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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.7.2008
COM(2008) 483 final

2008/0159 (CNS)

Proposal for a

COUNCIL REGULATION (EC) No .../....

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Grounds for and objectives of the proposal

Joint Undertakings (JUs) are instruments provided for in the Treaty establishing the European Community which enable the Community to establish structures, in particular public-private partnerships, necessary for the efficient execution of Community research, technological development and demonstration programmes.

The first Joint Undertaking established under Article 171 of the Treaty was the GALILEO Joint Undertaking (GJU) created in 2002¹ which also inspired the proposal for establishing the SESAR Joint Undertaking (SJU) launched in 2005².

However, these entities are not further defined in Community or national legislations. The absence of a clear definition of the legal status of these entities, which are between a Community body and a private company, has given rise to many difficulties in setting up their legal and administrative structure, which must comply with the requirements of the Community and of the hosting State.

Under the terms of the 7th Research and Development Framework Programme (FP7) f Joint Technology Initiatives (JTI) are to be implemented through JUs established under Article 171 of the Treaty. In view of the number of JTIs that were proposed and the legal and budgetary implications related to setting them up, the EU Institutions have specifically addressed the issue of better defining the status of these entities in order to adopt a common approach for their establishment.

In order to ensure consistency with the Community's approach to the setting up of these bodies, the SESAR Joint Undertaking should enjoy the same treatment as that afforded to similar structures. Moreover, these bodies have all been established as instruments for implementing FP7 and should therefore all be governed by a coherent set of rules. The purpose of the present proposal is to align the Regulation and Statutes of the SESAR Joint Undertaking, which is in the early stage of being setup, with the new approach that the EU Institutions have adopted for the establishment of JUs.

1.2. General context

The proposal for the establishment of the SJU was presented at a time when the GJU was in the process of winding up its activities. Therefore, the SESAR proposal was also discussed in the light of the "lessons learnt" from the GJU. From the discussions which took place during the legislative procedure, it appeared that a Joint Undertaking could not be regarded as a Community body (such as a Community

¹ Council Regulation (EC)876/2002 of 21.05.2002, OJ L138, 28.05.2002, p.1.

² Proposal for a Council Regulation on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR), COM(2005)602 final of 25.11.2005.

agency) or an international organisation because of the participation of private entities. This meant that it had to comply with the legal obligations of the hosting State, although some obligations would also derive from its "Community character".

The SJU was finally established by Council Regulation (EC) No 219/2007 of 27 February 2007 and its seat was fixed in Brussels. It has two founding members: the Community, represented by the European Commission, and Eurocontrol, represented by its Agency. As the SJU is conceived as a public-private-partnership, membership is also open to any other public or private entity including those from third Countries.

The legal status of the Joint Undertaking is not further defined in the Treaty or in any other EC or national legislative act other than the Regulations establishing the JU's. Therefore, it was considered that there was no legal basis which could justify granting this entity exemption from VAT and excise duties or benefits resulting from the Protocol on privileges and immunities granted to EU institutions or bodies, nor could its personnel be exempted from national taxes, social security contributions and similar charges. However, Member States agreed considering the scope of the SJU, to include a provision referring to a possible fiscal exemption (Article 2(2) of Regulation (EC) No 219/2007): "*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 duties*". This provision does not however constitute a binding commitment for Member States to grant the SJU any form of tax exemption.

On the other hand, it is also acknowledged that the SJU is "*a non profit entity which shall devote all its resources to the management of a public research programme of European interest*". Its founding members are two international organisations which provide two thirds of its total budget from public funds dedicated to R&D activities.

The setting up of the SJU was initiated immediately after the entry into force of Regulation (EC) No 219/2007. In 2007 the governance (consisting of the Administrative Board and the Executive Director) and an initial administrative structure were put in place and the membership process was launched. Under the terms of the current work programme the SJU structure and internal rules and the finalisation of the membership process are to be consolidated by the end of 2008. The SJU's objective is to launch the development activities in 2009.

After the presentation of the proposal for the SJU, discussions began on four other proposals for JU's (CLEAN SKY³, ENIAC⁴, IMI⁵ and ARTEMIS⁶) based on Article 171 of the Treaty for the implementation of Joint Technology Initiatives within the 7th Framework Programme for research and Technological development. These new entities are comparable with the SJU to the extent that they also carry out and manage large R&D projects involving public and private entities. At that time and considering the growing number of such initiatives, the amount of Community

³ Council Regulation (EC)71/2008 of 20.12.2007, OJ L30, 4.02.2008, p.1.

⁴ Council Regulation (EC)72/2008 of 20.12.2007, OJ L30, 4.02.2008, p.21.

⁵ Council Regulation (EC)73/2008 of 20.12.2007, OJ L30, 4.02.2008, p.38.

