

PROTOCOL**on the accession of the European Community to the Eurocontrol International Convention relating to Cooperation for the Safety of Air Navigation of 13 December 1960, as variously amended and as consolidated by the Protocol of 27 June 1997**

THE REPUBLIC OF ALBANIA,
THE FEDERAL REPUBLIC OF GERMANY,
THE REPUBLIC OF AUSTRIA,
THE KINGDOM OF BELGIUM,
THE REPUBLIC OF BULGARIA,
THE REPUBLIC OF CYPRUS,
THE REPUBLIC OF CROATIA,
THE KINGDOM OF DENMARK,
THE KINGDOM OF SPAIN,
THE REPUBLIC OF FINLAND,
THE FRENCH REPUBLIC,
THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,
THE HELLENIC REPUBLIC,
THE REPUBLIC OF HUNGARY,
IRELAND,
THE ITALIAN REPUBLIC,
THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA,
THE GRAND DUCHY OF LUXEMBOURG,
THE REPUBLIC OF MALTA,
THE REPUBLIC OF MOLDOVA,
THE PRINCIPALITY OF MONACO,
THE KINGDOM OF NORWAY,
THE KINGDOM OF THE NETHERLANDS,
THE PORTUGUESE REPUBLIC,
ROMANIA,
THE SLOVAK REPUBLIC,
THE REPUBLIC OF SLOVENIA,
THE KINGDOM OF SWEDEN,
THE SWISS CONFEDERATION,
THE CZECH REPUBLIC,
THE REPUBLIC OF TURKEY,
and
THE EUROPEAN COMMUNITY,

HAVING REGARD to the Eurocontrol International Convention relating to Cooperation for the Safety of Air Navigation of 13 December 1960, as amended by the Additional Protocol of 6 July 1970, in turn amended by the Protocol of 21 November 1978, all amended by the Protocol of 12 February 1981, and as amended and consolidated by the Protocol of 27 June 1997, hereinafter referred to as 'the Convention' in international cooperation, and in particular Article 40 thereof,

HAVING REGARD to the responsibilities granted by the Treaty establishing the European Community of 25 March 1957, as revised by the Amsterdam Treaty of 2 October 1997, to the European Community in certain areas covered by the Convention,

WHEREAS the European Community Member States, Members of Eurocontrol, when adopting the Protocol consolidating the Convention which was opened for signature on 27 June 1997, declared that their signature was without prejudice to the Community's exclusive competence in certain areas covered by that Convention and to the Community's membership of Eurocontrol for the purpose of exercising such exclusive competence;

WHEREAS the purpose of the accession of the European Community to the Convention is to assist the European Organisation for the Safety of Air Navigation, hereinafter referred to as 'Eurocontrol', in achieving its objectives as set out in the Convention, notably that of being a single and efficient body for Air Traffic Management policy-making in Europe;

WHEREAS the European Community's accession to Eurocontrol requires clarification of the way in which the provisions of the Convention will apply to the European Community and its Member States;

WHEREAS the terms and conditions of the accession of the European Community to the Convention shall enable the Community to exercise within Eurocontrol such competencies that have been transferred to it from its Member States;

WHEREAS arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries, and such arrangements have yet to come into operation,

HAVE AGREED AS FOLLOWS:

Article 1

The European Community, within the framework of its competence, accedes to the Convention on the terms and conditions laid down in this Protocol, in accordance with Article 40 of the Convention.

Article 2

For the European Community, within the framework of its competence, the Convention shall apply to en-route air navigation services and related approach and aerodrome services for air traffic in the Flight Information Regions of its Member States listed in Annex II to the Convention, which are within the limits of the territorial applicability of the Treaty establishing the European Community.

The application of this Protocol to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

Application of this Protocol to Gibraltar airport shall be suspended until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of Spain and the United Kingdom will inform the other Contracting Parties to this Protocol of such date of entry into operation.

Article 3

Subject to the provisions of this Protocol, provisions in the Convention shall be so interpreted as to also include the European Community within the framework of Community competence, and the various terms used to designate the Contracting Parties to the Convention and their representatives are to be understood accordingly.

