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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

**on the project to develop the new generation European air traffic management system
(SESAR) and the establishment of the SESAR Joint Undertaking**

Proposal for a

COUNCIL REGULATION

**on the establishment of a Joint Undertaking to develop the new generation European air
traffic management system (SESAR)**

(presented by the Commission)

{SEC(2005)1532}

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1. INTRODUCTION

Air transport contributes €220 billion to European gross domestic product and employs 3.1 million people. It is also an important aspect of European cohesion, ensuring the rapid and efficient movement of people and goods, but also providing essential access to remote regions.

Projections for the development of air traffic in Europe show that it should more than double in the next 20 years, or even triple in some regions, particularly central Europe¹.

Developing air transport infrastructure is therefore becoming a priority for European growth. Moreover, this growth relies on the operation of major industrial projects with high technological value such as GALILEO (satellite radionavigation) or ITER (nuclear fusion).

SESAR falls into this category. This project aims to develop the new generation European air traffic management system. The challenge is to develop technologies, methods of organisation and industrial components that are capable of ensuring the safety and fluidity of air transport in the next 20 years in Europe and in the world.

It is also the response of the European Community to the vision of the High Level Group on the single European sky, and the recommendations of the Advisory Council for Aeronautics Research in Europe (ACARE), which called for a “revolution” in air traffic control to ensure that Europe is in a position to meet the challenges of its economic and social development.

With its key contribution to the development of the aeronautics sector in Europe, it is in line with the Lisbon objective of making the European Union “the most competitive and dynamic knowledge-based economy in the world”.² The results of the impact study undertaken show that this project will contribute significantly to European growth and will promote the creation of high added-value jobs in Europe.

Finally, it is one of the “projects of common interest” for infrastructure identified by the European Council.³

¹ Source : Eurocontrol

² SESAR was included in the Commission's various contributions to the Lisbon process.

³ Council resolutions of 24 October 1994 (94/C 309/02), of 17 November 1995 (95/C 317/01) and of 19 July 1999 (1999/C 222/01). Decision 1692/96/EC of the European Parliament and of the Council of 23 July 1996. Commission proposal COM(2004) 475 of 14 July 2004.

2. AIR TRAFFIC CONTROL: AN ESSENTIAL ELEMENT OF AIR OPERATIONS

Air traffic control (ATC) is responsible for ensuring the safety and regularity of flights. Nowadays it is based mainly on systems for controlling and guiding aircraft that are located on the ground, and in particular on the work of air traffic controllers. In fact, the pilots in their cockpits are to a large extent “blind”, their “eyes” being those of the controllers who tell them which paths to follow.

2.1. A rapidly changing institutional organisation

The ‘single European sky’⁴ adopted in March 2004, the implementation of which is already well-advanced, radically reforms the organisation of air navigation services. It clearly defines the roles and responsibilities of supervisory authorities and service providers, and establishes crossborder blocks of airspace. With these blocks, routes and airspace structures are no longer defined in accordance with borders but in accordance with the operational reality of traffic.

This reform will lead to a significant reorganisation of the sector by establishing new working and decision-making methods that are more efficient and based on consultation of the Member States and the industry.

2.2. An ageing infrastructure

Whilst the field is changing rapidly, even if the global performance of the system has improved, there has been little change in the equipment. In fact, the fast growth of air traffic over the last 20 years has not been accompanied by a substantial modernisation of the air traffic control system. In the age of the information society, controllers and pilots still use voice communication and the same radio means as before.⁵ Whereas cockpits are becoming increasingly automated, controllers still essentially have to base their work on anticipating problems and obstacles which could arise. Reliability and safety rates for air transport, which are exceptional in comparison with other forms of transport, have been maintained largely as a result of significant increases in staff which have improved the distribution of traffic, and also as a result of the efforts made by all European air traffic controllers, but without changing working methods. At a time when the capacity limit is becoming critical, a qualitative leap is necessary.

2.3. A necessary technological reform

As current air traffic control systems are obsolescent and have an excessive amount of specific local features, they are ill-suited for the rapid, economic and reliable development of aviation in Europe. At the same time, however, needs in this sector are changing rapidly:

- passengers want efficient, affordable and safe transport;

⁴ Regulation (EC) No 549/2004 laying down the framework for the creation of the single European sky. Regulation (EC) No 550/2004 on the provision of air navigation services. Regulation (EC) No 551/2004 on the organisation and use of the airspace. Regulation (EC) No 552/2004 on the interoperability of the European Air Traffic Management network.

⁵ This also presents safety issues relating to the congestion of the airwaves and misunderstandings which can arise between the instructions given by one party and the actions taken by another.

- respect for the environment is becoming a major constraint for the harmonious development of mobility;
- 11 September 2001 showed that planes can be a threat to the safety of the population.

The changes required to take account of this new approach to air transport cannot be based on the current system:

- The ageing techniques and systems, based on architecture dating from the 1980s, are not designed to make full use of new technologies, for example satellite navigation technologies.
- The lack of technical adaptability means that aircraft must follow predefined and strict flight paths, which are not optimal in terms of the consumption of energy or noise emissions.
- The over-adaptation of different systems to specific local features, even if this has enabled operators to respond to the pressure of traffic, makes the whole system weaker by making both technical and operational interoperability more difficult.
- There are huge disparities between the standards of equipment and the current performance of the different countries of the European Union in terms of air traffic control, which harms its overall performance.

Developments in this sector are not necessarily going in the right direction:

- Increases in the cost of the European air traffic control system (currently about €7 billion per year) are currently generally in proportion to the increase in traffic. Thus, if no proactive steps are taken, under a simple trend-based scenario air traffic control will cost between €14 and €18 billion per year in 2020.
- While, at global level, air transport has progressively achieved a very high level of safety, the analysis of safety data in Europe shows that, during the last five years, there have been three major accidents that have been directly linked to air traffic control problems.⁶ The analysis of trends in terms of air traffic incidents is still worrying. Even if the Community has adopted a proactive approach, particularly by creating the European Aviation Safety Agency, the role of which must develop in order to become central to all issues of air safety, it is feared that, with traffic becoming significantly more dense and equipment becoming increasingly more obsolescent, the risk of air accidents is reaching a level which is completely unacceptable to Europeans.
- The uncoordinated development of systems which we are currently seeing creates significant additional costs and delays in the introduction of new equipment, penalising users twice in terms of cost and performance, but also penalising controllers who are given tools which are not very flexible or high-performance.⁷

⁶ Paris-Roissy in 2000, Milan Linate in 2001 and Überlingen in 2002. There are also on average nine accidents per year which are indirectly linked to ATC.

⁷ The most blatant example is that of the aeronautical telecommunications network, which was defined and standardised on an obsolete model before Internet technology and which has still not been deployed today.

