

On the basis of Articles 237 (3) and 265 of the Air Transport Law (“Official Gazette of the Republic of Serbia” No 73/10 and 57/11), the Management Board of the Civil Aviation Directorate of the Republic of Serbia hereby adopts

REGULATION ON TRANSPOSITION OF THE EUROPEAN REGULATION ON ESTABLISHMENT OF THE JOINT UNDERTAKING TO DEVELOP THE NEW GENERATION EUROPEAN AIR TRAFFIC MANAGEMENT SYSTEM (SESAR)

Article 1

Scope

This regulation transposes the responsibilities of the Joint Undertaking to develop the new generation European Air Traffic Management (SESAR) in the Republic of Serbia, established with a view to updating the European ATM system by way of coordination and focusing its relevant research and development efforts in the Community.

Article 2

Transposing the Council regulations

This Regulation transposes into the national legislation the following EU Regulations:

- 1) 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) as set out in the Annex 1; and
- 2) Council Regulation (EC) No 1361/2008 of 16 December 2008 amending Regulation (EC) No 219/2007 on the establishment of a joint undertaking to develop the new generation European air traffic management system (SESAR) as set out in Annex 2.

Article 3

Definitions

Terms used in this Regulation shall have the following meanings:

- 1) ESSIP (European Single Sky Implementation) Plan is the European planning and reporting process designed to define common implementation actions designed to improve European ATM network within five to seven year time scale. This process is conducted through the implementation objectives (contributing to safety, capacity, cost-efficiency and lesser impact on the environment) and lines of action of the stakeholders (participants in the process) designed to define objectives, time scales, location and staff;
- 2) LSSIP (Local Single Sky Implementation) Plan is the European planning and reporting process designed to show the progress achieved in the previous year on a local level including the planned action in respect of ESSIP objectives applicable to the given local level. LSSIP mechanism is used for reporting on SES Regulation implementation by a particular state/stakeholders;
- 3) SESAR project means the European air traffic control infrastructure modernisation programme, being a technological element of the Single European Sky, consisting of a definition, development and deployment phase. SESAR aims at developing a highly

efficient ATM infrastructure by year 2020, enabling the safe and environmentally friendly development of air transport using to the fullest the technological advances of the programme;

- 4) Regulation (EC) No 549/2004 means the Regulation (EC) No 549/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) transposed into the legislation of the Republic of Serbia by way of Regulation on conditions and manner of issuing and maintaining the certificate for air navigation services provision (Official Gazette of the Republic of Serbia No 32/11);

“Member State” and “Official Gazette of the European Union” used in the Annex to this Regulation shall be interpreted in line with points 2 and 3 in Annex II to the Multilateral Agreement between the European Community and its Member States, Albania, Bosnia and Herzegovina, Bulgaria, Republic of Croatia, the former Yugoslav Republic of Macedonia, Iceland, Republic of Montenegro, Norway, Romania, Republic of Serbia and the United Nations Interim Administration in Kosovo (in accordance with Security Council resolution UN Security Council Resolution 1244 of 10 June 1999) on the establishment of a European Common Aviation Area.

Article 4

Final provision

This Regulation shall enter into force on the eighth day of the day of its publication in the “Official Gazette of the Republic of Serbia.”

No 1/0-01-0001/2012-0009

In Belgrade, 23 February 2012

Management Board

President

Milutin Mrkonjic

**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)**

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).
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.
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 Eurocontrol, 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.

Article 2 Legal Status

1. 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.
2. Member States shall take all appropriate action to ensure that the Joint Undertaking has been exempted from taxation in particular with respect to the value added tax including excise tax and other duties.

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.

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.
2. The Community contribution shall be paid from the budget of the framework programme for research and technological development. It can be additionally paid from the budget of the Framework Programme on Trans-European networks.
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, (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.
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.

