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DRAFT REPORT

on the proposal for a Council regulation on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR)
(COM(2005)0602 – C6-0002/2006 – 2005/0235(CNS))

Committee on Industry, Research and Energy

Rapporteur: Erna Hennicot-Schoepges

Draftsman (*):
Philip Bradbourn, Committee on Transport and Tourism

(*) Enhanced cooperation between committees – Rule 47 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	27

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council regulation on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR)
(COM(2005)0602 – C6-0002/2006 – 2005/0235(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2005)0602)¹,
 - having regard to Article 171 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0002/2006),
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Rules 51 and 35 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinion of the Committee on Transport and Tourism (A6-0000/2006),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Recital 6

(6) The definition phase will be followed by ***a phase to implement the plan to modernise air traffic management in the***

(6) The definition phase will be followed by two successive ***phases***: development (2008-2013) and deployment (2014-2020).

¹ OJ C ... / Not yet published in OJ.

Community, which will consist of two successive **steps**: development (2008-2013) and deployment (2014-2020).

Justification

This amendment should be considered in conjunction with the amendment to Article 1(1a) (new), whose justification makes the case for three distinct phases that are interdependent.

Amendment 2
Recital 6 a (new)

(6a) Each phase should lay down the main elements of its content and for the ‘deployment phase’, in particular, the possible legal provisions of the forthcoming proposal should be stated.

Justification

This amendment should be considered together with Amendment to Article 1(1a) (new). The latter gives a fuller justification.

Amendment 3
Recital 7

/(7) In accordance with Article 15(3) of Regulation (EC) No 550/2004, the route charges can provide income to finance projects aimed at supporting specific categories of airspace users and/or air navigation service providers in order to improve the collective air navigation structures, the supply of air navigation services and the use of airspace./

/(7) In accordance with Article 15(3) of Regulation (EC) No 550/2004, the route charges can provide income to finance projects aimed at supporting specific categories of airspace users and/or air navigation service providers in order to improve the collective air navigation structures, the supply of air navigation services and the use of airspace./

Justification

A private-public partnership (PPP) presupposes a credible mechanism of funding of a common project. Whereas public funding is assured by the Budgetary agreement for the period 2007-2013 by the two branches: Council and Parliament, the private sector firstly objects to the route charges but so far has not come up with an alternative mechanism concerning its financial contribution. Hence this recital and corresponding Articles will be provisionally suspended in this document.

Amendment 4
Recital 12

(12) Taking into account the number of players who will need to be involved in this process, and the financial resources and technical expertise needed, it is vital to set up a legal entity capable of ensuring the coordinated management of the funds assigned to the SESAR project during its **implementation** phase.

(12) Taking into account the number of players who will need to be involved in this process, and the financial resources and technical expertise needed, it is vital to set up a legal entity capable of ensuring the coordinated management of the funds assigned to the SESAR project during its **development** phase.

Justification

The Commission text is not clear in the sense that 'implementation' does not constitute a phase of its own. Implementation - according to the amendment to Article 1(1a) (new) - is present in all three phases.

Amendment 5
Recital 13

(13) This entity, **which** is responsible for managing a public research programme of European interest, **must be considered as an international organisation** within the meaning of the second indent of Article 15(10) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, and the second indent of Article 23(1) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products.

(13) This entity is responsible for managing a public research programme of European interest within the meaning of the second indent of Article 15(10) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, and the second indent of Article 23(1) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products.

Justification

This amendment should be seen in the context of another amendment to Article 2(2) where it is argued that 'joint undertakings' are not automatically recognised as 'international organisations'.

Amendment 6
Recital 17

(17) The main task of the Joint Undertaking must be to organise and coordinate the SESAR project by combining public and private sector funding and using external technical resources, provided by its members, and in particular *Eurocontrol's experience*.

(17) The main task of the Joint Undertaking must be to organise and coordinate the SESAR project by combining public and private sector funding and using external technical resources, provided by its members, and in particular *the experience of Eurocontrol and European Space Agency*.

Justification

This amendment follows the logic of amendment to Annex, article 3(1) where the European Space Agency (ESA) is added and the reasons justifying it are thereby stated.

Amendment 7
Recital 18

(18) In order to facilitate communication with the founding members, the seat of the Joint Undertaking should be *located in Brussels*.

(18) In order to facilitate communication with the founding members, the seat of the Joint Undertaking should be *established in accordance with the provisions of Council Regulation 58/2003*.

Justification

This amendment should be considered in conjunction with the amendment to Article 1(3), given Council Regulation N°58/2003 of 19.12.2002.

