



**COUNCIL OF
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Subject: *Preparation of the Council meeting (Transport, Telecommunications and Energy) on 10 October 2013*

Proposal for a COUNCIL REGULATION 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 regards the extension of the Joint Undertaking until 2024

- *Adoption of Council position*

I. INTRODUCTION

The objective of SESAR (Single European Sky ATM Research) Programme is to develop the new generation of air traffic management in Europe. It is composed of three phases (a "definition phase", a "development phase" and a "deployment phase") and constitutes the technological element of the Single European Sky. The SESAR Joint Undertaking (SESAR JU) was established in 2007 and was tasked with managing the SESAR Programme's development phase, as well as with the execution of the European ATM Master Plan. The SESAR JU's mandate is foreseen to expire on 31 December 2016.

The Commission submitted the above proposal to the Council on 10 July 2013, seeking to extend the duration of the SESAR JU until 2024. The proposal takes into account that the execution of the ATM Master Plan still requires coordinated development and validation activities, and foresees an indicative amount of 600 million EUR, to be earmarked under the Union's Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020). As the mid-term evaluation of the SESAR JU showed that in terms of the scope of its activities and its governance structure the Joint Undertaking functions in a satisfactory way, the Commission did not propose to fundamentally change these aspects of the Regulation.

II. WORK WITHIN COUNCIL BODIES

The Working Party on Aviation has examined the proposed Regulation at a number of meetings. Although a broad majority of delegations supported the extension of the SESAR JU activities beyond 2016, CZ, DE and DK were sceptical on the necessity of the extension until 2024. They considered the ten-year period too long, especially with a view to the accountability of the SESAR JU on the projects still to be executed. Some delegations expressed concerns also on the funding structure of the SESAR JU, and the openness of the various forms of cooperation with the SESAR JU. There was also a general wish to emphasise the SESAR JU's result-oriented approach in relation to the EU funding received.

The Commission provided delegations with clarifications on the above aspects, and the Presidency has amended several provisions of the Commission proposal to take account of delegations' comments. The Presidency compromise was examined by the Working Party on Aviation on 19 September 2013.

On 25 September 2013, the draft Council Regulation was submitted to the Permanent Representatives Committee (Coreper). During this meeting, several delegations expressed, in general, their support for the Presidency compromise text, while others reiterated their concerns related in particular to two issues, the financing of the SESAR JU activities from the EU budget and the extension of the SESAR JU's mandate until 2024. The Presidency took note of the delegations' concerns and, in order to solve the outstanding issues and to facilitate the adoption of the draft Council Regulation, accepted some of the suggestions proposed by the delegations.

However, a few questions still need to be discussed at Council level, as some delegations maintain their reservations on the text. All delegations have a scrutiny reservation on the text following the Coreper meeting.

In accordance with Article 188 of the TFEU, on 2 September 2013, the Council sent two letters of consultation to the European Parliament and the Economic and Social Committee.

III. OUTSTANDING ISSUES

An overall agreement on the majority of the Presidency proposals has been reached. However, some delegations still hold reservations on a number of issues.

**(a) Extension of the SESAR JU's mandate until 2024
(Article 1(1), amending Article 1(2) of the SESAR JU Regulation and recital 8,
footnote 10)**

A large majority of delegations support the extension of the mandate of the SESAR Joint Undertaking. However, some delegations have doubts on the necessity to extend the activities of the Joint Undertaking beyond the Horizon 2020 financing period. The Commission proposes the extension until 2024, bearing in mind the need to close down projects for which budgetary commitments are made under the 2014-2020 financing period. These projects will only be finalised beyond 2020, and still require management by the SESAR JU.

The Presidency compromise leaves Article 1(1) unchanged, referring clearly to the end date of 2024. At the same time, clarifications were introduced in recital 8, explaining that the activities of the SESAR JU beyond 2020 would only concern the closing down of ongoing projects. Also, changes were made in recital 4 to make explicit the clear delimitation of the tasks of the SESAR JU, and in Article 7 to reinforce the reporting obligations on the actual results delivered by the SESAR JU.