3. THE SESAR PROJECT

3.1. SESAR: new generation air traffic control

The growth in air traffic is confronting Europe with the urgent need to modernise air traffic infrastructure. By radically improving air traffic management, SESAR will allow us to face up to the limits of airspace and the increasing lack of airport capacity through the optimum use of existing infrastructure.

SESAR is the technological element of the single European sky: it allows the technical and operational infrastructure to accompany and facilitate institutional reform. It will also use the regulatory instruments and new working methods permitted by the single sky, which will ensure that technological advances can be effectively implemented in the field.

A real technological leap must be made, for example in the areas of data links between aircraft and the ground, satellite navigation and real-time automated flight trajectories management. It will allow the best use to be made of the significant developments in computing and communication technologies, whilst at the same time taking account of the necessary safety, security and reliability constraints during the design phases of the systems.

The United States, which is facing the same difficulties, has already launched the Next Generation Air Transport System (NGATS) project. SESAR is the European response to consolidate Europe's place in this sector. The industrial challenge is enormous since it is a global market.

4. SESAR IS A MAJOR EUROPEAN INDUSTRIAL PROJECT

The SESAR project falls into the same category as European industrial successes such as Ariane, Airbus and GALILEO. It combines research efforts, acts as a catalyst for Europe's innovation capacity and will make European air traffic control infrastructure the most modern and high-performance infrastructure in the world.

SESAR allows the pooling and rationalisation of the development of new generation air traffic control systems which, upstream, creates economies of scale and, downstream, brings significant benefits in terms of the operation and maintenance of these systems. A study carried out for the Commission (see Annex 3), and involving representatives from the industry's consultative body, shows a **net present value of €20 billion** for developing SESAR.

An overall assessment, taking account of the impact of SESAR on the whole of the European aeronautics sector, shows that the project will create several thousand additional jobs throughout the aeronautics sector.

The technological lead conferred by SESAR on the European aeronautics industry will put it in position of strength on export markets. It will also allow European aircraft to compete with their foreign competitors.

The impact of SESAR in terms of safety is fundamental. The current fragmentation of systems and operational procedures and the ageing technologies are not sustainable even though safety is the main objective of air traffic control. The use of

modern, safe and reliable technologies and standardisation of the air traffic control infrastructure will bring significant benefits in terms of the safety of air transport.⁸

The environmental impact of SESAR will also be considerable, in particular as a result of exploiting the amazing advances of GALILEO which will mean that flight paths can be proposed that are more direct and therefore better in terms of the environment. It is estimated that the savings in terms of the reduction of greenhouse gas emissions could be between 4 and 6% per flight⁹. Furthermore, the higher degree of precision and flexibility offered by satellite navigation and the new generation systems for landing and taking off will mean that flight paths around airports can be optimised in order to take better account of the needs of local residents. These benefits are however related to each flight made and a significant increase in the number of flights will have an overall negative effect on the environment, which SESAR cannot entirely prevent. It is therefore necessary to provide for additional measures aimed at reducing the impact of aviation on the environment.

5. THE GOVERNANCE OF SESAR: A KEY FACTOR FOR ITS SUCCESS

5.1. Avoiding deadlocks in decision-making

Problems encountered in the modernisation of air transport infrastructure also result from decision-making difficulties. There are great differences in the type and status of the various stakeholders in the air traffic control sector which are reinforced by geographical differences.

As was the case for GALILEO, making use of the Community's institutional mechanisms and a flexible and original management structure will mean that current obstacles can be overcome.

5.2. The single European sky: an institutional solution

With the regulatory instruments which it has put in place in the context of the single European sky, the Community has efficient decision-making mechanisms which have a strong element of consultation, in particular through the Single Sky Committee, composed of the Member States, and the industry's consultative body in which all stakeholders in the industry take part. Its decisions are compulsory and must be implemented through regulations and this is their strength.

5.3. The SESAR Joint Undertaking

SESAR will combine research and development funds to create a new generation of systems and will allow the equipment in the different countries of the European Union to be standardised and a new European aeronautical infrastructure to be deployed.

⁸ In particular, the Commission has just adopted a communication on reducing the climate change impact of aviation (COM(2005)459 final).

⁹ Eurocontrol data

This policy must be able to develop in the framework of a public-private partnership combining the long-term institutional investment capacity with a sharing of the risk with industry. The project must be able to benefit from public and private funds and must be guided by the programme and not the budget, and must allow for it gradually and irrevocably to be taken over by the industry.

It is therefore necessary to have a flexible and reactive structure with a legal personality so that it can conclude the contracts required to develop the European air traffic control system. Close links with the public authorities responsible for regulation should however be maintained.

SESAR is first and foremost an ambitious research and development project and will as such be able to benefit from Community funding from the research framework programme and the trans-European networks programme which explicitly provide for the possibility of the financing technological development activities. In this context, Article 171 of the Treaty provides the Community with an effective tool, the **Joint Undertaking**, which has proved its worth in the GALILEO project.

Such a Joint Undertaking is in line with the Lisbon strategy in that it allows public and private resources to be combined for a joint objective. It is also flexible enough to be able to manage research projects itself or to interact efficiently and proactively with other initiatives in order to ensure overall consistency.

A proposal for a regulation setting up the joint undertaking and defining its statutes is attached to this communication.

The Joint Undertaking has a number of advantages:

- it ensures the coordinated management of a budget from very diverse sources;
- it allows the Community (Member States and the Commission) to maintain political control over SESAR;
- it ensures consistency between the Commission's actions under the single European sky and the actions required for SESAR;
- it ensures the consistency of a project that affects very disparate stakeholders (air companies, the military, industry, service providers etc.);
- it can benefit from technical support from Eurocontrol¹⁰, developed within SESAR;
- it can fully involve industry, particularly through contributions of private transnational capital;
- it can receive a contribution from users, directly levied on route charges for projects of common interest;
- it can open up the possibility of extending the SESAR partnership to third countries.

The joint undertaking will operate at project supervision level. It will rely to a large extent on external technical efforts, in particular on the part of its members. It must

¹⁰ In particular in application of the ATM 2000+ strategy

be set up quickly in order to take over the modernisation plan resulting from the definition phase and prepare the resulting work programme.

6. SESAR IS A PROJECT IN STAGES

In view of the differences between the air traffic control systems in Europe and the diversity of the fleet of aircraft in service, there must be a transition to ensure the continuity and quality of the services offered to users of European airspace.

SESAR is also planned in several stages in order to allow flexibility in the implementation of developments and to minimise the transitory risks.

6.1. The definition phase (2005-2007)

The main aim of the definition phase is to draw up the plan for the modernisation of air traffic management in Europe. It defines the different technological steps to be taken, the priorities for modernisation and the timetables for operational implementation.