⁶ Council Regulation (EC)74/2008 of 20.12.2007, OJ L30, 4.02.2008, p.52.

funding involved and also the implications of Article 185 of the Financial Regulations relating to "bodies set up by the Communities", the EU Institutions acknowledged that it was necessary to better define the legal status of the JUs. A new approach was therefore adopted based on the fact that JUs can be set up as Community bodies. Consequently, the Protocol on the Privileges and Immunities of the European Communities (PPI), the Staff Regulations of Officials of the European Communities and the provisions of Article 185 of the Financial Regulation could apply to these bodies.

This was the approach adopted for the creation of the four new JUs mentioned above, which are clearly defined as Community bodies in their basic acts. This status entails a number of privileges and obligations which have been defined in the respective Regulations and Statutes of these bodies taking into account their specific nature and operational needs.

1.2.1. Existing provisions in the area of the proposal

Since the establishment of the SJU, four new JUs have been established under Article 171 of the Treaty. These are: ARTEMIS, CLEAN SKY, IMI and ENIAC.

1.2.2. Consistency with the other policies and objectives of the Union

The scope of the present proposal is to ensure that the setting up of the SJU is consistent with the approach endorsed by the Institutions for the establishment of JUs under Article 171 of the Treaty. The proposed adaptations of the SJU Regulation and its Statutes reflect the principles of the Community approach for setting up JUs and are in line with the respective provisions of the Regulations establishing the JUs mentioned in 1.2.1.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

2.1. Consultation of interested parties

2.1.1. Consultation methods, main sectors targeted and general profile of respondents

Not applicable

2.1.2. Summary of responses and how they have been taken into account

2.2. Collection and use of expertise

Information relating to the impact of the present proposal have been provided by the administrative services of the SJU. The Commission Staff Working Document on the financial and staff implications of the Proposal for a Council Decision on Europol⁷ has also been used as a reference.

⁷ SEC(2007)729 of 23.05.2007

2.3. Impact assessment

The main purpose of the present proposal is to ensure a consistent approach for the establishment of JUs under Article 171 of the Treaty. Nevertheless, the alignment of the SJU Regulation and Statutes with those of the above mentioned JTIs would have a substantial positive financial impact on both the SJU and the SESAR development phase. The savings which will result from this new statute will make it possible to concentrate and optimise the use of Community funds for research, development and validation activities for the benefit of the entire Community which is in fact the one of SESAR's objectives.

Fiscal impact

The total estimated cost of the SESAR development phase over the period 2007-2016 is EUR 2.1 billion. The costs will be supported in equal parts by the Community (EUR 700 million: EUR 350 million from the 7th R&D framework programme + EUR 350 million from the Trans-European Networks Programme), by Eurocontrol (EUR 700 million) and by "industry" (EUR 700 million).

While the Community's contribution to the SJU will be entirely in cash, some 90 % of the contributions from Eurocontrol and from industry shall be mainly in-kind.

As the SJU was not considered to be a Community body and as Joint Undertakings are not defined in Belgian law, the SJU had requested the Belgian authorities to determine its fiscal status. The SJU requested that it be considered as a taxable person for VAT purposes, with the right to full deduction of VAT. The position taken by the Belgian Minister of Finances was that the SJU could not be granted such a status. Under these circumstances, the financial impact of the SJU's present fiscal status is substantial. The SJU will have to pay non recoverable VAT on the purchase of goods and services for its own operations, on the in-kind contributions from its members and in general on all study and development activities that it coordinates. It is estimated that the total amount of VAT to be paid amounts to EUR 290 million, representing 41% of the Community's overall estimated contribution to the SESAR Development phase. A changeover to the status of a Community body would therefore generate savings in the order of EUR 290 million in the budget of the SJU which shall be allocated in favour of financing research and development activities.

Changeover of SJU staff to EU Staff Regulations

A changeover of the SJU staff from Belgian employment conditions to the EU Staff Regulations will also have a positive impact on the personnel and administrative costs of the SJU.

The SJU will be a lean structure with a small number of highly qualified staff in charge of the overall management of the Development phase. According to the staff establishment plan approved by the SJU Administrative Board, there will be a total complement of twenty-eight staff. At present the SJU employs fifteen staff and plans to recruit eight additional staff by the end of 2008 and five more in 2009.

Considering the high level of involvement of the major air traffic management (ATM) players in the SJU, independence of staff is essential. This is why the SJU

needs to recruit its own personnel, which shall be placed under the direct authority of the Executive Director. However, the ATM sector is a relatively small environment. The major stakeholders of the sector already employ all the highly qualified experts. The SJU must therefore be able to offer attractive conditions in order to recruit qualified staff. For this reason, although SJU staff are currently subject to Belgian employment laws, the SJU Statutes state that the employment conditions shall be "based on those of the servants of the European Communities". The rules for recruitment adopted by the Administrative Board establish that: "The conditions of employment of servants of the European Communities as referred to in Article 8 of the Statutes serve as a basis and as far as possible, for the establishment of the salaries of the staff, for the salary increases due to seniority, for the number of days of leave, for the reimbursement of the medical expenditure, for the complementary pension rights."

