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COUNCIL REGULATION (EC) No 219/2007

of 27 February 2007

on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR)

(OJ L 64, 2.3.2007, p. 1)

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COUNCIL REGULATION (EC) No 219/2007

of 27 February 2007

on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 171 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Whereas:

- (1) In order to create the single European sky, on 10 March 2004 the European Parliament and the Council adopted Regulation (EC) No 549/2004 laying down the framework for the creation of the single European sky (the framework Regulation) ⁽¹⁾, Regulation (EC) No 550/2004 on the provision of air navigation services in the single European sky (the service provision Regulation) ⁽²⁾, Regulation (EC) No 551/2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation) ⁽³⁾, and Regulation (EC) No 552/2004 on the interoperability of the European Air Traffic Management network (the interoperability Regulation) ⁽⁴⁾.
- (2) The project to modernise air traffic management in Europe, (the SESAR project), is the technological element of the single European sky. It aims by 2020 to give the Community a high-performance air traffic control infrastructure which will enable the safe and environmentally friendly development of air transport, benefiting fully from the technological advances of programmes such as Galileo.
- (3) Following the Community's accession to Eurocontrol, the Commission and Eurocontrol have signed a cooperation framework agreement for the implementation of the single European sky and for research and development activities in the field of air traffic control.
- (4) In accordance with the guidelines adopted by the Competitiveness Council of 7 June 2005 concerning the preparation of the future European space programme, the European Union will be responsible for ensuring the availability and continuity of operational services supporting its policies, and it will contribute to the development, deployment and operation of a European space infrastructure by concentrating on space-based applications to contribute to the achievement of its policies.
- (5) The SESAR project aims to integrate and coordinate research and development activities which were previously undertaken in a dispersed and uncoordinated manner in the Community, including the most remote and outlying regions thereof, referred to in Article 299(2) of the Treaty.
- (6) By avoiding the duplication of research and development activities, the SESAR project will not lead to an increase in the overall volume of air users' contributions to research and development efforts.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ OJ L 96, 31.3.2004, p. 10.

⁽³⁾ OJ L 96, 31.3.2004, p. 20.

⁽⁴⁾ OJ L 96, 31.3.2004, p. 26.

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- (7) The SESAR project is composed of three phases: a definition phase, a development phase and a deployment phase.
- (8) The definition phase of the SESAR project aims to define the different technological steps to be taken, the priorities in the modernisation programmes and the operational implementation plans. It is co-financed by the Community and by the European Organisation for the Safety of Air Navigation (Eurocontrol).
- (9) The definition phase started in October 2005 and is carried out under the responsibility of Eurocontrol by a consortium of undertakings chosen after a public invitation to tender. It will finish in 2008 and will result in the European Air Traffic Management Master Plan. This plan will define the work programme for the implementation of the target concepts, including the different deployment strategies.
- (10) The definition phase will be followed by the development phase (2008-2013) which will develop new equipments, systems or standards, which will ensure a convergence towards a fully interoperable Air Traffic Management system in Europe.
- (11) The development phase will change into the deployment phase (2014-2020), which will be a large scale production and implementation of the new air traffic management infrastructure. The infrastructure should be composed of fully harmonised and interoperable components which guarantee high performance air transport activities in Europe.
- (12) Taking into account the number of actors who will need to be involved in this process and the financial resources and technical expertise needed, it is vital for the rationalisation of activities to set up a legal entity capable of ensuring the management of the funds assigned to the SESAR project during its development phase.
- (13) It is therefore necessary to set up a Joint Undertaking under Article 171 of the Treaty in order to enable considerable progress to be made in the development of technologies relating to air traffic control systems during the development phase and prepare the deployment phase.
- (14) The main task of the Joint Undertaking is to manage the research, development and validation activities of the Sesar project by combining public and private sector funding provided by its members and using external technical resources and in particular by using Eurocontrol's experience and expertise.
- (15) The activities undertaken by the Joint Undertaking under the SESAR programme are mainly research and development activities. Therefore, Community funding should be paid in particular from its research and development framework programmes. Additional funding can be paid from the Trans-European Network programme in accordance to Article 4(g) of Decision 1692/96/EC of the European Parliament and the Council of 23 July 1996 on Community guidelines for the development of the Trans-European transport network ⁽¹⁾, which envisages the possibility of financing research and development activities.
- (16) The Community funding for the Joint Undertaking should, at this stage of the project, be limited to the development phase within the period covered by the current financial framework 2007-2013. However, this does not prejudice the possibility for the Council to review the scope, governance, funding and duration of the Joint Undertaking on the basis of the progress made in the development phase.

