RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

in order to authorise the Commission to open and conduct negotiations with the International Civil Aviation Organization (ICAO) on the conditions and arrangements for accession by the European Community

RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

in order to authorise the Commission to open and conduct negotiations with the International Maritime Organization (IMO) on the conditions and arrangements for accession by the European Community
EXPLANATORY MEMORANDUM

Introduction

This communication from the Commission to the Council concerns the accession of the European Community to the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO).

It is necessary, as the White Paper on the future of the European transport policy\(^1\) underlines, that the European Union, which is the world’s leading commercial power and conducts a large part of its trade outside its own borders, play its role in the adoption of the international rules which govern much of transport.

The Community has built up a considerable body of law over the last ten years on air and sea transport. Therefore the increasing involvement of the Community in matters dealt with in the two organizations and the consequent development of the Community's internal rules make it necessary to strengthen Community participation in the ICAO and IMO, organizations with worldwide membership setting international rules concerning air and maritime transport. This will put the Community in a position to meet its obligations as regards external competences and to guarantee consistency between Community law and international law in these two sectors of particular economic importance.

As ruled by the European Court of Justice back in 1971, as the Community develops common internal rules it also acquires authority over external negotiations which might affect these common rules (ERTA doctrine\(^2\)). Later, in Opinion 1/76 the Court of Justice further declared that if the Community has an internal competence to achieve a specific objective, it implicitly holds the exclusive external competence on that subject as far as such an external exercise is necessary to achieve that objective\(^3\).

The Court’s Opinion 1/94\(^4\) confirmed the rationale of these two judgements. It further stated that “Once the Community has included in its internal legislative acts provisions relating to the treatment of nationals of third countries or has expressly conferred upon its institutions a competence to negotiate with third countries, it acquires an exclusive competence on the measure covered by these acts. This is also the case, even in the absence of an explicit provision enabling its institutions to negotiate with third countries, when the Community has achieved a complete harmonisation (…) because the common rules so adopted could be affected in the sense of the ERTA judgement (…) if the Member States retained a freedom to negotiate with the third countries.”\(^5\)

Consequently, the Community has no other choice than to accede to the Chicago and Geneva Conventions, in order to meet its obligations arising both from secondary legislation and from the principles laid down in the case law of the ECJ.

---

5. Opinion 1/94, paragraphs 95 and 96.
In addition to legal considerations, as the Commission stated in its recent White Paper on "European transport policy for 2010: time to decide"6 "(...) the European Union, which is the world’s leading commercial power and conducts a large part of its trade outside its own borders, has (...) little say in the adoption of the international rules which govern much of transport. This is because the Union as such is excluded from most intergovernmental organizations, where it has no more than observer status."

The Commission has therefore taken the position that "...[this situation] needs to be remedied without delay, by having the Community accede to the inter-governmental organizations which govern transport so that the thirty-odd members of the enlarged Union not only speak with a single voice but, above all, can influence those organizations’ activities in the common interest and in support of sustainable development."

The potential impact of carefully coordinated Community action on the decisions taken in the ICAO and IMO has been already demonstrated under the existing, very limited possibilities for effective Community participation. In the field of maritime safety, the Community has agreed to ban single-hull tankers from its ports by 2015. This determination on the part of the European Union has led the IMO to change its planned timetable for phasing out such ships. The Community efforts to achieve a progressive reduction in aircraft noise have also helped speed up the multilateral discussions on the revision of aircraft noise standards in the ICAO.

**The problem and the way forward**

Existing arrangements, however, for the participation of the Community as observer in the ICAO or the Commission in the IMO are neither satisfactory nor sufficient to guarantee effective representation of the Community position.

In this regard, the fact that the Community can be invited to attend meetings of subsidiary bodies of the ICAO Council only as observer on an *ad hoc* basis and does not receive any information about the day-to-day activities of the ICAO Council and the Air Navigation Commission, the bodies where decisions are prepared and made during the 3-year intervals between meetings of the ICAO Assembly, raises a serious problem for the Community.

Similarly, the Commission’s observer status in the IMO does not permit it either to express itself in the name of the Community on matters of exclusive Community competence or to refer to decisions made at Community level, since any national position is considered only as such, regardless of the Community membership of the Member State expressing it. Under these circumstances the status of observer makes it difficult to reap the benefits of the coordination of positions, instead favouring the emergence of positions contrary to Community interests.

A disparity is therefore obvious between the legitimate right of the European Community to exercise its powers in its own name and the status which the Community or the Commission is accorded in these two organizations.

As the Chicago and Geneva Conventions setting up these two international organizations provide for only States to become members, accession of the Community requires amendment of the Conventions to allow regional economic integration organizations to become a member. Thus, before the Community can accede, proposals for amendment of both the Chicago Convention and the Geneva Convention will have to be submitted, approved by a

---

two-thirds majority of the relevant organization's Assembly and ratified in accordance with the provisions of the relevant Convention 7.

To this end the Commission recommends to the Council to authorise it to negotiate the necessary amendments of the Conventions.

However, as the Community will not be in a position to accede to either organization until the necessary number of States which are members of the organization have ratified the amendment of the relevant Convention, this process can be expected to take a considerable time.

**Transitional arrangements**

Taking this into account, transitional arrangements are proposed, to be established once the Commission has been given authorisation to negotiate amendment of the Conventions. The objective is to strengthen working relations between the EC and the ICAO/IMO, based on consideration of the need and conditions for fuller participation in the work of these organizations.

Because of differences in the rules and functioning of the two international organizations, the present possibilities for EC participation in their work differ considerably.

For example, the European Commission has permanent observer status at the IMO and is therefore authorised to receive all documents and to participate as it sees fit, whereas the Community has non-permanent observer status at the ICAO and may participate at meetings only when invited 8, having access only to documents connected with such meetings, the legal restriction being greater in relation to the ICAO than the IMO. One practical result of this is that the Commission coordinates the position of the Member States for IMO meetings, whereas in the case of the ICAO the Community may not attend meetings of ICAO bodies which make binding decisions.

In view of these differences, the two parts of this communication relating to the ICAO and the IMO respectively place a different emphasis on such intermediate steps and make recommendations in this regard adapted to the needs and possibilities of the respective situation.

In the case of the ICAO, due, on the one hand, to the weakness of the present status of the Community in view of the working methods of the organization, and, on the other, to the distance from its headquarters, the Commission will put in place, in parallel with the accession negotiations, more effective methods of representation by designating a permanent representative on the spot (as is the case with the states which are members of the ICAO Council). In addition, appropriate internal Community procedures are required, adapted to the real situation of ICAO work.

---

7 In the case of IMO, by two-thirds of contracting States; in the case of ICAO, by the number of contracting States specified by the Assembly, the number so specified having to be not less than two-thirds of the total number of contracting States.

8 The existing internal ICAO rules do not provide for the status of permanent observer.
In the case of the IMO, where coordination takes place but does not allow the Community to speak with a single voice, the Member States should undertake concerted action within the IMO committees, with a view to permitting the Presidency or the Commission, depending on which holds the powers, to express the position of the Community. The process of full participation is likely to take considerable time. Throughout this process it will be important to maintain close relations with other IMO Contracting Parties and representatives of industry. Therefore, a permanent representative of the Commission at the IMO should also be envisaged.

Conclusions

The Commission invites the Council:

- to authorise the Commission to negotiate in the name of the Community the necessary amendments to the Chicago and Geneva Conventions to allow it to become a member and appropriate arrangements for the transitional period; and

- to adopt appropriate internal Community procedures for effective participation in the work of the organizations.
RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

in order to authorise the Commission to open and conduct negotiations with the International Civil Aviation Organization (ICAO) on the conditions and arrangements for accession by the European Community

1. INTRODUCTION

Community involvement in matters dealt with in the International Civil Aviation Organization (ICAO), including the adoption of internal Community rules, has been increasing over the years, creating a need to strengthen Community participation in the ICAO in order to ensure that the action taken within the ICAO is in conformity with the Community's obligations and to guarantee the consistency of the Community position.

To this end the Commission considers, as stated with particular emphasis as regards air transport in its recent White Paper “European transport policy for 2010: time to decide”\(^9\), that the present situation where the Community has little say in the adoption of the international rules which govern the sector because it is excluded from the ICAO, where it has no more than observer status, needs to be remedied without delay, by having the Community accede to the organization. This is the only way to ensure that Community interests are fully safeguarded and properly pursued in the work of the ICAO on adoption of international rules governing air transport.

However, this will require amendment of the Convention on International Civil Aviation, as this now provides for only states to be members, a process requiring approval by two thirds of the votes in the Assembly and ratification by the states which are members of the ICAO. This process will take time, so in the mean time it is necessary, as a transitional step, to improve internal Community procedures for coordination of positions in the ICAO and strengthen working relations between the EC and the ICAO. This communication considers the need and conditions for fuller participation in ICAO work.

Consequently, the Commission recommends to the Council:

– to authorise the Commission to open and conduct negotiations with the ICAO on the conditions and arrangements for accession of the European Community to the ICAO;

– to authorise the Commission to negotiate with the ICAO, as an interim measure, the status of permanent observer for the Community.

– to appoint a special committee to assist the Commission in this task;

– to adopt the proposed negotiating directives.

The Commission further recommends to the Council to invite the Member States to act in support of these objectives.

2. COMMUNITY COMPETENCE AND COMMON INTEREST IN MATTERS DEALT WITH IN THE ICAO

The International Civil Aviation Organization (ICAO) is a specialised agency of the United Nations responsible for establishing international standards, recommended practices and procedures covering the technical, economic and legal aspects of international civil aviation. In addition to matters of long-established Community competence (e.g. customs) and to the general Community responsibilities for the functioning of the air transport market, Community involvement with matters dealt with in the ICAO, such as protection of the environment, market access, computer reservation systems, air traffic management, satellite navigation, air transport safety and security, has been increasing over the years and the adoption of Community legislation in these areas has brought the relevant subjects within the Community's competence, in accordance with the relevant case law of the European Court of Justice.

In the negotiating directives for the accession of the Community to Eurocontrol, the Council already admitted extensive Community competence in connection with matters listed in the Appendix thereto, namely:

- air traffic management, insofar as the application of Community legal acts concerning standardisation, research and development, and trans-European transport networks affects air traffic management and related equipment;
- activities of Eurocontrol that may have implications for Member States’ public procurement practices; and
- aviation traffic rights, insofar as the exercise of operational rules may have a direct effect on traffic rights or the establishment of route charging principles may discriminate among Community carriers.

Furthermore, the Community recently acceded to the Montreal Convention for the Unification of Certain Rules for International Carriage by Air.

Increasingly, the need is being felt to ensure consistency between international rules established by the ICAO and Community rules, but also the need to avoid decisions in the ICAO preempts the possibilities of the Community.