In Coreper, even though a large majority of delegations expressed their full support for the Presidency compromise text, DK maintained its position that the SESAR JU mandate should be strictly linked to the Horizon 2020 financing period, due to their concerns on the efficiency of the SESAR Programme and the impression of a permanent entity instead of a temporary one.

In the Working Party, CZ had made its support to the extension of the mandate until 2024 conditional on receiving clear and simple information from the Commission on future tasks and activities to be executed by the SESAR JU until 2024. In order to respond to the CZ concerns, previous to the Coreper meeting, the Commission had circulated an information note on the activities planned to be performed in the SESAR JU Work Programme in the period 2014-2024.

However, in Coreper, CZ, supported by PT and RO, indicated that the Commission's information note did not provide enough information and that more details on the future working programme of SESAR JU were necessary. The Commission accepted to provide delegations with more detailed information before the TTE Council meeting.

(b) Financing of SESAR JU activities from the EU budget (Article 1(3), amending Article 4(2) of the SESAR Regulation)

The Union contribution to the SESAR Programme is limited to EUR 600 million, and the majority of delegations welcomed a clear cap on Union financing.

In Coreper, UK, supported by DK, FI, SE and SI, proposed to put the EUR 600 million in square brackets, in order to keep the SESAR budget flexible until the budget of the other initiatives under the reduced budget of Horizon 2020 has also been agreed. Other delegations (ES, FR, IT) considered that the EUR 600 million should not be questioned and indicated their full support for the Presidency text. As a compromise, FR suggested the solution of a declaration which could state that the SESAR budget would not influence the future decision of the Council on the budget of the rest of the Horizon 2020 initiatives. The FR suggestion was accepted by the Presidency, UK and the rest of the delegations. The text of the declaration is set out in Annex II to this report.

The Commission fully reserves its position on the entire compromise proposal, pending the consent of the European Parliament.

DK has a parliamentary scrutiny reservation on the text.

V. CONCLUSIONS

In the light of the above, at its meeting on 10 October 2013, the Council is invited to:

- examine the text as set out in Annex I to this report, to resolve the last outstanding issues and to agree on a Council position;
- to take note of and to include in the Council minutes the Council Declaration set out in Annex II to this report.

2013/0237 (NLE)

Proposal for a

COUNCIL REGULATION

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 regards the extension of the Joint Undertaking until 2024

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 187 and 188 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

- (1) The Single European Sky Air Traffic Management Research and Development project (the 'SESAR project') aims to modernise the air traffic management ('ATM') in Europe and represents the technological pillar of the Single European Sky ('SES'). It aims by 2030 to provide the Union with a high performance air traffic control infrastructure which will enable the safe and environmentally friendly development of air transport.
- (2) The SESAR project comprises three interrelated, continuous and evolving collaborative processes: the definition of the content and priorities, the development of new technological systems, components and operational procedures of the SESAR concept and the deployment plans of the next generation of ATM systems contributing to the achievement of the Single European Sky performance targets.
- (3) The first phase of the definition process ran from 2004 to 2008 and delivered the SESAR ATM Master Plan (D5) which was the base for the first edition of the European ATM Master plan (the 'ATM Master Plan') endorsed by the Council on the 30th of March 2009. The ATM Master Plan identifies three steps in the SESAR development process: Time Based operations (Step 1), Trajectory Based Operations (Step 2) and Performance Based Operations (Step 3). The ATM Master Plan is the agreed roadmap to bring ATM research and development to the deployment phase.
- (4) The SESAR Joint Undertaking (the 'Joint Undertaking') was set up by Regulation (EC) No 219/2007³ of 27 February 2007, for the purpose of managing the activities of the development process of the SESAR project under the Union's 2007-2013 financial perspectives. The main task of the Joint Undertaking is the execution of the ATM Master Plan.

³ OJ L 64, 2.3.2007, p. 1.