The SJU staff have been recruited on the basis of the grades of Community temporary agents corresponding to their functions. All SJU staff have been recruited at the first step of their respective grade. Consequently, the changeover will not require a reclassification of the staff as there is a direct correspondence between the grades of the two sets of Staff Regulations. Furthermore the SJU has taken complementary insurances for sickness and pensions in order to upgrade the mandatory conditions offered under Belgian rules to the level of those offered under the Community Staff Regulations.

The annual net salary of a staff member is intended to be equivalent to the annual net salary of an EC temporary agent of the same grade and step. The calculation of the net salary takes into account: Basic salary, household allowance, dependant child allowance, education allowance, deduction of the pension contribution, deduction of sickness insurance contribution, deduction of accident insurance, deduction of tax, deduction of unemployment contribution, deduction of allowances received elsewhere and deduction of the special levy. The annual cost is then calculated by adding on the mandatory social security contributions of both employee and employer and finally the supplementary contributions for upgrading the sickness and pension schemes.

Taking into account the fact that the SJU currently employs 15 staff consisting of: one AD14, one AD13, three AD 12, two AD10, two AD8, three AD7, one AST3 and two AST1, the indicative average annual cost of a SJU employee under the present staff rules is EUR 253.306.

SJU staff regulations	
Average monthly basic salary	6,832.44
1) Average monthly net salary (12 months)	6,501.09
2) Average employee contributions	8,049.02
3) Average employer contributions	4,755.96
4) Average employer contributions for complementary insurance schemes	1,802.75
Average monthly cost (1+2+3+4)	21,108.82
Average annual cost	253,305.85
Average annual net salary	81,989.28

The indicative average annual cost⁸ of a SJU employee under the EC Staff Regulations would be EUR 105.563. This amount is determined under the same assumptions in terms of number of employees, grading and benefits and assuming also that the SJU staff costs will be covered entirely by the Community's contribution to the SJU.

EC staff regulations	
Average monthly basic salary (BS)	6.832,44
Average monthly allowances and benefits	1.514,18
Employer contributions:	
<i>Illness (3,40% of BS)</i>	232,30
<i>Accident (0,71% of BS)</i>	48,51
<i>Unemployment (1,62% of BS)</i>	110,69
Annual travel expenses	106,59
Sub total	8.844,70
Tax	-748,15
Employee pension contribution	-700,32
Virtual employer pension contribution	1.400,65
Average monthly cost	8.796,87
Average monthly net salary	6.561,69
Average annual cost	105.562,50
Average annual net salary	78.740,28

It should be noted that the positions currently filled are those of the management staff. Future recruitments will be made at lower grades; therefore the average salary cost will decrease.

Currently employed SJU staff will be offered the choice to changeover to the EC Staff Regulations, but will not be obliged to do so.

3. LEGAL ASPECTS OF THE PROPOSAL

3.1. Summary of the proposed action

The proposed revision of Council Regulation (EC) No 219/2007 consists in incorporating the following provisions that align the status of the SJU to that of the newly created JUs:

- (1) Recognition of the SJU as a Community body (Article 2 of the Regulation).
- (2) Application of the Staff Regulations 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 them, to SJU staff (Article 2a of the Regulation).

⁸ Commission Staff Working Document on the financial and staff implications of the Proposal for a Council Decision on Europol, SEC(2007)729 of 23.05.2007

- (3) Application of the Protocol on Privileges and Immunities of the European Communities to the SJU, to its staff and to the Executive Director (Article 2b of the Regulation).
- (4) Adaptation of the provisions on liability (Article 2c of the Regulation);
- (5) Adaptation of the provisions on jurisdiction of the Court of Justice and applicable law (Article 2d of the Regulation);
- (6) Quantification of the Community contribution and practical arrangements for its transfer to the SJU (Article 4(2) of the Regulation).
- (7) Amendment of the provision related to the modification of the SJU Statutes (Articles 3(2) & 5(4) of the Regulation and 24(2) of the Statutes). This amendment is not linked to the alignment of the SJU status. It is a correction to the procedure for adopting amendments to the SJU Statutes. The intention of the original provision was to enable the adoption of amendments to the Statutes by means of a regulatory comitology procedure involving the Single Sky Committee. However, the wording of the original provision does not clearly express this intention and therefore needs to be adapted.
- (8) Application of Article 185 of the Financial Regulations⁹:
 - (a) Adoption of financial rules in accordance with the framework financial regulations for bodies referred to in Article 185 of the Financial Regulation (Article 4a of the Regulation).
 - (b) Discharge (Article 4b of the Regulation) and presentation of the budget (Article 15(2) & (4) of the Statutes).
- (9) Adaptation of the procedure for the appointment of the Executive Director (Article 7(5) of the Statutes).
- (10) Adaptation of the provisions on protection of the financial interests of the Community (Article 17(3) of the Statutes).
- (11) Transitional provisions for the changeover of SJU staff to EU Staff Regulations (Article 2 of the proposal).