This definition phase, cofinanced with Eurocontrol, represents a sum of €60 million, half of which is provided by the Community under the trans-European transport networks. It is currently being launched and will be completed at the end of 2007. It represents two years' work by a team of nearly 200 people, including representatives from throughout the industry, which shows the strong feeling of ownership and involvement which the stakeholders in the field have in relation to SESAR.

6.2. The implementation phase (2008-2020)

The **definition** phase will be followed by an **implementation phase** which will consist of two successive stages:

- **Development (2008-2013)**

This phase will see the establishment of the technological bases which will be the foundation of the new generation of systems. It will lead to major changes in terms of functions, in particular on the development of assistance for air traffic control and the sharing of certain tasks between the ground and the aircraft in order to free air traffic controllers from tasks which could be carried out by pilots in certain phases of the flight (for example during the approach phases).

- **deployment (2014-2020)**

This is the phase for the large-scale installation of the new systems and the widespread implementation of the related functions. The air traffic management system resulting from this last stage corresponds to the new generation of air traffic control. This new system will triple its capacity compared with the current situation, with the level of safety increased by a factor of at least 10 and a unit cost of operation much lower than the current cost.

The Joint Undertaking must be set up quickly, even before the end of the definition phase, so that it can appropriate the modernisation plan being drawn up and prepare the resulting work programme. It will thus be able to benefit

from the momentum of the definition phase and will continue it in the effective implementation of the industry's recommendations.

6.3. Stakeholders and financing

The following table gives the different financial deadlines for the project and identifies the stakeholders who will be responsible for implementing this financing.

The Commission's financial analysis shows that the funding needs for the foundation, deployment and consolidation phases of the project will be approximately **€300 million per year**:

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

The figures given are indicative, except for the definition phase. They will be clarified during this first phase which is under way and will give rise to a specific communication from the Commission on the subject in the course of 2006.

In particular, it should be noted that at the end of the deployment phase in 2013, the industry will be responsible for the financing and control of the whole SESAR project. At the end of this phase, and based on the progress made in achieving its objectives, the Joint Undertaking will be required to transform into an essentially private body (for example in the form of a European company) which will ensure the development of the project according to the initial ambitions whilst making sure that there are no conflicts of interest. This structure should nevertheless allow the public authorities to keep a stake in the project, particularly as the owner of tangible and intangible assets financed by public funds. Such a stake will also make it easier to supervise work, particularly tasks relating to international cooperation and standardisation procedures.

The budget would come from the following sources:

- the **European Community**, from the research and development¹¹ framework programmes and the trans-European networks. After the definition phase, the Community's financial participation is strictly limited to the duration of the new financial perspective 2007-2013¹²;

¹¹ The Commission will keep ACARE (Advisory Council for Aeronautics Research in Europe) informed about the Joint Undertaking's programmes.

¹² Any modification to the annual spending from the community budget will need to be approved during discussions relating to budgetary procedures of the said year, and will stay below the approved ceilings for "projects of common interest", following decisions taken on the proposal COM (2004) 475 final

- resources from **industry**;
- the **Eurocontrol** budget;
- the budget from the **route charges**, levied according to the terms of Article 15(1) of the Regulation on the provision of services in the framework of the single sky;
- the contributions of **other new members** of the Joint Undertaking, including third countries.

7. CONCLUSION

The impact study on the project to modernise the European air traffic control infrastructure, as well as the discussions with stakeholders in the area, in particular the consultation of the Member States through the Single Sky Committee, the social partners and industry, have shown that the only solution in Europe for developing the new generation of air traffic control systems is to pool energies in a major industrial project.

The definition phase of SESAR, which has already been launched, shows a degree of commitment and ownership which has never before been seen in the world of air transport. It is also a sign of the degree of urgency in which the aeronautics community finds itself, and of how important the expected benefits of SESAR are.

SESAR will represent real progress in terms of efficiency by making available technologies which will optimise the capacities of machines and people. SESAR will also create substantial economies of scale by the rationalisation of development projects and the extensive standardisation and interoperability of systems installed.

SESAR will also increase the environmental efficiency of each flight by reducing congestion, which is costly in terms of pollution, and optimising the flight paths of aircraft in accordance with environmental constraints.

Finally, SESAR will greatly increase the safety of air transport, which is currently threatened by the obsolescence of equipment and the lack of standardisation of air traffic control in Europe. This is the aspect which will be of greatest benefit to European society as a whole, in particular for citizens who put safety at the heart of their aspirations.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Grounds for and objectives of the proposal

Projections for the development of air traffic in Europe show that it should more than double in the next 20 years, or even triple in some regions, particularly central Europe.

Developing air transport infrastructure is therefore becoming a priority for European growth. Moreover, this growth relies on the operation of major industrial programmes with high technological value such as GALILEO (satellite radionavigation) or ITER (nuclear fusion).

SESAR falls into this category. This programme aims to develop the new generation European air traffic management system. The challenge is to develop technologies, methods of organisation and industrial components that are capable of ensuring the safety and fluidity of air transport in the next 20 years in Europe and in the world.

The purpose of the proposal is to create a SESAR Joint Undertaking to ensure the coherence and consistency of the programme, whilst promoting partnership between the Community and other institutions and bodies, both public and private.

1.2. General context

As current air traffic control systems are obsolescent and have an excessive amount of specific local features, they are ill-suited for the rapid, economic and reliable development of aviation in Europe. At the same time, however, needs in this sector are changing rapidly:

- passengers want efficient, affordable and safe transport;
- respect for the environment is becoming a major constraint for the harmonious development of mobility;
- 11 September 2001 showed that planes can be a threat to the safety of the population.

The developments required to take account of this new approach to air transport cannot be based on the current system:

- The ageing techniques, some of which based on a architecture several decades old, are reaching their maximum capacity to evolve in order to make full use of new technologies, for example satellite navigation technologies.
- The lack of technical adaptability means that aircraft must follow predefined and strict flight paths, which are not optimal in terms of the consumption of energy or noise emissions.

- The over-adaptation of different systems to specific local features, even if this has enabled operators to respond to the pressure of traffic, makes the whole system weaker by making both technical and operational interoperability more difficult. It also raises the question of the overall capacity of the system to adapt to new functions.
- There are huge disparities between the standards of equipment and the current performance of the different countries of the European Union in terms of air traffic control, which harms its overall performance.

Developments in this sector are not necessarily going in the right direction:

- Increases in the cost of the European air traffic control system (currently about €7 billion per year) are currently generally in proportion to the increase in traffic. Thus, if no proactive steps are taken, under a simple trend-based scenario air traffic control will cost between €14 and 18 billion per year in 2020.
- While, at global level, air transport has progressively achieved a very high level of safety, the analysis of safety data in Europe shows that, during the last five years, there have been three major accidents that have been directly linked to air traffic control problems. The analysis of trends in terms of air traffic incidents is worrying. Even if the Community has adopted a proactive approach, particularly by creating the European Aviation Safety Agency, the role of which must develop in order to become central to all issues of air safety, it is feared that, with traffic becoming significantly more dense, the risk of air accidents is reaching a level which is completely unacceptable to Europeans.