Amendment 8
Recital 19

/(19) As route charges are entirely borne by airspace users, the latter contribute financially to the research and development efforts in the air traffic management sector. They should therefore be given appropriate representation within the Joint Undertaking./

/(19) As route charges are entirely borne by airspace users, the latter contribute financially to the research and development efforts in the air traffic management sector. They should therefore be given appropriate representation within the Joint Undertaking./

Justification

This recital is suspended as well as other articles are also put on hold until a binding

mechanism of private funding of SESAR, a private-public partnership (PPP), is assured.

Amendment 9
Recital 20

(20) The rules for the organisation **and** operation of the Joint Undertaking should be laid down by drawing up the statutes of the Joint Undertaking.

(20) The rules for the organisation, operation, **avoidance of conflict of interest and procedure of appointment of the officials** of the Joint Undertaking should be laid down by drawing up the statutes of the Joint Undertaking **set out in the Annex**.

Justification

Two other amendments to Article 3(1) and to Annex, Article 6(1) should be taken into account.

Amendment 10
Recital 20 a (new)

(20a) The European Parliament should be granted observer status on the Administrative Board of the SESAR Joint Undertaking.

Justification

This amendment should be considered in conjunction with amendment to Annex, article 3(2), taking on board the position of the European Parliament of 6 September 2005 (see Barsi-Pataky report, A6-0212/2005 on the Galileo programme).

Amendment 11
Recital 21 a (new)

(21a) Applications for the accession of new members should be welcomed, subject to the provisions of Article 1(3) of the Annex.

Justification

This amendment should be considered in conjunction with amendments to Article 5a (new), Annex, Article 1(3a) (new), Annex, Article 4(1), Annex, Article 4(2) and Annex, Article 5a (new).

Amendment 12
Recital 21 b (new)

(21b) The Commission should report to the European Parliament and the Council every three years on the application of this Regulation and, if appropriate, should propose amendments to this Regulation.

Justification

This amendment is to be considered in conjunction with amendment to Article 6a (new).

Amendment 13
Article 1, paragraph 1

1. In order to carry out the development activities of the implementation phase of the project to modernise air traffic management in Europe, hereinafter referred to as the “SESAR project”, a Joint Undertaking is hereby established, known as “SESAR Joint Undertaking” for a period ending on 31 December 2013.

1. A Joint Undertaking is hereby established, known as “SESAR Joint Undertaking”, whose primary objective shall be to manage the activities of the development phase of the SESAR project and to modernise air traffic management in Europe (ATM), hereinafter referred to as the “SESAR project”, for a period starting from the date on which the Council endorses the ATM Master Plan referred to in Article 1a, until the end of the second phase.

Justification

This amendment seeks to render the Commission text clearer and to clarify the concepts employed as well the definition of the development phase.

Amendment 14
Article 1, paragraph 1 a (new)

1a. The “SESAR project” shall consist of three phases:

a. The “definition phase” aims to define the terminological options and steps to be taken and the priorities in the modernisation programmes as well as the

operational implementation plans. It has started in October 2005 and is expected to finish in December 2007 resulting in the ATM Master Plan. The ATM Master Plan is being carried out by a consortium of undertakings under the supervision of the Eurocontrol,

b. The “development phase” will start on 1 January 2008, after the endorsement of the ATM Master Plan by the Council, acting on a proposal from the Commission and after consulting the European Parliament. The development phase will end on 31 December 2013.

c. The “deployment phase” will start on 1 January 2014 and end on 31 December 2020, and will comprise large-scale production and implementation of the new ATM infrastructure. The Commission shall submit a proposal to the European Parliament and the Council, defining:

- i. the transition of the development into the deployment phase,*
- ii. the reimbursement mechanisms that any body succeeding the SESAR Joint Undertaking shall undertake, and*
- iii. the transfer of tangible and intangible assets to the new body succeeding the SESAR Joint Undertaking.*

Justification

For reasons of better regulation and clarity of responsibility, this Regulation should define the phases in terms of a time period and in terms of what ought to be achieved during the three phases, while paying attention to the responsibilities of legislators and other bodies concerned.

Amendment 15 Article 1, paragraph 1 b (new)

1b. The scope, governance, funding and duration of the SESAR Joint Undertaking shall, where appropriate, be reviewed by

the Council, according to the development of the project and the “ATM Master Plan”, while taking into account the evaluation referred to in Article 6 and review clause of Article 6 a (new) of this Regulation.