⁽¹⁾ OJ L 228, 9.9.1996, p. 1. Decision as last amended by Council Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

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- (17) Substantial participation from industry is an essential element for the SESAR project. It is therefore fundamental that the public budget for the development phase of the SESAR project be supplemented by contributions from industry.
- (18) The Joint Undertaking should be set up before the end of the definition phase so that it can follow the work of the definition phase and prepare the development phase in order to ensure the rapid implementation of the European Air Traffic Management Master Plan.
- (19) The Council should decide on the endorsement of the European Air Traffic Management Master Plan, including its transfer to the Joint Undertaking, to modernise air traffic management in Europe, and should in this context also review the financing of the SESAR project and in particular the pledges of contributions from industry to the Joint Undertaking.
- (20) In order to facilitate communication with the founding members, the seat of the Joint Undertaking should be located in Brussels.
- (21) The Joint Undertaking is a non-profit entity which shall devote all its resources to the management of a public research programme of European interest. Its two founding members are international organisations acting on behalf of their respective Member States. This entity should therefore be granted, as far as possible, the most extensive exemption from taxation from the hosting State.
- (22) The Commission should be assisted by the Single Sky Committee established by Article 5 of Regulation (EC) No 549/2004. The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (23) The Commission should inform the European Parliament and the Council on a regular basis of the progress of the Joint Undertaking. This information should be done through periodic evaluations performed by the Commission and on the basis of the annual activity reports of the Joint Undertaking.
- (24) The rules for the organisation and operation of the Joint Undertaking should be laid down by drawing up the statutes of the Joint Undertaking as set out in the Annex.
- (25) As route charges are entirely borne by airspace users, the latter contribute financially to the research and development efforts in the air traffic management sector. They should therefore be given appropriate representation within the Joint Undertaking.
- (26) Public financing for the definition and development phases of the SESAR project is substantial and investments in a new generation of air traffic management should, to a large extent, be made by Member States, including bodies designated by Member States. Member States (of the European Union and/or of Eurocontrol) should therefore be granted access free of charge, for non-commercial purposes, to the knowledge resulting from the project and be allowed to use this knowledge for their own purposes, including for calls for public tender,

HAS ADOPTED THIS REGULATION:

⁽¹⁾ OJ L 184, 17.7.1999, p. 23. Decision as last amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

▼B*Article 1***Establishment of a Joint Undertaking**

1. In order to manage the activities of the development phase of the project to modernise air traffic management in Europe and to enhance safety, (the SESAR project), a Joint Undertaking is hereby established, known as ‘SESAR Joint Undertaking’ (the Joint Undertaking).

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2. The Joint Undertaking shall cease to exist on 31 December 2016 or eight years after an endorsement by the Council of the European Air Traffic Management Master Plan (the ATM Master Plan) resulting from the definition phase of the SESAR project, whichever is the earlier. The Council shall decide on such endorsement acting on a proposal from the Commission.

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3. The ATM Master Plan shall be communicated to the European Parliament.

4. The scope, governance, funding and duration of the Joint Undertaking shall, where appropriate, be reviewed by the Council on the basis of a proposal from the Commission according to the development of the project and of the ATM Master Plan, taking into account the evaluation referred to in Article 7.

5. The aim of the Joint Undertaking shall be to ensure the modernisation of the European air traffic management system by coordinating and concentrating all relevant research and development efforts in the Community. It shall be responsible for the execution of the ATM Master Plan and in particular for carrying out the following tasks:

- organising and coordinating the activities of the development phase of the SESAR project, in accordance with the ATM Master Plan, resulting from the definition phase of the project managed by Euro-control, by combining and managing under a single structure public and private sector funding,
- ensuring the necessary funding for the activities of the development phase of the SESAR project in accordance with the ATM Master Plan,
- ensuring the involvement of the stakeholders of the air traffic management sector in Europe, in particular: air navigation service providers, airspace users, professional staff associations, airports, and manufacturing industry; as well as the relevant scientific institutions or the relevant scientific community,
- organising the technical work of research and development, validation and study, to be carried out under its authority while avoiding fragmentation of such activities,
- ensuring the supervision of activities related to the development of common products duly identified in the ATM Master Plan and if necessary, to organise specific invitations to tender.