The uncoordinated development of systems which we are currently seeing creates significant additional costs and delays in the introduction of new equipment, penalising users twice in terms of cost and performance, but also penalising controllers who are given tools which are not very flexible or high-performance.

1.2.1. Existing provisions in the area of the proposal

There are no existing provisions in the area of the proposal.

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

The ‘single European sky’ adopted in March 2004, the implementation of which is already well-advanced, radically reforms the organisation of air navigation services. It clearly defines the roles and responsibilities of supervisory authorities and service providers, and establishes crossborder blocks of airspace. With these blocks, routes (and airspace structures) are no longer defined in accordance with borders but in accordance with the operational reality of traffic. SESAR is the technological element of the single European sky.

The proposal also fits in with the Lisbon Strategy by integrating and speeding up European research and technological innovation in order to stimulate growth and the creation of jobs in Europe.

Finally, SESAR is one of the “projects of common interest” for infrastructure identified by the European Council. Council resolutions of 24 October 1994 (94/C

309/02), of 17 November 1995 (95/C 317/01) and of 19 July 1999 (1999/C 222/01). Decision 1692/96/EC of the European Parliament and of the Council of 23 July 1996. Commission proposal COM(2004) 475 of 14 July 2004.

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

The industry consultation body set up by the framework Regulation for the single European sky (Regulation (EC) No 549/2004) and composed of representatives from throughout the civil aviation industry (including the social partners) created a specific subgroup to be responsible for the economic impact study and the assessment of the different possible forms of governance for SESAR.

The results of this study have also been the subject of a joint presentation to the members of the industry consultation body and the single sky committee, composed of representatives from the states of the European Union.

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

The continuous involvement of the players in the economic impact and governance assessment meant that the specimen quotations could be validated and comments and suggestions could be gathered along the way.

In addition, when drawing up its proposal, the Commission took account of the comments made during the final presentation of the study.

2.2. Collection and use of expertise

The use of external expertise, apart from in the economic impact and mode of governance study, was not necessary.

2.3. Impact assessment

As an option, “not doing anything” will mean activities relating to the research, development and implementation of new air traffic control equipment continue to be carried out in a dispersed and fragmented way in Europe. The role of the Commission will be limited to setting standards for the interoperability of systems, the existence of which will not give any boost to innovation: standards are set de facto to maintain innovation rather than speed it up. In this scenario, there will continue to be a high degree of fragmentation within the European air traffic control infrastructure and the lack of consolidation of research will risk not generating enough technological innovation to renew systems. Furthermore, the decision-making processes will continue to be inefficient, owing to the gap between technological action and the legal provisions for implementing it. This option would therefore mean that the air traffic control infrastructure is not able to accommodate the desired growth in traffic, which will result in poor operational and financial performance. The cost of congestion has been estimated at €20 billion and the risk in

terms of safety is real, with the air traffic control system operating at full capacity and using obsolete equipment.

A second option was analysed, aimed at setting up a central European body which would replace national and local bodies. The latter would then be responsible only for putting the products developed by the central body into operational service. This option has, however, met with considerable opposition from all players consulted.

Thus, the suppliers of air navigation services consider that, in an area which is becoming increasingly competitive particularly as a result of the single sky, equipment is an essential component of their production plant and it is therefore important to keep a minimum amount of strategic control. The social partners, whilst recognising that standardisation “from above” was desirable, have suggested that the transition between the current patchwork of local equipment and such a situation would require a local or regional component, at least in the beginning. The air operators, although wanting a standard system in Europe, recognised the value of a gradual transition. The Member States wanted a certain level of competition to be maintained in Europe, and wanted the transition to be organised to take account of local constraints.

The planned option of creating a joint undertaking to manage SESAR’s activity is a middle way between the two previous options, centralising what it is expedient to centralise, whilst leaving enough flexibility for local implementation and adaptation. The joint undertaking, which provides for significant industry participation, also allows the long-term institutional investment capacity to be combined with sharing the risk with industry. This option seems to be extremely positive from an economic point of view in comparison with the option of “not doing anything” because the financial analysis gives a compared incremental net present value of about 20 billion €. This option means that a high-performance and cutting-edge system can be put in place, which will increase the environmental efficiency of each flight, whilst maximising safety. In addition, the rationalisation of the research and development programme and the partnership between public authorities and private undertakings envisaged by the joint undertaking will enable European industry to achieve a high degree of competitiveness on the market for the sale of equipment and aircraft.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposed action

The proposal consists of a Council regulation on the establishment of the SESAR Joint Undertaking.

3.2. Legal basis

The legal basis of the proposal is Article 171 of the Treaty establishing the European Community.

3.3. Subsidiarity principle

The principle of subsidiarity applies in so far as the proposal does not affect an area where the Community has exclusive competence.

The objectives of the proposal may not be achieved to a sufficient extent by the action of Member States for the following reasons:

- The single European sky is, by nature, supranational. It establishes, in particular, the formation of functional crossborder blocks of airspace. With these blocks, routes and airspace structures are no longer defined in accordance with national borders but in accordance with the reality of traffic flows. The new air traffic control systems, intended in particular to equip these functional blocks of airspace, cannot be limited to a national dimension. In addition, the new technologies implemented will require equipment for aircraft, for which there is little point in being limited to a purely national technological choice. Finally, the disparities between the equipment and performance of the Member States' air traffic control systems are such that harmonisation at European level is necessary: the overall performance of the European air traffic control infrastructure, particularly in terms of safety, depends above all on the performance of its "weakest" links.
- The Member States have adopted a declaration on military issues related to the single European sky¹³ according to which a close European cooperation between civil and military users, on all issues relating to air traffic management, is necessary.
- The European air traffic control equipment industry is working in a "niche" market, in which there are hardly any off-the-shelf product lines, given that each control system installed is specific to local constraints. This therefore generates a high unit cost of production and affects the industry's capacity for investment in technological innovation, which is a weakness in comparison to the American competition which benefits from a large single market in the United States.

The pooling of research and development efforts at EU level is therefore necessary, given the transnational nature of the equipment and technologies to be developed, and also the need to achieve a sufficient mass of resources to permit innovation.

The aims of the proposal may be better achieved through Community action for the following reasons:

- The research and development efforts must be carried out at European level. The effective implementation of technological innovations must be synchronised within the Union in order to ensure the homogenous nature of the quality and safety of the air traffic control service within the European area. This synchronisation can only be carried out by using the Community's legal provisions resulting from the single sky.

In addition, the public-private partnership which is necessary to maximum the synergies necessary for innovation, as well as the participation of third countries, are conceivable only at European level.

