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Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union, in respect of the decisions to be adopted by Eurocontrol's Permanent Commission, on the roles and tasks of Eurocontrol and on centralised services**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### 1.1. Reasons for and objectives of the proposal

##### **General**

The present proposal concerns the position to be taken in Eurocontrol's Permanent Commission regarding, on the one hand, the definition of Eurocontrol's roles and tasks and, on the other, Eurocontrol's activity in the area of Centralised Services. A meeting of that Commission is scheduled for the 8 / 9 December, on which these two items will be dealt with. Background is the particular position of Eurocontrol's activity, which in some ways overlaps with Union activity, in areas covered by Union legislation.

Over the last decade, efforts have been undertaken to avoid such overlaps and to come to the best possible results in view of the available resources on both sides. As a result, Eurocontrol performs tasks under the Single European Sky (SES) legislation. The organisation has been charged with three major tasks/roles:

- (1) Providing technical support to the Commission and EASA for assisting them in their regulatory actions, with respect to their regulatory action, in accordance with the EU-Eurocontrol High level Agreement of 29 October 2012.
- (2) Acting as the Performance Review Body to assist the Commission in the development and implementation of the performance scheme (designation by the Commission until end 2016).
- (3) Acting as the Network Manager for the ATM Network functions (designation by the Commission until end 2019).

In addition, Eurocontrol is a founding member together with the Union in the SESAR Joint Undertaking (since 2007).

The High Level Agreement (HLA) of 2012 recognises the contribution that each organisation can make to European ATM. The respective roles of the Union as single pan-European regulator and that of Eurocontrol in technical support of the achievement of the objectives of the SES policy were reaffirmed in this agreement.

The above items have to be seen in the context of the framework governing in general the roles and tasks of the organisation, which is the first item to be dealt with by the Permanent Commission at the above mentioned meeting.

At present, the operation of Eurocontrol is in principle governed by the International Convention relating to co-operation for the safety of air navigation, as amended by the Protocol signed at Brussels on 12 February 1981 ("the Amended Convention"). However, the contracting parties signed a Consolidating Protocol on 27 June 1997 which, inter alia, is intended to amend the definition of the organisation's tasks. The Convention as amended by that Protocol has is generally referred to as the "revised Convention". The Consolidating Protocol has not yet entered into force, however.

On 9 December 1997, Eurocontrol's Permanent Commission adopted Decision No 71, on the early implementation of Article 2(1) of the revised Convention, defining the tasks the organisation shall undertake.

The activities of Eurocontrol's Study Group on reforming the organisation extend inter alia to this aspect. At its 6<sup>th</sup> meeting, held on 19 October 2015, that Study Group tasked Eurocontrol Agency to prepare a draft Permanent Commission Act, defining the future roles, tasks and functions of the organisation to be presented and adopted at the next meeting of the Permanent Commission on 8-9 December 2015.

That decision of the Permanent Commission will have legal effects. According to the applicable institutional framework of the organisation, set out in the Amended Convention, the Permanent Commission is in charge of "formulating the Organisation's general policy".

In turn, the definition of the roles and tasks will govern Eurocontrol's future action and, by the same token, will necessarily reflect what the organisation considers as legitimate activity. It will be binding on all Eurocontrol Members, including Union Member States.

In this respect, it shall be observed that the decision of the Permanent Commission may have consequences for the application of EU law and, particularly, on the integrity of EU competences, given that Union legislation covers important areas in which Eurocontrol is active. In some cases, Eurocontrol's role and activity depend on decisions to be taken at Union level (see above). It is therefore important to ensure that the definition of Eurocontrol's roles and tasks does not conflict with EU law, in particular EU competences, and that it does not prejudice future EU action.

The second item to be dealt with at the above mentioned Permanent Commission meeting concerns Eurocontrol's activity on Centralised Services. More precisely, it is expected that a decision pertaining to the financing of certain centralised services be adopted. The issue of centralised services should be seen in the context of the Union's activity in the field of the Single European Sky ATM Research (SESAR) project and the network management functions as laid-down in Regulation (EU) 677/2011. In this regard, it is important to underline that the provision of these Centralised Services entails the availability of the required ATM infrastructure at central, regional and local sites, as appropriate. The deployment of that infrastructure depends on decisions to be taken at Union's level in the context of SESAR, in particular as far as air-to-ground and ground-to-ground communication systems are concerned. These decisions will result from in-depth analyses of costs and benefits, governance, investment, security and defence, and in identifying the added value stemming from the centralised provision of such services, including those services already in place on a limited scale. Furthermore, the provision of Centralised Services may require decisions at Union's level on the role to be played by the Network Manager to act as a provider of those Centralised Services. Under these circumstances, a decision by Eurocontrol on the financing of certain Centralised Services at this stage is premature, and may prejudice future activities conducted by Eurocontrol in a manner that may be detrimental to the Union's activity in this field, notably as regards SESAR. It is therefore necessary to seek postponement of that decision, given that the Union is not currently in possession of sufficient information to evaluate the situation. .

Eurocontrol bodies do not admit the Union in the Permanent Commission, whereas member countries, including all EU Member States are so admitted. The position set out in the present proposal is therefore intended to be defended by Member States, when acting in the Permanent Commission.