6. The Joint Undertaking shall be operational at the latest when the ATM Master Plan has been transferred to the Joint Undertaking.

7. The seat of the Joint Undertaking shall be located in Brussels.

▼M1*Article 2***Legal status**

The Joint Undertaking shall be a Community body and shall have legal personality. In every Member State, it shall enjoy the most extensive legal capacity accorded to legal persons under the law of that State. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

▼ **M1***Article 2a***Staff**

1. The Staff Regulations of Officials of the European Communities, the Conditions of Employment of other servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for the purpose of applying these Staff Regulations and the Conditions of Employment shall apply to the staff of the Joint Undertaking and its Executive Director.
2. Without prejudice to Article 7(2) of its Statutes, the Joint Undertaking shall exercise the powers conferred on the appointing authority by the Staff Regulations of Officials of the European Communities and on the authority empowered to conclude employment contracts by the Conditions of employment of other servants of the European Communities in respect of its staff.
3. The Administrative Board shall, in agreement with the Commission, adopt the appropriate implementing rules referred to in Article 110(1) of the Staff Regulations of Officials of the European Communities and the Conditions of Employment of other Servants of the European Communities.
4. The staff resources shall be determined in the establishment plan of the Joint Undertaking that will be set out in its annual budget.
5. The staff of the Joint Undertaking shall consist of temporary agents and contract agents engaged for a fixed period that may be renewed once and for a fixed period only. The total period of engagement shall not exceed eight years and shall not in any case exceed the duration of the Joint Undertaking.
6. All costs related to the staff shall be borne by the Joint Undertaking.

*Article 2b***Privileges and immunities**

1. The Protocol on the Privileges and Immunities of the European Communities shall apply to the Joint Undertaking and, insofar as they are subject to the rules referred to in paragraph 1 of Article 2a, to its staff and its Executive Director. Insofar as taxes and customs duties are concerned, that Protocol shall apply to the Joint Undertaking as from 15 October 2008.
2. An administrative agreement shall be concluded between the Joint Undertaking and Belgium concerning privileges and immunities and other support to be provided by Belgium to the Joint Undertaking.

*Article 2c***Liability**

1. The contractual liability of the Joint Undertaking shall be governed by the relevant contractual provisions and by the law applicable to the agreement or contract in question.
2. In the case of non-contractual liability, the Joint Undertaking shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its staff in the performance of their duties.
3. Any payment by the Joint Undertaking in respect of the liability referred to in paragraphs 1 and 2 and the costs and expenses incurred in connection therewith shall be considered as expenditure of the Joint Undertaking and shall be covered by its resources.

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

*Article 2d***Jurisdiction of the Court of Justice and applicable law**

1. The Court of Justice shall have jurisdiction:
 - (a) in any dispute between the members, which relates to the subject matter of this Regulation and/or the Statutes referred to in Article 3;
 - (b) pursuant to any arbitration clause contained in agreements and contracts concluded by the Joint Undertaking;
 - (c) in actions brought against the Joint Undertaking, including decisions of its bodies, under the conditions provided for in Articles 230 and 232 of the Treaty;
 - (d) in disputes related to compensation for damage caused by the staff of the Joint Undertaking in the performance of their duties.
2. For any matter not covered by this Regulation or by other acts of Community law, the law of the State where the seat of the Joint Undertaking is located shall apply.

▼B*Article 3***Statutes of the Joint Undertaking**

The Statutes of the Joint Undertaking, as set out in the Annex hereto constitute an integral part of this Regulation and are hereby adopted.

*Article 4***Sources of financing**

1. The financing of the Joint Undertaking shall come from contributions from its members, including private undertakings, in accordance with Articles 1 and 12 of the Statutes.

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2. The maximum Community contribution shall be EUR 700 million of which EUR 350 million shall be paid from the budget appropriation allocated to the theme 'Transport (Including Aeronautics)' of the Specific Programme Cooperation of the Seventh Framework Programme for research and technological development and EUR 350 million from the budget of the Framework Programme on Trans-European networks for the period 2007-2013. The Community contribution shall be paid in accordance with Article 54(2)(b) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾ (hereinafter referred to as the Financial Regulation).