¹³ OJ L 96, 31.3.2004, p. 9

Community intervention will allow the rationalisation of development programmes and significant interoperability of systems installed which will result in substantial economies of scale. The standardisation of systems in Europe and the replacement of obsolete technologies will also lead to a significant improvement in the level of safety of European air traffic control.

The economic assessment shows that SESAR will contribute substantially to European growth and the creation of new jobs in Europe by improving the performance of air transport activities and increasing the competitiveness of the European aeronautical sector.

The option chosen to make this proposal is a combination of pooling, at European level, what must be pooled (research programmes, planning), what it is expedient to pool (development of joint components), whilst leaving local flexibility for implementation.

The proposal therefore complies with the subsidiarity principle.

3.4. Proportionality principle

The proposal complies with the proportionality principle for the following reasons.

SESAR coordinates and integrates the research and development activities in the field of air traffic control in Europe; uniform management of this programme is necessary in order to ensure consistency. The option of a joint undertaking seemed to all players to be the simplest way of managing SESAR, as it allows public authorities (Community, Eurocontrol) to be associated with the private sector. It also enables third countries that have concluded at least one agreement with the European Community in the field of air transport to be associated with SESAR. The joint undertaking will operate at project supervision level. However it will have to be given enough technical capability to enable it to ensure that the decisions it will have to take are well-founded. It will rely to a large extent on external technical efforts, in particular on the part of its members.

The overall financial burden required for SESAR has been estimated at €300 million per year. This amount must however be seen in the context of the €200 million currently spent in Europe on research alone, or the €1 billion of annual investment at European level in air traffic control. SESAR will rationalise this expenditure by coordinating it and avoiding the duplication of efforts.

3.5. Choice of instruments

Proposed instrument(s): regulation.

Other means would not have been adequate for the following reason(s):

- The creation of an undertaking in which the Community participates requires a Council regulation.

4. BUDGETARY IMPLICATIONS

The preliminary budgetary assessment, which must however be fine-tuned during the definition phase which is under way, indicates Community expenditure of €3 million in 2007 and €100 million per year between 2008 and 2013.

5. ADDITIONAL INFORMATION

5.1. Simulation, pilot phase and transitory period

The proposal is subject to a definition phase which has already been launched.

5.2. Review/revision/sunset clause

The proposal includes a review clause.

The proposal includes a sunset clause of all or part of the legislative act if predefined conditions are met.

Proposal for a

COUNCIL REGULATION

on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission¹⁴,

Having regard to the opinion of the European Parliament¹⁵,

Having regard to the opinion of the European Economic and Social Committee¹⁶,

Whereas:

- (1) In order to create the single European sky, on 10 March 2004 the European Parliament and the Council adopted Regulation (EC) No 549/2004 laying down the framework for the creation of the single European sky (the framework Regulation)¹⁷, Regulation (EC) No 550/2004 on the provision of air navigation services in the single European sky (the service provision Regulation)¹⁸, Regulation (EC) No 551/2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation)¹⁹, and Regulation (EC) No 552/2004 on the interoperability of the European Air Traffic Management network (the interoperability Regulation)²⁰.
- (2) The project to modernise air traffic management in Europe, hereinafter called the “SESAR project”, is the technological element of the single European sky. It aims to give the Community a high-performance air traffic control infrastructure which will enable the safe and environmentally friendly development of air transport, benefiting fully from the technological advances of programmes such as GALILEO.
- (3) The SESAR project aims to integrate and coordinate activities which were previously undertaken in a dispersed and uncoordinated manner in the Community.

¹⁴ OJ C [...], [...], p.[...].

¹⁵ OJ C [...], [...], p.[...].

¹⁶ OJ C [...], [...], p.[...].

¹⁷ OJ L 96, 31.3.2004, p. 1.

¹⁸ OJ L 96, 31.3.2004, p. 10.

¹⁹ OJ L 96, 31.3.2004, p. 20.

²⁰ OJ L 96, 31.3.2004, p. 26.

- (4) The first phase of the SESAR project, the “definition” phase, which aims to define the different technological steps to be taken, the priorities in the modernisation programmes and the operational implementation plans, is under way. It is cofinanced by the Community under the trans-European networks and by the European Organisation for the Safety of Air Navigation (Eurocontrol).
- (5) This definition phase is carried out under the responsibility of Eurocontrol by a consortium of undertakings chosen after a public invitation to tender. It will finish in 2007 and will result in a plan to modernise air traffic management in the Community.
- (6) The definition phase will be followed by a phase to implement the plan to modernise air traffic management in the Community, which will consist of two successive steps: development (2008-2013) and deployment (2014-2020).
- (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.
- (8) In accordance with the guidelines adopted by the Competitiveness Council of 7 June 2005²¹ concerning the preparation of the future European space programme, the European Union will be responsible for ensuring the availability and continuity of operational services supporting its policies, and it will contribute to the development, deployment and operation of a European space infrastructure by concentrating on space-based applications to contribute to the achievement of its policies.
- (9) By avoiding the duplication of research and development activities, the SESAR project will not lead to an increase in the overall volume of air users’ contribution to research and development efforts.
- (10) Following the Community’s accession to Eurocontrol, the Commission and Eurocontrol have signed a cooperation framework agreement for the implementation of the single European sky and for research and development activities in the field of air traffic control.
- (11) The public budget for the implementation phase of the SESAR project should be supplemented by contributions from the private sector.
- (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.
- (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

²¹ 9440/05 RECH 120 COMPET 111

assessment²², 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 products²³.

- (14) This entity should also be exempt from taxation by the Member States as regards taxes other than VAT and excise duty, and salaries paid to its staff should be exempt from any national income tax.
- (15) SESAR is a research and development project which justifies funding from the Community research and development framework programmes. It is therefore necessary to set up a Joint Undertaking under Article 171 of the Treaty in order to enable considerable progress to be made in the development of technologies relating to air traffic control systems during the development phase (2008-2013) phases.
- (16) Article 4(g) of Decision 1692/96/EC of the European Parliament and the Council of 23 July 1996, on the guidelines on development of the Trans-European transport network²⁴, foresees the possibility to finance research and development activities.
- (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.
- (18) In order to facilitate communication with the founding members, the seat of the Joint Undertaking should be located in Brussels.
- (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.
- (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.
- (21) The Commission is assisted by the Single Sky Committee established by Article 5 of Regulation (EC) No 549/2004.
- (22) The Joint Undertaking should be set up before the end of the definition phase so that it can follow the work of the definition phase and prepare the development phase in order to ensure a rapid implementation of the plan to modernise air traffic management in Europe.

²² OJ L 145, 13.06.1977, p. 1. Directive as last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

²³ OJ L 76, 23.03.1992, p. 1. Directive as last amended by Directive 2000/106/EC (OJ L 359, 4.12.2004, p. 30).