- (5) The Joint Undertaking's work programme, covered by the Union's 2007-2013 financial perspectives, addresses all elements of Step 1 and approximately 80% of Step 2 of the ATM Master Plan. The related activities should be completed by 2016. The remaining activities of Step 2 and those related to Step 3 should start in 2014 under the Union's 2014-2020 financial framework. The cost of these activities has been estimated at EUR 1.6 billion, including EUR 100 million for exploratory research, EUR 1.2 billion for applied research and pre-industrial development and EUR 300 million for large-scale demonstrations. Exploratory research activities should be entirely paid from the Union budget. In this light the Union budget for the execution of the remaining activities should be supplemented by contributions of industry and EUROCONTROL, following the same approach taken during the Union's 2007-2013 financial perspectives.
- (6) In accordance with Article 1(2) of Regulation (EC) No 219/2007, the Joint Undertaking should 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'), whichever is the earlier. The Commission communicated the ATM Master Plan to the Council on 14 November 2008⁴ and the Council endorsed it on 30 March 2009.
- (7) The Joint Undertaking fulfils the criteria for public-private partnerships established under Decision (EU) No .../2013 of the Council of ... 2013 establishing the Specific Programme implementing Horizon 2020 (2014-2020)⁵ (the 'Horizon 2020 Specific Programme').

⁴ OJ C 76, 25.3.2010, p. 28.

⁵ OJ ... [H2020 SP]

- (8) To continue the development of the activities defined in the ATM Master Plan, it is necessary to extend the duration of the Joint Undertaking until 2024, which reflects the duration of the Union's 2014-2020 financial framework and allows 4 additional years for completion of the Joint Undertaking's Work Programme and the closing of projects that would be initiated by the end of that financial framework. Such an extension should therefore allow for the execution of the whole ATM Master Plan (step 2 and step 3) as it stands today.
- (9) 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)⁶ indicates that the mandate of the Executive Director in force on 1 January 2009 shall cease on the date on which the Joint Undertaking shall cease to exist and that in the event of an extension of the duration of the Joint Undertaking, a new procedure leading to the appointment of the Executive Director should be launched in accordance with Article 7(2) of the Annex to Regulation (EC) No 219/2007.
- (10) An open call for new members should be organised for the activities to be carried out under the Union's 2014-2020 financial framework and the membership of members of the Joint Undertaking who do not contribute to the activities financed under the Union's 2014-2020 financial framework should be terminated by 31 December 2016.

⁶ OJ L 352, 31.12.2008, p. 12.

- (10a) The Joint Undertaking should continue to be open to and encourage the widest possible participation and representation of stakeholders from all Member States, including small and medium enterprises, through the accession of new members or other forms of participation. Furthermore, participation should ensure a proper balance between airspace users, air navigation service providers, airports, military, professional staff and manufacturers, and offer opportunities to SMEs, academia and research organisations.
- (11) The experience acquired from the operation of the Joint Undertaking as a Union body under Article 185 of Regulation (EC, Euratom) No 1605/2002⁷ shows that the current framework of operation is sufficiently flexible and adapted to the needs of the Joint Undertaking. The Joint Undertaking should operate in accordance with Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union⁸, which replaced Article 185 of Regulation No 1605/2002, and should adopt financial rules which should not depart from the framework Financial Regulation except where its specific needs so require and with the Commission's prior consent.
- (12) The participation in indirect actions funded by the Joint Undertaking should comply with Regulation (EU) No ... /2013 of the European Parliament and of the Council of [...] 2013 laying down the rules for the participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)"⁹ and no derogation in accordance with Article 1(3) of Regulation (EU) No [...] should be required.

⁷ OJ L 248, 19.6.2002, p. 1.

⁸ OJ L 298, 26.10.2012, p. 1.

⁹ OJ ... [H2020 RfP]

- (13) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.
- (14) Therefore, Regulation (EC) No 219/2007 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 219/2007

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

1. Article 1, is amended as follows:

(a) paragraph 2 is replaced by the following:

“2. The Joint Undertaking shall cease to exist on 31 December 2024¹⁰.”;

(b) paragraph 3 is deleted;

(c) in paragraph (5), the fifth indent is replaced by the following:

"- ensuring the supervision of activities related to the development of common products duly identified in the ATM Master Plan, through grants to Members and through the most appropriate measures, such as procurement or the award of grants following calls for proposals to achieve the programme objectives, in accordance with Regulation (EU) No[...] laying down the rules for participation and dissemination in 'Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)'. ”;

¹⁰ DK supports the limitation of the mandate until 2020. CZ supports the extension period until 2024 if the Commission provides clear and simple information on the remaining tasks of the SESAR JU, to be completed until 2020 and beyond.