Justification

This amendment follows the logic of the working group of the Council, albeit, a necessary legal provision, judging from the experience of the Galileo Joint Undertaking.

Amendment 16

Article 1, paragraph 2, first sentence

2. The aim of the Joint Undertaking shall be to ensure the modernisation of the European air traffic management system by ***federating research and development efforts in the Community***. It shall be responsible in particular for carrying out the following tasks:

2. 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***. It shall be responsible in particular for carrying out the following tasks:

Justification

This follows from the previous amendments on the definition of the development phase.

Amendment 17

Article 1, paragraph 2, indent 1

- organising and coordinating the ***implementation*** of the SESAR project, in accordance with ***the plan to modernise air traffic management in Europe, hereinafter referred to as “the plan”, drawn up*** by Eurocontrol, by combining public and private sector funding;

- organising and coordinating the ***activities of the development phase*** 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;

Justification

This follows from the previous amendments concerning the definition of the development phase.

Amendment 18
Article 1, paragraph 2, indent 2a (new)

- ensuring the necessary funding for the activities of the development phase SESAR project in accordance with the ATM Master Plan;

Justification

The question of funding merits special mention.

Amendment 19
Article 1, paragraph 2, subparagraph 1 a (new)

- ensuring the involvement of the stakeholders of the air traffic management in Europe, both in decision-making and funding;

Justification

This addition is needed because of the important role played, due to experience and accumulated knowledge, by air traffic management in Europe.

Amendment 20
Article 1, paragraph 3

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

3. The seat of the Joint Undertaking shall be **established in accordance with the provisions of Council Regulation 58/2003**.

Justification

The seat of the SESAR Joint Undertaking should not be decided by this Regulation. This decision should be taken by the European Council, in accordance with the principles underlying the decision on the seat of Agencies (see Council Reg. N°58/2003 of 19.12.2002) and other organs and services of the EC.

Amendment 21
Article 2, paragraph 2

2. The Joint Undertaking shall be recognised as an international

deleted

organisation within the meaning of the second indent of Article 15(10) of Directive 77/388/EEC and the second indent of Article 23(1) of Directive 92/12/EEC.

Justification

Directive 77/388/EEC and Directive 92/12/EEC do not allow joint undertakings to be recognised as 'international organisations', unless they are fully public bodies. A joint undertaking - involving both public and private sectors in its decision-making bodies - being endowed with the power to conclude international agreements will be a new development in the EU legal order, never experienced before in EC legislation.

Amendment 22
Article 3, paragraph 1

1. The statutes of the Joint Undertaking, as set out in the Annex hereto, are hereby adopted.

1. The statutes of the Joint Undertaking, as set out in the Annex hereto, **constituting an integral part of this Regulation**, are hereby adopted.

Justification

It seeks to make the point that Annexes to a legal instrument are part and parcel of the legal proposal that they annexed to. A number of Court rulings have stressed this point, but for 'joint undertakings' we have not had Court cases yet. Hence the need to stress this aspect.

Amendment 23
Article 3, paragraph 2

2. The statutes may be modified in accordance to the procedure referred to in **paragraph 2 of Article 5, and in particular Articles 3, 4, 5, 6 and 8 thereof.**

2. The statutes may be modified in accordance to the procedure referred to in **Article 6 a.**

Justification

For reasons of clarity and following the guides on 'better regulation', there should be one article in a legal proposal defining the procedure of any modification judged necessary by the EC institutions, not initiated or effectuated by an organ of a 'joint undertaking'. See also amendment to Art. 6a (new) of the Regulation.

Amendment 24
Article 4, paragraph 1, points a) and b)

[a) contributions from its members in accordance with **Article** 1 of its statutes and
b) a **possible** levy on the air navigation charges within the meaning of the second indent of Article 15(3)(e) of Regulation (EC) No 550/2004. The Commission shall **define, in accordance to the procedure referred to in paragraph 4 of Article 15 of Regulation (EC) No 550/2004**, the procedures for collecting and using **the** this levy.]

[a) contributions from its members in accordance with **Articles 1, 3 and 11** of its statutes and
b) a levy on the air navigation charges within the meaning of the second indent of Article 15(3)(e) of Regulation (EC) No 550/2004. The Commission shall **submit a proposal to the European Parliament and the Council defining** the procedures for collecting and using this levy.]