The outcome of ICAO work ranges from the formulation of policy statements (recommendations and resolutions) to the adoption of instruments, such as standards, which can become legally binding. In this respect, the following types of activity, with their potential consequences as regards the Community, can be distinguished:

---

10 The aims and objectives of ICAO, and details on the structure of the organization and the function of ICAO bodies are set out in Annex II.
11 See list of relevant Community legislation in Annex I.
12 Commission v. Council, Case 22/70 (ERTA) [1971] ECR 263; Opinion 1/76 (Agreement establishing a European laying-up fund for inland waterway vessels) [1976]; Opinion 1/94 (Competence of the Community to conclude international agreements concerning services and the protection of intellectual property).
13 Council doc. 10208/98 AVIATION 38 dated 15.07.1998
14 Done at Montreal on 28 May 1999.
– The establishment of technical standards which, once adopted, are binding on the Member States\(^\text{15}\) and could affect the functioning of the internal market. The main example is the preparation of environmental standards and the future GNSS\(^\text{16}\) standards.

– The definition of operational and technical rules and guidelines for the provision of transport services, stop-over services, airport services and air navigation services. This is an area where the Community has already adopted rules and may have an interest in adopting more. In such areas the ICAO and the Community can develop cooperation and support the development of safe and orderly air transport. Examples are computer reservation systems, slot allocation or custom facilitation.

– The definition of political orientations by the adoption of Assembly resolutions concerning air transport with regard to, for example, the environment, safety or air traffic management. These political orientations may be converted into standards and recommended practices. It is important that such resolutions and standards be in line with and support Community objectives.

– The development of an international cooperation strategy based on geographical and financing priorities. Such activities could conflict with the common external policy. One example is the establishment of an International Financial Facility for Aviation Safety which could affect the EC assistance programmes and the role of existing financial institutions.

The necessary international standardisation has been achieved primarily through the creation of Annexes to the Convention on International Civil Aviation (commonly known as "the Chicago Convention"). The main parts of each Annex are International Standards and Recommended Practices (SARPs). At present there are eighteen Annexes to the Convention, covering the technical fields of aviation: licensing of personnel, rules of the air, aeronautical meteorology, aeronautical charts, units of measurement, operation of aircraft, nationality and registration marks, airworthiness, aeronautical telecommunications, air traffic services, search and rescue, aircraft accident investigation, aerodromes, aeronautical information services, aircraft noise and engine missions, security and the safe transport of dangerous goods.

Thus, ICAO work involves, inter alia, development of rules that could affect existing Community rules and policies and, unless the Community effectively participates in such work, there is the further risk of eventual adoption of international rules which might not be in the interest of the Community as a whole.

\(^{15}\) States may, nevertheless, file "differences" during the adoption process.

\(^{16}\) Global Navigation Satellite System.
3. **COMMUNITY ACCESION**

3.1. **Status of the European Community and participation of the Commission in ICAO work**

Following a Commission communication to the Council concerning relations with the ICAO in March 1988\(^\text{17}\), on 12 April 1988 the Commission addressed a request to the ICAO to establish relations between the ICAO and the European Community “that permit the latter to benefit from a permanent invitation to the meetings of the ICAO and to participate in them as observer”.

In February 1989, following an exchange of letters on this request, the ICAO Council decided to include the Commission “in the list of the organizations which may be invited to participate in the appropriate meetings of ICAO”.

Since then, the Community, represented by the Commission, has held the status of (non-permanent) observer and has been on the list of the international organizations which may be invited, each time by decision of the ICAO Council, to attend meetings\(^\text{18}\).

When invited to participate in an ICAO meeting on behalf of the Community, the Commission, in accordance with the procedure agreed by COREPER on 11 November 1988\(^\text{19}\), has to inform this Committee and obtain its agreement for participation at the meeting in question.

This very cumbersome procedure, solely for authorising Commission officials to participate at a meeting, was warranted at the time by the fact that the Community's fields of activity on air transport matters were very limited and it was considered that the Commission should not engage in unlimited participation in ICAO activities. At present, and in the light of developments in the mean time and Community competence, this procedure is no longer appropriate and has lost any justification it may have had at the time when it was established.

Details on the status of the Community and participation of the Commission in ICAO work are provided in Annex III.

The present status of the Community, with the consequent limitations on the representation of the Community's interests in the ICAO – as detailed in Section 4 below – is plainly inadequate.

---

\(^{17}\) SEC(88) 341.

\(^{18}\) Note that the ICAO Council referred to participation by the Commission. For its part, the Commission has consistently referred to participation by the Community, represented by the Commission, and, in the accreditation letters presented to the ICAO, to “the delegation of the European Community”.

\(^{19}\) COREPER on “Request for participation, as observer, of the Community in the International Civil Aviation Organization (ICAO)”. 
3.2. The need for Community membership

The development of the Community's internal rules in a wide range of areas concerning air transport, as indicated in the previous section, makes it necessary to strengthen Community participation in the ICAO in order to put the Community in a position to meet its obligations in respect of its external competence and to guarantee the consistency of the Community position.

Thus, in its recent White Paper on “European transport policy for 2010: time to decide” the Commission took the position that the present situation “needs to be remedied without delay, by having the Community accede to the inter-governmental organizations which govern transport so that the thirty-odd members of the enlarged Union not only speak with a single voice but, above all, can influence those organizations' activities in the common interest and in support of sustainable development.” It further emphasised that “the need for Europe to speak with a single voice in defence of its industrial and environmental interests is particularly urgent in the field of air transport.”

The Commission considers, indeed, that the only way to ensure that EC interests are fully safeguarded and properly pursued in the ICAO is by admission of the EC as a full participant, i.e. by accession to the Chicago Convention. Less than full participation, but with an improved status, such as that of permanent observer, would certainly constitute a significant improvement compared to the present, very unsatisfactory, situation while not depriving the Member States of their position in the organization and of their right to vote; it would remain inadequate, however, in terms of permitting the pursuit of EC interests in all cases under favourable conditions, as envisaged in the Treaty.

3.3. Application for accession

The Commission therefore considers that negotiations with the ICAO should be opened with a view to the European Community becoming a party to the Chicago Convention. As the Chicago Convention provides for only states to become members, accession by the EC requires amendment of the Convention in order to allow regional economic integration organizations to become a member.

To achieve this, a proposal for amendment of the Chicago Convention has to be submitted to the ICAO Assembly in order to insert in the Convention a provision along the lines of Article 53 of the Montreal Convention. Such amendment will require approval with two thirds of the votes in the Assembly and ratification “by the number of contracting States specified by the Assembly. The number so specified shall not be less than two-thirds of the total number of contracting States.”

---

21 The relevant provisions of the Chicago Convention are contained in Chapters VIII (The Assembly) and XXI (Ratifications, adherences, amendments and denunciations); they are reproduced in Annex IV.
22 In accordance with Article 49 of the Chicago Convention on “powers and duties of the Assembly”.
23 Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999. This implies that only certain provisions will be applicable to regional economic integration organizations. Indeed Article 53 of the Montreal Convention clearly sets out which provisions of the Convention will be applied to such organizations.
24 Article 94 of the Chicago Convention.
Such amendment of the Convention is a prerequisite for accession by the Community. The amendment does not automatically mean that the Community becomes a party to the amended Convention.

The Commission would need to be authorised by the Council to negotiate such an amendment. The Council would also need to approve the internal Community rules for the establishment of the positions and the arrangements for participation by the Commission as representative of the Community.

The successive steps necessary for accession are as follows:

– The Council authorises the Commission to negotiate the conditions and the arrangements for the accession of the European Community to the ICAO, by amendment of the Chicago Convention opening membership to regional economic integration organizations along the lines of Article 53 of the Montreal Convention.

– The Community submits to the competent ICAO bodies a request for the necessary amendments to allow a regional economic integration organization to become a party.

– The amendments “shall then come into force in respect of States which have ratified such amendments when ratified by the number of contracting States specified by the Assembly. The number so specified shall not be less than two-thirds of the total number of contracting States.”

– The Commission adopts a proposal for a Council decision on the accession of the European Community to the ICAO and submits it to the Council.

– The Council Decision allows the Community to accede to the ICAO by addressing a notification to the Government of the USA (Article 92 of the Chicago Convention).

– The Community accession takes effect in accordance with the relevant provisions of the Chicago Convention, as amended.

This process of accession of the Community will take time, making it necessary in the mean time, as a first step, to strengthen working relations between the EC and the ICAO.

4. **Initiatives to strengthen Community participation during the transition period**

4.1. **Existing limitations on participation in meetings**

The fact that the Community cannot participate in meetings of the ICAO Council and the Air Navigation Commission (ANC) and does not receive any information about their day-to-day activities, but can only be invited to attend meetings of subsidiary bodies as observer on an *ad hoc* basis, raises a serious problem for the Community as regards its participation in ICAO work. Indeed, it is at the ICAO Council and the
ANC where decisions are prepared and made\(^\text{25}\) during the 3-year intervals between meetings of the Assembly. The Council, for example, may launch the procedure for the adoption of a standard impacting the functioning of the internal market and the Member States may file diverging differences without any transparency for the Community.

Coordination of positions in these matters is made more difficult by the fact that the working papers for the Council and the ANC become available only days before the meetings and are not available for observers. It is necessary that these limitations be overcome.

4.2. Coordination of Community positions

As the ICAO deals largely with matters of Community competence or common interest, prior coordination between the Commission and the Member States on such matters is necessary. Council Decision 80/50/EEC of 20 December 1979\(^\text{26}\) provides for a procedure for consultations on air transport questions dealt with in international organizations.

A number of problems arise, however, in connection with the coordination of positions; they relate to (i) availability of information, (ii) organization of the coordination, and (iii) adoption and presentation of the common position. Due to these problems, discussed below, Council Decision 80/50/EEC is no longer sufficient for coordination of positions in the ICAO, which requires timely access to information, rules and procedures well adapted to the way ICAO bodies work and representation of the Community interest in the decision-making bodies.

4.2.1. Access to information

It is essential for the Commission to receive in advance all relevant information in order to act so as to avoid unnecessary friction, as well as to ensure, as far as possible, the consistency of Commission initiatives with those of the ICAO.

It should be noted in this connection that distribution of ICAO documents is limited, so that the Commission does not regularly receive documentation and, in any case, does not receive documentation for Council and ANC meetings. To receive this documentation, and particularly to receive it in good time, is a prerequisite for being in a position to initiate consultations with the Member States and to coordinate positions. Through better use of the Internet, with ICAO Secretariat authorisation,

---

\(^{25}\) The ICAO Council is empowered to make decisions which are binding on ICAO Contracting States; the Air Navigation Commission (ANC) has similarly effective decision-making powers. The work of the organization during the 3-year periods between successive Assembly sessions is carried out under the authority of the Council which, though of limited membership, is empowered to make decisions which are binding on the Contracting States. The Council, responsible to the Assembly, is empowered to make decisions, such as to adopt Standards and Recommended Practices (SARPS), which are binding on the Contracting States unless they file a difference. It holds regularly 3 sessions per year, each lasting for about 2 months. The schedule of Council and Committee meetings makes necessary the virtually permanent presence of Council members' representatives in Montreal. The ANC, the principal body concerned with the preparation of International Standards and Recommended Practices (SARPs) and Procedures for Air Navigation Services (PANS), has similarly effective decision-making powers in the technical field, although the Council has the responsibility for their final adoption. Details of the structure of the organization and the function of ICAO bodies are provided in Annex I.

some improvement in the situation has been achieved, but the situation is still not satisfactory.

