

ANNEX

STATUTES OF THE JOINT UNDERTAKING

Article 1

Members

- 1 The following shall be founding members of the Joint Undertaking:
- 2 The following may become members of the Joint Undertaking:
- 3 Any request for accession shall be addressed to the Executive Director, who shall transmit it to the Administrative Board. The Administrative Board shall decide whether to authorise negotiations. If authorisation is given, the Executive Director shall negotiate the conditions of accession and submit them to the Administrative Board. These conditions shall include, in particular, provisions relating to the financial contributions and representation within the Administrative Board. The draft agreement shall be presented to the Administrative Board for approval under Article 5(1)(d).
- 4 In deciding whether to authorise negotiations on accession with a public or private undertaking or body the Administrative Board shall, in particular, take account of the following criteria:
- 5 Membership of the Joint Undertaking may not be transferred to a third party without the prior and unanimous agreement of the Administrative Board.

Article 2

Organs of the Joint Undertaking

The organs of the Joint Undertaking shall be the Administrative Board and the Executive Director.

Article 3

Composition and chairmanship of the Administrative Board

- 1 The Administrative Board shall be composed of:
- 2 The Administrative Board shall be chaired by the representative of the Community.

Article 4

Voting in the Administrative Board

- 1 The representatives referred to in points (a) and (c) of Article 3(1) shall have the right to vote.
- 2 The members of the Joint Undertaking shall have a number of votes in proportion to their contribution to the funds of the Joint Undertaking. However, notwithstanding the first sentence of this paragraph, the Community and Eurocontrol shall each have not less than 25 %

of the total number of votes and the airspace users' representative referred to in point (c) of Article 3(1) shall have at least 10 % of the total number of votes.

3 Decisions of the Administrative Board shall be adopted by a simple majority of the votes cast unless otherwise provided for in these Statutes.

4 If the votes are evenly divided, the Community shall have the casting vote.

5 Any decision relating to the accession of new members (within the meaning of Article 1(2)), the appointment of the Executive Director, proposed amendments to these Statutes, proposals to the Commission on the duration of the Joint Undertaking, the dissolution of the Joint Undertaking or decisions taken under Article 23 shall require the positive vote of the Community's representative on the Administrative Board.

6 Decisions relating to the adoption of the ATM Master Plan and its modifications shall require the positive votes of the founding members. Notwithstanding paragraph 1, such decisions shall not be taken where the representatives referred to in points (c), (d), (f), and (g) of Article 3(1) are unanimously opposed.

Article 5

Responsibilities of the Administrative Board

1 In particular, the Administrative Board shall be responsible for:

2 The Administrative Board shall adopt its rules of procedure which shall ensure that its proceedings run in a smooth and efficient manner, particularly in the event of a significant expansion in membership. These rules shall also include the following provisions:

Article 6

Avoidance of conflicts of interest

1 Members of the Joint Undertaking or of the Administrative Board and Joint Undertaking staff are not allowed to participate in the preparation, evaluation or the awarding procedures of calls for public tender, if they own or have partnership agreements with bodies who are potential candidates for calls for public tender or represent such bodies.

2 Members of the Joint Undertaking and participants in the Administrative Board must disclose any direct or indirect personal or corporate interest in the outcome of the deliberations of the Administrative Board in relation to any matter on the agenda. This requirement also applies to the staff in relation to the tasks which are assigned to them.

3 Based on the disclosure mentioned in paragraph 2 the Administrative Board may decide to exclude members, participants or staff from decisions or tasks where a conflict of interest is likely to occur. They will not have access to information relating to the fields deemed subject to potential conflicts of interest.

Article 7

Executive Director

1 The Executive Director shall be responsible for the day-to-day management of the Joint Undertaking and is its legal representative.

2 The Executive Director shall be appointed by the Administrative Board on a proposal from the European Commission which shall include at least three candidates.

3 The Executive Director shall perform his duties with complete independence within the powers assigned to him.

4 The Executive Director shall direct the execution of the Sesar project within the guidelines established by the Administrative Board to which he shall be responsible. He shall provide the Administrative Board with all information necessary for the performance of its functions.

5 The Executive Director shall in particular:

Article 8

Staff of the Joint Undertaking

1 The staff complement shall be determined in the establishment plan that will be set out in the annual budget.

2 The members of the staff of the Joint Undertaking shall have a fixed-term contract based on the conditions of employment of servants of the European Communities.

3 All staff expenditure shall be borne by the Joint Undertaking.

4 Any member of the Joint Undertaking may propose to the Executive Director to second members of its staff to the Joint Undertaking in accordance with the conditions provided for in the relevant agreement.

