



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 14 June 2006

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AVIATION 88

NOTE

from :	Council General Secretariat
to :	Delegations
No. Cion prop.:	15143/05 AVIATION 185
No. prev. doc.:	9805/06 AVIATION 80
Subject :	Proposal for a Council Regulation on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) - General approach

Please find attached the text of the above draft Regulation (Annex I) on which the Council reached a general approach at its meeting on 9 June 2006. Delegations will also find attached the Statement by the Council (Annex II) which will be included in the Minutes of the Council session at which the Regulation finally will be adopted.

It should be noted that UK still has a Parliamentary scrutiny reserve on the text of the draft Regulation.

Proposal for a
COUNCIL REGULATION
**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 Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Whereas:

¹ OJ C [...], [...], p.[...].

² OJ C [...], [...], p.[...].

³ OJ C [...], [...], p.[...].

- (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)⁴, Regulation (EC) No 550/2004 on the provision of air navigation services in the single European sky (the service provision Regulation)⁵, Regulation (EC) No 551/2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation)⁶, and Regulation (EC) No 552/2004 on the interoperability of the European Air Traffic Management network (the interoperability Regulation)⁷.
- (2) The project to modernise air traffic management in Europe, hereinafter called 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 2005⁸ 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.

⁴ OJ L 96, 31.3.2004, p. 1.

⁵ OJ L 96, 31.3.2004, p. 10.

⁶ OJ L 96, 31.3.2004, p. 20.

⁷ OJ L 96, 31.3.2004, p. 26.

⁸ Doc. 9440/05 RECH 120 COMPET 111

- (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.
- (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' contribution to research and development efforts.
- (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 has 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 ATM system in Europe.

- (11) The development phase will transition into the deployment phase (2014-2020), which will be a large scale production and implementation of the new ATM 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 players 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.

- (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 the guidelines on development of the Trans-European transport network⁹, which foresees the possibility to finance 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 and within the period covered by the current financial perspectives 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.
- (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 is 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 a rapid implementation of the European Air Traffic Management Master Plan.
- (18bis) The Council should decide on the endorsement of the European Air Traffic Management Master Plan, including its transfer to the Joint Undertaking, to modernize 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.

⁹ OJ L 228, 9.9.1996, p. 1. Decision as last amended by Decision 884/2004/EC, (OJ L 167, 30.4.2004, p. 1).

- (19) In order to facilitate communication with the founding members, the seat of the Joint Undertaking should be located in Brussels.
- (20) The Joint Undertaking is a non profit entity which shall devote all its resources for 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.
- (21) 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.¹⁰
- (22) 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.
- (23) The rules for the organisation and operation of the Joint Undertaking should be laid down by drawing up the statutes of the Joint Undertaking.
- (24) 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.

¹⁰ OJ L 184, 17.7.1999, p. 23.

(25) 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 have to 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:

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, hereinafter referred to as the "SESAR project", a Joint Undertaking is hereby established, known as "SESAR Joint Undertaking" (hereinafter referred to as "the Joint Undertaking").
2. The Joint Undertaking shall cease to exist 8 years after an endorsement by the Council of the European Air Traffic Management Master Plan (hereinafter referred to as "*the ATM Master Plan*") resulting from the definition phase of the SESAR project. The Council shall decide on such endorsement acting on a proposal from the Commission.
3. 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 6 of this Regulation.

4. 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 development activities of the SESAR project, in accordance with *the ATM Master Plan*, resulting from the definition phase of the project managed by Eurocontrol, by combining and managing under a single structure public and private sector funding;
 - ensuring the necessary funding for the development activities 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 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.

5. The Joint Undertaking shall be operational at the latest when *the ATM Master Plan* has been transferred to the Joint Undertaking.
6. The seat of the Joint Undertaking shall be located in Brussels.

Article 2

Legal status

1. The Joint Undertaking shall have legal personality. In every Member State, it shall enjoy the most extensive legal capacity accorded to legal persons under that State's law. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.
2. Member States shall take all possible measures to afford the Joint Undertaking the most extensive exemption from taxation as possible as regards to VAT and other taxes and excise duties.