Justification

This amendment is in [...] indicating suspension because of resistance from the private sector to the route charges. The rapporteur has not yet seen any alternative mechanism imposing on the private sector its financial contribution. Yet a legal provision is proposed because it sets out the financial obligations of the private sector in a public-private partnership (PPP). It is only proper and desirable that these matters be debated in the EP and certain guidelines on PPPs be defined. Hence the need for a separate legal instrument, not a Commission legal instrument to be approved by the Comitology procedure.

Amendment 25
Article 4, paragraph 3

3. All Community financial contributions to the Joint Undertaking shall cease upon expiry of the period mentioned in Article 1.

3. All Community financial contributions to the Joint Undertaking shall cease upon expiry of the period mentioned in Article 1, **unless otherwise decided by the European Parliament and the Council on the basis of a Commission proposal.**

Justification

The option of an additional EC contribution should exist in a legal instrument. But an EC financial contribution should follow the proper and established budgetary procedure.

Amendment 26
Article 5, paragraph 1

1. The Single Sky Committee, established

1. The Single Sky Committee, established

by Article 5 of Regulation (EC) No 549/2004, hereinafter referred to as “the Committee”, shall be informed on a regular basis about *its* work. To this end, the Commission shall put the SESAR project as an item on the agenda of the Committee’s meetings.

by Article 5 of Regulation (EC) No 549/2004, hereinafter referred to as “the Committee”, shall be informed on a regular basis about *the work of the SESAR Joint Undertaking*. To this end, the Commission shall put the SESAR project as an item on the agenda of the Committee’s meetings.

Justification

Simple clarification is added.

Amendment 27
Article 5, paragraph 2 a (new)

2a. The Commission’s position on the Administrative Board as regards decision-making concerning technical adjustments to the ATM Master Plan, shall be adopted in accordance with the procedure referred to in Article 3 of Decision 1999/468/EC.

Justification

This amendment should be considered in conjunction with the new Article 6a on the Review Clause. In other words, this amendment only mandates the Commission to adopt its position on the technical modifications of the ATM Master Plan, after invoking the ‘Advisory Procedure’ of Comitology.

Amendment 28
Article 5 a (new)

Article 5a

Accession of new members

The Commission shall report to the Council and the European Parliament on the accession of new members. Any participation of new members, including the participation of members from third countries, shall be submitted to the Council and the European Parliament for approval.

Justification

The legal provision is borrowed from the Galileo Joint Undertaking (Reg.(EC) N°876/2002), slightly amended as to the role of the European Parliament. It is a necessary condition for a public-private partnership (PPP), like the SESAR Joint Undertaking.

Amendment 29
Article 6 a (new)

Article 6a

Review

If the Commission judges or if either the Council or the European Parliament – under the comitology procedure – requests that part of this Regulation and its statutes need revision or partial modification, the Commission shall submit the appropriate legal proposal in accordance with the procedure laid down by the EC Treaty.

Justification

This is an important procedural amendment seeking to safeguard the European Parliament's prerogatives in Community legislation.

Amendment 30
Annex, Article 1, paragraph 2, indent 3

- any other public or private undertaking or body.

- any other public or private undertaking or body ***that have concluded at least one agreement with the European Community in the field of air transport.***

Justification

Given the PPP nature of the SESAR Joint Undertaking, there should be reasonable conditions attached to the membership of the Joint Undertaking. This amendment seeks to insert one condition, i.e. an agreement with the EC. The [...] are needed because clarification demanded has not yet arrived.

Amendment 31
Annex, article 1, paragraph 3

3. Any request for accession pursuant to paragraph 2 shall be addressed to the Executive Director, who shall transmit it to the Administrative Board.

The Administrative Board shall **decide** whether to accept or reject the request. If the request is accepted, the Executive Director shall negotiate the conditions of accession and submit them to the Administrative Board. These conditions may include, in particular, provisions relating to the financial contributions and representation within the Administrative Board.

3. Any request for accession pursuant to paragraph 2 shall be addressed to the Executive Director, who shall transmit it to the Administrative Board.

The Administrative Board shall **advise the Commission** whether to accept or reject the request **and the Commission, pursuant to the procedure set out in Article 5a, shall make a proposal to that effect.** If the request is accepted, the Executive Director shall negotiate the conditions of accession and submit them to the Administrative Board. These conditions may include, in particular, provisions relating to the financial contributions and representation within the Administrative Board.

Justification

This is a necessary clarification deriving from the Regulation's new Article 5a (new) on the accession of new members. The procedure should be stated clearly, allowing no misinterpretation or creation of precedent. The EU Institutions are responsible for such questions, not its Joint Undertaking of a PPP nature, such as the SESAR.

