

MEMORANDUM OF UNDERSTANDING

between

THE MINISTER OF NATIONAL DEFENCE OF CANADA,
THE MINISTRY OF DEFENCE OF THE CZECH REPUBLIC,
THE MINISTRY OF DEFENCE OF THE KINGDOM OF DENMARK,
THE MINISTER OF DEFENCE OF THE FRENCH REPUBLIC,
THE FEDERAL MINISTRY OF DEFENCE OF THE FEDERAL REPUBLIC OF
GERMANY,
THE MINISTER OF DEFENCE OF THE REPUBLIC OF HUNGARY,
THE MINISTER OF DEFENCE OF THE GRAND-DUCHY OF LUXEMBOURG,
THE MINISTER OF DEFENCE OF THE KINGDOM OF THE NETHERLANDS,
THE MINISTER OF DEFENCE OF THE KINGDOM OF NORWAY,
THE MINISTER OF NATIONAL DEFENCE OF THE REPUBLIC OF POLAND,
THE MINISTRY OF NATIONAL DEFENCE OF THE REPUBLIC OF PORTUGAL,
THE MINISTRY OF DEFENCE OF THE SLOVAK REPUBLIC,
THE MINISTRY OF DEFENCE OF THE REPUBLIC OF SLOVENIA,
THE MINISTER OF DEFENCE OF THE KINGDOM OF SPAIN,
THE MINISTER OF NATIONAL DEFENCE OF THE REPUBLIC OF TURKEY

concerning their co-operation in
an Interim Strategic Air Lift Capability for Outsized Cargo

Short Title:

Strategic Air Lift Interim Solution (SALIS) MOU

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The Minister of National Defence of Canada,
the Ministry of Defence of the Czech Republic,
the Ministry of Defence of the Kingdom of Denmark,
the Minister of Defence of the French Republic,
the Federal Ministry of Defence of the Federal Republic of Germany,
the Minister of Defence of the Republic of Hungary,
the Minister of Defence of the Grand-Duchy of Luxembourg,
the Minister of Defence of the Kingdom of the Netherlands,
the Minister of Defence of the Kingdom of Norway,
the Minister of National Defence of the Republic of Poland,
the Ministry of National Defence of the Republic of Portugal,
the Ministry of Defence of the Slovak Republic,
the Ministry of Defence of the Republic of Slovenia,
the Minister of Defence of the Kingdom of Spain,
the Minister of National Defence of the Republic of Turkey -
hereinafter referred to as the “Participants”,

considering the Agreement between the Parties to the North Atlantic Treaty regarding the status of their Forces (NATO SOFA), dated 19.06.1951;

considering the Agreement among the States Parties to the North Atlantic Treaty and Other States Participating in the Partnership for Peace regarding the Status of their Forces (PfP SOFA), dated 19 June, 1995;

responding to the capability gaps stated in the context of the Prague Capabilities Commitment and the Helsinki Progress Catalogue;

recognising their common need for an interim strategic air lift capability for outsized cargo until a sufficient number of Participant-operated strategic transport aircraft are introduced into service;

recognising the cost effectiveness of a multinational approach to contracting of air lift resources;

noting the Berlin plus Arrangements, dated 17.03.2003;

noting the Statement of Intent on Strategic Air Lift, dated 21.11.2002;

noting the results of the “Feasibility Study for a Preferred Solution” for a Strategic Air Lift Interim Solution for an outsized cargo capability, dated 23.05.2003;

noting the Letter of Intent on Implementation of an Interim Strategic Air Lift Capability, dated 12.06.2003;

noting the ECAP Letter of Intent concerning the Implementation of an Outsized Strategic Air Lift Capability, dated 17.05.2004;

welcoming any NATO or EU nation wishing to join this initiative -
have reached the following understanding:

Section 1 Acronyms and Definitions

1.1 Acronyms see at Annex A

1.2 Definitions

For the purpose of this Memorandum of Understanding (MOU), the terms and expressions below are defined as follows:

- 1.2.1 **Activation Right** - the right given to any Participant to use AN-124-100 aircraft on very short notice, under the terms and conditions defined in this MOU and in the resulting contract. One Activation Right means activation of one AN-124-100 aircraft. Activation Rights might be executed for the NATO/EU requirement and also by an individual Participant for national purposes, when normal procedures of the contract do not allow timely access to the required aircraft.
- 1.2.2 **Contracting Authority** - Body appointed by the Participants for conducting the procurement process for the SALIS requirements.
- 1.2.3 **Contractor** - the service provider(s) to whom the SALIS contract will be awarded.
- 1.2.4 **Initial Operational Capability** - the initial capability, when the first AN-124-100 aircraft is available for use by Participants within the SALIS context.
- 1.2.5 **Strategic Air Lift Partnership** - a special relationship between the Participants and the Contracting Authority, necessary to ensure the effective

management of the contract. This will have the form of a “Weapon System Partnership” under CA’s regulations.

- 1.2.6 **National Access Rights** - the element of the SALIS capability that can be activated in support of a Participant’s operation outside the framework of NATO or EU.
- 1.2.7 **National Requirements, National Needs and National Purposes** refer to the needs of individual Participants for outsized cargo air lift. The definition of individual requirements for each of the Participants is a national responsibility.
- 1.2.8 **Outsized Cargo** according to the DM 5 – Study - cargo that exceeds 810 inches (2057.4 cm) long by 117 inches (297.18 cm) wide by 105 inches (266.7 cm) high in any dimension.
- 1.2.9 **Participant** - any signatory to this MOU.
- 1.2.10 **Procurement Process** - a set of predetermined activities and procedures that allow Participants to acquire as a group, through a Contracting Authority (CA), the required outsized air lift cargo capability. This process will include the drafting and issuing of a Request for Proposal (RfP) to industry, a bids evaluation, a recommendation and any other negotiations that might take place between the CA and potential contractor(s), as well as the contract preparation and ratification process.
- 1.2.11 **SALIS Capability** - an interim outsized cargo capability that comprises the strategic air lift assets, available under specific terms and conditions as laid down in this MOU, by which the Participants will close the existing capability gap for strategic air lift for outsized cargo.
- 1.2.12 **Steering Board** - a committee composed of one representative from each Participant, chaired by a non-voting chairman. The Steering Board (SB) will be the highest decision-making body and decide on all overarching issues related to the SALIS capability. The SB will act at the same time as the Strategic Air Lift Partnership Committee.
- 1.2.13 **Third Parties** - any person or other entity whose government or entity thereof is not a Participant.

Section 2 Objective and Scope

2.1 Objective

2.1.1 The objective of this MOU is to establish the means by which the Participants intend to close the existing capability gap for strategic air lift for outsized cargo by jointly acquiring the additional necessary assured access and capabilities in the most cost efficient manner.

2.1.2 The purpose of the strategic air lift capability referred to within the framework of this MOU is:

- to deploy equipment for forces for rapid deployment in support of NATO and/or EU- operations or NATO and/or EU supported operations.
- to allow Participants to acquire additional flying hours on an annual basis for their national use.

2.2 Scope

2.2.1 This MOU provides the fundamental principles that will form the basis of other documents needed to acquire the SALIS capability.

2.2.2 This MOU is not a legally binding document. It is not a procurement instrument and does not commit Participants to financial obligations, other than those mentioned in paragraph 12.7, prior to signing a contract(s) with a service provider(s) of strategic transport aircraft. Financial commitments following the signing of a contract(s) with a service provider(s) is regulated in accordance with Section 7 through Section 12. All activities of the Participants under this MOU will be carried out in accordance with their national laws.