²⁴ OJ L 228, 9.9.1996, p. 1. Decision as last amended by Decision 884/2004/EC, (OJ L 167, 30.4.2004, p. 1)

HAS ADOPTED THIS REGULATION:

Article 1
Establishment of a Joint Undertaking

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.
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:
 - 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;
 - updating the plan and verifying its execution;
 - organising the technical work of research and development, validation and study, to be carried out under its authority;
 - ensuring the supervision of activities related to the development of common products duly identified in “the plan” and if necessary, to organise specific invitations to tender;
3. The seat of the Joint Undertaking shall be located in Brussels.

Article 2
Legal status

1. The Joint Undertaking shall have legal personality. In every Member State, it shall enjoy the most extensive legal capacity accorded to legal persons under that State’s law. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.
2. The Joint Undertaking shall be recognised as an international 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.
3. The Joint Undertaking shall be exempt from taxation by the Member States as regards taxes other than VAT and excise duty. In particular, it shall be exempt from the payment of registration fees and corporate or similar taxes. Salaries paid to staff of the Joint Undertaking shall be exempt from any national income tax.

Article 3
Statutes of the Joint Undertaking

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

Article 4
Sources of financing

1. The financing of the Joint Undertaking shall come from:
 - 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.
2. The Community's contribution can be paid from the budget of the research and technological development and the trans-European networks framework programmes.
3. All Community financial contributions to the Joint Undertaking shall cease upon expiry of the period mentioned in Article 1.

Article 5
Committee

1. The Single Sky Committee, established by Article 5 of Regulation (EC) No 549/2004, hereinafter referred to as "the Committee", shall be informed on a regular basis about its work. To this end, the Commission shall put the SESAR project as an item on the agenda of the Committee's meetings.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.

Article 6
Assessment

Every three years from the start of the activities of the Joint Undertaking and upon expiry of the term of the Joint Undertaking, the Commission shall carry out assessments on the implementation of this Regulation, the results obtained by the Joint Undertaking and its working methods.

Article 7
Entry into force

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

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

Done at Brussels,

For the Council
The President

ANNEX

Statutes of the Joint Undertaking

Article 1

Members

1. The following shall be founding members of the Joint Undertaking:
 - the European Community, represented by the European Commission (hereinafter referred to as “the Commission”);
 - the European Organisation for the Safety of Air Navigation (Eurocontrol), represented by its Agency (hereinafter referred to as “Eurocontrol”).
2. The following may become members of the Joint Undertaking:
 - the European Investment Bank;
 - third countries, in particular those that have concluded at least one agreement with the European Community in the field of air transport;
 - any other public or private undertaking or body.
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.
4. Membership of the Joint Undertaking may not be transferred to a third party unless the prior and unanimous agreement of the Administrative Board is given.

Article 2

Organs of the Joint Undertaking

The organs of the Joint Undertaking shall be the Administrative Board and the Executive Director.

Article 3

Composition of the Administrative Board

1. The Administrative Board shall be composed of:
 - a) a representative from each of the members of the Joint Undertaking;

- b) 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;
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.

Article 4
Voting in the Administrative Board

- 1. The representatives referred to in points (a) and (b) of Article 3(1) shall have the right to vote.
- 2. The members of the Joint Undertaking shall have a number of votes in proportion to their contribution to the funds of the Joint Undertaking. However, 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 Article 3(1) shall have at least 10% of the total number of votes.
- 3. Decisions of the Administrative Board shall be adopted by a simple majority of the votes cast unless otherwise provided for in these statutes.
- 4. If the votes are evenly divided, the Community shall have the casting vote.
- 5. Any decision relating to the accession of new members - within the meaning of 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.

Article 5
Tasks and meetings of the Administrative Board

- 1. In particular, the Administrative Board shall be responsible for:
 - a) giving guidelines and taking the decisions necessary for the implementation of the SESAR project and exercising overall control over its implementation;
 - b) deciding on the accession of new members;
 - c) appointing the Executive Director and approving the organisation chart;
 - d) deciding on the amounts and procedures for paying members' financial contributions;

- e) adopting the financial regulations of the Joint Undertaking;
 - f) approving the three-year business plan and the annual work programme of the Joint Undertaking referred to in Article 15(1) and (2) as well as the annual budget, including the staff establishment plan;
 - g) approving the annual accounts and balance-sheet;
 - h) adopting the annual report on the progress of the SESAR project referred to in Article 15(3);
 - i) deciding on any acquisition, sale and mortgaging of land and other property rights, as well as on the giving of any sureties or guarantees, the taking-out of shares in other undertakings or institutions, on any granting or taking of loans and on the dissolution of the Joint Undertaking;
 - j) establishing procedures for granting rights of access to tangible and intangible assets which are the property of the Joint Undertaking;
 - k) laying down the rules and procedures for awarding the contracts necessary to implement “the plan”;
 - l) approving any proposal involving significant changes in the execution of the SESAR project and in the work programme;
 - m) exercising such other powers and performing such other functions, including the establishment of subsidiary bodies, as may be necessary for the purposes of the SESAR project.
2. The Administrative Board shall meet at least twice a year. Extraordinary meetings shall be convened at the request of either one-third of the members of the Administrative Board representing at least 30% of the voting rights, at the request of the Community or of the Executive Director.

The meetings shall normally take place at the seat of the Joint Undertaking.

Unless otherwise decided in particular cases, the Executive Director shall participate in the meetings.

3. The Administrative Board shall adopt its rules of procedure.

Article 6 *Executive Director*

1. The Executive Director shall be responsible for the day-to-day management of the Joint Undertaking and is its legal representative. He shall be appointed by the Administrative Board on a proposal from the European Commission. He shall perform his duties with complete independence.
2. The Executive Director shall direct the execution of the SESAR project within the guidelines established by the Administrative Board to which he shall be responsible.

He shall provide the Administrative Board with all information necessary for the performance of its functions.

3. The Director shall in particular:
 - a) employ, manage and supervise the staff of the Joint Undertaking, including the staff referred to in Article 7(4);
 - b) organise, manage and supervise the activities of the Joint Undertaking;
 - c) submit to the Administrative Board his proposals concerning the organisation chart;
 - d) draw up and regularly update the business plan and the annual work programme of the Joint Undertaking, and submit them to the Administrative Board;
 - e) draw up the draft annual budget, including the staff establishment plan, and submit them to the Administrative Board;
 - f) ensure that the obligations of the Joint Undertaking, with regard to the contracts and agreements it concludes, are met;
 - g) ensure that the activities of the Joint Undertaking are carried out with complete independence and without any conflicts of interest;
 - h) draw up the annual report on the progress of the SESAR project and submit it to the Administrative Board;
 - i) submit the annual accounts and balance-sheet to the Administrative Board;
 - j) submit to the Administrative Board any proposal involving a significant change in the design of the SESAR project.