2. In Article 2a, paragraph 5 is replaced by the following:

“5. The staff of the Joint Undertaking shall consist of temporary agents and contract agents. The total period of engagement shall not in any case exceed the duration of the Joint Undertaking.”;

3. Article 4 is amended as follows:

(a) the first subparagraph of paragraph 2 is replaced by the following:

"2. The Union contribution under the Multiannual Financial Framework 2014-2020, including EFTA contributions, paid from the budget appropriations allocated to the Horizon 2020 - The Framework Programme for Research and Innovation (2014-2020) shall be EUR 600 million¹¹. ";

(b) paragraph 3 is replaced by the following:

"3. All Union financial contributions to the Joint Undertaking shall cease upon expiry of the 2014-2020 financial framework unless otherwise decided by the Council on the basis of a Commission proposal. ";

¹¹ Indicative amount in current prices. The amount will depend on the final agreed amount for DG MOVE for the theme 'Smart, green and integrated transport' which will be approved by the Budgetary Authority in the final version of the legislative and financial statement.

4. Article 4a is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. The financial rules applicable to the Joint Undertaking shall be adopted by the Administrative Board after consulting the Commission. They shall not depart from the framework Financial Regulation unless it is specifically required for the Joint Undertaking's operation and the Commission has given its prior consent.";

(b) paragraph 2 is deleted.

5. Article 5 is amended as follows:

(a) paragraph 2 is replaced by the following:

"The Commission shall adopt the Union position in the Administrative Board."

(b) paragraph 3 is deleted.

(c) paragraph 4 is replaced by the following:

"4. Without prejudice to paragraph 2, the position of the Union in the Administrative Board as regards decisions concerning significant modifications of the ATM Master Plan shall be adopted by the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 6(2)."

6. Article 6 is replaced by the following:

"Article 6

1. The Commission shall be assisted by the Single Sky Committee established by Regulation (EC) No 549/2004. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third paragraph of Article 5(4) of Regulation (EU) 182/2011 shall apply.

7. Article 7 is replaced by the following:

"Every three years from the start of the activities of the Joint Undertaking and 6 months after the winding down of the Joint Undertaking, the Commission shall carry out evaluations on the implementation of this Regulation-and the results obtained by the Joint Undertaking, focussing in particular on the impact and effectiveness of these concrete results achieved under the given term, in accordance with the ATM Master Plan. The evaluations shall also cover the working methods, as well as on the general financial situation of the Joint Undertaking. The Commission shall present the results of those evaluations to the European Parliament and to the Council.";

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

Article 2

Transitional provisions relating to the mandate of the Executive Director

The mandate of the Executive Director in office on 1 January 2009 shall expire on 31 December 2016 at the latest. Upon expiry of that mandate or the replacement of the Executive Director in office on 1 January 2009, a new procedure leading to the appointment of the Executive Director shall be launched in accordance with Article 7(2) of the Annex to Regulation (EC) No 219/2007.

Article 3

Transitional provisions relating to the membership in the Joint Undertaking

Membership in the Joint Undertaking shall end by 31 December 2016 with regards to the Members of the Joint Undertaking who, as of 1 January 2014, do not contribute in kind or in cash to the costs of the Joint Undertaking's work programme related to the Union's 2014-2020 financial framework.

Article 4

Transitional provisions relating to the activities of the Joint Undertaking financed under the Union's 2007-2013 financial framework

The activities of the Joint Undertaking financed under the 7th Framework Programme for research and technological development and the Framework Programme on Trans-European networks initiated until 31 December 2013 shall be terminated by 31 December 2016, with the exclusion of project management activities related to their closing down.

Article 5

Entry into force and application

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

It shall apply from 1 January 2014.