2.2.3 Until further notice by the Danish Participant, this MOU will not apply to Greenland and the Faeroe Islands.

Section 3 Basic Concept and Principles

3.1 Basic Concept

- 3.1.1 Participants will pursue a dual-track SALIS to address both the NATO and EU assured access requirements for outsized cargo and their individual national needs for outsized air lift flying hours and assured access to them.
- 3.1.2 The NATO and EU requirements will be met through an assured access clause in subsequent contract(s), whereby the contractor(s) will provide assured access for up to six (6) AN-124-100 no later than six (6) days after notification by the Steering Board (SB). In such a case, these six (6) aircraft will be available for up to twenty (20) consecutive days and able to fly a minimum of eight hundred (800) total hours during that period. This assured access may be activated once every calendar year, independent of the national annual flying hours or national access rights used during the calendar year in which the NATO or EU activation takes place.
- 3.1.3 In addition to the minimum number of annual flying hours stated in 3.1.2, national requirements for annual flying hours and access to this capability may be met through a contracted number of additional annual flying hours and through Activation Rights.
- 3.1.4 Participants will, under normal circumstances, pre-plan the use of their national outsized air lift flying hours and co-ordinate the employment of these hours through the Strategic Air Lift Coordination Cell (SALCC).
- 3.1.5 For the purpose of the Activation Rights referred to in paragraph 3.1.3, the Contractor will be required to provide a minimum of fifty (50) single outsized cargo aircraft activations over the eight years of the project.
- 3.1.6 As a group, Participants will always keep a minimum of six (6) and a maximum of ten (10) Activation Rights reserved for the deployment of NATO or EU forces. The remaining Activation Rights will be distributed amongst Participants as detailed in paragraph 3.1.7.
- 3.1.7 National access to Activation Rights will be determined in accordance with the sharing key described at Annex B. Participants requiring more than their

normal share may buy extra Activation Rights. The general terms of use of all Participants Activation Rights are outlined in section 6 of this MOU.

3.1.8 Participants will use their Activation Rights through the SALCC. Unless under exceptional circumstances as detailed in section 6, Participants can use no more than two (2) single Activation Rights simultaneously. In addition to the NATO and EU requirements for assured access to a maximum of six (6) outsized air lift aircraft referred to in paragraph 3.1.2 above, the contractor will also be required to be able to provide up to a maximum of six (6) cumulative national Activation Rights plus the number of supplementary Activation Rights bought by the Participants in a calendar year.

3.1.9 In the case of usage of national Activation Rights, the contractor will be required to make available a minimum of fifty (50) flying hours per outsized cargo aircraft activated (exclusive of the flying hours required for pre-positioning the aircraft).

In this case, the contractor will be required to provide the aircraft at the designated airport within seventy-two (72) hours of the issuance of the national Activation Right order.

3.2 Basic Principles

3.2.1 To be allowed to participate in this project, Participants will be required to commit to procuring a minimum number of outsized air lift flying hours annually. The minimum level of commitment to outsized air lift annual flying hours will be based on a Participant's share of 800 flying hours in accordance with the sharing key as laid down at Annex B. This commitment is irrespective of the use of these hours, which may be national or multinational.

3.2.2 The total minimum annual outsized air lift flying hours commitment to be purchased annually by all Participants shall not relieve the contractor of its obligation to provide, upon notification from the SB, the number of aircraft and flying hours outlined in paragraph 3.1.2.

3.2.3 Participants own the rights to the total annual outsized air lift flying hours that they acquire as a group through the contract(s) to be entered into.

3.2.4 In addition to the commitment stated in Annex C, Participants will use their best endeavours to use the SALIS when acquiring additional outsized air lift flying hours.

Section 4 Organisation and Management

4.1 Contracting Authority

Participants intend to appoint NAMSA with the responsibility for conducting the procurement process for the SALIS requirements. Prior written approval of the Participants will be required for the CA to enter into (a) contract(s) with a service provider of strategic air lift.

4.2 Structure

Participants intend to establish a two level structure for the direction and management of the SALIS. It will comprise of a directing level and an executive level.