Amendment 32

Annex, Article 1, paragraph 3 a (new)

3a. In proposing whether to authorise negotiations on accession with a public or private undertaking or body, given the agreement referred to in paragraph 2, the Administrative Board shall take particular account of the following criteria:

- Documented knowledge and experience with air traffic management and/or with the manufacture of equipment and/or services for use in air traffic management.***
- The contribution that the undertaking or body can be expected to give to the execution of the ATM Master Plan.***
- The financial solidity of the undertaking or body.***
- The potential conflict of interest.***

Justification

This is a follow up to the essential condition referred to in amendment to Art. 1(2), subparagraph 1a (new). It further clarifies the criteria and procedure. The Council's working group has agreed on a similar text. And this amendment should be considered in conjunction with the amendment to Article 5a (new).

Amendment 33 Annex, Article 3, paragraph 1

The Administrative Board shall be composed of:

- a) a representative from each of the members of the Joint Undertaking;
- b) ***an airspace users' representative;***
- c) ***a navigation service providers' representative;***
- d) ***an equipment manufacturers' representative;***
- e) ***an airports' representative;***
- f) ***a representative from the bodies representing staff in the air traffic management sector;***

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 the ESA;***
- d) ***five representatives of Industry Consultation Body (ICB);***

Justification

This amendment seeks to better balance the representation in the Administrative Board according to the following criteria: 'public bodies' (EC, EIB, third countries and military), should be represented; 'intergovernmental organisations' (Eurocontrol and ESA), contributing financially and in kind should also be represented; the 'private sector' adequately be represented, as recognised by Article 6 of Regulation (EC) N°549/2004.

Amendment 34 Annex, Article 3, paragraph 2

2. The representatives referred to in points (b), (c), (d), (e) and (f) of paragraph 1 are designated by the Industry Consultation Body, set up in accordance with Article 6 of Regulation (EC) No 549/2004.

2. The European Parliament shall have observer status on the Administrative Board.

Justification

The deletion follows from the amendment to Article 3(1). But the addition concerns the role of the European Parliament in a 'joint undertaking' of a public-private partnership. The Observer status to be granted to the European parliament is justified on two grounds: Parliamentary monitoring of a PPP involved in transforming research funding into a public service and fulfilment of its budgetary role on equal grounds with the Council.

Amendment 35
Annex, Article 3, paragraph 2 a (new)

2a. The Administrative Board shall be chaired by the Commission.

Justification

This is a necessary provision and is agreed on at the Council level.

Amendment 36
Annex, Article 4, paragraph 1

1. ***The*** representatives referred to in ***points (a) and (b)*** of Article 3(1) shall have ***the right to vote***.

1. ***All*** representatives referred to in Article 3(1) shall have ***a weighted vote in proportion to their contribution to the funds of the SESAR Joint Undertaking and subject to the provisions of paragraph 2.***

Justification

A new equilibrium of representation and weighting of votes are proposed and linked to the financial contribution of each representative in the Administrative Board.

Amendment 37
Annex, Article 4, paragraph 2

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, the Community and Eurocontrol shall each have at least 30% of the total number of votes and the air passengers' representative referred to in point (b) of***

2. ***The weight of the votes and the total number of votes are as follows:***

Article 3(1) shall have at least 10% of the total number of votes.

- a. The Community and Eurocontrol shall each have at least 25%;
- b. The ESA shall have 5%;**
- c. The Industry Consultation Body shall have 25%;**
- d. The EIB shall have 5%;**
- e. Any other public [or private] undertaking or body from third countries, the rest of the votes.**

Justification

This amendment seeks to attain two objectives. Firstly, clarity over the weight of the votes by reference to those entitled to. Secondly, a ponderate relationship between funding and weight of votes. The [...] are needed because clarification demanded has not yet arrived.

Amendment 38
Annex, Article 4, paragraph 5

5. Any decision relating to the accession of new members - within the meaning of paragraph 2 of Article 1 - the appointment of the Executive Director and the dissolution of the Joint Undertaking shall require the positive opinion of the Community's representative on the Administrative Board. *deleted*

Justification

It follows from the rapporteur's amendment to Article 5 a (new) on accession of new members.

Amendment 39
Annex, Article 5, paragraph 1, point b)

b) **deciding on** the accession of new members; b) **proposing on** the accession of new members;

Justification

This is to be consistent with amendments to Article 5 a (new) and to Annex, Art. 1(3) and Art.