3.2. Legal basis

The present proposal does not envisage a change of the legal basis of the original Regulation.

3.3. Subsidiarity principle

NA

⁹ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities OJ L 248, 16.9.2002, p. 1–48

3.4. Proportionality principle

NA

3.5. Choice of instruments

Council Regulation amending Regulation (EC) No 219/2007.

4. BUDGETARY IMPLICATIONS

The total estimated Community contribution to the development phase of SESAR has been fixed at a maximum of 700 million EUR coming in equal parts from the 7th R&D Framework Programme and the Trans-European Network programme over the period 2007-2013. The above-mentioned programmes shall finance the administrative and operational costs of the SJU in accordance with their respective rules. The proposed revision of Regulation 219/2007 will not affect the estimated amount mentioned. However, a revised financial statement is attached to the present proposal in order to update the budgetary forecast of the SJU in the light of developments in the project.

5. ADDITIONAL INFORMATION

5.1. Simulation, pilot phase and transitory period

The proposed revision of Regulation 219/2007 will require the adaptation of the SJU's financial rules, its rules for recruitment and its employment contracts. The SJU will also have to conclude a general agreement with the Commission and an administrative agreement with Belgium on the application of the PPI.

5.2. Review/revision/sunset clause

NA

Proposal for a

COUNCIL REGULATION (EC) No/....

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 171 and 172 thereof,

Having regard to the proposal from the Commission¹⁰,

Having regard to the opinion of the European Parliament¹¹,

Having regard to the opinion of the European Economic and Social Committee¹²,

Whereas:

- (1) Since the establishment of the SESAR Joint Undertaking, Council Regulation (EC) No 71/2008 of 20 December 2007¹³ has set up the Clean Sky Joint Undertaking, Council Regulation (EC) No 72/2008 of 20 December 2007¹⁴ the ENIAC Joint Undertaking, Council Regulation (EC) No 73/2008 of 20 December 2007¹⁵ the Joint Undertaking for the implementation of the Joint Technology Initiative on Innovative Medicines and Council Regulation (EC) No 74/2008 of 20 December 2007¹⁶ the ARTEMIS Joint Undertaking to implement a Joint Technology Initiative in Embedded Computing Systems. Those Joint Undertakings are bodies set up by the Communities within the meaning of Article 185(1) of Council Regulation (EC) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹⁷ for which Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of other Servants of the European Communities and

¹⁰ OJ C, , p. .

¹¹ OJ C, , p. .

¹² OJ C, , p. .

¹³ OJ L 30, 4.2.2008, p. 1.

¹⁴ OJ L 30, 4.2.2008, p. 21.

¹⁵ OJ L 30, 4.2.2008, p. 38.

¹⁶ OJ L 30, 4.2.2008, p. 52.

¹⁷ OJ L 248, 16.9.2002, p. 1. Regulation as last amended by Council Regulation (EC) No 1525/2007 (OJ L 343, 27.12.2007, p. 9).

instituting special measures temporarily applicable to officials of the Commission¹⁸ apply to their staff and the Protocol on Privileges and Immunities of the European Communities apply to them and to their staff.

- (2) As a body set up by the Community, it is appropriate to align the legal status of the SESAR Joint Undertaking with that of the newly established Joint Undertakings which would also ensure that it benefits from the same treatment as that afforded to them.
- (3) Council Decision 2006/971/EC of 19 December 2006 concerning the specific programme "Cooperation" implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013)¹⁹ states that research will develop and implement an innovative Air Traffic Management system within the context of the SESAR initiative, which will also ensure the most effective coordination of the development of the ATM systems in Europe.
- (4) According to the annual work programmes for 2007 and 2008 concerning the Specific Programme "Cooperation", Transport (including aeronautics), implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013), the Commission will provide annual contributions from the Seventh Framework Programme to the SESAR Joint Undertaking for a total estimated amount of EUR 350 million over the entire programme.
- (5) The multi-annual work programme for grants in the field of trans-European Transport networks for the period 2007-2013²⁰, identifies the SESAR project to modernise air traffic management in Europe as a major horizontal priority allocating an estimated budget of EUR 350 million over the period 2007-2013.
- (6) The Commission estimates that the Community's financial contribution to the SESAR Joint Undertaking will be EUR 700 million which will come in equal parts from the 7th Framework Programme for Research and Development and from the Trans-European transport networks programme.
- (7) As the SESAR Joint Undertaking is a body set up by the Community, its decision-making process should guarantee the Community's decision-making autonomy in particular on issues having an impact on the strategic orientation of SESAR and the Joint Undertaking, on the Community's financial contribution and on the independence and equal treatment of the Joint Undertaking's staff.
- (8) An agreement should be concluded between the SESAR Joint Undertaking and Belgium concerning privileges and immunities and other support to be provided by Belgium to the SESAR Joint Undertaking.