4.2.1 The directing level will be a Steering Board (SB).

4.2.1.1 The SB will be the highest decision-making body, which will be in place and operational by the initial operational capability (IOC) date. The SB will unanimously establish its own Terms of Reference (TOR's) and organise itself accordingly.

4.2.1.2 The SB will be composed of one delegate from each Participant. Chairmanship of the SB will be rotated amongst Participants. Each Participant's delegate will have one vote.

4.2.1.3 The SB will at the same time act as the NAMSOS Strategic Air Lift Partnership Committee. It will serve as the overall directing body for all matters according to the strategic air lift interim solution partnership agreement.

4.2.1.4 The SB will, in respect of the executive level, in particular

- issue policies and guidelines and supervise its work,
- appoint a chief,
- establish the posts,
- set rules for rotation of personnel amongst Participants.

4.2.1.5 All decisions concerning the budget, manpower and general functioning of the NAMS0 Strategic Air Lift Partnership will require unanimity. Details will be covered by the SB TOR`s.

4.2.1.6 All other procedures and rules will be covered in the SB TOR`s.

4.2.2 The executive level will be the Strategic Air Lift Coordination Cell (SALCC).

4.2.2.1 Participants will establish a SALCC to manage the day-to-day SALIS operations. As agreed by the EACC Steering Board, the SALCC will be co-located and working jointly as equal partners and making use of the EACC facilities, located at RNLAF Eindhoven AB, NL.

4.2.2.2 The relationship between SALCC and EACC will be established through an Implementation Arrangement (IA) to be negotiated subsequent to the effective date of this MOU.

Section 5 General Contractual Commitments

5.1 On behalf of the Participants, the CA will enter into contract(s) which will be legal document(s) between the Contractor(s) and the CA. These contract(s) will give Participants assured access to flying hours and Activation Rights in accordance with the principles of this MOU. It is intended to enter into a three (3)-year contract that may be extended until December 31, 2012.

5.2 The administrative costs of the CA and the administrative and operating costs (excluding Participants' national personnel) of the SALCC will be shared amongst Participants in accordance with the sharing key at Annex B.

Section 6 Use of Flying Hours and Activation Rights

The following principles will apply to the usage of flying hours and Activation Rights:

6.1 Participants will use their share of the flying hours as they see fit, subject to Section 8.

- 6.2 Participants may use the total amount of the flying hours committed in Annex C.
- 6.3 A maximum of two Activation Rights can be simultaneously used for national purposes by a Participant(s). The annual amount of national Activation Rights depends on the sharing key at Annex B and supplementary Activation Rights.
- 6.4 In case of extraordinary national requirements, unanimous consent by all members of the SB will be required to activate assured access to more than two aircraft as stated in paragraph 6.3 above.

Section 7 Financial Commitments

- 7.1 The minimum financial commitment to the SALIS from each Participant will consist of :
- a share of the CA's service charges for preparing and conducting the procurement,
 - a share of the administrative costs of the CA and the administrative and operating costs of the SALCC,
 - a share of the annual costs of the assured access.
- All these shares will be determined in accordance with the sharing key at Annex B.
- 7.2 Each Participant will commit the funds for using flying hours as stated at Annex C.
- 7.3 Participants will be allowed to contribute outsized air lift hours from their own national assets to the NATO and EU requirements in lieu of a financial share to this commitment. Contributions in kind will be valued based on the type of aircraft and assessed in accordance with the sharing key at Annex B. Conditions and detailed arrangements will be established by the Participants on a case-by-case basis.
- 7.4 Any potential cost saving resulting from a Participant's decision to commit to a greater number of annual flying hours over and above the minimum mentioned in paragraph 3.2.1 will accrue to that Participant.