By virtue of Article 4(3) TEU, Member States are also obliged, as are Union institutions, to defend the same position in Eurocontrol's Provisional Council, the competent preparatory body.

## **Background regarding the roles and tasks of Eurocontrol**

In 2013, Eurocontrol launched a debate on the reform of its organisation. On 4 December 2013, Eurocontrol's Permanent Commission established an internal Study Group to investigate in what matters the Eurocontrol Convention may require to be amended to adapt to changes in the air traffic management landscape in Europe.

Discussions have been on-going during the last two years. At the latest meeting of the Eurocontrol Study Group, held on 19 October 2015, the chairman of the Group concluded that the Eurocontrol Agency should prepare a proposal on services, roles and tasks of Eurocontrol, as described in chapter 4 of a paper proposed by some Eurocontrol Member States (Eurocontrol Study Group of Alternates discussion paper CN-SG-6-2015-2: "*Future role and tasks of the Organisation*") and on which the chairman considered there was a reasonable level of consensus in the Study Group.

A Permanent Commission Act on the roles and tasks of the organisation is planned to be adopted at the 44<sup>th</sup> Provisional Council (PC44) meeting on 9 December 2015. This Act will specify the existing Decision No 71 of 9 December 1997 on early implementation of Article 2.1 of the revised Convention.

## **Background regarding the development of Centralised ATM Services**

The work of the Eurocontrol Agency on the subject of Centralised Services has progressed significantly since its inception in late 2012. The Eurocontrol Agency was authorised by its Permanent Commission in February 2014 to initiate a stepwise approach to the assessment and demonstration of the operational, technical and financial feasibility of these potential Centralised Services recognising the varying levels of maturity across those services. Since then, the Eurocontrol Agency has held a series of workshops, and has developed Concepts of Operations (CONOPs) for a number of Centralised Services. It has produced a global Cost Benefit Analysis (CBA) which it has had endorsed by an independent consultant – although the detail within that CBA has not been subject to public scrutiny.

A Permanent Commission Act on the financing of Centralised Services is expected to be adopted at the 44<sup>th</sup> Provisional Council (PC44) meeting on 9 December 2015. This Act would launch the demonstration phase of certain Centralised Services.

## **2. LEGAL ELEMENTS OF THE PROPOSAL**

Against the background described above and based upon Articles 100(2) and 218(9) TFEU it is proposed to adopt the position to be taken on behalf of the Union in respect of the decisions to be adopted by Eurocontrol's Permanent Commission, on the roles and tasks of Eurocontrol and on Centralised Services.

Proposal for a

## **COUNCIL DECISION**

**on the position to be taken on behalf of the European Union, in respect of the decisions to be adopted by Eurocontrol's Permanent Commission, on the roles and tasks of Eurocontrol and on centralised services**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) and Article 218(9) thereof.

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Permanent Commission of Eurocontrol through Decision No 123 of 4 December 2013 established a Study Group to investigate in what matters the Eurocontrol Convention may require to be amended in view of adapting it to the evolving air traffic management landscape in Europe.
- (2) The Study Group tasked the Eurocontrol Agency on 19 October 2015 with preparing a draft Permanent Commission Act defining the future roles, tasks and functions of the organisation.
- (3) A draft decision of the Permanent Commission regarding roles and tasks of the organisation will be on its agenda for approval on 8-9 December 2015.
- (4) That decision will have legal effects. According to the applicable institutional framework of the organisation, set out in the Eurocontrol International Convention, as amended by the Protocol signed at Brussels on 12 February 1981 ("the Amended Convention"), the Permanent Commission is in charge of "formulating the Organisation's general policy". In turn, the definition of the roles and tasks will govern Eurocontrol's future action and, by the same token, will necessarily reflect what the organisation considers as legitimate activity. It will be binding on all Eurocontrol Members, including Union Member States.
- (5) The definition on the roles and tasks of Eurocontrol, object of the Permanent Commission's decision, may have consequences for the application of Union law and, particularly, on the integrity of Union competences, given that Union legislation covers important areas in which Eurocontrol is active. In some cases, Eurocontrol's role and activity depend on decisions taken at Union level.
- (6) It is therefore important to ensure that the definition of Eurocontrol's roles and tasks does not conflict with Union law, in particular Union competences, and that it does not prejudge future Union action.
- (7) At the same meeting, the Permanent Commission may adopt a decision on centralised services.
- (8) This decision is expected to pertain to the financing of certain centralised services. The Union is not currently in possession of sufficient information to evaluate the substance

of such decision. Such decision may prejudice future activity conducted by Eurocontrol and in a manner that may be detrimental to the Union's activity in this field, notably as regards Single European Sky Air Traffic Management Research (SESAR). The decision on this matter should thus be postponed.

- (9) Therefore the position to be taken on the Union's behalf in the Permanent Commission of Eurocontrol should be established,

HAS DECIDED AS FOLLOWS

*Article 1*

The position to be taken by the Member States on behalf of the Union in the Permanent Commission of Eurocontrol concerning the role and tasks of Eurocontrol and centralised services shall be in accordance with the Annex.

The Member States shall act jointly in the interest of the Union.

*Article 2*

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council  
The President*