¹⁸ OJ L 56, 4.3.1968, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 337/2007 (OJ L 90, 30.3.2007, p. 1)

¹⁹ OJ L 400, 30.12.2006, p. 86. Regulation as corrected in OJ L 54, 22.2.2007, p. 30.

²⁰ Commission Decision C(2007)3512 of 23.07.2007

(9) Council Regulation (EC) No 219/2007 should therefore be amended accordingly.

HAS ADOPTED THIS REGULATION:

Article 1

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

(1) Article 2 is replaced by the following:

"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) The following Articles 2a, 2b, 2c and 2d are 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 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 the annual budget.

5. The staff of the Joint Undertaking shall consist of temporary agents and contract agents engaged for a fixed period that may be renewed once and for a fixed period only. The total period of engagement shall not exceed eight years and shall not in any case exceed the duration of the Joint Undertaking.

6. All costs related to the staff shall be borne by the Joint Undertaking.

Article 2b

Privileges and immunities

1. The Protocol on the Privileges and Immunities of the European Communities shall apply to the Joint Undertaking, to its staff and its Executive Director.
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 the resources of the Joint Undertaking.
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.”

- (3) Article 3 is replaced by the following:

"Article 3

Statutes of the Joint Undertaking

1. The Statutes of the Joint Undertaking, as set out in the Annex hereto, constitute an integral part of this Regulation and are hereby adopted.
2. The Statutes may be amended in accordance with the procedure referred to in Article 6(3)."

- (4) In Article 4, paragraph 2 is 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 the provisions of Article 54(2)(b) of Council Regulation 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities²¹ (hereinafter referred to as the Financial Regulation).

The arrangements for the Community financial 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 above 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 4a and 4b are 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 2343/2002²² of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of the

²¹ OJ L 248, 16.09.2002, p.1. Regulation as last amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p.1).

²² OJ L 357, 31.12.2002 p. 72; corrigendum in OJ L 2, 7.1.2003, p. 39.

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 is 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 is amended in accordance with the Annex to this Regulation.

Article 2

Transitional provisions

(1) Transitional provisions related to the staff :

(a) By way of derogation from Article 1(2) of this Regulation, all employment contracts concluded by the SESAR Joint Undertaking in force at the date of entry into force of this Regulation will be honoured until their expiry date without further possible renewal.

(b) All members of staff under contracts referred to in paragraph (a) shall be offered the possibility to conclude contracts of temporary agent under Article 2(a) of the Conditions of Employment of Other Servants of the European Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68²³ at the various grades as set out in the establishment plan.

To that end an internal selection process shall be applied to all staff members, except the Executive Director, who have a contract with SESAR Joint Undertaking at the date of entry into force of this Regulation. The internal selection process will be

²³ OJ L 56, 4.3.1968 p. 1 Regulation as last amended by Regulation (EC, Euratom) No 1558/2007 (OJ L 340, 22.12.2007, p. 1)

carried out within [6] months after the entry into force of this Regulation by the authority authorised to conclude contracts in order to check the ability, efficiency and integrity of those to be engaged.

Depending on the type and level of functions performed, successful candidates will be offered contracts of temporary agent for a duration corresponding at least to the time remaining under the contract concluded before the date of entry into force of this Regulation.

(c) If a contract of an indefinite duration had been concluded by the SESAR Joint Undertaking before the date of entry into force of this Regulation and the staff member accepted a contract of temporary agent under the conditions set out in point (b) of this Article, this contract will be concluded for an indefinite duration in compliance with Article 8, paragraph 1 of the Conditions of Employment of other Servants of the European Communities.

(d) The Belgian law applying to labour contracts and other relevant instruments shall continue to apply to staff members who are not recruited in accordance with point (b) of this Article.

(2) Transitional provisions related to the mandate of the Executive Director:

The mandate of the Executive Director in place at the date of the entry into force of this Regulation shall cease on the date on which the SESAR Joint Undertaking shall cease to exist as set out in Article 1(2) of Regulation (EC) No 219/2007. In case of an extension of the duration of the SESAR 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 will 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 3

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*

ANNEX

(1) In Article 5, paragraph 1(h) the words “Financial Regulations” are replaced by “financial rules”.

(2) Article 7 is amended as follows:

(a) In paragraph 1 the following sentence is added:

“The Executive Director shall exercise, in respect of the staff, the powers laid down in Article 2a(2) of this Regulation.”

(b) paragraph 2 is 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, which in any case may not go beyond the duration of the Joint Undertaking set out in Article 1(2) of this Regulation."

(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”.

(3) The following Article 7a is 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 Joint Undertaking.”

(4) Article 8 is 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 to second 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."

(5) Article 14 is deleted.

(6) Article 15 is 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."

(7) In Article 17, the following paragraph 3 is 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 at the premises of the final beneficiaries."

(8) Article 21 is replaced by the following:

"Article 21

Insurances

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."