Section 8 Transfers to other Participants and to Third Parties

- 8.1 Participants are permitted to give access to their Activation Rights and transfer their flying hours to any other Participant.
- 8.2 In case of a Participant's requirement for flying hours in excess of the current annual commitment he will first attempt to acquire flying hours from other Participants.
- 8.3 In case of a NATO or EU operation, any Participant can transfer its flying hours to non-Participants taking part in that operation to satisfy the Commander's requirement.
- 8.4 Transfer or sale of Activation Rights to non-Participants is not allowed under the terms of this MOU.
- 8.5 To allow for optimal usage of Participants' national air lift capabilities and outsized air lift flying hours an exchange of services mechanism will be established, subject to feasibility.

Section 9 Claims and Liabilities

- 9.1 Claims between Participants arising from or in connection with the execution of this MOU will be dealt with in accordance with the provisions of Article VIII of the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces of 19 June 1951 (NATO SOFA) or Article I of the Agreement among the States Parties to the North Atlantic Treaty and Other States Participating in the Partnership for Peace regarding the Status of their Forces, dated 19 June, 1995 (PfP SOFA), as applicable.
- 9.2 In regions where claims are not covered by the NATO or PfP SOFA, they will be handled through consultations between the Participants concerned, the principles established in Article VIII of the NATO SOFA being the basis for such consultations.

- 9.3 Third party claims not covered by the NATO or PfP SOFA will be processed by the most appropriate Participant, as determined by the Participants. The cost incurred in satisfying such claims will be borne by the Participants in a proportion to be decided by the Participants on a case-by-case basis.

Section 10 Settlement of Disputes

Any dispute concerning the interpretation or implementation of this MOU will be solely settled by consultation and negotiation between the Participants at the lowest appropriate level and will not be referred to a national or international tribunal or other Third Party for settlement.

Section 11 Admission of New Participants

- 11.1 This MOU is open to participation by NATO and EU nations, subject to them acceding to the provisions of this MOU and to other applicable arrangements, and the unanimous acceptance by the Participants.
- 11.2 Admission of a new Participant will require an adjustment of the sharing key, taking into account the new member's weight in the group of Participants. The revised sharing key will come into effect on the first day of the year that enlargement takes effect.
- 11.3 Detailed accession procedures will be worked out by the SB.

Section 12 Withdrawal and Change of Flying Hours

- 12.1 Any Participant will be entitled to withdraw or to modify its participation subject to the following conditions. Any Participant withdrawing will inform the chairman of the

SB in writing accordingly not less than one year in advance of the date the withdrawal will take effect as stated in paragraph 12.3.

- 12.2 On receipt of such information the SB will decide on a course of action, taking into account the financial impact of that particular nation withdrawing and any other matters, which may affect the action to be taken.
- 12.3 Withdrawal of a Participant will take effect on the last day of the calendar year during which the one-year notification period ends. Modification of participation will take effect on the first day of the calendar year that follows the one-year notification period. A Participant will be allowed to replace its annual flying hours by a contribution in kind with effect to the end of a contract period under provisions of paragraph 12.1.
- 12.4 A Participant reducing its committed annual flying hours or withdrawing its participation will:
 - 12.4.1 meet in full its commitments up to the date of reduction in flying hours or withdrawal;
 - 12.4.2 remain financially liable in the validity timeframe of the contract with the service provider of strategic air lift.
- 12.5 The total liability to the Programme of a Participant who reduces his committed annual flying hours or withdraws will, in no event, exceed the amount that the Participant would have contributed had it not reduced its flying hours or had it not withdrawn from the Programme.
- 12.6 At the request of the other Participants, the withdrawing Participant will make its best endeavour to ensure that the SALIS can be continued by the remaining Participants.
- 12.7 Following evaluation of the bids received in response to the RfP, any Participant may withdraw from the MOU with no further financial commitment other than its share of those commitments incurred and remaining unpaid in relation to the administrative

and operational costs of the SALCC and the CA's administrative and other costs incurred in conducting the procurement.