4.2.2. Organization of the coordination

As all the Member States of the European Community are also members of the European Civil Aviation Conference (ECAC)\(^{27}\), a degree of coordination of positions takes place within that organization, in particular in the preparations of an Assembly. However, as experience at the ICAO Assembly has shown, the level of coordination in the Community is necessarily more substantial than in the ECAC where the interests are more diverging and no binding legislation exists.

The provisions of Council Decision 80/50/EEC\(^{28}\) on the exchange of information and consultations are outdated in relation to the new institutional rules and practices. An appropriate mechanism for such coordination is required, without undermining ECAC’s special relations with the ICAO.

4.2.3. Adoption and presentation of positions

Assuming that the relevant information is available, the question is then how to define and express a common position:

(i) The definition and presentation of a common position in the environment field in the last two sessions of the Assembly\(^{29}\) is relevant in this regard. The position was defined in the Council and presented on behalf of the Community and its Member States by the Presidency. Participation in proceedings on the spot made it possible to follow negotiation of the resolutions. But, since the documentation for the Assembly meetings reaches contracting states and observers 3 months prior to the meeting, appropriate procedures have to be set up to coordinate the position.

(ii) The situation is totally different for measures adopted by the Council and the ANC. Indeed, because of the extremely short (often as short as 24-hour) deadlines after relevant documents become available, given the short intervals between meetings of the ICAO Council during its sessions and similarly for the ANC, it is not possible to coordinate positions except on the spot. This requires the presence of the Commission and rules for coordination and adoption of common positions, which are adapted to the way ICAO bodies work.

\(^{27}\) ECAC is a consultative inter-governmental organization seeking, mainly, to harmonize civil aviation policies and practices amongst its Member States. It was founded in 1955 and has at present a membership of 37 European States, including all Member States of the EU. Directors-General for Civil Aviation meet at regular intervals (normally twice a year) and the day-to-day work is managed by a Coordinating Committee. ECAC is served by its own Secretariat, under the direction of its Executive Secretary.


(iii) When it comes to meetings of panels and study groups, coordination is much more difficult because, contrary to Assembly and Conferences, the Commission is not always informed and because the members are invited on an ad hoc basis and not as representatives of their administration. But their activities are under the guidance of the Council and a "light" form of Community coordination would be in the Community interest to avoid conflicts with the ICAO's work.

(iv) Finally, the ICAO regularly consults its members on amendments to SARPs and other matters, through "State letters". Again, the Member States react in an uncoordinated way and, since the Community is not represented, the Commission receives no information and is placed before a fait accompli. These difficulties explain why the Commission has never, so far, tried to present a common position. In the case of the NOx standard, to take an example, a SARP was adopted while a proposal was pending before the Council, putting the Community before a fait accompli.

In summary, depending on the availability of the information (which needs to be improved) the Community has the possibility, in view of the ICAO rules, to build and present a common position in the Assembly for the approval of policy decisions but has, at present, no possibility in practice to follow the implementation of these policy decisions in the Council, the ANC, panels, study groups and through State letters, because of lack of representation of the Community interest in the decision-making bodies.

4.3 Need and conditions for improved participation in ICAO work

The need to improve EC participation in ICAO work is being felt increasingly, and is bound to be felt even more in future with the increased involvement of the Community in subjects dealt with by the organization. Appropriate steps therefore have to be taken to meet this need.

The arrangements for cooperation to date, based on the 1988 exchange of letters between the President of the Commission and the President of the ICAO Council, as well as the internal Community procedure established at that time whereby the Commission obtains the agreement of COREPER each time it considers it appropriate to participate in a meeting, need to be adapted to present needs and realities taking into account the increasing link between the responsibilities of the Community and those of the ICAO. Appropriate rules for the coordination of positions, adapted to the real situation of ICAO work, are also required.

The effective participation of the Community in ICAO work involves four elements: (1) appropriate internal Community procedures; (2) access to information; (3) the status of the Community; and (4) arrangements for representation.

30 Standards and Recommended Practices.
31 See Annex III.
4.3.1 Internal Community procedures

As regards internal Community procedures, relations with the ICAO should operate in the same manner as in the case of other international organizations. This means that there is no longer a need for the Commission to inform COREPER and obtain its assent to participate at ICAO meetings. This change will not affect the normal procedures for the preparation of the Community position or a coordinated position.

The coordination of positions in the specific circumstances of ICAO work can be effectively organised on the spot, as required, by a permanent representative of the Commission stationed in Montreal (see Section 4.3.4 below).

As to the presentation of positions, the Community position on matters of Community competence should be presented by the representative of the Commission with the support of the Presidency. The common position on matters of shared competence should be presented by the Presidency or the Commission. Member States may also speak in support of the common position.

A common position on other matters of common interest should be presented by the representative of the Presidency. The Commission and Member States may speak in support of the common position.

4.3.2 Access to information

The effective participation of the Community in ICAO work requires resolution of the problem of (timely) access to all relevant ICAO documents. This is indispensable as it is a prerequisite for putting the Commission in a position to take initiatives when appropriate or necessary.

The situation in this regard has recently improved to a certain extent: the ICAO has initiated wider use of the Internet to make an increasing number of documents accessible in this manner to authorised users, and the Commission has been provided with a code number permitting access to a range of documents.

It remains to be seen, however, whether such access to information can be extended to the information circulating within the ICAO Council or the Air Navigation Commission. If not, access to this information would depend on the Member States, and in particular the Presidency, and should be addressed in the decision which the Commission invites the Council to adopt (Section 6 below).

4.3.3 Permanent observer status

The position of the Community as observer in the ICAO should be strengthened: the Community should no longer be treated on the same footing as any other international organization, but instead be accepted as a permanent observer. This is the case with a multitude of international organizations, including organizations of the United Nations family, where the Community has an observer status (International Telecommunications Union, UNCTAD, UN Commission on International Trade Law, UN Environment Programme, UNESCO, World Food

---

32 In this connection, any ambiguity as to the fact that the Commission represents the Community should be cleared (see Section 3.1 and Annex III).
Programme, World Health Organization, World Intellectual Property Organization, etc.).

Permanent observer status would permit regular participation in the work of the ICAO bodies and thereby greatly improve both the Community's standing and its material possibilities in terms of active participation in ICAO work, as a result of being automatically informed and invited in good time.

In conclusion, the Commission recommends to the Council of Ministers to authorise it to negotiate with the ICAO the status of permanent observer and to decide on appropriate action by the Member States vis-à-vis the ICAO\textsuperscript{33} in support of the request made by the Commission (Section 6 below).

4.3.4. **Representation at ICAO headquarters**

In view of the working methods of the organization\textsuperscript{34}, and also because of the distance from its headquarters, effective participation in ICAO work requires more effective methods of representation in the form of designation of a permanent representative on the spot (as is the case with the states which are members of the ICAO Council).

5. **CONCLUSIONS**

The Community has to become a member of the ICAO and to this effect the appropriate steps for amendment of the Chicago Convention need to be taken.

As the accession process will take time, in the mean time there is a need to improve the participation and presence of the Community in the ICAO work and to align it on the practices in other international organizations. This improvement will not affect the weight and voices of the EU Member States in the ICAO. It is not expected to produce a negative or reluctant reaction from the third countries, first because regional coordination exists already (ECAC) and will only be strengthened with the Community and, second, because the EU integration is already perceived by the ICAO as a reality.

The Member States of the European Community will have to explain these developments to the third countries in the ICAO.

6. **RECOMMENDATIONS**

In view of the foregoing, the Commission recommends to the Council: to authorise the Commission to open and conduct negotiations with the ICAO on the conditions and arrangements for accession of the European Community to the Chicago Convention and, as an interim measure, on the status of permanent observer for the Community in the ICAO; to appoint a special committee to assist the Commission in this task; and to adopt the negotiating directives included in the Recommendation below.

\textsuperscript{33} As ICAO policy concerning its relations with international organizations rests on a resolution of the Assembly, granting the Community a permanent observer status would possibly depend on a decision of the Assembly rather than a decision of the Council.

\textsuperscript{34} See Annex II.
(a) The negotiating directives included in the Recommendation below have been drafted with a view to achieving the overall aim of allowing the Community to become a member of the ICAO.

This status should allow the Community, in matters of its competence and on an equal footing with States which are members of the ICAO, to:

(i) express its views during negotiations, or at any meeting of the bodies,

(ii) for matters that have to be decided through a vote, have a voting weight equivalent to that of those of its Member States represented in the relevant ICAO body and bound by Community legislation from which external competence arises,

(iii) express consent in its own name to assume the rights and obligations stemming from the instruments concluded in the framework of the ICAO.

In accordance with Article 300 of the EC Treaty, the negotiations should be conducted by the Commission in consultation with a special committee appointed by the Council. In their role as current members of the ICAO, the Member States should provide all possible support for the accession of the Community to the Chicago Convention.

As regards budgetary issues, in view of the fact that the financial contributions from the Member States of the European Union represent a part of the ICAO budget, it is not considered appropriate to envisage an additional financial contribution from the Community. As a fallback position, however, the Community could envisage a solution based on that adopted for Community accession to FAO, i.e. contributing a sum to cover administrative and other expenses arising out of its membership in the Chicago Convention (provided this sum is in no case fixed unilaterally by the ICAO, but in agreement with the Community).

During negotiations, the question of the most appropriate place for including the arrangements for Community accession and participation might be raised. The ICAO might prefer to include some of them in the rules of procedure. For reasons of stability of the arrangements allowing its participation, the Community should prima facie have an interest in including them in the Convention. Nevertheless, it is also important to leave substantial room for manoeuvre on this point, in order to accommodate possible practical constraints on the ICAO side.

Finally, the ICAO will presumably wish to allow Community participation through the inclusion of a general provision referring to the participation of regional economic integration organizations, and not only of the Community. In that case, it could be useful for the Community to suggest to the ICAO use of a definition along the lines of that incorporated in the Statute of the Food and Agriculture Organization of the United Nations.

Once the Chicago Convention has been amended, and in the light of the results obtained, the Commission will present a proposal for a Council decision on the accession of the European Community.

(b) The Council should authorise the Commission to negotiate with the ICAO, as an interim measure, the status of permanent observer for the Community. The Member States should take action vis-à-vis the ICAO in support of any such request.
During the interim period, common positions should be presented in the ICAO, as indicated in Section 4.3.1 above.

