

FINAL ACT

**OF THE DIPLOMATIC CONFERENCE ON THE PROTOCOL ON THE ACCESSION OF
THE EUROPEAN COMMUNITY TO THE EUROCONTROL INTERNATIONAL
CONVENTION RELATING TO CO-OPERATION FOR THE SAFETY OF AIR NAVIGATION
OF 13 DECEMBER 1960, AS VARIOUSLY AMENDED AND AS CONSOLIDATED BY THE
PROTOCOL OF 27 JUNE 1997**

(Brussels, 8 October 2002)

THE PLENIPOTENTIARIES OF

**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,**

Assembled at Brussels on 8 October 2002;

1. *Have unanimously adopted* the text of a Protocol set out in Annex to the present Final Act and hereinafter called "the Accession Protocol", on the accession of the European Community to the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation of 13 December 1960, as variously amended, and as

consolidated by the Protocol opened for signature on 27 June 1997, hereinafter called "the revised Convention". The said Accession Protocol has been opened for signature at Brussels on 8 October 2002.

2. *Have adopted* the following resolutions regarding respectively the ratification, acceptance or approval by the Contracting Parties at their earliest convenience of the Accession Protocol and the early implementation of the Accession Protocol;

The Conference:

Assembled at Brussels on 8 October 2002;

Having unanimously adopted the Protocol, hereinafter called "the Accession Protocol", on the accession of the European Community to the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation of 13 December 1960, as variously amended, and as consolidated by the Protocol opened for signature on 27 June 1997, hereinafter called "the revised Convention";

I. Resolution urging Contracting Parties to ratify, accept or approve the Accession Protocol at their earliest convenience

Considering that the accession of the European Community will significantly contribute to the aims and tasks of EUROCONTROL on the terms and conditions contained in the Accession Protocol;

Recalling the resolution adopted by the Diplomatic Conference of 27 June 1997 on the Protocol consolidating the EUROCONTROL Convention urging the Contracting Parties to the EUROCONTROL Convention to ratify the above-mentioned Protocol of 27 June 1997 at their earliest convenience;

Agreeing on the importance of an entry into force of the revised Convention and of the Accession Protocol as soon as possible;

Urges the signatories to the Accession Protocol to ratify, accept or approve that Protocol as soon as possible.

Requests the Director General of EUROCONTROL to take all practical measures, in co-operation with the signatory States and the European Community, to provide assistance, if requested, in the process of ratification, acceptance or approval of the Accession Protocol.

II. Resolution on early implementation of the Accession Protocol

Having noted the Resolution on early implementation of the Consolidating Protocol adopted by the Diplomatic Conference on the adoption of that Protocol on 27 June 1997;

Considering the importance of a smooth and efficient implementation of the Accession Protocol;

Urges all States and the European Community to develop, to the fullest extent possible, arrangements for the early implementation of certain provisions of the Accession Protocol.

3. *Have adopted* the following joint declarations on the absence of Community competence in the fields of national security and defence and on RTDE co-ordination:

I. Joint declaration on the absence of Community competence in the fields of national security and defence

The signatories to the Protocol on the accession of the European Community to the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation of 13 December 1960, as variously amended, and as consolidated by the Protocol opened for signature on 27 June 1997, hereinafter called "the revised Convention",

Having noted that the European Community has at present no competence with regard to defence and security policies;

Taking note of the role of EUROCONTROL as contained in the provisions of the revised Convention relating to military issues;

Agree that:

If the competence of the European Community were to be extended to those matters there would be a need to review whether this radically transforms the extent of their obligations under the revised Convention and whether therefore the Protocol in its present form can be applied to those matters.

II. Joint declaration on RTDE co-ordination

The signatories to the Protocol on the accession of the European Community to the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation of 13 December 1960, as variously amended, and as consolidated by the Protocol opened for signature on 27 June 1997, hereinafter called "the revised Convention",

Having examined the provisions of the revised Convention relating to the co-ordination of research, technological development and evaluation (RTDE) activities in the fields covered by that Convention;

Having noted that Article 2.1.(h) of the revised Convention is applicable to the co-ordination of RTDE activities between EUROCONTROL and its Contracting Parties;

Having noted that the co-ordination organised by the EUROCONTROL Agency under Article 1.5 (i) of its Statute concerns its own RTDE activities and those of ATM Organisations;

Agree that:

- the "co-ordination of RTDE activities" is the exchange of views, information and experience about RTDE programmes and activities in the area of air traffic management; its main objectives are to promote complementarity and to avoid duplication of work;
- in co-ordinating their RTDE activities, all parties involved shall respect the overall objectives, competencies, administrative, managerial and budgetary responsibilities and the procedures of their respective institutions or bodies entrusted with the

execution of RTDE programmes, as well as their rules governing participation, dissemination and intellectual property rights;

- the Contracting Parties shall remain free to decide on their RTDE strategies, programmes and projects in accordance with their own internal procedures.
4. *Have noted* the following joint declaration by the States signatories to the Consolidating Protocol and this Final Act:

III. Joint declaration regarding the entry into force of the Consolidating Protocol and the Accession Protocol, and regarding further signatures to the Accession Protocol

The States signatories to the Protocol consolidating the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation of 13 December 1960, as variously amended, opened for signature on 27 June 1997, hereinafter called "the Consolidating Protocol", and signatories to the Final Act of the Diplomatic Conference on the Protocol on the accession of the European Community to the EUROCONTROL Convention, opened for signature on 8 October 2002, hereinafter called "the Accession Protocol";

Desirous to clarify the conditions regarding the entry into force of the consolidating Protocol and the Accession Protocol;

Confirm their interpretation of Article II, paragraph 3, of the Consolidating Protocol to the effect that the aforesaid Protocol shall enter into force when all States that are parties to the EUROCONTROL Convention on 8 October 2002, have deposited their instruments of ratification, acceptance or approval of the Consolidating Protocol.

Agree that EUROCONTROL shall take the appropriate steps to ensure, when considering a request for accession to the EUROCONTROL Convention and for an authorisation to sign the Consolidating Protocol, that adequate commitments are made for signature and for ratification, acceptance or approval, of the Accession Protocol.

PROTOCOL

ON THE ACCESSION OF THE EUROPEAN COMMUNITY TO THE EUROCONTROL INTERNATIONAL CONVENTION RELATING TO CO-OPERATION 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,
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THE SWISS CONFEDERATION,
THE CZECH REPUBLIC,
THE REPUBLIC OF TURKEY,
AND
THE EUROPEAN COMMUNITY,**

Having regard to the EUROCONTROL International Convention relating to Co-operation 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", 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 co-operation 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 sub-paragraph of Article 8.2, the Community shall be considered as representing its Member States, which are Members of EUROCONTROL.

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.

2. 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 Co-operation 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 open, 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 above.

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 Organization pursuant to Article 83 of the Convention on International Civil Aviation signed in Chicago on 7 December 1944.