The arrangements for the Community contribution shall be established by means of a general agreement and annual financial implementation agreements, which shall be concluded between the Commission, on behalf of the Community, and the Joint Undertaking.

The general agreement shall provide for a right for the Commission to oppose the use of the Community contribution for purposes it considers to be contrary to the principles of the Community programmes mentioned in the first subparagraph or to its Financial Regulation or detrimental to the interests of the Community. In the event of the Commission's opposition, the Community contribution cannot be used by the Joint Undertaking for those purposes.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

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3. All Community financial contributions to the Joint Undertaking shall cease upon expiry of the 2007-2013 financial perspectives unless otherwise decided by the Council on the basis of a Commission proposal.

▼M1*Article 4a***Financial Rules**

1. The Joint Undertaking shall adopt specific financial rules in accordance with Article 185(1) of the Financial Regulation. They may depart from the rules 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 the Financial Regulation ⁽¹⁾ where the specific operating needs of the Joint Undertaking so require and subject to prior consent of the Commission.

2. The Joint Undertaking shall have its own internal audit capability.

*Article 4b***Discharge**

Discharge for the implementation of the budget of the year n of the Joint Undertaking shall be given by the European Parliament, upon recommendation from the Council, before 15 May of the year $n + 2$. The Administrative Board shall, in the financial rules of the Joint Undertaking, provide for the procedure to be followed when giving discharge, taking into account the particular characteristics resulting from the nature of the Joint Undertaking as public-private partnership, and in particular from the private sector contribution to the budget.

▼B*Article 5***Committee**

1. The Single Sky Committee, established by Article 5 of Regulation (EC) No 549/2004, (the Committee), shall be informed on a regular basis about the work of the Joint Undertaking. To this end, the Commission shall put the Sesar project as an item on the agenda of the Committee's meetings.

2. The Commission shall adopt the Community position in the Administrative Board.

3. However, the position of the Community in the Administrative Board as regards decisions concerning the appointment of the Executive Director, strategic financial issues or decisions taken under Article 23 of the Statutes shall be adopted in accordance with the procedure referred to in Article 6(2) of this Regulation.

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4. The position of the Community in the Administrative Board as regards decisions concerning the accession of new members and significant modifications of the ATM Master Plan shall be adopted in accordance with the procedure referred to in Article 6.3.

▼B*Article 6***Committee procedure**

1. The Commission shall be assisted by the Committee referred to in Article 5.

⁽¹⁾ OJ L 357, 31.12.2002, p. 72.

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2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period referred to in Article 4(3) of Decision 1999/468/EC shall be set at one month.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.

4. The Commission may consult the Committee on any other matter concerning the application of this Regulation.

5. The Committee shall adopt its Rules of Procedure.

*Article 7***Evaluation**

Every three years from the start of the activities of the Joint Undertaking and at least one year before expiry of the term of the Joint Undertaking, the Commission shall carry out evaluations on the implementation of this Regulation, the results obtained by the Joint Undertaking and its working methods, as well as on the general financial situation of the Joint Undertaking. The Commission shall present the results of these evaluations to the European Parliament and to the Council.

*Article 8***Entry into force**

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.



ANNEX

STATUTES OF THE JOINT UNDERTAKING

Article 1

Members

1. The following shall be founding members of the Joint Undertaking:
 - the European Community, represented by the European Commission (the Commission),
 - the European Organisation for the Safety of Air Navigation (Eurocontrol), represented by its Agency.
2. The following may become members of the Joint Undertaking:
 - the European Investment Bank,
 - any other public or private undertaking or body including those from third countries that have concluded at least one agreement with the European Community in the field of air transport.
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:
 - documented knowledge and experience with air traffic management and/or with the manufacture of equipment and/or services for use in air traffic management,
 - the contribution that the undertaking or body can be expected to make to the execution of the ATM Master Plan,
 - the financial soundness of the undertaking or body,
 - potential conflicts of interest.
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:
 - (a) a representative from each of the members of the Joint Undertaking;
 - (b) a representative of the military;
 - (c) a representative of civil users of airspace, designated by their representative organisation at European level;
 - (d) an air navigation service providers' representative, designated by their representative organisation at European level;
 - (e) an equipment manufacturers' representative, designated by their representative organisation at European level;