**RECOMMENDATION**

In the light of the above, the Commission recommends:

- that the letter in Attachment 1 be addressed to the Secretary-General of the ICAO informing the ICAO of the Community's wish to open negotiations with a view to allowing the accession of the European Community to the Convention on International Civil Aviation ("Chicago Convention");

- that the Council authorise the Commission to negotiate with the ICAO the conditions and arrangements for the accession of the European Community to the Chicago Convention;

- that the Council authorise the Commission to negotiate with ICAO, as an interim measure, the status of permanent observer;

- that, since, in accordance with the Treaty, the Commission will conduct these negotiations on behalf of the European Community, the Council appoint a special committee to assist it in this task, and

- that the Council issue the attached negotiating directives.
Proposal for a letter to be addressed to the Secretary-General of the ICAO

Sir,

We have the honour to inform you that the European Community wishes to become a full member of the ICAO.

The European Community has competence to adopt measures in the field of the ICAO. As a matter of fact, this competence has already been exercised through the adoption of a number of instruments in areas where the ICAO has carried or is currently carrying out work.

As a result of this, the Community as such is increasingly concerned by the work of the ICAO. This has in turn raised the issue of Community accession to the ICAO. In this respect, the European Community believes that its accession to the ICAO would be advantageous not only for itself, but also for the ICAO. Indeed, facilitating the rights and obligations stemming both from ICAO membership and accession to instruments in areas where the Community is competent should also facilitate the progress and results of the work of the ICAO.

The Chicago Convention does not, however, allow for membership of regional economic integration organizations. Therefore, we would like to ask you to open negotiations with a view to making the changes to the Convention and other internal rules that are necessary for allowing the Community to become a member of the ICAO, as well as on the conditions and arrangements for our membership.

The Commission, assisted by a special committee of Member States, will be in charge of these negotiations from the Community side. The Commission is at the ICAO's disposal to meet its representatives at an early date, as the ICAO deems appropriate.

Let us finally assure you that, as we have also expressed, the Community remains committed to ensuring that the ICAO remain an attractive forum for all countries in the world.

For the Commission

The President

For the Council of the European Union

The President
Attachment 2

Negotiating directives

– The Community should be granted full member status on equal footing with States.

– The status should allow Community participation at negotiations and meetings on equal footing with States.

– As to voting rights, the Community should have a number of votes equivalent to those of Member States represented in the relevant ICAO body and bound by the Community instruments from which external competence arises.

– The Community shall make no financial contribution to the ICAO budget. Should this prove impossible to achieve, or were it to compromise acceptance of Community membership by current members of the ICAO, the Community could accept as a fallback position making available a sum compensating for the administrative and other expenses arising out of its membership of the ICAO. This sum should not be determined unilaterally by the ICAO, but in agreement with the Community.

– As a full member, the Community should be entitled to accede to all future instruments negotiated in the context of the ICAO which fall under its competence.

– The Commission should aim at the arrangements concerning the participation of the Community being included in the most appropriate place in the ICAO internal rules in order to guarantee their stability. However, the need for stability of such arrangements will be weighed against possible ICAO internal constraints.

– During negotiations, and if necessary, the Commission will propose a definition of regional economic integration organization along the lines of that contained in Article II of the Statute of the Food and Agriculture Organization of the United Nations35.

35 “… a regional economic integration organization must be one constituted by sovereign States, a majority of which are Member Nations of the Organization, and to which its Member States have transferred competence over a range of matters within the purview of the Organization, including the authority to make decisions binding on its Member States in respect of those matters".
ANNEX I

Derived Community legislation in areas dealt with in the ICAO

**Market operation**


**Air traffic management**


**Air safety**


**Environment**


Council Regulation (EC) No 925/1999 of 29 April 1999 on the registration and operation within the Community of certain types of civil subsonic jet aeroplanes which have been modified and recertificated as meeting the standards of volume I, Part II, Chapter 3 of Annex 16 to the Convention on International Civil Aviation, third edition (July 1993) (OJ L 115, 04.05.1999, p. 1)

**Air carrier liability and passenger protection**


**Working conditions**


Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organization of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA) (OJ L 302, 01.12.2000, p. 57)

**Other**


ANNEX II

The International Civil Aviation Organization (ICAO)

ICAO was founded through the Convention on International Civil Aviation of 1944 (commonly known as "the Chicago Convention") and has a worldwide membership of 185 states, including all the EC Member States. It has its headquarters in Montreal and seven regional offices, among them a European office in Paris.

The aims and objectives of ICAO, set out in the Chicago Convention, are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to: (a) ensure the safe and orderly growth of international civil aviation throughout the world; (b) encourage the arts of aircraft design and operation for peaceful purposes; (c) encourage the development of airways, airports, and air navigation facilities for international civil aviation; (d) meet the needs of the peoples of the world for safe, regular, efficient and economical air transport; (e) prevent economic waste caused by unreasonable competition; (f) ensure that the rights of Contracting States are fully respected and that every Contracting State has a fair opportunity to operate international airlines; (g) avoid discrimination between Contracting States; (h) promote safety of flight in international air navigation; (i) promote generally the development of all aspects of international civil aeronautics.

1. Structure of the International Civil Aviation Organization and function of its bodies

The bodies set up by the Chicago Convention are the Assembly, the Council, the Air Navigation Commission (ANC) and the Secretariat.

The Assembly is composed of the representatives of all Contracting States. It normally meets every 3 years to examine in detail the Organization's activities, to draw up policies for the following years, and to adopt budgets.

The Council is elected by the Assembly for a 3-year term, composed of 33 members, among which 6 are EC Member States (France, Germany, Ireland, Italy, Spain, United Kingdom). The Council members are chosen so as to give a balanced representation to three categories of states: those of major importance in air transport; those making the largest contribution to the provision of facilities for civil air navigation; and those whose designation assures the representation of every major geographic area in the world.

The ICAO Council is empowered to make decisions which are binding on the Contracting States. It has several auxiliary Committees, inter alia the Air Transport Committee (ATC), the Joint Support Committee (JSC), the Legal Committee (LC), the Finance Committee (FC), the Committee on Unlawful Interference (UIC) and the Technical Cooperation Committee (TCC).

36 Article 44 of the Chicago Convention.
37 In October 1990 the Assembly adopted an amendment to the Convention raising the number of Council Members to 36. This amendment is not yet in force.
38 On behalf also of Belgium, Luxembourg, the Netherlands and Austria. Furthermore, Denmark, Sweden and Finland are represented by Norway.
The Council holds regularly 3 sessions per year, each lasting for about 2 months. The schedule of Council and Committee meetings makes necessary the virtually permanent presence of Council members' representatives in Montreal.

In addition to the Assembly and the Council, an **Air Navigation Commission (ANC)** was set up by the Chicago Convention itself.

The ANC is composed of fifteen persons who have "suitable qualifications and experience in the science and practice of aeronautics", nominated by Contracting States and appointed by the Council. The members of this Commission act independently. This Commission reports to the Council and is responsible for the examination, coordination and planning of the ICAO's technical work programme in the air navigation field. On specialised problems requiring up-to-date and specialised expertise, the Commission is assisted by panels - small groups of experts, acting in their personal expert capacity, although nominated by Contracting States and international organizations and approved by the Commission.

The ANC is the principal body concerned with the development of International Standards and Recommended Practices (SARPs), and Procedures for Air Navigation Services (PANS), enjoying effective decision-making powers, although the Council has the responsibility for their final adoption.

**The Secretariat** provides technical and administrative assistance to the governmental representatives making up the Council. It is headed by a Secretary-General appointed by the Council.

2. **Relations with other international organizations**

ICAO works in collaboration with other *Specialised Agencies of the UN* such as the WMO, ITU, UPU, WHO, IMO and UNDP.

Several *Non-Governmental Organizations* also participate in ICAO activities as observers: IATA, International Federation of the Pilots' Associations and International Association of Aircraft Owners and Pilots.

*Regional organizations* (and among them the European Community) can also be invited to attend as observers at meetings of ICAO bodies, as is usually the case. Furthermore, invitations are extended on an *ad hoc* basis and, generally, following a request indicating the grounds justifying it. However, no invitations are extended to *ad hoc* observers to meetings of the Council or the Air Navigation Commission. Coupled with the fact that relevant documentation is not regularly available, this raises serious difficulties, in particular as regards meetings of the Council and the Air Navigation Commission.

---

39 Specifications proposed to be given the status of Standards or Recommended Practices are, after consultation with all Contracting States and interested international organizations, finalized by the ANC and submitted to the Council where they require a two-thirds majority for adoption. Following their adoption and provided a majority of Contracting States do not disapprove them before the established effective date, the SARPs become applicable at dates set by the Council. These Standards and Recommended Practices are considered binding. However, if any Contracting State finds it impossible to comply with them, the State is required to inform ICAO of any differences that will exist on the applicability of the amendment.
ANNEX III

Status of the EC and participation of the Commission in ICAO work

Following a Commission communication to the Council concerning relations with the ICAO (SEC(88) 341, March 1988), on 12 April 1988 Mr Delors, then President of the European Commission, addressed a request to Mr Kotaite, President of ICAO, initiated by the former’s request on 12 April 1988, to establish relations between ICAO and the European Community “that permit the latter to benefit from a permanent invitation to the meetings of the ICAO and to participate in them as observer”.

On 28 February 1989, following an exchange of letters on this request, Mr Kotaite informed Mr Delors that the ICAO Council had decided to include the Commission “in the list of the organizations which may be invited to participate in the appropriate meetings of ICAO”.

As explained, however, by Mr Kotaite, ICAO does not acknowledge the status of permanent observer: … under a resolution adopted by the Assembly, the ICAO’s policy has always been to keep its relations with other international organizations highly flexible and on an unofficial footing. In this context, no “permanent observer” status exists within the ICAO. The ICAO Council decides which observers will be invited to each meeting.

The Community, represented by the Commission, has since held the status of (non-permanent) observer and is on the list of the international organizations which may be invited to attend meetings. It can thus be invited to attend meetings open to regional organizations:

– it is regularly invited to the meetings of the Assembly;
– it is invited upon request to meetings of Committees in which it has an interest;
– it is also invited upon request to meetings of expert groups (CAEP, GNSS).

However, so far it has not participated in meetings of the ICAO Council or the ANC.

When invited to participate at an ICAO meeting on behalf of the Community the Commission, in accordance with the procedure agreed by COREPER on 11 November 1988, has to inform the Committee - under "other business" - and obtain the Committee's agreement for the participation of the Community in the meeting in question.

This procedure is a gentlemen's agreement whereby the Commission is assured, informally and in advance of its participation at a meeting, that COREPER has no objection. This is an exceptional procedure, as the Commission participates in a multitude of meetings of international organizations, including organizations of the United Nations family, where the Community has an observer status (International Telecommunications Union, UNCTAD, UN Commission on International Trade Law, UN Environment Programme, UNESCO, World...

40 IATA appears, though, to be (for all intents and purposes, at least) a permanent observer.
41 It is noted that the ICAO Council decision referred to participation of the Commission. On its part, the Commission has consistently referred to the participation of the Community, represented by the Commission and, in the Accreditation Letters presented to ICAO, to “the delegation of the European Community”.
42 “The participation of the Community, in a capacity of observer, in the meetings of the ICAO will be with the agreement of the Council on the proposal of the Commission” (cf. doc. 9310/88 EXT 1 CRS/CRP 38 AER 28)
Food Programme, World Health Organization, World Intellectual Property Organization, etc.) without any intervention of the Council.