(9) 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 3(2) of this Regulation."

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL:

Proposal for a Council Regulation amending Council Regulation (EC) 219/2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR).

The present financial statement is an update of the financial statement presented with the Commission's proposal COM(2005)602 final of 25.11.2005.

2. ABM / ABB FRAMEWORK

Policy Area(s) concerned and associated Activity/Activities:

Policy Area : Title 06 — Energy and transport

Activities:

Chapter 06 03 — Trans-European networks;

Chapter 06 06 - Research related to energy and transport

3. BUDGET LINES

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B..A lines)) including headings:

06.0305 – SESAR Joint Undertaking.

06.060203 – SESAR Joint Undertaking

3.2. Duration of the action and of the financial impact: 2007-2013

3.3. Budgetary characteristics:

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
06.0305	Non-comp	Diff	YES	YES	NO	No
06.060203	Non-comp	Diff	YES	YES	NO	No

4. SUMMARY OF RESOURCES

4.1. Financial Resources

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		Year 2007	2008	2009	2010	2011	2012 and later	Total
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Operational expenditure²⁴

Commitment Appropriations (CA)	8.1.	a							
06.0305			50.000	150.000	0	0	50.000	100.000	350.000
06.060203			10.000	50.000	51.500	60.000	60.000	118.500	350.000
Payment Appropriations (PA)		b							
06.0305			0.000	25.000	50.000	50.000	50.000	175.000	350.000
06.060203			10.000	50.000	23.000	80.000	60.000	125.000	350.000

Administrative expenditure within reference amount

Technical & administrative assistance (NDA)	8.2.4.	c	0	0	0	0	0	0	0
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Commitment Appropriations		a+c	60.000	200.000	51.500	60.000	110.000	218.500	700.000
Payment Appropriations		b+c	10.000	75.000	73.000	130.000	110.000	300.000	700.000

Administrative expenditure not included in reference amount

Human resources and associated expenditure (NDA)	8.2.5.	d	0.305	0.422	0.422	0.422	0.422	0.844	2.837
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6.	e	0.017	0.005	0.005	0.205	0.005	0.610	0.847

Total indicative financial cost of intervention

TOTAL CA including cost of Human Resources		a+c +d +e	60.322	200.427	51.927	60.627	110.427	219.954	703.684
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²⁴ Expenditure that does not fall under Chapter 06 01 of the Title 06 concerned.

TOTAL PA including cost of Human Resources		b+c +d +e	10.322	75.427	73.427	130.627	110.427	301.454	703.684
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Co-financing details

If the proposal involves co-financing by Member States, or other bodies (please specify which), an estimate of the level of this co-financing should be indicated in the table below (additional lines may be added if different bodies are foreseen for the provision of the co-financing):

EUR million (to 3 decimal places)

Co-financing body		Year 2007	2008	2009	2010	2011	2012 and later	Total
EUROCONTROL		0	12.000	80.000	100.000	120.000	388.000	700.000
Other members of the SJU	f	0	2.000	80.000	100.000	80.000	438.000	700.000
TOTAL CA including co-financing	a+c +d +e +f	60.222	214.427	211.927	260.627	310.427	1,045.954	2,103.584

4.1.2. Compatibility with Financial Programming

- Proposal is compatible with existing financial programming.
- Proposal will entail reprogramming of the relevant heading in the financial perspective.
- Proposal may require application of the provisions of the Interinstitutional Agreement²⁵ (i.e. flexibility instrument or revision of the financial perspective).

4.1.3. Financial impact on Revenue

- Proposal has no financial implications on revenue
- Proposal has financial impact – the effect on revenue is as follows:

EUR million (to one decimal place)

Budget line	Revenue	Prior to action [Year n-1]	Situation following action					
			[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5] ²⁶

²⁵ See points 19 and 24 of the Interinstitutional agreement.

²⁶ Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years

	a) Revenue in absolute terms						
	b) Change in revenue	Δ					

4.2. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

Annual requirements	2007	2008	2009	2010	2011	2012 and later
Total number of human resources	3	4	4	4	4	8

5. CHARACTERISTICS AND OBJECTIVES

5.1. Need to be met in the short or long term

The setup of the SJU as a public-private partnership in alignment with the status of the CLEAN SKY²⁷, ENIAC²⁸, IMI²⁹ and ARTEMIS³⁰ Joint Technology Initiatives, under Article 171 of the Treaty.

5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

No changes on this point with respect to the original financial statement accompanying COM(2005)602 final of 25.11.2005.

5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

The SESAR initiative aims at developing a new generation harmonised air traffic management system in Europe which is necessary to sustain air traffic growth in Europe for the next 20 years in an economically and environmentally sound way. The target operational concepts and the associated research programme for the new system have been developed in the SESAR definition phase and will be included in the **European ATM Master plan**. This Master plan defines the roadmap for the development and implementation of new technologies, functions or organisations needed in all regions of Europe. It is in fact the European ATM modernisation plan.