4(5). *The Administrative Board simply 'proposes' - given the fulfilment of the criteria- and does **not** decide. It is up to the EU institutions to decide on the accession of new members.*

Amendment 40

Annex, Article 5, paragraph 1, point c)

c) appointing the Executive Director and approving the organisation chart;

c) appointing the Executive Director, ***subject to the procedure laid down in Article 6(1) and 6(2) of the Annex***, and approving the organisation chart;

Justification

This should be considered in conjunction with the amendment to Annex, Article 6(1) and (2) on the procedure concerning the appointment of the Executive Director.

Amendment 41

Annex, Article 5 a (new)

Article 5 a

Avoidance of conflicts of interest

1. Members of the SESAR Joint Undertaking or of the Administrative Board and SESAR Joint Undertaking staff shall not participate in the preparation, evaluation or the awarding procedures of calls for public tender, if they own or have partnership agreements with bodies that are potential candidates for calls for public tender or that represent such bodies.

2. Members of the SESAR 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. Excluded members, participants and staff shall have no access to information relating to the fields deemed subject to potential conflicts of interest.

Justification

This is the result of consultations undertaken by the rapporteur with the Council and Commission representatives on the need to clarifying the conflict of interest. The Council's working group has proposed the above text

Amendment 42
Annex, Article 6, paragraph 1

1. The Executive Director shall be ***responsible for the day-to-day management of the Joint Undertaking and is its legal representative. He shall be*** appointed by the Administrative Board on ***a proposal from the European Commission. He shall perform his duties with complete independence.***

1. The Executive Director shall be appointed by the Administrative Board on ***the grounds of merit and documented administrative and managerial skills, as well as relevant competence and experience, from a list of at least three candidates proposed by the Commission, after hearing the opinion of the representative appointed by the European Parliament. The Administrative Board shall take its decision by a three-quarters majority of its members.***

2. The term of office of the Executive Director shall be five years. On a proposal from the Commission, after hearing the opinion of the representative appointed by the European Parliament and after an evaluation, it may be extended once for a period of no longer than three years.

Justification

This two legal provisions have been taken from the Gargani report (A6-0355/2005) adopted by the European Parliament on 13 December 2005 but still pending before the Council. The Commission proposal and said report concern the Term of Office of the Executive Director of the European GNSS Supervisory Authority. Hence it is only proper that the same legal procedure be applied to the Executive Director of the 'SESAR Joint Undertaking'.

Amendment 43
Annex, Article 8, paragraph 1

In order to carry out the tasks defined in Article 1 of the present Regulation, the Joint Undertaking shall conclude **an agreement** with Eurocontrol by which:

1. In order to carry out the tasks defined in Article 1 of the present Regulation, the Joint Undertaking shall conclude **specific agreements** with **its members**.

Justification

Given the underlying logic of the amendment to Article 3, all members of the Joint Undertaking should conclude agreements.

Amendment 44
Annex, Article 8, points a) and b)

- a) ***Eurocontrol shares*** the results of the definition phase with the Joint Undertaking;
- b) ***Eurocontrol is given responsibility for the following tasks, which result from implementing “the plan”, as well as the management of the relevant funds:***

1a. Eurocontrol’s role and contribution shall be defined in an agreement with the SESAR Joint Undertaking. This agreement shall:

- a) ***establish the modalities of the share and the use of*** the results of the definition phase with the Joint Undertaking;
- b) ***describe Eurocontrol’s tasks and responsibilities in the implementation of “the ATM Master Plan”, such as:***

Justification

It seeks to clarify the role and responsibilities of Eurocontrol during the ‘development phase’, and it should be considered together with amendment to Annex, Art. 8(1).

Amendment 45
Annex, Article 8, paragraph 1 b (new)

1b. Specific agreements shall also be concluded with:

- a) ***The European Space Agency, and***
 - b) ***Industry Consultation Body.***
- Drafts of the agreements will be submitted to the Council and the European Parliament for information.***

Justification

This amendment is necessary following the previous amendments to Article 3 and Article 8(1). Furthermore the submission of the draft agreement to the Council and Parliament is a correct application of the Revised Council Decision on Comitology.

Amendment 46
Annex, Article 11, paragraph 1

*[1. The revenue of the Joint Undertaking shall come from members' contributions and from a **possible** levy on the air navigation charges within the meaning of the second paragraph of Article 15(3)(e) of Regulation (EC) No 550/2004.]*

[1. The revenue of the Joint Undertaking shall come from members' contributions and from a levy on the air navigation charges within the meaning of the second paragraph of Article 15(3)(e) of Regulation (EC) No 550/2004.]