Article 3

Statutes of the Joint Undertaking

The Statutes of the Joint Undertaking, as set out in the Annex hereto, 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 11 of its Statutes.
2. The Community's contribution shall be paid from the budget of the research and technological development framework programme. It may in addition be paid from the budget of the trans-European networks framework programme.
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.

Article 5
Committee

1. The Single Sky Committee, established by Article 5 of Regulation (EC) No 549/2004, hereinafter referred to as "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 22 of the Statutes shall be adopted in accordance with the procedure referred to in Article *5bis* paragraph 2.

4. The position of the Community in the Administrative Board as regards decisions concerning the accession of new members, the modification of the Statutes and significant modifications of the ATM Master Plan shall be adopted in accordance with the procedure referred to in Article *5bis* paragraph 3.

Article 5bis
Committee procedure

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

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 6
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 7
Entry into force

This Regulation shall enter into force on the day following that of 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.

Done at Brussels,

For the Council
The President

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 (hereinafter referred to as “the Commission”);
 - the European Organisation for the Safety of Air Navigation (Eurocontrol), represented by its Agency (hereinafter referred to as "Eurocontrol").

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 pursuant to this paragraph 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 the 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 membership agreement shall be presented to the Administrative Board for approval under Article 5(1)(d).

4. In deciding whether to authorize 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 give to the execution of *the ATM Master Plan*.
 - The financial solidity of the undertaking or body.
 - The potential conflict of interest.

5. Membership of the Joint Undertaking may not be transferred to a third party unless the prior and unanimous agreement of the Administrative Board is given.

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 its representative organisation at European level;
 - d) an air navigation service providers' representative, designated by its representative organisation at European level;
 - e) an equipment manufacturers' representative, designated by its representative organisation at European level;
 - f) an airports' representative, designated by its representative organisation at European level;
 - g) a representative from the bodies representing staff in the air traffic management sector, designated by its representative organisation at European level;
 - h) a representative of the relevant scientific institutions or the relevant scientific community, designated by its 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 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 22 of these Statutes 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 above, such decisions shall not be taken where the representatives referred to in points (c), (d), (f), and (g) of Article 3(1) are unanimously against.

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 the 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 15(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 membership agreements;
 - 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;

- g) deciding on the amounts and procedures for the payment of members' financial contributions and the assessment of in kind contributions;
- h) adopting the financial regulations of the Joint Undertaking;
- i) approving the annual accounts and balance-sheet;
- j) adopting the annual report on the progress of the development phase of the SESAR project and its financial situation referred to in Article 15(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 23;

- 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 7;
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 at the request of either 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 5bis
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 6
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 or her duties with complete independence within the powers assigned to him or her.
4. The Executive Director shall direct the execution of the SESAR project within the guidelines established by the Administrative Board to which he/she shall be responsible. He/she shall provide the Administrative Board with all information necessary for the performance of its functions.
5. The Director shall in particular:
 - a) employ, manage and supervise the staff of the Joint Undertaking, including the staff referred to in Article 7(4);
 - b) organise, manage and supervise the activities of the Joint Undertaking;
 - c) submit to the Administrative Board his/hers 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 Financial Regulations, 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.

Article 7

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 membership agreement.

Staff seconded to the Joint Undertaking shall be included in the staff establishment plan and must act with complete independence under the supervision of the Executive Director.

Article 8
Agreements

1. In order to carry out the tasks defined in Article 1(4) of the present 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:
 - a) establish the modalities of 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(4) of the 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 9

External contracts

1. Notwithstanding the provisions of Article 8, 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(4) of the present 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 17 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 7(4), cannot take part in carrying out this work.

Article 10

Working groups

1. In order to carry out the tasks provided for in Article 1(4) of the present 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 11

Financial provisions

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

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 enterprises¹¹, this amount shall be reduced to EUR 250 000 regardless of when they become members.

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 membership agreement referred to in Article 1(2).
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, membership shall be repealed.

¹¹ OJ L 124, 20.05.2003, p. 36.