²⁷ Council Regulation (EC)71/2007 of 20.12.2007, OJ L30, 4.02.2008, p.1.
²⁸ Council Regulation (EC)72/2008 of 20.12.2007, OJ L30, 4.02.2008, p.21.
²⁹ Council Regulation (EC)73/2008 of 20.12.2007, OJ L30, 4.02.2008, p.38.
³⁰ Council Regulation (EC)74/2008 of 20.12.2007, OJ L30, 4.02.2008, p.52.

Result indicators	Latest known result	Objectives
- Capacity of ATM systems; -ATM Costs; - Safety linked to ATM; - Environmental impact of each flight.	- 9 million flights/year. 18 million expected in 2020; - ATM cost = 800€/flight; - 3 major accidents linked to ATM failure since 2000; - Environmental impact of aviation represents today 2% of the global CO ₂	By 2013, develop a new generation harmonised ATM system capable of: - Tripling capacity of current systems; - Reduce ATM costs by 50%; - Increase safety by a factor of 10; - Reduce the environmental impact by 10% for each flight.

The new equipment, systems and standards will be developed and validated in the development phase of SESAR. In order to rationalise and organise ATM research so that it leads to actual operational and industrial implementation avoiding fragmentation and duplication of efforts, all the ATM research in the 7th Framework programme will be undertaken within the SESAR initiative and managed by the SJU. The SJU will also coordinate the SESAR programme with other aeronautical research activities in order to maintain a consistent system wide approach for the entire air transport system.

The SJU will be a small structure which will employ indicatively 28 staff::

Function	Grade	2007-2008	2009
Executive Director	AD14	1	
Deputy Executive Director-Programme Director	AD13	1	
Director, Administration and Finance	AD12	1	
Chief Architect	AD12	1	
Chief Operational concept and validation	AD12	1	
Chief of Communication & stakeholders relations	AD10	1	
Chief Economics and Environment	AD10	1	
Chief Safety & Security	AD12	1	
Technical experts	AD6-11	4	4
Head of Legal and contracts unit	AD8	1	
Financial and budget Head of unit	AD8	1	
Human Resources Officer	AD7	1	
Legal and Contracts Officer	AD5-7	2	
Finance and accounting Officer	AD7	1	
Project control	AD7	1	
Administrative assistants	AST3-5	1	1
Executive Secretary	AST3	1	

Secretary - Administration & Finance Director	AST1	1	
Secretary - Programme Director	AST1	1	
		23	5

The activities of the SJU shall be organised around the following themes:

- **Development of new air traffic management tools and systems** which shall enhance the automation of air traffic management systems enabling human operators to concentrate on high added value tasks.
- **Development of new technologies for air traffic management** which can support air traffic management development, including more aircraft autonomy.
- **Integration and validation projects.** The new technologies and concepts will be assessed in a realistic environment which can be simulated or tested in a pre-operational context.

Method of Implementation (indicative)

X *Centralised Management*

directly by the Commission

X indirectly by delegation to:

executive Agencies

X bodies set up by the Communities as referred to in art. 185 of the Financial Regulation

national public-sector bodies/bodies with public-service mission

Shared or decentralised management

with Member states

with Third countries

Joint management with international organisations (please specify)

Relevant comments:

6. MONITORING AND EVALUATION

6.1. Monitoring system

No changes on this point with respect to the original financial statement accompanying COM(2005)602 final of 25.11.2005.

6.2. Evaluation

6.2.1. Ex-ante evaluation

No changes on this point with respect to the original financial statement accompanying COM(2005)602 final of 25.11.2005.

6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)

No changes on this point with respect to the original financial statement accompanying COM(2005)602 final of 25.11.2005.

6.2.3. Terms and frequency of future evaluation

No changes on this point with respect to the original financial statement accompanying COM(2005)602 final of 25.11.2005.

7. ANTI-FRAUD MEASURES

No changes on this point with respect to the original financial statement accompanying COM(2005)602 final of 25.11.2005.

8. DETAILS OF RESOURCES

8.1. Objectives of the proposal in terms of their financial cost

Commitment appropriations in EUR million (to 3 decimal places)

(Headings of Objectives, actions and outputs should be provided)	Type of output	Av · cost	Year 2007		Year 2008		Year 2009		Year 2010		Year 2011		Year 2012 and later		Total	
			No Outputs	Total cost	No Outputs	Total cost	No Outputs	Total cost	No Outputs	Total cost	No Outputs	Total cost	No Outputs	Total cost	No Outputs	Total cost
OPERATIONAL OBJECTIVE No.1 ³¹ Setup and management of the SJU																
Personnel				1.000		2.000		3.000		3.000		3.000		6.000		18.000
Other administrative costs				2.000		2.000		3.000		3.000		2.000		5.000		17.000
Sub-total Objective 1				3.000		4.000		6.000		6.000		5.000		11.000		35.000
OPERATIONAL OBJECTIVE No.2 ¹ R&D consistency and programme																

