The Relationship between Eurocontrol and the EC: Living Apart Together

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Abstract
This article discusses the relationship between Eurocontrol, the European organization for the safety and efficiency of air traffic management, henceforth also referred to as ATM, and the EC. Until a few years ago, the two organizations carried out complementary tasks. Their fields of activity did not overlap. This changed in 1997 with the establishment of Eurocontrol’s revised Convention and the coming into being of the Single European Sky regulations in 2004, which provided for the accession of the EC to Eurocontrol whilst enhancing the regulatory forces of standards made by the latter organization.

These events in effect made the relationship competitive rather than complementary. Various arrangements regulate this relationship. A balanced cooperation has yet to be found.

1. The Organization of ATM
Traditionally and principally, ATM is a task that falls under the responsibility of States parties to the Chicago Convention on international civil aviation of 1944. Hence, it was regarded as a national affair.1 The Chicago Convention is adhered to by 190 states including all European states, and includes the constitution of the International Civil Aviation Organization (ICAO). Consequently, States must be

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1) See Chicago Convention, 15 U.N.T.S. 326, art. 28, 1 & 6:
   Article 28: Air navigation facilities and standard systems
   Each contracting State undertakes, so far as it may find practicable, to:
   Provide, in its territory, airports, radio services, meteorological services and other air navigation facilities to facilitate international air navigation, in accordance with the standards and practices recommended or established from time to time, pursuant to this Convention; …
   Article 1: Sovereignty
   The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.
equipped with the means in terms of infrastructure (airports and air traffic control towers), human resources (including expertise on ATM-related matters), and rule-making functions, in order to discharge themselves of their obligations. Neither Eurocontrol nor the EC is a party to the Chicago Convention. Both organizations have an observer status with ICAO.

The great merit of the Chicago Convention/ICAO regime is its worldwide scope, which helps to underline the global character of international civil aviation. The Chicago/ICAO regime provides a link between all states of the world that is underpinned by a common understanding on how to approach ATM. This link is built upon both mandatory treaty rules and the somewhat less binding ICAO standards.

However, the reliance upon State sovereignty, related restrictions imposed by national boundaries, and the establishment of minimum standards enforceable exclusively by States, as opposed to ICAO, are sometimes cited as shortcomings of the regime set up by the Chicago Convention and ICAO and as hampering progress. Lack of binding force of ICAO rules and lack of centralised enforcement powers may be seen as undermining the targeted uniformity.

Consequently, regional organizations are deemed to be in a better position to organise “local” ATM needs for air traffic. In the European context, Eurocontrol was the first organization tasked with the management of air traffic on a regional level. This organization will be further discussed in the next section.

2. The Establishment of Eurocontrol

Eight European States, namely Belgium, France, the United Kingdom, West-Germany, Luxembourg, the Netherlands, Ireland and Portugal created Eurocontrol in 1960. This was done pursuant to the provisions of the International Convention relating to Co-operation for the Safety of Air Navigation (Eurocontrol), henceforth also referred to as the 1960 Convention. In short, the idea was to pool their national resources in the area of air traffic management and related matters on a regional basis.

Article 6: Scheduled air services

No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization.

2) Enforcement mechanisms are laid down in bilateral air services agreements and implemented in national law. In some instances, regional arrangements such as those made by the EC may play a role.