The procedure agreed in 1988, solely for authorising Commission officials to participate at a meeting, was warranted at the time by the fact that the Community’s fields of activity on air transport matters were very limited and it was considered that the Commission should not engage in unlimited participation in ICAO activities. At present, and in the light of developments since then, it appears as an oddity which has lost any justification it may have had at the time when it was established.
ANNEX IV

Relevant provisions of the Chicago Convention

CHAPTER VIII

THE ASSEMBLY

Article 48

Meetings of Assembly and voting

a) The Assembly shall meet not less than once in three years and shall be convened by the Council at a suitable time and place. An extraordinary meeting of the Assembly may be held at any time upon the call of the Council or at the request of not less than one-fifth of the total number of contracting States addressed to the Secretary General.

b) All contracting States shall have an equal right to be represented at the meetings of the Assembly and each contracting State shall be entitled to one vote. Delegates representing contracting States may be assisted by technical advisers who may participate in the meetings but shall have no vote.

c) A majority of the contracting States is required to constitute a quorum for the meetings of the Assembly. Unless otherwise provided in this Convention, decisions of the Assembly shall be taken by a majority of the votes cast.

Article 49

Powers and duties of Assembly

The powers and duties of the Assembly shall be to:

.....................

j) Consider proposals for the modification or amendment of the provisions of this Convention and, if it approves of the proposals, recommend them to the contracting States in accordance with the provisions of Chapter XXI;

.....................

CHAPTER XXI

RATIFICATIONS, ADHERENCES, AMENDMENTS, AND DENUNCIATIONS

Article 91

Ratification of Convention

a) This Convention shall be subject to ratification by the signatory States. The instruments of ratification shall be deposited in the archives of the Government of the United States of America, which shall give notice of the date of the deposit to each of the signatory and adhering States.
b) As soon as this Convention has been ratified or adhered to by twenty-six States it shall come into force between them on the thirtieth day after deposit of the twenty-sixth instrument. It shall come into force for each State ratifying thereafter on the thirtieth day after the deposit of its instrument of ratification.

c) It shall be the duty of the Government of the United States of America to notify the government of each of the signatory and adhering States of the date on which this Convention comes into force.

**Article 92**

*Adherence to Convention*

a) This Convention shall be open for adherence by members of the United Nations and States associated with them, and States which remained neutral during the present world conflict.

b) Adherence shall be effected by a notification addressed to the Government of the United States of America and shall take effect as from the thirtieth day from the receipt of the notification by the Government of the United States of America, which shall notify all the contracting States.

**Article 93**

*Admission of other States*

States other than those provided for in Articles 91 and 92 a) may, subject to approval by any general international organization set up by the nations of the world to preserve peace, be admitted to participation in this Convention by means of a four-fifths vote of the Assembly and on such conditions as the Assembly may prescribe: provided that in each case the assent of any State invaded or attacked during the present war by the State seeking admission shall be necessary.

**Article 94**

*Amendment of Convention*

a) Any proposed amendment to this Convention must be approved by a two-thirds vote of the Assembly and shall then come into force in respect of States which have ratified such amendment when ratified by the number of contracting States specified by the Assembly. The number so specified shall not be less than two-thirds of the total number of contracting States.

b) ............
**FINANCIAL STATEMENT**

Policy area(s): Air Transport  
Activity(ies): Participation in ICAO

### Title of action: Representation to ICAO

1. **BUDGET LINE(S) + HEADING(S):** Part A, title 6

2. **OVERALL FIGURES**

2.1 Total allocation for action (Part B): € million for commitment: none

2.2 Period of application: Starting in 2003, indefinite duration

2.3 Overall multiannual estimate on expenditure:

   a) Schedule of commitment appropriations/payment appropriations (financial intervention) *(see point 6.1.1)*

   € million (to 3rd decimal place)

   | Commitments | -- | -- | -- | -- | -- | -- | -- |
   | Payments     | -- | -- | -- | -- | -- | -- | -- |

   b) Technical and administrative assistance and support expenditure *(see point 6.1.2)*

   | Commitments | -- | -- | -- | -- | -- | -- | -- |
   | Payments     | -- | -- | -- | -- | -- | -- | -- |

   **Subtotal a+b**

   | Commitments | -- | -- | -- | -- | -- | -- | -- |
   | Payments     | -- | -- | -- | -- | -- | -- | -- |

   c) Overall financial impact of human resources and other administrative expenditure *(see points 7.2 and 7.3)*

   | Commitments/ payments | 0.345 | 0.308 | 0.308 | 0.308 | 0.308 | 0.308 | n.a. |

   **TOTAL a+b+c**

   | Commitments       | 0.345 | 0.308 | 0.308 | 0.308 | 0.308 | 0.308 | n.a. |
   | Payments          | 0.345 | 0.308 | 0.308 | 0.308 | 0.308 | 0.308 | n.a. |
2.4 Compatibility with the financial programming and the financial perspective

☐ Proposal compatible with the existing financial programming

☑ This proposal will entail reprogramming of the relevant heading in the financial perspective

☐ This may entail application of the provisions of the Interinstitutional Agreement.

2.5 Financial impact on revenue:

☑ No financial implications

OR

☐ Financial impact – the effect on revenue is as follows:

3. BUDGET CHARACTERISTICS

<table>
<thead>
<tr>
<th>Type of expenditure</th>
<th>New EFTA participation</th>
<th>Participation applicant countries</th>
<th>Heading Financial Perspective</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-comp</td>
<td>Non-diff</td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td></td>
<td></td>
<td>NO</td>
<td>No 5</td>
</tr>
</tbody>
</table>

4. LEGAL BASIS: Article 302 (ex Article 229)

5. DESCRIPTION AND GROUNDS

5.1 Need for Community intervention

5.1.1 Objectives pursued

The increasing involvement of the Community in matters dealt with in the ICAO and the consequent development of Community internal rules makes it necessary to strengthen Community participation in this organization, which sets international rules concerning air transport. This will put the Community in a position to meet its obligations as regards external competence and to guarantee the consistency of the Community position in this sector of particular economic importance.

Thus, in its recent White Paper on “European transport policy for 2010: time to decide” the Commission took the position that the present situation needs to be remedied without delay, by having the Community accede to ICAO, “so that the thirty-odd members of the enlarged Union not only speak with a single voice but, above all, can influence those organizations’ activities in the common interest and in support of sustainable development.”

Existing arrangements for the participation of the Community as observer in ICAO work are neither satisfactory nor sufficient to guarantee the effective representation of the Community position. As the Chicago Convention setting up the organization provides for membership by states only, accession of the Community requires amendment of the Convention to allow regional economic integration organizations to become members. Thus, before the Community can accede, a proposal for amendment of the Chicago Convention has to be submitted, approved by the
organization’s Assembly, and ratified. To this end, the Commission recommends to the Council to authorise it to negotiate the necessary amendment of the Convention.

However, as the Community will not be in a position to accede to the ICAO until the necessary number of States which are members of the organization have ratified the amendment of the Convention, this process can be expected to take a considerable time. Taking this into account, transitional arrangements are proposed, to be established once the Commission has been given authorisation to negotiate amendment of the Convention in order to strengthen working relations between the EC and ICAO, based on consideration of the need and conditions for improved participation in its work. Due, on the one hand, to the weakness of the present status of the Community in view of the methods of work of the organization, and also because of the distance from its headquarters, the Commission will put in place, in parallel with the negotiations on accession, more effective methods of representation by establishing an office and designating a permanent representative in Montreal.

5.1.2 Measures taken in connection with ex ante evaluation

Not applicable

5.1.3 Measures taken following ex post evaluation

Not applicable

5.2 Actions envisaged and arrangements for budget intervention

− the target population(s) (specify number of beneficiaries if possible);

Not applicable

− the specific objectives set for the programming period (in measurable terms);

Establishment of representative office in Montreal

− the concrete measures to be taken to implement the action;

Negotiations

− the immediate outputs of each action, and their contribution to

Not applicable

− the expected outcomes solving needs or problems

Not applicable

Information should also be given on the arrangements for budget intervention (rate and form of the required financial assistance): 100 %

The establishment of a representative office in Montreal will require budget resources for the establishment of an external service.
5.3 Methods of implementation

The Commission office will need regular staff (one official) and a local agent (secretary).

6. FINANCIAL IMPACT

6.1 Total financial impact on Part B - (over the entire programming period)

6.1.1 Financial intervention: None

6.1.2 Technical and administrative assistance, support expenditure and IT expenditure (Commitment appropriations) None

6.2 Calculation of costs by measure envisaged in Part B (over the entire programming period)

Commitments in € million (to the 3rd decimal place)

<table>
<thead>
<tr>
<th>Breakdown</th>
<th>Type of outputs (projects, files)</th>
<th>Number of outputs (total for years 1…n)</th>
<th>Average unit cost</th>
<th>Total cost (total for years 1…n)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Action</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>TOTAL COST</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
</tbody>
</table>

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

7.1 Impact on human resources

<table>
<thead>
<tr>
<th>Types of post</th>
<th>Staff to be assigned to management of the action using existing and/or additional resources</th>
<th>Total</th>
<th>Description of tasks deriving from the action</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of permanent posts</td>
<td>Number of temporary posts</td>
<td></td>
</tr>
<tr>
<td>Permanent official or Temporary staff</td>
<td>A</td>
<td>1A</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>B</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>C</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other human resources</td>
<td>1</td>
<td>1</td>
<td>1 Secretary</td>
</tr>
<tr>
<td>Total</td>
<td>1</td>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>

7.2 Overall financial impact of human resources

<table>
<thead>
<tr>
<th>Type of human resources</th>
<th>Amount €</th>
<th>Method of calculation *</th>
</tr>
</thead>
<tbody>
<tr>
<td>Officials</td>
<td></td>
<td>Cost of external services</td>
</tr>
<tr>
<td>Temporary staff</td>
<td>182 000*</td>
<td></td>
</tr>
<tr>
<td>Other human resources (local agent)</td>
<td>95 000</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>277 000*</td>
<td></td>
</tr>
</tbody>
</table>

The amounts are total expenditure for twelve months.
7.3 **Other administrative expenditure deriving from the action**

<table>
<thead>
<tr>
<th>Budget line (number and heading)</th>
<th>Amount €</th>
<th>Method of calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall allocation (Title A7)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Information systems (A-5001/A-4300)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other expenditure – Part A (Title A6, Office cost)</td>
<td>31 000</td>
<td>Cost of external service (DG Relex)</td>
</tr>
<tr>
<td>Total</td>
<td>31 000</td>
<td></td>
</tr>
</tbody>
</table>

The amounts are total expenditure for twelve months.