Article 6

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 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;
 - (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 Eurocontrol shall each have not less than 25 % of the total number of votes and the airspace users' representative referred to in point (c) of Article 3(1) shall have at least 10 % of the total number of votes.
3. Decisions of the Administrative Board shall be adopted by a simple majority of the votes cast unless otherwise provided for in these Statutes.
4. If the votes are evenly divided, the Community shall have the casting vote.
5. Any decision relating to the accession of new members (within the meaning of Article 1(2)), the appointment of the Executive Director, proposed amendments to these Statutes, proposals to the Commission on the duration of the Joint Undertaking, the dissolution of the Joint Undertaking or decisions taken under Article 23 shall require the positive vote of the Community's representative on the Administrative Board.
6. Decisions relating to the adoption of the ATM Master Plan and its modifications shall require the positive votes of the founding members. Notwithstanding paragraph 1, such decisions shall not be taken where the representatives referred to in points (c), (d), (f), and (g) of Article 3(1) are unanimously opposed.

Article 5

Responsibilities of the Administrative Board

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

- (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;
- (g) deciding on the amounts and procedures for the payment of members' financial contributions and the assessment of contributions in kind;
- (h) adopting the financial rules 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 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.

2. The Executive Director shall be appointed by the Administrative Board, proposed by the Commission, comprising of at least three candidates.

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

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

5. The Executive Director shall in particular:

(a) employ, manage and supervise the staff of the Joint Undertaking, including the staff referred to in Article 8 (4);

(b) organise, manage and supervise the activities of the Joint Undertaking;

(c) submit to the Administrative Board his proposals concerning the organisation chart of the Joint Undertaking;

- (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 8

Staff to the Joint Undertaking

1. The staff complement shall be determined in the establishment plan that will be set out in the annual budget.
2. The members of the staff of the Joint Undertaking shall have a fixed-term contract based on the conditions of employment of servants of the European Communities.
3. All staff expenditure shall be borne by the Joint Undertaking.
4. Any member of the Joint Undertaking may propose to the Executive Director to second members of its staff to the Joint Undertaking in accordance with the conditions provided for in the relevant agreement.
5. 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 9

Agreements

1. In order to carry out the tasks defined in Article 1(5) of this Regulation, the Joint Undertaking may conclude specific agreements with its members.
2. Eurocontrol's role and contribution shall be defined in an agreement with the Joint Undertaking. This agreement shall:
 - (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.
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, 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.

Article 14

Financial regulations

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

2. The purpose of the financial regulations is to ensure the economic and sound financial management of the Joint Undertaking.
3. The financial regulations should respect the broad principles laid down in Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (2), and shall in particular include the main rules on:
 - (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 15

Implementation and control of the budget

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

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 Executive Director shall supply the members with all supplementary information needed for this purpose.
3. The members shall forthwith communicate to the Executive Director their comments on the project cost estimates, and in particular on the estimates of revenue and expenditure for the following year.
4. Based on the approved project cost estimates, and taking into account the comments received from members, the Executive Director shall prepare the draft budget for the following year and submit it to the Administrative Board for adoption before 30 September.
5. Within two months of the end of each financial year, the Executive Director shall submit the annual accounts and balance-sheets for the preceding year to the Court of Auditors of the European Communities. The audit executed by the Court of Auditors shall be based on records and performed on the spot.

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

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

Article 16

Work programme and reports

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

(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.

Article 18

Property rights

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

Article 19

Transparency

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

Article 20

Anti-fraud measures

1. For the purposes of combating fraud, corruption and other illegal acts, Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (11) 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) (12) and shall forthwith issue the appropriate provisions applicable to all employees of the Joint Undertaking.

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

Article 21

Liability

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

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

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

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

Article 22

Confidentiality

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

Article 23

Transfer of tangible and intangible assets by the Joint Undertaking

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

Article 24

Amending the Statutes

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

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

Article 25

Dissolution of the Joint Undertaking

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

Article 26

Applicable law

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

Council Regulation (EC) No 1361/2008 of 16 December 2008 amending Regulation (EC) No 219/2007 on the establishment of a joint undertaking to develop the new generation European air traffic management system (SESAR)

Article 1

Amendments to Regulation (EC) No 219/2007

Regulation (EC) No 219/2007 is hereby amended as follows:

1. in Article 1, paragraph 2 shall be replaced by the following:
'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.';
2. Article 2 shall be replaced by the following:

'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.';

3. the following Articles shall be inserted:

'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.

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.

5. 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.

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.’;

4. in Article 4, paragraph 2 shall be replaced by the following:

‘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 (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. ’;

5. the following Articles shall be inserted:

‘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 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.