³¹ As described under Section 5.3

management																
Sub-total Objective 2				5.000		9.000		9.000		9.000		9.000		19.000		60.000
OPERATIONAL OBJECTIVE No 3 Development of new ATM technologies, tools and systems																
Sub-total Objective n				52.000		155.000		36.500		45.000		87.000		179.500		555.000
OPERATIONAL OBJECTIVE No 4 Integration and validation projects																
Sub-total Objective n4				0		32.000		0		0		9.000		9.000		50.000
TOTAL COST				60.000		200.000		51.500		60.000		110.000		218.500		700.000

8.2. Administrative Expenditure

8.2.1. Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (number of posts/FTEs)					
		Year 2007	Year 2008	Year 2009	Year 2010	Year 2011	Year 2012-2013
Officials or temporary staff ³² (06 01 01)	A*/AD	1	1	1	1	1	2
	B*, C*/AST	1	2	2	2	2	4
Staff financed ³³ by art. 06 01 02		1	1	1	1	1	2
Other staff ³⁴ financed by art. 06 01 04/05		0	0	0	0	0	0
TOTAL		3	4	4	4	4	8

8.2.2. Description of tasks deriving from the action

- Setup of the SJU
- Participation in governance of the SJU
- Liaison with political, economic, technical and social stakeholders
- Management of Community contributions to the SJU
- Communication activities on SESAR

8.2.3. Sources of human resources (statutory)

- Posts currently allocated to the management of the programme to be replaced or extended
- Posts pre-allocated within the APS/PDB exercise for year n
- Posts to be requested in the next APS/PDB procedure
- Posts to be redeployed using existing resources within the managing service (internal redeployment)

³² Cost of which is NOT covered by the reference amount

³³ Cost of which is NOT covered by the reference amount

³⁴ Cost of which is included within the reference amount

- Posts required for year n although not included in the APS/PDB exercise of the year in question

8.2.4. *Other Administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)*

EUR million (to 3 decimal places)

Budget line (number and heading)	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
1 Technical and administrative assistance (including related staff costs)							
Executive agencies ³⁵							
Other technical and administrative assistance							
- <i>intra muros</i>							
- <i>extra muros</i>							
Total Technical and administrative assistance							

8.2.5. *Financial cost of human resources and associated costs not included in the reference amount*

EUR million (to 3 decimal places)

Type of human resources	Year 2007	Year 2008	Year 2009	Year 2010	Year 2011	Year 2012 and later
Officials and temporary staff (06 01 01)	0.234	0.351	0.351	0.351	0.351	0.702
Staff financed by Art 06 01 02 (auxiliary, END, contract staff, etc.) 06 01 02 01 03	0.071	0.071	0.071	0.071	0.071	0.142

³⁵ Reference should be made to the specific legislative financial statement for the Executive Agency(ies) concerned.

Total cost of Human Resources and associated costs (NOT in reference amount)	0.305	0.422	0.422	0.422	0.422	0.422	0.844
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Calculation– *Officials and Temporary agents*

1 agent x 117.000 EUR/year

Calculation– *Staff financed under art. 06 01 02*

1 END 70.768 EUR/year

8.2.6. Other administrative expenditure not included in reference amount

EUR million (to 3 decimal places)

	Year 2007	Year 2008	Year 2009	Year 2010	Year 2011	Year 2012 and later	TOTAL
06 01 02 11 01 – Missions (*)	0.003	0.003	0.003	0.003	0.003	0.006	0.021
06 01 02 11 02 – Meetings & Conferences (**)		pm	pm	pm	pm	pm	pm
06 01 02 11 03 – Committees ³⁶							
06 01 02 11 04 – Studies & consultations							
06 01 02 11 05 - Information systems							
2 Total Other Management Expenditure (06 01 02 11)	0.003	0.003	0.003	0.003	0.003	0.006	0.021
3 Other expenditure of an administrative nature (specify including reference to budget line)							
06.010404 (***)				0.200		0.600	0.800
Missions 06.010503 (****)	0.014	0.002	0.002	0.002	0.002	0.004	0.026
Total Administrative expenditure, other than human resources and associated costs (NOT included in reference amount)	0.017	0.005	0.005	0.205	0.005	0.610	0.847

³⁶

Specify the type of committee and the group to which it belongs.

Calculation - *Other administrative expenditure not included in reference amount*

(*) Missions expenses for DG TREN staff assigned to the project: participating in meetings and events relating to SESAR and the SJU.

(**) Organisation of conferences, seminars and meetings to present and support SESAR, the SJU and the European ATM Master plan.

(***) Costs related for the two interim and the final evaluations foreseen in Article 7 of Reg. 219/2007

(****) Expenses for missions of the END assigned to the project (Research Budget).

The needs for human and administrative resources shall be covered within the allocation that can be granted to the managing DG in the framework of the annual allocation procedure in the light of budgetary constraints.