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

Done at Brussels,

For the Council

The President

The Annex is amended as follows:

1. Article 5 is amended as follows :

(a) in paragraph 1, points (m) and (n) are replaced by the following:

"(m) laying down the rules and procedures for awarding the contracts or grants and any other agreement necessary to implement the ATM Master Plan, including specific procedures for avoidance of conflict of interest;

(n) deciding on proposals to the Commission to amend the statutes";

(b) in paragraph 2, point (a) is replaced by the following:

"(a) the Administrative Board shall meet at least three 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 Commission or of the Executive Director;";

2. In Article 6, paragraph 1 is replaced by the following:

"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 award procedure of financial support from the Joint Undertaking, in particular following calls for tender or calls for proposals if they own, represent or have agreements with bodies which are potential candidates or applicants."

3. In Article 7, paragraph 2 is replaced by the following:

"2. The Executive Director shall be engaged as a temporary agent of the Joint Undertaking under Article 2(a) of the Conditions of employment of other servants. The Executive Director shall be appointed by the Administrative Board, from a list of candidates proposed by the Commission, following an open and transparent selection procedure.

For the purpose of concluding the contract with the Executive Director, the Joint Undertaking shall be represented by the Chairperson of the Administrative Board.

The term of office of the Executive Director shall be five years. By the end of that period, the Commission shall undertake an assessment that takes into account an evaluation of the performance of the Executive Director and the Joint Undertaking's future tasks and challenges.

The Administrative Board, acting on a proposal from the Commission, which takes into account the assessment referred to in the third subparagraph of this paragraph, may extend once the term of office of the Executive Director for no more than five years.

An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.

The Executive Director may be removed from office only upon a decision of the Administrative Board acting on a proposal from the Commission.";

4. In Article 9, paragraph 1 is replaced by the following:

"In order to carry out the tasks defined in Article 1(5) of this Regulation, the Joint Undertaking may conclude specific agreements with and award grants to its members, in accordance with the applicable financial regulations.";

5. Article 10 is replaced by the following:

"Article 10

Contracts and grants

1. Notwithstanding the provisions of Article 9, the Joint Undertaking may conclude service and supply contracts or grant agreements 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 and grant agreements and agreements referred to in paragraph 1 provide for the right of the Commission to carry out controls in order to ensure that the financial interests of the Union are protected.

3. The contracts and grant agreements referred to in paragraph 1 shall include all appropriate provisions relating to the intellectual property rights referred to in Article 18. In order to avoid any conflict of interest, members involved in defining work that is subject to a procurement or grant procedure, including their staff seconded under Article 8, may not take part in carrying out that work."

5a. In Article 12(3), the first subparagraph is replaced by the following:

"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 24 months of its constitution or after a call for new membership."

6. In Article 13, paragraph 2 is amended as follows:

"Any interest yielded by the contributions paid by the members of the Joint Undertaking shall be considered to be revenue of the Joint Undertaking."

7. In Article 16, the introductory part of paragraph 1 is replaced by the following:

"The Joint Undertaking shall draw up its work programme on the basis of the financial framework referred to in Article 4(2) of this Regulation and on the basis of sound management and accountability principles setting out clear deliverables and milestones. It shall consist of:";

8. Article 17 is replaced by the following:

"Article 17

Protection of the Union's financial interests

1. The Joint Undertaking shall take appropriate measures ensuring that, when actions financed under this Regulation are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportional and deterrent penalties.

2. The Commission or its representatives and the Court of Auditors shall have the power of audit, on the basis of documents as well as on-the-spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds.

3. The European Anti-Fraud Office ('OLAF') shall be authorised to carry out on-the-spot checks and inspections on economic operators concerned directly or indirectly by such funding in accordance with the procedures laid down in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities with a view to establishing that there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or decision or a contract concerning Union funding.

4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with international organisations, grant agreements, decisions and contracts resulting from the implementation of this Regulation shall expressly entitle the Commission, the Court of Auditors and OLAF to conduct such audits, on-the-spot checks and inspections.".

9. Article 24 is deleted.

Council Declaration
on the EU contribution to the SESAR JU budget

THE COUNCIL

NOTES that SESAR is one of several initiatives due to be extended or established under Articles 187 and 188 of the TFEU and is expected to draw €600m from Horizon 2020.

EMPHASISES in this respect that the Council should, in due course, take the opportunity to examine the budgets proposed for all Article 187 and 188 initiatives in order to ensure effective prioritisation in light of the reduced Horizon 2020 budget.