Justification

It follows from the amendment to Article 4 of the Regulation and it is essentially suspended [...].

Amendment 47
Annex, Article 11, paragraph 3

*3. The members referred to in the second and third indents 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.***

3. The members referred to in the second and third indents 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.

Justification

This favourable clause is discriminatory with respect to the rest of members depicted in Article 1(1) concerning the founding members.

Amendment 48
Annex, Article 11, paragraph 5

5. Contributions in kind are possible. They

*5. Contributions in kind are possible, **and***

shall be subject to an evaluation of their value and their utility for carrying out the tasks of the Joint Undertaking.

shall be set out in the Agreements referred to in Article 8 of the Annex. They shall be subject to an evaluation of their value and their utility for carrying out the tasks of the Joint Undertaking.

Justification

It follows from the amendment to Annex, Art. 8 (1a) new.

Amendment 49
Annex, Article 11, paragraph 6

6. The Administrative Board shall propose to the Commission the level and the cost-base of the levy on the air navigation charges referred to in paragraph 1. *deleted*

Justification

It follows from the amendment to Article 4 of the Regulation.

Amendment 50
Annex, article 17

The Joint Undertaking shall own all the tangible and intangible assets created or transferred to it for the ***implementation*** phase of the SESAR project.

The Joint Undertaking shall own all the tangible and intangible assets created ***by the SESAR Joint Undertaking*** or transferred to it for the ***development*** phase of the SESAR project ***in accordance with membership agreements concluded by the SESAR 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.***

Justification

This is an important amendment that merits careful consideration because it lays down the legal provisions concerning property rights. A similar proposal has been made by the Council's working group.

EXPLANATORY STATEMENT

Background

In 2004 the ‘Single European Sky’ legislation laid the institutional and regulatory foundations for defragmented and interoperable air traffic control.

We are now in the implementation phase of Single Sky and it is becoming urgent to address the problem of developing the technologies required.

The European Commission has accordingly launched the European plan for modernising air traffic control (SESAR), in cooperation with the European Organisation for the Safety of Air Navigation (Eurocontrol) and, in principle, with financial support from the private sector. This configuration forms a public-private partnership (PPP) with a tripartite financial structure.

The aim of SESAR is to set up a joint undertaking to create a new-generation European air traffic management system.

Why is SESAR needed?

Estimates suggest that the volume of air traffic will double, if not triple, between now and 2025. The industry also contributes 220 thousand million euros to Europe’s GDP and employs 3.1 million people.

Bottlenecks in air transport infrastructure, particularly in the area of air traffic control (ATC), are unavoidable. This is all the more true as the present ATC systems are based on technologies that are 20 years old, if not older. In an age of satellite communication, Galileo and the high-speed network, pilots and their controllers are still communicating by radio.

The present system is capable of ensuring that air traffic control operates safely, but it is clearly approaching its limits. The ATC infrastructure is fragmented and only interoperable in part, so it cannot meet the challenges of the coming years: greater safety, increased traffic, energy efficiency and environmental constraints. There is a pressing need for innovation.

As the technology arm of Single European Sky, SESAR needs to:

- adapt air traffic control to the new technologies,
- ensure the safety and regulation of flights,
- organise air navigation services,
- define the respective roles and responsibilities of surveillance authorities and service providers.

Today there is a need to take advantage of navigation systems using real-time automated flight trajectories management. But the rapporteur goes beyond that and stresses the need for interoperability of the two systems, SESAR and Galileo.

Apart from the significant impact on flight safety, the environmental impact will also be considerable. The Commission estimates that greenhouse gas will be reduced by 4 to 6 % per flight.

Content of SESAR

The new-generation ATC systems will integrate complex links between aircraft and the ground and provide automated equipment for controllers and pilots. As air transport is essentially international, implementation cannot be achieved in an unsynchronised manner. With 60 different air traffic management (ATM) systems in place on the ground and about 5000 aircraft, SESAR will provide the missing legislation by which the European Union will, using the legislative instruments of Single Sky, effectively synchronise implementation of the new technology. SESAR emphatically delivers Community added value, as no one Member State is capable of developing a comparable system on its own.

The SESAR joint undertaking is thus the first European public-private partnership to be running with the participation of the European Community .

The project is organised in three stages.

The **definition phase**, launched in 2005 and running until 2007, sets out the ATM Master Plan, defining the technologies to be developed and methods of organisation. Funding of 60 million euros is provided by the European budget and Eurocontrol (50/50).