Article 4

The European Community will not contribute to the budget of Eurocontrol.

Article 5

Without prejudice to the exercise of its voting rights under Article 6, the European Community shall be entitled to be represented and involved in the work of all bodies of Eurocontrol in which any of its Member States is entitled to be represented as a Contracting Party, and where matters falling within its competence may be dealt with, with the exception of bodies which have an audit function.

In all bodies of Eurocontrol where it may participate, the European Community will present its positions, within the framework of its competence, in accordance with its institutional rules.

The European Community may not submit candidates for membership of elected Eurocontrol bodies, nor may it submit candidates for office on the bodies in which it is entitled to participate.

Article 6

1. For decisions in matters where the European Community has exclusive competence and for the purpose of the application of the rules provided for in Article 8 of the Convention, the European Community shall exercise the voting rights of its Member States under the Convention, and the votes and weighted votes so cast by the European Community shall be cumulated for the determination of the majorities provided for in the said Article 8 of the Convention. When the Community votes, its Member States shall not vote.

For the purpose of deciding on the number of Contracting Parties to the Convention required for a request for decision-making by a three-quarters majority, as stipulated at the end of the first subparagraph of Article 8.2, the Community shall be considered as representing its Member States, which are Members of Eurocontrol.

2. A decision proposed with respect to a specific item to be voted on by the European Community shall be postponed if a Contracting Party to the Convention that is not a member of the European Community so requests. The postponement shall be used for consultations between the Contracting Parties to the Convention, assisted by the Eurocontrol Agency, on the decision proposed. In the event of such a request, the taking of the decision may be postponed for a maximum period of six months.

For decisions in matters where the European Community has no exclusive competence, Member States of the European Community shall vote in accordance with their voting rights as provided for in Article 8 of the Convention, and the European Community shall not vote.

3. The European Community shall inform on a case-by-case basis the other Contracting Parties to the Convention of the cases where, with regard to the various items of the agendas of the General Assembly, the Council and other deliberating bodies to which the General Assembly and the Council have delegated powers, it will exercise the voting rights provided for in paragraph 1 above. This obligation shall also apply when decisions are taken by correspondence.

Article 7

The scope of the competence transferred to the Community is indicated in general terms in a written declaration made by the European Community at the time of the signature of this Protocol.

This declaration may be modified as appropriate by notification from the European Community to Eurocontrol. It does not replace or in any way limit the matters that may be covered by the notifications of Community competence to be made prior to Eurocontrol decision-making by means of formal voting or otherwise.

Article 8

Article 34 of the Convention shall apply to any dispute arising between two or more Contracting Parties to this Protocol or between one or more Contracting Parties to this Protocol and Eurocontrol relating to the interpretation, application or performance of this Protocol, including its existence, validity and termination.

Article 9

1. This Protocol shall be opened for signature by all States signatories to the Protocol consolidating the Eurocontrol International Convention relating to Cooperation for the Safety of Air Navigation of 13 December 1960, as variously amended, opened for signature on 27 June 1997, hereinafter referred to as 'the Consolidating Protocol', and the European Community.

It shall also be opened, prior to the date of its entry into force, for signature by any State, duly authorised to sign the Consolidating Protocol, in accordance with Article II of that Protocol.

2. This Protocol shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Government of the Kingdom of Belgium.

3. This Protocol shall enter into force when it has been ratified, accepted or approved, on the one hand, by all signatory States that are also signatories to the Consolidating Protocol and whose ratification, acceptance or approval is required for the entry into force of the Consolidating Protocol, and on the other hand, by the European Community, on the first day of the second month after the deposit of the last instrument of ratification, acceptance or approval, provided that the Consolidating Protocol has come into force on that date. Where this condition is not met, it shall enter into force on the same date as the Consolidating Protocol.

4. This Protocol shall enter into force with respect to such signatories that have deposited their instruments of ratification, acceptance or approval after its entry into force on the first day of the second month following the deposit of the relevant instruments of ratification, acceptance or approval.

5. The Government of the Kingdom of Belgium shall notify the Governments of the other signatory States of this Protocol and the European Community of each signature, each deposit of an instrument of ratification, acceptance or approval and each date of entry into force of this Protocol pursuant to paragraphs 3 and 4.