Section 13 Effective Date, Duration, Amendments and Termination

- 13.1 This MOU will come into effect on the date of the last signature and will stay in effect until 31 December 2012 unless extended by the Participants.
- 13.2 Notwithstanding the provisions of Section 12, this MOU may be amended in writing at any time only with the unanimous consent of the Participants.
- 13.3 This MOU may be terminated at any time with the unanimous consent of the Participants.
- 13.4 This MOU will become null and void unless it results in a contract arrangement with a service provider effective not later than 01 January 2006.
- 13.5 The provisions of Sections 9, 10 and 12 will remain in effect irrespective of any Participant's withdrawal or termination or expiration of this MOU.

Signed in Istanbul on 28 June, 2004 in the English language only.

The Honourable David Pratt

Minister of National Defence of Canada

His Excellency Mr. Miroslav Kostelka

Minister of Defence of the Czech Republic

His Excellency Mr. Søren Gade

Minister of Defence of the Kingdom of Denmark

Her Excellency Mrs. Michèle Alliot-Marie

Minister of Defence of the French Republic

His Excellency Mr. Walter Kolbow

Parliamentary State Secretary to the Federal Minister of Defence

of the Federal Republic of Germany

His Excellency Mr. Ferenc Juhász

Minister of Defence of the Republic of Hungary

His Excellency Mr. Charles Goerens

Minister of Defence of the Grand-Duchy of Luxembourg

His Excellency Mr. Henk G.J. Kamp

Minister of Defence of the Kingdom of the Netherlands

Her Excellency Mrs. Kristin Krohn Devold

Minister of Defence of the Kingdom of Norway

His Excellency Mr. Jerzy Szmajdzinski

Minister of Defence of the Republic of Poland

His Excellency Mr. Dr. Paulo Sacadura Cabral Portas

Minister of the State and for National Defence of the Republic of Portugal

His Excellency Mr. Juraj Liska

Minister of Defence of the Slovak Republic

His Excellency Mr. Dr. Anton Grizold

Minister of Defence of the Republic of Slovenia

His Excellency Mr. José Bono Martínez

Minister of Defence of the Kingdom of Spain

His Excellency Mr. Mehmet Vecdi Gönül

Minister of National Defence of the Republic of Turkey

ACRONYMS

AN	Antonov
CA	Contracting Authority
DM 5	Deployment and Mobility Decision 5
EACC	European Air Lift Coordination Cell
ECAP	European Capabilities Action Plan
EU	European Union
IA	Implementation Arrangement
MOU	Memorandum of Understanding
NAMSA	NATO Maintenance and Supply Agency
NAMSO	NATO Maintenance and Supply Organisation
NATO	North Atlantic Treaty Organisation
PCC	Prague Capabilities Commitment
PfP	Partnership for Peace
RfP	Request for Proposal
RNLAF	Royal Netherlands Air Force
SALCC	Strategic Air Lift Coordination Cell
SALIS	Strategic Air Lift Interim Solution
SB	Steering Board
SOFA	Status of Forces Agreement
TOR	Terms of Reference

SHARING KEY

<u>Participants</u>	<u>Sharing Key</u>
Canada	7.4925 %
Czech Republic	1.6550 %
Denmark	4.5338 %
France	25.4764 %
Germany	33.7342 %
Hungary	1.1953 %
Luxembourg	0.2615 %
Netherlands	6.6448 %
Norway	3.7088 %
Poland	4.5604 %
Portugal	0.8466 %
Slovakia	0.8827 %
Slovenia	0.4781 %
Spain	6.2081 %
Turkey	2.3220 %

ANNUAL COMMITTED FLYING HOURS

<u>Participants</u>	<u>Flying Hours</u>
Canada	150
Czech Republic	60
Denmark	40
France	550
Germany	750
Hungary	25
Luxembourg	3
Netherlands	70
Norway	60
Poland	50
Portugal	7
Slovakia	20
Slovenia	4
Spain	50
Turkey	20
TOTAL:	1.859