Article 7
Staff of the Joint Undertaking

1. The staff complement shall be determined in the establishment plan that will be set out in the annual budget.
2. The members of the staff of the Joint Undertaking shall have a fixed-term contract based on the conditions of employment of other servants of the European Communities.
3. All staff expenditure shall be borne by the Joint Undertaking.
4. Any member of the Joint Undertaking may propose to the Executive Director to second members of its staff to the Joint Undertaking. If this proposal is accepted, the costs relating to this shall be borne by this member and may constitute a contribution in kind within the meaning of Article 11(5).

Staff seconded to the Joint Undertaking must act with complete independence and under the supervision of the Executive Director.

5. The Administrative Board shall adopt the arrangements for implementing this Article.

Article 8 *Agreements*

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:

- 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:
 - i) organising research, development and validation activities in accordance with the work programme of the Joint Undertaking;
 - ii) overall management responsibility of the common developments for the future system;
 - iii) monitoring “the plan” and proposing possible amendments to it;
 - iv) updating convergence indicators (European convergence and implementation plan, local convergence and implementation plan);
 - v) liaison with the International Civil Aviation Organisation.

Article 9 *External contracts*

1. Notwithstanding the provisions of Article 8, the Joint Undertaking may conclude service and supply contracts with undertakings or a consortium of undertakings, in particular to carry out the tasks provided for in Article 1(2) of the present Regulation.
2. The Joint Undertaking shall ensure that the contracts referred to in paragraph 1 provide for the right of the Commission to carry out, on behalf of the Joint Undertaking, controls in order to ensure that the financial interests of the Community are protected.
3. The contracts referred to in paragraph 1 shall include all appropriate provisions relating to the intellectual property rights referred to in Article 17. In order to avoid any conflict of interests, members involved in defining work that is subject to an invitation to tender, including their staff seconded under Article 7(4), cannot take part in carrying out this work.

Article 10
Working groups

1. In order to carry out the tasks provided for in Article 1 of the present Regulation, the Joint Undertaking can set up a limited number of working groups to carry out activities which are not already being carried out elsewhere. These groups shall rely on the expertise of professionals in the air traffic management sector and shall work in a transparent manner.
2. The experts who take part in the working groups shall not belong to the staff of the Joint Undertaking.
3. The working groups shall be chaired by a representative of the Joint Undertaking.

Article 11
Financial provisions

1. The revenue of the Joint Undertaking shall come from 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.
2. In order to start up the work of the Joint Undertaking, the founding members shall pay a minimum initial contribution of EUR 10 million within a period of one year from the establishment of the Joint Undertaking.
3. The members referred to in the second 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.

In the case of undertakings, subscribing individually or collectively, which may be regarded as small or medium-sized enterprises within the meaning of the Commission recommendation of 6 May 2003 concerning the definition of small and medium-sized enterprises²⁵, this amount shall be reduced to EUR 250 000 regardless of when they become members.

4. The Administrative Board shall decide on the amounts which must be released by each member in proportion to the contributions which it has agreed to pay and shall establish the deadline by which the members must pay their contributions.
5. Contributions in kind are possible. They shall be subject to an evaluation of their value and their utility for carrying out the tasks of the Joint Undertaking.
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.

²⁵ OJ L 124, 20.05.2003, p. 36

7. Any member of the Joint Undertaking that fails to meet its commitments concerning the contributions in kind or does not release the amount due within the prescribed time-limit shall be, for six months following the expiry of this time-limit, disqualified from voting in the Administrative Board until such time as its obligations have been met. Upon expiry of this period of six months, if the obligations have still not been met, membership shall be repealed.

Article 12

Revenue

1. All the revenue of the Joint Undertaking shall be applied to promoting the tasks defined in Article 1 of the present Regulation. Subject to Article 23, no payment by way of division of any excess revenue over expenditure shall be paid to the members of the Joint Undertaking.
2. Notwithstanding the regulatory provisions applicable to the Community's contribution, any interest yielded by the contributions paid by its members shall be considered to be revenue of the Joint Undertaking.

Article 13

Financial regulations

1. The financial regulations of the Joint Undertaking shall be adopted by the Administrative Board.
2. The purpose of the financial regulations is to ensure the economic and sound financial management of the Joint Undertaking.
3. The financial regulations should respect the broad principles laid down in Regulation (EC, Euratom) No 2343/2002, and shall in particular include the main rules on:
 - a) the presentation and structure of the SESAR project cost estimates and the annual budget;
 - b) the implementation of the annual budget and internal financial control;
 - c) the method of payment of contributions by the members of the Joint Undertaking;
 - d) the keeping and presentation of accounts and inventory records as well as the drawing up and presentation of the annual balance-sheet;
 - e) the procedure regarding calls for tender, based on non-discrimination between the countries of the members of the Joint Undertaking and the Community character of the project, the award and the terms and conditions of contracts and orders on behalf of the Joint Undertaking.
4. The detailed implementing rules enabling the Commission to ensure compliance with its obligations pursuant to Article 274 of the Treaty establishing the European

Community shall be set out in an agreement between the Joint Undertaking and the Commission.

Article 14
Implementation and control of the budget

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

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

3. The members shall forthwith communicate to the Director their comments on the project cost estimates, and in particular on the estimates of revenue and expenditure for the following year.
4. Based on the approved project cost estimates, and taking into account the comments received from members, the Director shall prepare the draft budget for the following year and submit it to the Administrative Board for adoption before 30 September.
5. Within two months of the end of each financial year, the Director shall submit the annual accounts and balance-sheets for the preceding year to the Court of Auditors of the European Communities. The audit executed by the Court of Auditors shall be based on records and performed on the spot.
6. The Director shall present the annual accounts and balance-sheet, together with the report of the Court of Auditors, to the Administrative Board for approval by a majority of 75% of the votes cast. The Director is entitled and, if requested by the Administrative Board, obliged to comment on the report.
7. The Court of Auditors shall send its report to the members of the Joint Undertaking.

Article 15
Documents to be drawn up

1. The business plan shall specify the plan for the execution of all elements of the SESAR project. It shall cover three year periods and be updated regularly.
2. The annual work programme shall be drawn up each year for a period of twelve months and shall describe the activities, timetable and costs of the Joint Undertaking over this period.
3. The annual report shall show the progress of the SESAR project, in particular with regard to the timetable, costs and performance of this project.

Article 16
Protection of the financial interests of the Community

1. The Commission shall have the right to ensure that the financial interests of the Community are protected by carrying out effective controls. Should the Commission discover any irregularities, it shall reserve the right to reduce or suspend any subsequent payment to the Joint Undertaking.
2. The reduced or suspended amount pursuant to paragraph 1 shall be equivalent to the amount of the irregularities actually discovered by the Commission.