Article 9

Agreements

1 In order to carry out the tasks defined in Article 1(5) of this Regulation, the Joint Undertaking may conclude specific agreements with its members.

2 Eurocontrol's role and contribution shall be defined in an agreement with the Joint Undertaking. This agreement shall:

3 All agreements with members shall include appropriate provisions which shall prevent any possible conflict of interest for members in performing the tasks under the said agreements.

4 Representatives of members of the Joint Undertaking shall not participate in deliberations of the Joint Undertaking pertaining to negotiations on the conclusion of their own agreements referred to in paragraph 1 and shall be denied access to the documentation on these deliberations.

Article 10

External contracts

1 Notwithstanding the provisions of Article 9, the Joint Undertaking may conclude service and supply contracts with undertakings or a consortium of undertakings, in particular to carry out the tasks provided for in Article 1(5) of this Regulation.

2 The Joint Undertaking shall ensure that the contracts referred to in paragraph 1 provide for the right of the Commission to carry out, on behalf of the Joint Undertaking, controls in order to ensure that the financial interests of the Community are protected.

3 The contracts referred to in paragraph 1 shall include all appropriate provisions relating to the intellectual property rights referred to in Article 18 and appropriate penalty clauses. In order to avoid any conflict of interests, members involved in defining work that is subject to an invitation to tender, including their staff seconded under Article 8(4), cannot take part in carrying out this work.

Article 11

Working groups

1 In order to carry out the tasks provided for in Article 1(5) of this Regulation, the Joint Undertaking can set up a limited number of working groups to carry out activities which are not already being carried out elsewhere. These groups shall rely on the expertise of professionals and shall work in a transparent manner.

2 The experts who take part in the working groups shall not belong to the staff of the Joint Undertaking.

3 The working groups shall be chaired by a representative of the Joint Undertaking.

Article 12

Financial provisions

1 The revenue of the Joint Undertaking shall come from the sources identified in Article 4 of this Regulation.

2 In order to start up the work of the Joint Undertaking, the founding members shall pay a minimum initial contribution of EUR 10 million within a period of one year from the establishment of the Joint Undertaking.

3 The members referred to in the second indent of Article 1(2) shall undertake to pay a minimum initial contribution of EUR 10 million within a period of one year from when their accession to the Joint Undertaking is accepted. This amount shall be reduced to EUR five million for members that subscribe to the Joint Undertaking within 12 months of its constitution.

4 The Administrative Board shall decide on the amounts which must be released by each member in proportion to the contributions which it has agreed to pay and shall establish the deadline by which the members must pay their contributions.

5 Contributions in kind are possible except as regards the contributions referred to in paragraph 2. They shall be subject to an evaluation of their value and their utility for carrying out the tasks of the Joint Undertaking and shall be specified in the agreement referred to in Article 1(3).

6 Any member of the Joint Undertaking that fails to meet its commitments concerning the contributions in kind or does not release the amount due within the prescribed time-limit shall be, for six months following the expiry of this time-limit, disqualified from voting in the Administrative Board until such time as its obligations have been met. Upon expiry of this period of six months, if the obligations have still not been met, its membership shall be revoked.

Article 13

Revenue

1 All the revenue of the Joint Undertaking shall be applied to promoting the tasks defined in Article 1(5) of this Regulation. Subject to Article 25, no payment by way of division of any excess revenue over expenditure shall be made to the members of the Joint Undertaking.

2 Notwithstanding the regulatory provisions applicable to the Community's contribution, any interest yielded by the contributions paid by its members shall be considered to be revenue of the Joint Undertaking.

Article 14

Financial regulations

1 The financial regulations of the Joint Undertaking shall be adopted by the Administrative Board.

2 The purpose of the financial regulations is to ensure the economic and sound financial management of the Joint Undertaking.

3 The financial regulations should respect the broad principles laid down in Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities⁽²⁾, and shall in particular include the main rules on:

4 The detailed implementing rules enabling the Commission to ensure compliance with its obligations pursuant to Article 274 of the Treaty establishing the European Community shall be set out in an agreement between the Joint Undertaking and the Commission.

Article 15

Implementation and control of the budget

1 The financial year shall correspond to the calendar year.

2 Before 31 March of each year, the Executive Director shall transmit to the members the cost estimates of the Sesar project as approved by the Administrative Board.

3 The members shall forthwith communicate to the Executive Director their comments on the project cost estimates, and in particular on the estimates of revenue and expenditure for the following year.

4 Based on the approved project cost estimates, and taking into account the comments received from members, the Executive Director shall prepare the draft budget for the following year and submit it to the Administrative Board for adoption before 30 September.