Article 12

Revenue

1. All the revenue of the Joint Undertaking shall be applied to promoting the tasks defined in Article 1(4) of the present Regulation. Subject to Article 24, no payment by way of division of any excess revenue over expenditure shall be paid 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 13

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 Regulation (EC, Euratom) No 2343/2002, and shall in particular include the main rules on:
 - a) the presentation and structure of the SESAR project cost estimates and the annual budget;
 - b) the implementation of the annual budget and internal financial control;

- c) the method of payment of contributions by the members of the Joint Undertaking;
 - d) the keeping and presentation of accounts and inventory records as well as the drawing up and presentation of the annual balance-sheet;
 - e) the procedure regarding calls for tender, based on non-discrimination between the countries of the members of the Joint Undertaking and the Community character of the project, the award and the terms and conditions of contracts and orders on behalf of the Joint Undertaking.
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 14

Implementation and control of the budget

1. The financial year shall correspond to the calendar year.
2. Before 31 March of each year, the Director shall transmit to the members the cost estimates of the SESAR project as approved by the Administrative Board.

The project cost estimates shall include a forecast of annual expenditure for the following two years. Within this forecast, the estimates of revenue and expenditure for the first of those two financial years (preliminary draft budget) shall be drawn up in such detail as is necessary for the internal budgetary procedure of each member regarding its financial contributions to the Joint Undertaking. The Director shall supply the members with all supplementary information needed for this purpose.

3. The members shall forthwith communicate to the 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 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 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 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 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 15

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 16

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 17

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 membership agreements 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 18

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 Council¹².

Article 19

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 Council¹³ 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)¹⁴ 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.

¹² OJ L 145, 31.05.2001, p. 43.

¹³ OJ L 136, 31.05.1999, p. 1.

¹⁴ OJ L 136, 31.05.1999, p. 15.

Article 20

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 21

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/EC¹⁵.

¹⁵ OJ L 101, 11.4.2001, p. 1. Decision as last amended by Decision 2005/571/CE (OJ L 193, 23.7.2005, p. 31).

Article 22

Transfer of tangible and intangible assets by the Joint Undertaking

Upon expiry of the period referred to in Article 1 of the present 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 23

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 the present Regulation.

Article 24

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 25
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.

STATEMENT BY THE COUNCIL

on the proposal for a Council Regulation on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR).

THE COUNCIL OF THE EUROPEAN UNION:

1. UNDERLINES the urgent need to develop a new and harmonised air traffic management system in Europe capable of increasing safety and capacity while reducing costs and environmental impact;
2. WELCOMES the start of the definition phase of SESAR, led by all the major stakeholders of the air transport community, which will define the European Air Traffic Management Master Plan (ATM Master Plan) for the development of a new generation European air traffic management system in Europe;
3. CALLS for the ATM Master Plan to establish the base for the development of a system which should aim at tripling air transport capacity and increasing safety significantly while decreasing costs by one-half and reducing the environmental impact;
4. RECOGNISES that for the development and deployment of SESAR it is essential to combine and rationalise both public and private efforts also by appropriately redirecting to SESAR on-going and planned activities - in particular those of Eurocontrol - in the field of modernisation of air traffic management and calls upon industry to mobilise the necessary resources to that effect;

5. WELCOMES the Commission's proposal for the establishment of a Joint Undertaking under Article 171 of the Treaty, to whom the ATM Master Plan will be transferred to, for the management of research, development and validation activities of SESAR;
6. NOTES that in order to rationalise and organise ATM research so that it leads to actual operational and industrial implementation, the Joint Undertaking will be the single entity for pooling together financial resources and managing the development phase of SESAR;
7. AGREES on the general approach on the proposed Regulation and will consider the opinions of the European Parliament and the European Economic and Social Committee for its formal adoption;
8. STATES that formal establishment of the Joint Undertaking is subject to a Council decision, if possible in March 2007, based on a report from the Commission on:
 - the preliminary results of the definition phase;
 - the financial commitments of the founding members;
 - the financial commitments of the industry, bearing in mind information to be supplied by the Commission on:
 - . procedures for assessing contributions in kind;
 - . the sharing of intellectual property rights between members of the Undertaking, pursuant to Article 17 of its Statutes;
 - . the modalities for transition between the development phase and the deployment phase;
9. REQUESTS that the Commission starts the preparatory work to allow the setting up of the SESAR Joint Undertaking in order to ensure the effective and timely transfer of the ATM Master Plan and NOTES that in 2008, the Council will have to endorse the ATM Master Plan based on a Communication from the Commission.