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- (f) an airports' representative, designated by their representative organisation at European level;
 - (g) a representative from the bodies representing staff in the air traffic management sector, designated by their representative organisation at European level;
 - (h) a representative of the relevant scientific institutions or the relevant scientific community, designated by their representative organisation at European level.
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 Euro-control 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:
 - (a) adopting the ATM Master Plan endorsed by the Council as referred to in Article 1(2) of this Regulation and approving any proposal to modify it;
 - (b) giving guidelines and taking the decisions necessary for the implementation of the development phase of the Sesar project and exercising overall control over its implementation;
 - (c) approving the Joint Undertaking's work programme and annual work programmes referred to in Article 16(1) as well as the annual budget, including the staff establishment plan;
 - (d) authorising negotiations and deciding on the accession of new members and on the relating agreements as referred to in Article 1(3);
 - (e) supervising the execution of the agreements between members and the Joint Undertaking;
 - (f) appointing and dismissing the Executive Director and approving the organisation chart; ►**M1** and monitoring the Executive Director's performance ◀
 - (g) deciding on the amounts and procedures for the payment of members' financial contributions and the assessment of contributions in kind;
 - (h) adopting the ►**M1** financial rules ◀ of the Joint Undertaking;
 - (i) approving the annual accounts and balance-sheet;

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- (j) adopting the annual report on the progress of the development phase of the Sesar project and its financial situation referred to in Article 16(2);
- (k) deciding on proposals to the Commission on the extension and the dissolution of the Joint Undertaking;
- (l) establishing procedures for granting rights of access to tangible and intangible assets which are the property of the Joint Undertaking and the transfer of such assets;
- (m) laying down the rules and procedures for awarding the contracts necessary to implement the ATM Master Plan, including specific procedures for conflicts of interest;
- (n) deciding on proposals to the Commission to amend the Statutes in accordance with Article 24;
- (o) exercising such other powers and performing such other functions, including the establishment of subsidiary bodies, as may be necessary for the purposes of the development phase of the Sesar project;
- (p) adopting the arrangements for implementing Article 8.

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:

- (a) the Administrative Board shall meet at least four times a year. Extraordinary meetings shall be convened either at the request of one-third of the members of the Administrative Board representing at least 30 % of the voting rights, at the request of the Community or of the Executive Director;
- (b) the meetings shall normally take place at the seat of the Joint Undertaking;
- (c) unless otherwise decided in particular cases, the Executive Director shall participate in the meetings;
- (d) specific procedures for identifying and avoiding conflicts of interest.

*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. ►**M1** The Executive Director shall exercise, in respect of the staff, the powers laid down in Article 2a(2) of Regulation (EC) No 219/2007. ◀

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2. The Executive Director shall be appointed by the Administrative Board on the basis of a list of at least three candidates proposed by the Commission following a call for expressions of interest published in the *Official Journal of the European Union* and in other periodicals or Internet sites. The Executive Director shall be appointed for a period of three years. After an evaluation by the Administrative Board of the Executive Director's performance during this period,

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his term of office may be extended once for a further period of no more than four years. In any case the term of office may not go beyond the duration of the Joint Undertaking set out in Article 1(2) of Regulation (EC) No 219/2007.

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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:

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(a) employ, manage and supervise the staff of the Joint Undertaking, including the staff referred to in Article 8;

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- (b) organise, manage and supervise the activities of the Joint Undertaking;
- (c) submit to the Administrative Board his proposals concerning the organisation chart;
- (d) draw up and regularly update the global and the annual work programme of the Joint Undertaking, including an estimate on programme costs, and submit them to the Administrative Board;
- (e) draw up, in accordance with the ►M1 financial rules ◀, the draft annual budget, including the staff establishment plan, and submit them to the Administrative Board;
- (f) ensure that the obligations of the Joint Undertaking, with regard to the contracts and agreements it concludes are met;
- (g) ensure that the activities of the Joint Undertaking are carried out with complete independence and without any conflicts of interest;
- (h) draw up the annual report on the progress of the Sesar project and its financial situation, and such other reports as may be requested by the Administrative Board, and submit them to the latter;
- (i) submit the annual accounts and balance-sheet to the Administrative Board;
- (j) submit to the Administrative Board any proposal involving changes in the design of the Sesar project.

▼M1*Article 7a***Internal Auditing function**

The functions entrusted by Article 185(3) of the Financial Regulation to the Commission's internal auditor shall be carried out under the responsibility of the Administrative Board, which shall make appropriate provision, taking into account the size and the scope of the Joint Undertaking.