The needs for human and administrative resources shall be covered within the allocation granted to the managing DG in the framework of the annual allocation procedure.

<table>
<thead>
<tr>
<th>I.</th>
<th>Annual total (7.2 + 7.3): €308 000</th>
</tr>
</thead>
<tbody>
<tr>
<td>II.</td>
<td>Duration of action: <em>indefinite</em></td>
</tr>
<tr>
<td>III.</td>
<td>Total cost of action (I x II): n.a.</td>
</tr>
</tbody>
</table>

8. **FOLLOW-UP AND EVALUATION**

8.1 Follow-up arrangements

Not applicable

8.2 Arrangements and schedule for the planned evaluation

Not applicable

9. **ANTI-FRAUD MEASURES**

Not applicable

* An additional amount of €37 000 is foreseen for first installation.
1. INTRODUCTION

Given the Community's increasing powers in the field of maritime safety, European Community participation in the International Maritime Organization (IMO) would appear justified. In particular, stronger Community participation has become necessary to prevent infringements by the Member States against their Community obligations and to guarantee the consistency of the Community position.

This implies amending the 1948 Geneva Convention setting up the IMO (see Annex II), which must be voted and ratified by two thirds of the 160 countries that make up the Assembly. As IMO procedures are lengthy, the process will take several years and a transitional solution must be found to improve the internal Community procedures for coordination of positions within the IMO and ensure stronger representation of the Commission in the IMO.

Consequently, as the Commission notes in its White Paper on "European transport policy for 2010: Time to decide" 44 "This situation needs to be remedied without delay, by having the Community accede to the intergovernmental organizations which govern transport so that the 30-odd members of the enlarged Union not only speak with a single voice but, above all, can influence those organizations' activities in the common interest and in support of sustainable development." The Commission states that "the Union needs to increase its ability to assert itself in the international arena and speak with a single voice in defence of its social, industrial and environmental interests."

Consequently, the Commission recommends to the Council that it:

- authorise the Commission to open and conduct negotiations with the IMO on the conditions and arrangements for accession of the European Community to the IMO, in accordance with Article 300 of the Treaty;

- adopt the proposed negotiating directives annexed. The Commission further recommends to the Council to invite the Member States to support the action which it takes to attain these objectives, in accordance with Article 10 of the Treaty.

---

43 On average, the process of ratifying an IMO Convention takes from 8 to 10 years.
2. **COMMUNITY COMPETENCE AND COMMON INTEREST IN MATTERS DEALT WITH IN THE IMO**

The situation with regard to powers is complicated in that not all Community acts adopted in the field of maritime safety involve the same level of harmonisation: some set minimum standards, others require maximum harmonisation, while the content of others is more mixed.

It is therefore necessary to seek solutions derived from Community practice and the Court of Justice case law on external competences.

The Community has responsibility in a large number of areas directly or indirectly linked to maritime safety and the prevention of marine pollution by ships. These powers have been acquired through the entry into force of numerous mandatory instruments (regulations and directives) adopted on the basis of IMO resolutions, recommendations and conventions.

The primary purpose of this legislation is to ensure harmonised, consistent implementation throughout the Community of international rules addressed to Member States as flag States for both international and national traffic\(^\text{45}\) and for all ships irrespective of their flag.

By way of example, the Community has powers in the following areas (see Annex I):

- establishment and enforcement of criteria and technical standards which Member States are required to adopt, e.g. in the area of marine equipment;
- establishment of rules and safety standards for passenger ships;
- enforcement by the port State of international standards for ship safety, pollution prevention and shipboard living and working conditions in respect of ships using Community ports and sailing in the waters under the jurisdiction of the Member States;
- establishment of harmonised rules addressed to Member States' maritime inspection authorities and classification societies.

It is important to ensure that all existing and future rules\(^\text{46}\) are consistent with the other policies developed by the European Community, particularly with the objectives of the internal market and of environment policy.

As guardian of the Treaties, the European Community must ensure this consistency and be given its due position on the international scene.

\(^{45}\) No distinction is made in the Community between international and domestic maritime transport.

\(^{46}\) The proposals from the Erika I package that have been adopted: port State control, rules for classification societies; the phasing-out of old single-hull tankers; and those from the Erika II package still under discussion: the Community monitoring, control and information system for maritime traffic, the compensation fund for oil pollution in European waters and above all the creation of a European Maritime Safety Agency.
3. **COMMUNITY ACCESSION**

3.1. **Status of the European Commission**

The Geneva Convention confers membership status only on States. It is in the imperative political interest both of the Member States and third countries to clarify the nature of European participation, particularly as the IMO structures do not recognise the existence of economic integration organizations. The European Commission has had observer status, however, since the signature on 28 June 1974 of a cooperation and collaboration agreement between the Commission and the IMCO (which subsequently became the IMO). It is therefore the Commission, and not the European Community, which has this status (see Annex III).

Since 1994 the Commission has been receiving all the documents on the agenda of the IMO bodies \(^{47}\) and has been taking part in all meetings of the committees and subcommittees which it considers to be of Community interest. These committees have the power to change and amend by the tacit "no objection" procedure the technical annexes to the Conventions of which the IMO is the depository.

To this end, the Commission coordinates as appropriate the common or concerted positions of Member States on the fringes of the committee meetings under the auspices of the Member State holding the Council Presidency.

The oral presentation of these positions is made during the debates in the IMO bodies, either by a number of Member States expressing their individual views, or by all of them \(^{48}\).

3.1.1 **Current shortcomings**

While the principle of Community coordination has been established since 1994, its practical application has sometimes been wanting and resulted in dissonance, primarily owing to the lack of communication within national delegations and, as the White Paper points out, to the fact that *Member States do not always adopt a consistent position within the Organization in relation to what has been agreed at Community level.*

The current observer status also has several shortcomings.

Observer status does not allow the Commission to:

- negotiate directly, even when the issues raised concern matters that are harmonised within the Community;
- speak for the 15 Member States. At present, when a vote is taken, only Member States which actually take a stance are counted as for or against. They are always considered individually;

---

47 The Commission participates in the four main committees: Maritime Safety Committee (MSC), Marine Environment Protection Committee (MEPC), Technical Cooperation Committee (TCC) and Legal Committee (LEG).

48 Until recently, third countries occasionally raised objections when the Commission or the Member State holding the presidency took the floor on behalf of the 15.
– use the Community coordination mechanism effectively in the fields for which the Community is responsible; furthermore, there is always a risk that Member States' oral submissions do not systematically reflect what has been decided in the Community coordination process;

– make a concrete, visible contribution to Community maritime safety policy.

What is more, this observer status makes it particularly difficult for the Community to participate in negotiating international conventions since it places an obligation on the Community to be vigilant and to follow more cumbersome procedures, both internally and within the IMO structures, even where the Community could stake a claim to participation.

3.1.2 Development of powers

Within a relatively short period, the Community legislation has developed fast, and powers are still being added at a rapid rate. For example, the Erika I package entered into force recently and will soon be followed by Erika II.

Other proposals on the table or included in the Commission's work programme to confer new powers, for example to tighten up the Community rules on passenger vessels or the environment, and the related international instruments are all legitimate reasons to adopt an international position, particularly within the IMO.

3.2. Added value of Community accession

Accession by the Community will make it possible to remedy the shortcomings and problems described in the previous section, with the aid of the arrangements for Community participation and representation within the IMO.

3.2.1 Added value on the international scene

While the IMO remains the most appropriate forum in which to draw up international standards on ship safety and the prevention of pollution by ships, the mandatory character of Community legislation has proved effective in enforcing these standards.

This consistent approach, by 15 Member States at present and around 30 in the long term following enlargement, should logically be reflected on the international scene.

In economic terms, Member States' fleets currently represent 12% of world tonnage, a figure which will increase to 22% after enlargement. Furthermore, the Europe of 15 has financial control over 30% of the world fleet, and maritime traffic to and from Community ports represents 30% of world traffic.

When the Community incorporates IMO standards in its legislation, this has consequences not only for Member States' fleets, but also in many cases for third country vessels trading with Member States, primarily in the area of inspection.

As third countries cannot afford to ignore such a commercially important market, they will be obliged to familiarise themselves with and as far as possible conform to the rules in force in the European market. The safety requirements imposed by the Community in accordance with IMO rules are gradually becoming de facto professional practice for all vessels operating in the European area.
This added value should be reflected in a more appropriate status commensurate with the evolution of powers.

Certain matters have been fully harmonised in the Member States by regulations and directives, with the result that the Community has exclusive powers in those areas. The European Community should therefore be able to exercise its powers directly in the IMO\(^\text{49}\).

### 3.2.2 Arrangements for future participation by the European Community

Once accession comes into effect, it will therefore be necessary to adapt the presentation of views by the Commission and the Member States to the degree of harmonisation of powers and the procedure applicable to them.

- Where Community coordination relates to an area in which powers are fully harmonised, the Commission speaks and votes on behalf of the 15 Member States.
- Where Community coordination relates to an area of national competence, Member States express their individual views and vote individually.
- Where Community coordination relates to an area in which powers are shared and a common position has been established, the latter will be presented by the Council Presidency or by the Commission. If a common position has not been agreed, Member States will express their own views and vote individually, with due regard to Article 10 of the Treaty.

### 3.3 Application for accession by the Community

Under the Geneva Convention, the Secretary-General of the IMO alone can propose an amendment to the members of the Organization six months before the Assembly.

To give a clear idea of all the steps necessary for accession by the Community to the IMO, the rules of and stages in the procedure for accession by the Community must be borne in mind\(^\text{50}\).

### 3.3.1 Steps towards accession

Since the Geneva Convention allows only States to join, the only means of securing accession by the Community is to amend the Geneva Convention by inserting a clause allowing regional economic integration organizations to become a party to the Convention and by adapting all the relevant articles of the Convention affected by this clause, including the rules of procedure.

The following steps will be necessary for accession by the European Community:

- The Council authorises the Commission to negotiate the conditions and the arrangements for the accession of the European Community to the IMO, by

\(^{49}\) See Annex I.

\(^{50}\) See Annex II.
amendment of Article 66 of the Geneva Convention opening membership to regional economic integration organizations.

– The Community submits to the competent IMO bodies a request for amendment of the Geneva Convention to allow a regional economic integration organization to become a party.

– "Twelve months after acceptance by two-thirds of the Members of the Organization, other than Associate Members, each amendment shall come into force for all Members."

– The Commission adopts a proposal for a Council decision on the accession of the European Community to the IMO and submits it to the Council.

– The Council Decision allows the European Community to accede to the IMO; the instruments of signature and acceptance will be deposited with the Secretary-General of the United Nations (Article 71 of the Geneva Convention).

– The Community accession takes effect in accordance with the relevant provisions of the Geneva Convention, as amended.

3.3.2 Rules of procedure

The amendment must be voted and ratified by two thirds of the members present at the Assembly. It is deemed to be adopted when it has been formally accepted by two thirds of the IMO members, i.e. 106 of 160 countries\(^{51}\). It enters into force twelve months after notification of the last ratification\(^{52}\).