Article 10

Each accession to the Convention after its entry into force shall represent also consent to be bound by this Protocol. The provisions of Articles 39 and 40 of the Convention shall also apply to this Protocol.

Article 11

1. This Protocol shall remain in force for an indefinite period.

2. If all Eurocontrol Member States which are Members of the European Community withdraw from Eurocontrol, notification of withdrawal from the Convention, as well as from this Protocol, shall be considered to have been given by the European Community together with the notification of withdrawal, under Article 38(2) of the Convention of the last Member State of the European Community withdrawing from Eurocontrol.

Article 12

The Government of the Kingdom of Belgium shall have this Protocol registered with the Secretary General of the United Nations pursuant to Article 102 of the Charter of the United Nations and with the Council of the International Civil Aviation Organisation pursuant to Article 83 of the Convention on International Civil Aviation signed in Chicago on 7 December 1944.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having presented their Full Powers, found to be in good and due form, have signed this Protocol.

DONE at Brussels, this eighth day of October 2002 in each of the official languages of the Signatory States, in a single original, which shall remain deposited in the archives of the Government of the Kingdom of Belgium, which shall transmit certified copies to the Governments of the other Signatory States and to the European Community. In the case of any inconsistency, the text in the French language shall prevail.

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Declaration concerning the competence of the European Community in respect of matters covered by the Eurocontrol International Convention

In accordance with the relevant Articles of the EC Treaty, as interpreted by the Court of Justice of the European Communities, this declaration indicates the competence of the European Community in matters covered by the Eurocontrol International Convention.

A. GENERAL PRINCIPLES

1. The exercise of competence which the Member States have transferred to the Community pursuant to the EC Treaty is, by its nature, liable to develop constantly. In the framework of the Treaty, the competent institutions may take decisions which determine the extent of the competence of the European Community. The European Community therefore reserves the right to amend this declaration accordingly, without this constituting a prerequisite for the exercise of its competence in Eurocontrol.
2. In relation to Eurocontrol, only the external competence of the European Community is relevant. It follows that, unless the competent institutions explicitly decide to exercise directly an external competence on the basis of the Treaty in a given area, the European Community has exclusive competence only to the extent that its internal legislation is affected by international agreements or other rules established in the framework of international cooperation ⁽¹⁾.

B. COMPETENCE EXERCISED BY THE EUROPEAN COMMUNITY

1. *Areas of competence in the field of air traffic management*

- (a) Standardisation: this covers the harmonisation of technical specifications in general and those related to equipment and systems used for the provision of air traffic services in particular (Articles 95 and 80 of the EC Treaty).

In this area, the most important legal instruments adopted by the European Community are Council Regulation (EEC) No 3922/91 ⁽²⁾, Council Directive 93/65/EEC ⁽³⁾ and Directive 98/34/EC of the European Parliament and of the Council ⁽⁴⁾;

- (b) Policy on research and technological development (Articles 163 to 173 of the EC Treaty).

In this area, currently, the most important legal instruments adopted by the European Community are Decision No 1513/2002/EC of the European Parliament and of the Council ⁽⁵⁾, Council Decision 2002/834/EC ⁽⁶⁾ and Council Decision 2002/835/EC ⁽⁷⁾. These mainly cover basic research (universities, research institutes) and both research and technological development relating to aeronautics and telematics, including air traffic management systems and equipment;

- (c) Trans-European networks (Articles 154 to 156 of the EC Treaty): these include transport, telecommunications and energy with the aim to ensure interoperability and compatibility of national networks by means of collective planning, financial incentives and interoperability standards.

In this area, the most important legal instruments adopted by the European Community are Decision No 1692/96/EC of the European Parliament and of the Council ⁽⁸⁾ and Council Regulation (EC) No 2236/95 ⁽⁹⁾;

⁽¹⁾ As established by the Court of Justice in Opinions 1/94 [1994] ECR I-5267, 2/91 [1993] ECR I-1061 and 1/76 [1977] ECR 741, and in Case 22/71 [1971] ECR 949.

