefinance the project with United States' funds and to recoup these funds when the project has been authorized under Committee budget control procedures. The statement will also address the subject of NATO International Competitive Bidding (ICB), requesting either an exemption from, or an acceleration in, or normal ICB procedures, as appropriate.

Technical data accompanying the request will conform with the requirements that are set forth in NATO Infrastructure Committee Document AC/4-D/1977 and P & P Committee Document AC/4 (PP)N/2730 (revised).

B. The MOD will prepare and distribute the prefinancing statement to the Committee through its NATO representative under the terms specified in Committee Document AC/4(PP)D/8364 (revised).

C. The U.S. may submit a notice of intent to prefinance a project through its delegation to NATO in accordance with the procedures set forth in AC/4-D/1977. Normally, U.S. action of this nature will be taken only when the MOD has for one reason or another taken no action upon a request of the United States of the nature mentioned in subparagraph A above, within a period of 45 days from the date that the U.S. requested the MOD to prepare and submit a prefinancing statement to the Committee, or where, after coordination with the MOD, the U.S. determines that urgency precludes the use of procedures cited in article II, A and B.

*Article III. EXECUTION OF PREFINANCED PROJECTS*

A. Projects will be designed, advertised, awarded, and constructed in accordance with the arrangements mutually agreed upon in exchange of letters between MOD and U.S. (or its delegated agency, normally U.S. Army Engineer Division, Europe (EUD)). No contract will be awarded until Committee has noted the prefinancing statement and the U.S. notifies the MOD that the necessary funds have been committed to the project.

B. Once a contract has been awarded by the MOD, the U.S. will, on request, place at the disposal of the MOD the funds necessary for the execution of the works. This obligation terminates when authorization to commit funds is obtained from the Payments and Progress Committee.

*Article IV. NATO AUTHORIZATION AND RECOUPMENT*

A. The Mod (or U.S. if constructed directly by U.S.) will prepare and forward recoupment cost estimates for prefinanced projects of the nature mentioned in article I, A, B and C, above within 45 days subsequent to the time that the project is first listed in a Recommended Slice.

B. The MOD will after coordination with the U.S. process the cost estimates in accordance with its national regulations and will forward them to the NATO International Staff for screening and recommendation. The MOD will advise the appropriate representatives of the United States if and when delays in excess of 60 days after coordination with the U.S. has been finalized are encountered in the coordination, processing, and forwarding of cost estimates.

C. The U.S., upon NATO P&P Committee project authorization (which includes NAE), will forward a request to the MOD for reimbursement, as authorized by the Committee, of funds that have been expended, or that are expected to be expended by the United States in the prefinancing of a project prior to the date of the assumption of financial responsibility by the MOD. The MOD will reimburse the United States for funds so expended, including NAE, payable to the Treasurer of the United States, within 30 days after its receipt of the U.S. request. The U.S. request will contain a guarantee that sums paid to the U.S. by MOD for portions of projects that are subsequently disapproved by the NATO Board of Auditors as being ineligible for NATO common funding, will be refunded to MOD.

D. Fees for projects that are supervised and executed by MOD on the basis of a service fee schedule, are to be negotiated. The MOD will supervise execution of authorized projects within percentage for National Administrative Expenses set forth in C-M(58) 116. Where C-M(58) 116 does not provide for NAE, or where all or part of the project is not approved by NATO, the fees due to expenses will be subject to case-by-case agreement.

#### *Article V. REAL ESTATE AND LOCAL UTILITIES*

The MOD will, to the extent possible, provide land and local utilities that may be required for U.S. prefinanced Infrastructure projects. When budgetary restrictions or constraints prevent the MOD from assuming its normal obligations for NATO Infrastructure projects at the time of prefinancing, the U.S. may agree to advance U.S. funds for these normal host nation costs on the condition that the MOD agrees to reimburse it for such costs, concurrently with other prefinanced costs, upon final Committee authorization of the prefinanced projects in question. These costs, as applicable, will be separately identified in the recoupment request mentioned in article IV above.

#### *Article VI. NATO JOINT FORMAL ACCEPTANCE INSPECTION (JFAI) AND AUDIT*

A. When a project is completed, final Committee authorization thereof is obtained, and beneficial occupancy secured, the MOD will advise the NATO International Staff through their delegation to NATO that the project is ready for NATO JFAI as set forth in NATO Infrastructure Committee Document AC/4-D/2074 (Revised). In cases in which project completion precedes Committee authorization, request for the NATO JFAI will be initiated at the time of Committee approval.

B. When the Committee has accepted the prefinanced facilities, the MOD will request an audit of cost records by the NATO Board of Auditors. If constructed directly by U.S. Forces the U.S. Forces will maintain all fiscal records concerned with the execution of the project for inspection by the NATO Board of Auditors until the final audit report has been completed. The MOD will furnish the U.S. copies of all correspondence, the interim findings of the NATO Board of Auditors so that the U.S. may have whatever evidence they may contain, for use in a possible U.S. nonconcurrence in audit findings.

In cases in which recouped amounts exceed amounts approved by the NATO Board of Auditors, the U.S. will reimburse the MOD in a sum which represents the difference between the amount recouped under procedures in article IV above and the amount approved by the Board of Auditors findings. In cases where the Board of Auditors findings recommend amounts in excess of Committee authorization, the MOD will submit a request for additional funds to the Committee for authorization.

The procedures set forth in article IV above will apply to requests for additional reimbursement.

*Article VII. DURATION*

A. These arrangements shall come into force upon formal acceptance by both parties and shall continue in force until one year after the receipt by either party of written notice of the intention of the other party to terminate the Agreement, it being understood that projects initiated under the force of these arrangements, will continue to be implemented in accordance with the provisions thereof.

B. The two parties shall, upon the request of either of them, consult regarding any matter that related to the application or amendment of these arrangements. The arrangements may be revised at any time by mutual agreement upon the request of either party.

II

MINISTERIE VAN DEFENSIE  
DIRECTIE JURIDISCHE ZAKEN

AFDELING WETGEVING EN PUBLIEKRECHT<sup>1</sup>

's-Gravenhage, 24 Juli 1975<sup>2</sup>

451.258/C

*Onderwerp*<sup>3</sup>: Infrastructure Prefinance and Recoupment Arrangement

With reference to your letter AEAEN-CN, dated 30 May 1975, I herewith confirm our official acceptance of the Infrastructure Prefinancing and Recoupment Arrangement, as attached to your letter mentioned above.

As the arrangement should come into force with this exchange of letters, it is understood to be effective as from this day. Article VII has been corrected accordingly.

For the Minister of Defence:  
The Head of the Department  
of Legislation and Public Law,  
J. DEMMIMK

United States Army  
Europe  
Office of the Engineer  
Attn: Col. Joseph S. C. Smith  
H.Q. U.S.A.R.E.U.R.  
Heidelberg

<sup>1</sup> Ministry of Defense, Office of Legal Affairs, Department of Legislation and Public Law.

<sup>2</sup> The Hague, 24 July 1975.

<sup>3</sup> Subject.