The IMO Assembly meets every two years. It last met in November 2001, so any decision to amend the Convention could not be adopted before November 2003.

Should the Secretary-General of the IMO refuse to propose an amendment to the Convention to enable the EC to become a party, a decision by the IMO Council is necessary to overturn his position. In particular, the Council may take all appropriate decisions on matters within the scope of the IMO, by virtue of the general delegation of powers by the IMO Assembly (Part IV, Article 15(m) of the Convention). In practice, Article 15(m), in conjunction with Article 52 of the Convention, extends to the possibility of proposing amendments to the Convention. The IMO Council decides by simple majority of the members present.

Should the Secretary-General of the IMO refuse to propose such an amendment, concerted action by the Member States within the IMO Council will be necessary.

In any event, it is clear that, given the uncertainties of the negotiation and ratification process, it will take several years for accession by the Community to come into effect.

\(^{51}\) From which theoretically the Member States, EFTA countries and some candidate countries can be subtracted.

\(^{52}\) Article 66 of the Geneva Convention.
4. TRANSITIONAL MEASURES

The transitional measures would involve formalising the procedure which already functions correctly for Community coordination in the IMO technical committees and subcommittees. During the accession procedure, an interim arrangement can be sought in the form of coordinated action in the four IMO committees in the areas in which the Community is competent.

Account must also be taken of the extent to which powers are harmonised. Harmonisation of powers, by its nature, is constantly evolving, as reflected in the practical application of Community coordination in the IMO committees and subcommittees.

It is therefore necessary to adapt the presentation of views by the Commission and the Member States to the degree of harmonisation of powers and the procedure applicable to them.

- Where Community coordination relates to an area in which powers are fully harmonised, the Commission speaks on behalf of the Community.
- Where Community coordination relates to an area of national competence, Member States express their individual views.
- Where Community coordination relates to an area in which powers are shared and a common position has been established, the latter will be presented by the Council Presidency or by the Commission. If a common position has not been agreed, Member States will express their own views individually, with due regard to Article 10 of the Treaty.

The question of permanent representation of the Community before the IMO must also be taken into consideration to the extent that the accession negotiations imply a stronger presence before the Member States' permanent delegations to the IMO.

The Community's growing participation in the fields in which the IMO is active combined with the natural development of the maritime safety regulations create a need for stronger participation by the Community in development of the rules adopted under the auspices of this organization.

This would also enable the European Community to meet its obligations concerning external competences and to guarantee the consistency of the Community position in this field of activity.

5. CONCLUSIONS

The European Community has to become a member of the IMO and the Member States, meeting within the Council, must adopt a common approach to amending Part III and all other relevant provisions of the Geneva Convention in order to permit the accession of regional economic integration organizations.

The accession process will take several years. It is therefore necessary to adopt a transitional solution to improve the Community's internal procedures for coordinating positions within the IMO and ensure stronger representation of the Commission in the IMO.
6. RECOMMENDATIONS

In view of the foregoing, the Commission recommends to the Council to authorise the Commission to open and conduct negotiations with the IMO on the conditions and arrangements for accession of the European Community to the Geneva Convention, to appoint a special committee to assist the Commission in this task and to adopt the negotiating directives included in the Recommendation below.

The negotiating directives included in the Recommendation below have been drafted with a view to allowing the European Community to become a member of the IMO.

This status should allow the Community, in matters of its competence and on an equal footing with States which are members of the IMO, to:

(a) express its views during negotiations, or at any meeting of the IMO bodies,

(b) for matters that have to be decided through a vote, have a voting weight equivalent to that of those of its Member States represented in the relevant IMO body and bound by Community legislation from which external competence arises,

(c) express consent in its own name to assume the rights and obligations stemming from the instruments concluded in the framework of the IMO.

In accordance with Article 300 of the EC Treaty, the negotiations should be conducted by the Commission in consultation with a special committee appointed by the Council. In their role as current Members of the IMO, the Member States should provide all possible support for the accession of the Community to the IMO.

As regards budgetary issues, in view of the fact that the financial contributions from the Member States of the European Union represent a part of the IMO budget, it is not considered appropriate to envisage an additional financial contribution from the Community. As a fallback position, however, the Community could envisage a solution based on that adopted for Community accession to FAO, i.e. contributing a sum to cover administrative and other expenses arising out of its membership of the IMO (provided this sum is in no case fixed unilaterally by the IMO, but in agreement with the Community).

During negotiations, the question of the most appropriate place for including the arrangements for Community accession and participation might be raised. The IMO might prefer to include some of them in the Rules of Procedure. For reasons of legal certainty in the participation clauses, the Community should prima facie have an interest in including them in the Convention. Nevertheless, whichever option is chosen, it is also important to leave substantial room for manoeuvre in order to accommodate possible constraints imposed by the IMO.

Finally, the IMO will presumably wish to allow Community participation through the inclusion of a general provision referring to the participation of regional economic integration organizations. In that case, it could be useful for the Community to suggest to the IMO use of the definition incorporated into the Statute of the FAO.

Once the Chicago Convention has been amended, and in the light of the results obtained, the Commission will present a proposal for a Council decision on the accession of the European Community.
During the transition period, the procedures and arrangements for presenting the Community's position to the IMO will be decided as indicated in Section 4.

**RECOMMENDATION**

In the light of the above, the Commission recommends:

– that the letter in Annex 1 to this recommendation be addressed to the Secretary-General of the IMO informing the IMO of the European Community's wish to open negotiations with a view to allowing the accession of the European Community to the Convention on the International Maritime Organization ("Geneva Convention");

– that the Council authorise the Commission to negotiate with the IMO the conditions and arrangements for the accession of the European Community to the Geneva Convention;

– that, since in accordance with the Treaty, the Commission will conduct these negotiations on behalf of the European Community, the Council appoint a special committee to assist it in this task, and

– that the Council adopt the negotiating directives in Annex 2 to this recommendation.
Proposal for a letter to be addressed to the Secretary-General of the IMO

Sir,

We have the honour to inform you that the European Community wishes to become a full member of the IMO.

The European Community has competence to adopt measures in the field of maritime safety and marine pollution prevention and control. As a matter of fact, this competence has already been exercised through the adoption of a number of instruments in areas where the IMO has carried or is currently carrying out work.

As a result of this, the Community as such is increasingly concerned by the work of the IMO. This has in turn raised the issue of Community accession to the IMO. In this respect, the European Community believes that its accession to the IMO would be advantageous not only for itself, but also for the IMO. Indeed, facilitating the rights and obligations stemming both from IMO membership and accession to instruments in areas where the Community is competent, should also facilitate the progress and results of the works of the IMO.

The IMO does not, however, allow for membership of regional economic integration organizations. Therefore, we would like to ask you to open negotiations with a view to making the changes to the IMO Convention and other internal rules that are necessary for allowing the Community to become a member of the IMO, as well as on the conditions and arrangements for our membership.

The Commission, assisted by a special committee of Member States, will be in charge of these negotiations from the Community side. The Commission is at the IMO's disposal to meet its representatives at an early date as the IMO deems appropriate.

Let us finally assure you that, as we have also expressed, the Community remains committed to ensuring that the IMO remain an attractive forum for all countries in the world.

For the Commission

The President

For the Council of the European Union

The President
Attachment 2

Negotiating directives for accession to the IMO

– The Community should be granted full member status on equal footing with States.

– The status should allow Community participation at negotiations and meetings on equal footing with States.

– As to voting rights, the Community should have a number of votes equivalent to those of Member States represented in the relevant IMO body and bound by the Community instruments from which external competence arises.

– The Community shall make no financial contribution to the IMO budget. Should this prove impossible to achieve, or were it to compromise acceptance of Community membership by current members of the IMO, the Community could accept as a fallback position making available a sum compensating for the administrative and other expenses arising out of its membership of the IMO. This sum should not be determined unilaterally by the IMO, but in agreement with the Community.

– As a full member, the Community should be entitled to accede to all future instruments negotiated in the context of the IMO which fall under its competence. The Commission should also explore the possibility of including in the IMO internal rules a provision allowing Community accession to existing conventions open to Member States, for which a Community competence exists.

– The Commission should aim at the arrangements concerning the participation of the Community being included in the most appropriate place in the IMO internal rules in order to guarantee their stability. However, the need for stability of such arrangements will be weighed against possible IMO internal constraints.

– During negotiations, and if necessary, the Commission will propose a definition of regional economic integration organization along the lines of that contained in Article II of the Statute of the Food and Agriculture Organization of the United Nations 53.

53 "(…) a regional economic integration organization must be one constituted by sovereign States, a majority of which are Member Nations of the Organization, and to which its Member States have transferred competence over a range of matters within the purview of the Organization, including the authority to make decisions binding on its Member States in respect of those matters".
ANNEX I

Community legislation relevant to the work of the IMO

1) Adopted legislation


2) Proposed legislation


ANNEX II

The International Maritime Organization

The IMO is a specialised United Nations agency set up by the 1948 Geneva Convention which has its headquarters in London. The IMO is responsible for matters relating to maritime safety and protection of the environment in the event of accidental pollution by ships.

The IMO prepares diplomatic conferences with a view to the adoption of new rules (conventions/protocols) on maritime safety and protection of the marine environment and adopts recommendations in the form of resolutions in these areas. These resolutions (with certain exceptions) are non-binding.

The main bodies of the IMO are the Assembly, which meets every two years (22nd session in mid-November 2001), the Maritime Safety Committee (MSC), the Marine Environment Protection Committee (MEPC), the Legal Committee and the Technical Cooperation Committee. A number of subcommittees prepare the Committee decisions. The organization is run by a Council comprising some 40 members elected by the Assembly.

The main spokesman of the IMO is its Secretary-General, Mr William O'Neil (Canadian).

The IMO has 160 actual members, including all the Member States and all the accession candidate countries, who together account for about 25% of world tonnage.

The IMO is also the depository for a large number of existing conventions, in particular the SOLAS, MARPOL and STCW Conventions. Under these Conventions, decision-making powers (possibility to make amendments) have been delegated to the MSC and MEPC. These Committees adopt binding resolutions to this effect. The resolutions amend the Conventions and protocols and the amendments enter into force by tacit acceptance.
ANNEX III

Status of the Commission at the IMO

The Community is not represented as such at the IMO and is not party to any of the Conventions administered by it. Only States have the right to become members of the organization. The Convention provides only for cooperation mechanisms for international organizations. There is no provision for membership by regional economic integration organizations. This is why, since 1974, only the Commission has observer status.

Following an exchange of letters between Mr Ortoli, the then President of the European Commission and Mr Srivastava, Secretary-General of the Intergovernmental Maritime Consultative Organization (IMCO, which subsequently became the IMO), a cooperation agreement was concluded on 28 June 1974.

This agreement provides for:

- reciprocal consultations on topics of common interest;
- exchanges of information on planned projects and work programmes.

Owing to the leeway left to States by the Conventions and resolutions, the Community has adopted more than a dozen directives and regulations based directly or indirectly on IMO instruments (conventions or resolutions).