⁽²⁾ OJ L 373, 31.12.1991, p. 4. Regulation as last amended by Regulation (EC) No 1592/2002 of the European Parliament and of the Council (OJ L 240, 7.9.2002, p. 1).

⁽³⁾ OJ L 187, 29.7.1993, p. 52. Directive as last amended by Commission Regulation (EC) No 2082/2000 (OJ L 254, 9.10.2000, p. 1).

⁽⁴⁾ OJ L 204, 21.7.1998, p. 37. Directive as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).

⁽⁵⁾ OJ L 232, 29.8.2002, p. 1.

⁽⁶⁾ OJ L 294, 29.10.2002, p. 1.

⁽⁷⁾ OJ L 294, 29.10.2002, p. 44.

⁽⁸⁾ OJ L 228, 9.9.1996, p. 1. Decision as amended by Decision 1346/2001/EC (OJ L 185, 6.7.2001, p. 1).

⁽⁹⁾ OJ L 228, 23.9.1995, p. 1. Regulation as amended by Regulation (EC) No 1655/1999 of the European Parliament and of the Council (OJ L 197, 29.7.1999, p. 1).

- (d) Policy on harmonisation of radio spectrum: the aim in particular is to establish a policy and legal framework in order to ensure the coordination of policy approaches and harmonised conditions with regard to the availability and efficient use of the radio spectrum necessary for the establishment and functioning of the internal market in Community policy areas such as electronic communications, transport and research and development.

In this area, the most important legal instrument adopted by the European Community is Decision No 676/2002/EC of the European Parliament and of the Council ⁽¹⁾.

2. *Areas of competence in the field of air transport*

The air transport policy (Article 80(2) of the EC Treaty and subsequent legislation) has the objective to facilitate the provision of transport services within the Community, promote safety and security and contribute to the efficient functioning of the internal market.

In this area, the most important legal instruments adopted by the European Community are Council Regulations (EEC) No 2407/92 ⁽²⁾, (EEC) No 2408/92 ⁽³⁾, (EEC) No 2409/92 ⁽⁴⁾ and (EEC) No 95/93 ⁽⁵⁾, and Regulations (EC) No 1592/2002 ⁽⁶⁾ and (EC) No 2320/2002 ⁽⁷⁾ of the European Parliament and of the Council, implemented by Commission Regulation (EC) No 622/2003 ⁽⁸⁾, Regulation (EC) No 437/2003 of the European Parliament and of the Council ⁽⁹⁾ and Directive 2003/42/EC of the European Parliament and of the Council ⁽¹⁰⁾.

3. It may also occur that a measure to be taken by Eurocontrol affects established rules of general Community policies such as competition, free movement of goods and services (including public procurement and data protection), environmental protection, social policy and economic and social cohesion.

C. *Member States' competence*

1. When the European Community has not established internal rules and it has not been decided to exercise directly an external competence, the competence rests with its Member States.
2. The Treaty does not confer to the European Community competence with regard to issues of national security and defence; the design and use of airspace for military purposes therefore fall outside the scope of the competence of the European Community.

⁽¹⁾ OJ L 108, 24.4.2002, p. 1.

⁽²⁾ OJ L 240, 24.8.1992, p. 1.

⁽³⁾ OJ L 240, 24.8.1992, p. 8. Regulation as amended by the Act of Accession of Austria, Finland and Sweden.

⁽⁴⁾ OJ L 240, 24.8.1992, p. 15.

⁽⁵⁾ OJ L 14, 22.1.1993, p. 1. Regulation as last amended by Regulation (EC) No 1554/2003 of the European Parliament and of the Council (OJ L 221, 4.9.2003, p. 1).

⁽⁶⁾ OJ L 240, 7.9.2002, p. 1.

⁽⁷⁾ OJ L 355, 30.12.2002, p. 1.

⁽⁸⁾ OJ L 89, 5.4.2003, p. 9.

⁽⁹⁾ OJ L 66, 11.3.2003, p. 1. Regulation as amended by Commission Regulation (EC) No 1358/2003 (OJ L 194, 1.8.2003, p. 9).

⁽¹⁰⁾ OJ L 167, 4.7.2003, p. 23.