5 Within two months of the end of each financial year, the Executive Director shall submit the annual accounts and balance-sheets for the preceding year to the Court of Auditors of the European Communities. The audit executed by the Court of Auditors shall be based on records and performed on the spot.

6 The Executive Director shall present the annual accounts and balance-sheet, together with the report of the Court of Auditors, to the Administrative Board for approval by a majority of 75 % of the votes cast. The Executive Director is entitled and, if requested by the Administrative Board, obliged to comment on the report.

7 The Court of Auditors shall send its report to the members of the Joint Undertaking.

Article 16

Work programme and reports

1 The Joint Undertaking shall draw up its work programme on the basis of sound management and accountability principles setting out clear deliverables and milestones. It shall consist of:

2 The annual report shall show the progress of the Sesar project, in particular with regard to the timetable, costs and performance of this project.

Article 17

Protection of the financial interests of the Community

1 The Commission shall have the right to ensure that the financial interests of the Community are protected by carrying out effective controls. Should the Commission discover any irregularities, it shall reserve the right to reduce or suspend any subsequent payment to the Joint Undertaking.

2 The reduced or suspended amount pursuant to paragraph 1 shall be equivalent to the amount of the irregularities actually discovered by the Commission.

Article 18

Property rights

The Joint Undertaking shall own all the tangible and intangible assets created by the Joint Undertaking or transferred to it for the development phase of the Sesar project in accordance with agreements referred to in Articles 1(3) and 9, concluded by the Joint Undertaking. The Joint Undertaking may grant access rights to the knowledge resulting from the project, in particular to its members as well as Member States of the European Union and/or Eurocontrol for their own and non commercial purposes.

Article 19

Transparency and treatment of documents

The Administrative Board shall adopt rules on the treatment of documents in order to reconcile the requirements of security, commercial secrecy, and public access. These rules shall take into account, where appropriate, the principles and limits laid down in Regulation (EC) No 1049/2001 of the European Parliament and of the Council⁽³⁾.

Article 20

Anti-fraud measures

1 For the purposes of combating fraud, corruption and other illegal acts, Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)⁽⁴⁾ shall apply.

2 The Joint Undertaking shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti Fraud Office (OLAF)⁽⁵⁾ and shall forthwith issue the appropriate provisions applicable to all employees of the Joint Undertaking.

3 The Court of Auditors and OLAF may, if necessary, carry out on-the-spot checks among the recipients of the Joint Undertaking's funding and the agents responsible for allocating it.

Article 21

Liability

1 The Joint Undertaking shall be solely responsible for meeting its obligations.

2 The contractual liability of the Joint Undertaking shall be governed by the relevant contractual provisions and the law applicable to the contract in question.

3 Any payment by the Joint Undertaking for covering the liability referred to in paragraph 2 and the costs and expenses incurred in connection therewith shall be considered expenditure of the Joint Undertaking.

4 The Executive Director shall propose to the Administrative Board to take out any necessary insurance, and the Joint Undertaking shall take out such insurance as the Administrative Board may request.

Article 22

Confidentiality

The Joint Undertaking shall ensure the protection of sensitive information, the non-authorised disclosure of which could damage the interests of the contracting parties. It shall apply the principles and minimum standards of security defined and implemented by Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations⁽⁶⁾.

Article 23

Transfer of tangible and intangible assets by the Joint Undertaking

Upon expiry of the period referred to in Article 1 of this Regulation, the transfer by the Joint Undertaking of all or part of the tangible and intangible assets that it owns to another body shall be agreed by the Administrative Board.

Article 24

Amending the Statutes

1 Any member of the Joint Undertaking may submit proposals for the amendment of these Statutes to the Administrative Board.

2 If the Administrative Board agrees to such proposals by a majority of 75 % of the votes and in accordance with Article 4(5) of these Statutes, the Commission shall make a proposal in accordance with Article 5(4) of this Regulation.

Article 25

Dissolution of the Joint Undertaking

For the purpose of conducting the proceedings involved in winding up the Joint Undertaking, the Administrative Board shall appoint one or more liquidators, who shall comply with the decisions of the Administrative Board.

Article 26

Applicable law

The law of the State where the seat of the Joint Undertaking is located shall apply in any matter not covered by these Statutes.

Status: This is the original version (as it was originally adopted).

- (1) OJ L 124, 20.5.2003, p. 36.
- (2) OJ L 357, 31.12.2002, p. 72.
- (3) OJ L 145, 31.5.2001, p. 43.
- (4) OJ L 136, 31.5.1999, p. 1.
- (5) OJ L 136, 31.5.1999, p. 15.
- (6) OJ L 101, 11.4.2001, p. 1. Decision as last amended by Decision 2005/952/EC (OJ L 346, 29.12.2005, p. 18).