The aim of this legislation is to ensure harmonised, consistent application of international rules in the Community for all traffic, both international and domestic.

Powers are therefore shared, as a result of which in 1994 the Council instituted a pragmatic coordination approach.
ANNEX IV

Relevant procedural rules of the IMO

Part I. Purpose of the Organization

Article 1

The purposes of the Organization are:

(a) To provide machinery for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; etc.

Part III. Membership

Article 4

Membership in the Organization shall be open to all States…

Article 7

Any State not entitled to become a Member under Article 5 or 6 may apply through the Secretary-General of the Organization to become a Member and shall be admitted as a Member upon its becoming a Party to the convention in accordance with the provision of Article 71, etc.

Part V. The Assembly

Article 15

The function of the Assembly shall be:

(m) To refer to the Council for consideration or decision any matters within the scope of the organization (…)

Part XI. The Secretariat

Article 52

The Secretary-General shall assume any other functions which may be assigned to him by the Convention, the Assembly or the Council.

Part XV. Relationship with the United Nations and other organizations

Article 61

The Organization may, on matters within its scope, cooperate with other intergovernmental organizations which are not specialised agencies of the United Nations, but whose interests and activities are related to the purposes of the organization.
Article 63

Subject to approval by a two-third majority vote of the Assembly, the Organization may take over from any other international organizations, governmental or non-governmental, such functions, resources and obligations within the scope of the Organization by international agreements or by mutually acceptable arrangements entered into between competent authorities of the respective organizations. Similarly, the organization may take over any administrative functions which are within its scope and which have been entrusted to a government under the terms of any international instrument.

Part XVII. Amendments

Article 66

Texts of proposed amendments to the convention shall be communicated by the Secretary-General to Members at least six months in advance of their consideration by the Assembly. Twelve months after acceptance by two-third of the Members of the Organization, other than Associate Members, each amendment shall come into force for all Members. If within the first 60 days of this period of twelve months a Member gives notification of withdrawal from the Organization on account of an amendment the withdrawal shall, notwithstanding the provision of Article 73 of the Convention, take effect on the date on which such amendment comes into force.

Article 67

Any amendment adopted under Article 66 shall be deposited with the Secretary-General of the United Nations, who will immediately forward a copy of the amendment to all Members.

Article 68

A declaration or acceptance under Article 66 shall be made by the communication of an instrument to the Secretary-General for deposit with the Secretary-General of the United Nations. The Secretary-General will notify Members of the receipt of any such instrument and of the date when the amendment enters into force.
FINANCIAL STATEMENT

Policy area(s): Maritime Transport  
Activity(ies): Membership in the IMO

Title of action: Representative of the Commission to IMO

1. BUDGET LINE(S) + HEADING(S)

2. OVERALL FIGURES

2.1 Total allocation for action (Part B): € million for commitment : none

2.2 Period of application: Starting in 2003, indefinite duration

2.3 Overall multiannual estimate on expenditure:

   a) Schedule of commitment appropriations/payment appropriations (financial intervention) (*see point 6.1.1*)  

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008 and subs. years</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commitments</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Payments</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
</tbody>
</table>

   b) Technical and administrative assistance and support expenditure (*see point 6.1.2*)  

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008 and subs. years</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commitments</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Payments</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
</tbody>
</table>

   c) Overall financial impact of human resources and other administrative expenditure (*see points 7.2 and 7.3*)  

<table>
<thead>
<tr>
<th>Commitments/payments:</th>
<th>0.197</th>
<th>0.197</th>
<th>0.197</th>
<th>0.197</th>
<th>0.197</th>
<th>0.197</th>
<th>n.a.</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL a+b+c</td>
<td>0.197</td>
<td>0.197</td>
<td>0.197</td>
<td>0.197</td>
<td>0.197</td>
<td>0.197</td>
<td>n.a.</td>
</tr>
</tbody>
</table>

   | Commitments   | 0.197 | 0.197 | 0.197 | 0.197 | 0.197 | 0.197 | n.a.   |
   | Payments      | 0.197 | 0.197 | 0.197 | 0.197 | 0.197 | 0.197 | n.a.   |
2.4 Compatibility with the financial programming and the financial perspective

☑ Proposal compatible with the existing financial programming

☐ This proposal will entail reprogramming of the relevant heading in the financial perspective

☐ This may entail application of the provisions of the Interinstitutional Agreement.

2.5 Financial impact on revenue:

☑ No financial implications

OR

☐ Financial impact – the effect on revenue is as follows:

3. BUDGET CHARACTERISTICS: Not applicable

<table>
<thead>
<tr>
<th>Type of expenditure</th>
<th>New</th>
<th>EFTA participation</th>
<th>Participation applicant countries</th>
<th>Heading Financial Perspective</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-comp</td>
<td>Non-diff</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
</tr>
</tbody>
</table>

4. LEGAL BASIS

Article 302 (ex Article 229)

5. DESCRIPTION AND GROUNDS

5.1 Need for Community intervention

5.1.1 Objectives pursued

The increasing involvement of the Community in matters dealt with in the IMO and the consequent development of Community internal rules, makes it necessary to strengthen Community participation in this organization, which sets international rules concerning maritime transport. This will put the Community in a position to meet its obligations as regards external competence and to guarantee the consistency of the Community position in this sector of particular economic importance.

Thus, in its recent White Paper on “European transport policy for 2010: time to decide” the Commission took the position that the present situation needs to be remedied without delay, by having the Community accede to IMO, “so that the thirty-odd members of the enlarged Union not only speak with a single voice but, above all, can influence those organizations’ activities in the common interest and in support of sustainable development.”

No Community contribution to the budget of the IMO is foreseen as a consequence of the membership.
However, as the Community will not be in a position to accede to the IMO until the necessary number of States which are members of the organization have ratified the amendment of the relevant Convention, this process can be expected to take a considerable time. The Commission will therefore put in place, in parallel with the negotiations on accession, more effective methods of representation by establishing a permanent representative in London. The representation would consist of one official, permanently based at the Commission’s representation in London, and one secretary, also based in London. The costs related to this staff are the only part of this application for accession to the IMO that will have budgetary implications.

5.1.2 Measures taken in connection with ex ante evaluation

Based on the increasing need for close relations with other IMO Contracting Parties and industry representatives, and based upon past experience of having an official permanently in London to follow IMO matters, the need for such posts has been established. In particular, the negotiations for accession to the IMO, as called for in the White Paper for a European Transport Policy and discussed in this communication, will emphasise the need for such representation, whose annual work programme and achievements will be monitored by DG TREN/G.

5.1.3 Measures taken following ex post evaluation

The added value of having a permanent representation to the IMO in London will be regularly reviewed in relation to the relevant task allocations and work programmes.

5.2 Actions envisaged and arrangements for budget intervention

– the target population(s) (specify number of beneficiaries if possible);

The proposed action will be of mutual benefit for the Commission on the one hand and IMO Contracting Parties and industry representatives on the other hand, as it will allow for close relationships between them.

– the specific objectives set for the programming period (in measurable terms);

Establishing a representative of the Commission to the International Maritime Organization and providing secretarial support.

– the concrete measures to be taken to implement the action;

Negotiations on the possibilities of accommodating the Commission’s IMO representative in the offices of the Commission’s delegation in London (office space).

– the immediate outputs of each action, and their contribution to

The long-term goal of achieving accession by the Community to the IMO will not be an immediate result. By contrast, the benefits of permanent representation (those referred to in 5.1 above) will be immediate.
– the expected outcomes solving needs or problems

The outcome will solve the current under-representation of the Commission in the IMO, and would provide substantial added value to the Commission’s work in Brussels, by reducing the need for continuous missions to the IMO.

Information should also be given on the arrangements for budget intervention (rate and form of the required financial assistance).

The establishment of a representative of the Commission to the IMO and a secretary will require budget resources from Part A of the budget.

5.3 Methods of implementation

The proposed representative will require the employment of two regular staff (one A and one C official).

6. FINANCIAL IMPACT

6.1 Total financial impact on Part B - (over the entire programming period) None

6.1.1 Financial intervention

None

6.1.2 Technical and administrative assistance, support expenditure and IT expenditure (Commitment appropriations) None

6.2 Calculation of costs by measure envisaged in Part B (over the entire programming period) None

Commitments in € million (to the 3rd decimal place)

<table>
<thead>
<tr>
<th>Breakdown</th>
<th>Type of outputs (projects, files)</th>
<th>Number of outputs (total for years 1…n)</th>
<th>Average unit cost</th>
<th>Total cost (total for years 1…n)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Action</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>TOTAL COST</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
</tbody>
</table>
7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

7.1 Impact on human resources

<table>
<thead>
<tr>
<th>Types of post</th>
<th>Staff to be assigned to management of the action using existing and/or additional resources</th>
<th>Description of tasks deriving from the action</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of permanent posts</td>
<td>Number of temporary posts</td>
</tr>
<tr>
<td>Permanent officials or Temporary staff</td>
<td>A</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>B</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>C</td>
<td>-</td>
</tr>
<tr>
<td>Other human resources</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>1</td>
<td>-</td>
</tr>
</tbody>
</table>

7.2 Overall financial impact of human resources

<table>
<thead>
<tr>
<th>Type of human resources</th>
<th>Amount €</th>
<th>Method of calculation *</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrator</td>
<td>120 000</td>
<td>Cost of external services</td>
</tr>
<tr>
<td>Secretary</td>
<td>65 000</td>
<td></td>
</tr>
<tr>
<td>Other human resources (local agent)</td>
<td>185 000</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>185 000</td>
<td></td>
</tr>
</tbody>
</table>

The amounts are total expenditure for twelve months.

7.3 Other administrative expenditure deriving from the action

<table>
<thead>
<tr>
<th>Budget line (number and heading)</th>
<th>Amount €</th>
<th>Method of calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall allocation (Title A7)</td>
<td>9270</td>
<td>Missions to Brussels s (10/year)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Office of Information (EC)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- return fare Brussels- London = €360X10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- daily allowance: 189x 3x10</td>
</tr>
<tr>
<td>Information systems (A-5001/A-4300)</td>
<td>3000</td>
<td>2 PCs plus 2 standard software</td>
</tr>
<tr>
<td>Other expenditure – Part A (Title A6, Office cost)</td>
<td></td>
<td>It is foreseen that the existing premises of the Commission representation could be used for this purpose</td>
</tr>
<tr>
<td>Total</td>
<td>12270</td>
<td></td>
</tr>
</tbody>
</table>

The amounts are total expenditure for twelve months.

The needs for human and administrative resources shall be covered within the allocation granted to the managing DG in the framework of the annual allocation procedure.
I. Annual total (7.2 + 7.3): €197 270
II. Duration of action: indefinite
III. Total cost of action (I x II): n.a.

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements: Not applicable

8.2. Arrangements and schedule for the planned evaluation: Not applicable

9. ANTI-FRAUD MEASURES: Not applicable