The **development phase** (2008-2013), in which systems will be designed and their critical components produced, is estimated at about 300 million euros a year (1/3 European budget, 1/3 Eurocontrol, 1/3 private sector).

The **deployment phase** (2014-2020) will, according to the Commission, be financed by the private sector and installed on a wide scale in Europe and the associated countries.

The rapporteur's position

Your rapporteur points out that keeping to this timetable is of crucial importance to the programme's impact.

The United States are also working on a new-generation ATM system. For the sake of European competitiveness it is important to preserve our technological lead.

The Commission proposal to set up the SESAR joint undertaking does, however, leave some fundamental issues unanswered, such as precise definition of the separate phases, safeguards for financial participation by the private sector, intellectual property rights, potential conflicts of interest, the statutes of the joint undertaking and their review, the procedure for the accession of new members and voting rights on the administrative board, and finally, the involvement of the European Parliament.

Your rapporteur considers that there is a need for some clarification in the **definition of the three phases**. The amendments clearly define the three phases of SESAR and confine the existence of the joint undertaking to the second phase. The Commission needs to put forward

a legislative proposal establishing the third phase.

The rapporteur also underlines the importance of a **review clause** for the objective, governance and duration of the joint undertaking. In view of the problems with setting up Galileo, it is essential to prevent such obstacles from recurring.

On the admission of **new members** to the joint undertaking, the rapporteur calls for the approval of both Parliament and the Council. Given the PPP nature of the joint undertaking, it is also important to lay down specific conditions for access. There is a need to ensure that new members have previously concluded an agreement with the Union in the area of air traffic management. They should also produce documentation on their experience in the ATM field, their contribution to implementing the Master Plan, their financial contribution and potential conflicts of interest.

Funding

Since the first phase of the project is entirely funded by the European Union and Eurocontrol, there is a need to spell out the detail of the private sector's contribution for the second phase. The Commission's proposal on the constitution of the joint undertaking provides for financial participation by the private sector in the development phase of the programme by introducing a possible levy on flight navigation dues.

Phase	Years	Funding	Stakeholders
Definition	2005-2007	€60 million: Eurocontrol (€30 million) Community (€30 million)	Eurocontrol
Development	2008-2013	€300 million per year: Community (€100 million) Eurocontrol (€100 million) Industry and others (€100 million)	Joint Undertaking
Deployment	2014-2020	Industry	Industry

(Source COM(2005)0602, p.9)

As the above shows, the accession of private companies to the joint undertaking may lead to **conflicts of interest**. Such conflicts also arise when a member of the joint undertaking, whether private or public, is in a position to exploit his professional or official capacity. And public and private sector interests also differ fundamentally. While the programme presents an essentially commercial interest for the private sector, the public sector has to take on different aims that represent the general interest, and must act independently of industrial or commercial considerations.

One of the essential tasks of the joint undertaking is to prepare and carry out the invitations to tender required for the development phase. To avoid conflicts of interest, the joint undertaking's members must be shielded from potential conflicts of interest. At the end of the procedure specific contracts, defining the substantial, technical and financial arrangements, will be adopted by the joint undertaking and its members.

The role of Eurocontrol, as a founder member of the joint undertaking, is also clarified. Specific agreements with the joint undertaking must define the arrangements for sharing and using the results of the definition phase.

Involvement of the European Parliament

The rapporteur points out that the proposal makes no mention of the budgetary control authority, when a large part of the joint undertaking's activities are to be funded by the Community budget. Since it will be employing staff and receiving a Community subsidy, it would seem appropriate for the joint undertaking to comply with general budgetary procedures, so that its activities and administrative spending can be more effectively reviewed. Parliament should be consulted on the appointment of the executive director, changes in the statutes, and prolongation of the joint undertaking's funding, and should have an observer on the administrative board.

Given the many and important tasks of the **administrative board**, there is a need for better balancing of those represented, in accordance with the following criteria: public bodies, intergovernmental organisations, and the private sector. Voting rights should be balanced and weighted in accordance with financial participation.

On the appointment of the **executive director** the Commission, after consulting the European Parliament representative, should present the administrative board with a list of three possible candidates. The mandate, for five years, should be renewable for a maximum period of three years.

Conclusions

- SESAR will be the first joint undertaking based on a public-private partnership (PPP) and will thus be setting a precedent.
- SESAR and Galileo are sister projects with set medium- and long-term objectives and financial returns.
- SESAR and the Single Sky legislation may provide a number of stable jobs and this opportunity is a further argument for its realisation.