6. in Article 5, paragraph 4 shall be replaced by the following:

‘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.’;

7. the Annex shall be amended in accordance with the Annex to this Regulation.

Article 2

Transitional provisions related to the staff of the Joint Undertaking

1. Notwithstanding the provisions of Articles 2a, 2b, 2c, and 2d, all employment contracts concluded by the Joint Undertaking in force on 1 January 2009 (hereinafter prior contracts) shall be honoured until their expiry date without further renewal.

2. All members of staff under prior contracts shall be offered the possibility to apply for temporary agents’ contracts under Article 2(a) of the Conditions of Employment of Other Servants of the European Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68 at the various grades as set out in the establishment plan.

In order to check the ability, efficiency and integrity of potential applicants, an internal selection process shall be applied to all staff members who have prior contracts, except the Executive Director. This internal selection process shall be carried out before 1 July 2009 by the authority authorised to conclude employment contracts.

Depending on the type and level of functions performed, successful applicants shall be offered temporary agents’ contracts of a duration corresponding at least to the time remaining under the prior contract.

3. If a prior contract had been concluded for the duration of the Joint Undertaking and the staff member accepts a new temporary agent’s contract under the conditions set out in paragraph 2, that new contract will be concluded for an indefinite duration in accordance with the first paragraph of Article 8 of the Conditions of Employment of other Servants of the European Communities.

4. The Belgian law applying to labour contracts and other relevant instruments shall continue to apply to staff members with prior contracts who choose not to apply for temporary agents’ contracts or who are not offered temporary agents’ contracts in accordance with paragraph 2.

Article 3

Transitional provisions related to the mandate of the Executive Director

The mandate of the Executive Director in place on 1 January 2009 shall cease on the date on which the Joint Undertaking shall cease to exist, as set out in Article 1(2) of Regulation (EC) No 219/2007. In the event of an extension of the duration of the Joint Undertaking, a new procedure leading to the appointment of the Executive Director in accordance with Article 7(2) of the Annex to Regulation (EC) No 219/2007 shall be launched. If, during his mandate, the Executive Director has to be replaced, his successor shall be appointed in accordance with Article 7(2) of the Annex to Regulation (EC) No 219/2007.

Article 4

Prior contracts and agreements

Without prejudice to Article 2, this Regulation shall not affect the rights and obligations arising from contracts and other agreements concluded by the Joint Undertaking prior to 1 January 2009.

Article 5
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

The Statutes of the Joint Undertaking shall be amended as follows:

1. in Article 5, paragraph 1(f) the following words shall be added at the end:

‘and monitoring the Executive Director’s performance’;

2. in Article 5, paragraph 1(h) the words ‘financial regulations’ are replaced by ‘financial rules’;

3. Article 7 shall be amended as follows:

(a) in paragraph 1 the following sentence shall be added:

‘The Executive Director shall exercise, in respect of the staff, the powers laid down in Article 2a(2) of Regulation (EC) No 219/2007.’;

(b) paragraph 2 shall be replaced by the following:

‘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, 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.’;

(c) paragraph 5 is amended as follows:

(i) point (a) is replaced by the following:

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

(ii) in point (e) the words ‘Financial Regulations’ are replaced by ‘financial rules’;

4. the following Article shall be inserted:

‘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.’;

5. Article 8 shall be replaced by the following:

‘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.’;

6. Article 14 shall be deleted;

7. Article 15 shall be amended as follows:

(a) paragraph 2 is replaced by the following:

‘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.’;

(b) paragraph 4 is replaced by the following:

‘4. Based on the approved project cost estimates, and taking into account the comments received from members, the Executive Director shall prepare the draft budget for the following year and, submit it to the Administrative Board for adoption. The Administrative Board shall, in the financial rules of the Joint Undertaking, provide for the procedure to be followed when submitting the draft budget.’;

8. in Article 17, the following paragraph shall be added:

‘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.’;

9. Article 19 shall be replaced by the following:

‘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 and Commission documents 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.

10. Article 21 shall be replaced by the following:

‘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.’;

11. in Article 24, paragraph 2 is replaced by the following:

‘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.’;

12. in Article 24, the following paragraph shall be added:

‘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.’.