*Article 8***Secondment of staff to the Joint Undertaking**

Any member of the Joint Undertaking may propose to the Executive Director the secondment of members of its staff to the Joint Undertaking in accordance with conditions provided for in the relevant agreement referred to in Article 1(3) of these Statutes. Staff seconded to the Joint Undertaking must act with complete independence under the supervision of the Executive Director.

▼B*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.

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2. Eurocontrol's role and contribution shall be defined in an agreement with the Joint Undertaking. This agreement shall:
 - (a) establish the detailed arrangements for the transfer and the use of the results of the definition phase to the Joint Undertaking;
 - (b) describe Eurocontrol's tasks and responsibilities in the implementation of the ATM Master Plan under the authority of the Joint Undertaking, such as:
 - (i) organising research, development and validation activities in accordance with the work programme of the Joint Undertaking;
 - (ii) coordinating the common developments for the future system under the responsibility of Eurocontrol;
 - (iii) proposing, after consultation with the stakeholders referred to in Article 1(5) of this Regulation, possible amendments to the ATM Master Plan;
 - (iv) updating convergence indicators (European convergence and implementation plan, local convergence and implementation plan);
 - (v) liaising with the International Civil Aviation Organisation.
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.

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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.

In the case of undertakings, subscribing individually or collectively, which may be regarded as small or medium-sized enterprises within the meaning of the Commission recommendation of 6 May 2003 concerning the definition of small and medium-sized enterprises ⁽¹⁾, this amount shall be reduced to EUR 250 000 regardless of when they become members. New members may be offered the option of paying the initial contribution in several instalments, over a period to be agreed and established in their agreements as referred to in Article 1(3).

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.

▼M1**▼B***Article 15***Implementation and control of the budget**

1. The financial year shall correspond to the calendar year.

▼M1

2. Each year the Executive Director shall transmit to the members the cost estimates of the SESAR project as approved by the Administrative Board. The Administrative Board shall, in the financial rules of the Joint Undertaking, provide for the procedure to be followed when transmitting the cost estimates.

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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.

▼M1

4. Based on the approved project cost estimates, and taking into account the comments received from members, the Executive Director shall prepare the draft

⁽¹⁾ OJ L 124, 20.5.2003, p. 36.

▼M1

budget for the following year and, submit it to the Administrative Board for adoption. The Administrative Board shall, in the financial rules of the Joint Undertaking, provide for the procedure to be followed when submitting the draft budget.

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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:

- (a) a global work programme, divided into periods of thirty-six months;
- (b) annual work programmes established each year which describe the activities, timetable and costs of the Joint Undertaking over this period.

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.

▼M1

3. All decisions adopted and contracts concluded by the Joint Undertaking, shall provide explicitly that OLAF and the Court of Auditors may carry out on-the-spot inspections of the documents of all contractors and sub-contractors which have received Community funds, including inspections at the premises of the final beneficiaries.

▼B*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.

▼M1*Article 19***Transparency**

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding access to European Parliament, Council

▼M1

and Commission documents ⁽¹⁾ shall apply to documents held by the Joint Undertaking.

2. The Joint Undertaking shall adopt practical arrangements for implementing Regulation (EC) No 1049/2001 by 1 July 2009.

3. Decisions taken by the Joint Undertaking pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.

▼B*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) ⁽²⁾ 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) ⁽³⁾ 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.

▼M1*Article 21***Insurance**

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.

▼B*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 ⁽⁴⁾.

*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.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

⁽²⁾ OJ L 136, 31.5.1999, p. 1.

⁽³⁾ OJ L 136, 31.5.1999, p. 15.

⁽⁴⁾ 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).

▼M1

2. If the Administrative Board agrees to the proposals referred to in paragraph 1 by a majority of 75 % of the votes and in accordance with Article 4(5) of these Statutes, these proposals shall be submitted as draft amendments to the Commission, which shall adopt them as appropriate in accordance with the procedure set out in Article 6(3) of Regulation (EC) No 219/2007.

3. However, any amendment affecting the essential elements of these Statutes and in particular amendments to Articles 1, 3, 4, 5, 7, 12, 17, 18, 19, 20, 22, 24 and 25 shall be adopted in accordance with Article 172 of the Treaty.

▼B*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.