Article 17
Property rights

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

Article 18
Transparency and treatment of documents

The Administrative Board shall adopt rules on the treatment of documents in order to reconcile the requirements of security, commercial secrecy, and public access. These rules shall take into account, where appropriate, the principles and limits laid down in Regulation (EC) No 1049/2001 of the European Parliament and of the Council²⁶.

Article 19
Anti-fraud measures

1. For the purposes of combating fraud, corruption and other illegal acts, Regulation (EC) No 1073/1999 of the European Parliament and of the Council²⁷ shall apply.
2. The Joint Undertaking shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti Fraud Office (OLAF)²⁸ and shall forthwith issue the appropriate provisions applicable to all employees of the Joint Undertaking.
3. The Court of Auditors and OLAF may, if necessary, carry out on-the-spot checks among the recipients of the Joint Undertaking's funding and the agents responsible for allocating it.

²⁶ OJ L 145, 31.05.2001, p. 43.

²⁷ OJ L 136, 31.05.1999, p. 1.

²⁸ OJ L 136, 31.05.1999, p. 15.

Article 20
Liability

1. The Joint Undertaking shall be solely responsible for meeting its obligations.
2. The contractual liability of the Joint Undertaking shall be governed by the relevant contractual provisions and the law applicable to the contract in question.
3. Any payment by the Joint Undertaking for covering the liability referred to in paragraph 2 and the costs and expenses incurred in connection therewith shall be considered expenditure of the Joint Undertaking.
4. The Executive Director shall propose to the Administrative Board to take out any necessary insurance, and the Joint Undertaking shall take out such insurance as the Administrative Board may request.

Article 21
Confidentiality

The Joint Undertaking shall ensure the protection of sensitive information, the non-authorised disclosure of which could damage the interests of the contracting parties. It shall apply the principles and minimum standards of security defined and implemented by Council Decision 2001/264/EC²⁹.

Article 22
Operational period of the Joint Undertaking

1. The Joint Undertaking shall be established for a period ending on 31 December 2013.

According to the progress made in achieving the tasks of the Joint Undertaking, as defined in Article 1 of the present Regulation, that period may be reduced or extended by amending these statutes.

2. According to the progress made in achieving the objectives of the business plan and its updates, upon expiry of the period referred to in paragraph 1, the transfer by the Joint Undertaking of all or part of the tangible and intangible assets that it owns to another body shall be proposed by the Commission to the Council.

Article 23
Dissolution of the Joint Undertaking

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

²⁹ OJ L 101, 11.4.2001, p. 1. Decision as last amended by Decision 2005/571/CE (OJ L 193, 23.7.2005, p. 31).

Article 24
Applicable law

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

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL:

Proposal for a Council Regulation on the establishment of a Joint Undertaking, SESAR.

2. ABM / ABB FRAMEWORK

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

Activity: "Inland, air and maritime transport"

Objective: "To ensure the implementation of the internal market in transport services"

3. BUDGET LINES

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

According to current coding:

06.0301 - Financial support for projects of common interest in the trans-European transport network

06.0601 - Research related to energy and transport – Aeronautics and space

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

3.3. Budgetary characteristics (add rows if necessary):

Budget line	Expenditure type		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
06.0301	Non-comp	Diff ³⁰	NO	YES	NO	No 1A
06.0601	Non-comp	Diff	NO	YES	NO	No 1A

³⁰ Differentiated appropriations

4. SUMMARY OF RESOURCES

4.1. Financial Resources

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

Any amendment to the annual amounts charged to the Community budget will have to be approved during discussions relating to the budgetary procedure of the year concerned and be below the ceilings approved for the “projects of common interest” when the decisions are taken on proposal COM(2004) 475 final.

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 expenditure³¹

Commitment Appropriations (CA)	8.1	a							
06.0301			3.000	50.000	50.000	50.000	50.000	100.000	303.000
06.0601			0	50.000	50.000	50.000	50.000	100.000	300.000
Payment Appropriations (PA)		b							
06.0301			2.000	26.000	50.000	50.000	50.000	125.000	303.000
06.0601			0	25.000	50.000	50.000	50.000	125.000	303.000

Administrative expenditure within reference amount³²

Technical & administrative assistance (NDA)	8.2.4	c	=	=	=	=	=	=	=
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TOTAL REFERENCE AMOUNT

Commitment Appropriations		a+c	3.000	100.000	100.000	100.000	100.000	200.000	603.000
Payment Appropriations		b+c	2.000	51.000	100.000	100.000	100.000	250.000	603.000

Administrative expenditure not included in reference amount³³

Total indicative financial cost of intervention

³¹ Expenditure that does not fall under Chapter 06 01 of the Title 06 concerned.

³² Expenditure within Article 060104 of Title 06

³³ Expenditure within Chapter 06 01 other than Articles 060104 or 060105.

Human resources and associated expenditure (NDA)	8.2.5	d	0.389	0.281	0.281	0.281	0.281	0.562	2.075
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6	e	pm	pm	pm	0.200	pm	0.400	0.600

TOTAL CA including cost of Human Resources		a+c +d+ e	3.389	100.28 1	100.28 1	100.48 1	100.281	200.962	605.675
TOTAL PA including cost of Human Resources		b+c +d+ e	2.389	51.281	100.28 1	100.48 1	100.281	250.962	605.675

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	f	3.000	100.000	100.000	100.000	100.000	200.000	603.000
Other members of the Joint Undertaking and levy on the navigation charge*		0	100.000	100.000	100.000	100.000	200.000	600.000
TOTAL CA including co-financing	a+c+d +e+f	6,389	300.281	300.281	300.481	300.281	601.162	1 808.875

4.1.2. Compatibility with Financial Programming

The Community financing proposed is compatible with proposal COM(2004) 487 final subject to the final agreement on the 2007-2013 financial perspective.

The reference amounts charged to the TEN and RTD programmes are included in the amounts of proposals COM(2004) 475 final and COM(2005) 119.

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 Agreement³⁴ (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:

NB: All details and observations relating to the method of calculating the effect on revenue should be shown in a separate annex.

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] ³⁵	
		a) Revenue in absolute terms								
		b) Change in revenue	Δ							

(Please specify each revenue budget line involved, adding the appropriate number of rows to the table if there is an effect on more than one budget line.)

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

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

5. CHARACTERISTICS AND OBJECTIVES

Details of the context of the proposal are required in the Explanatory Memorandum. This section of the Legislative Financial Statement should include the following specific complementary information:

³⁴ See points 19 and 24 of the Interinstitutional agreement.

³⁵ Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years.

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

The SESAR project is composed of a definition phase (2004-2007) and an implementation phase (2008-2020) in two stages: development (2008-2013) and deployment (2014-2020). The exact scope of the implementation phase will depend on the definition phase. **The Joint Undertaking will be involved only in the development activities of the implementation phase.** The Commission communication on SESAR includes further details on this point.

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

The Community is already co-financing, with Eurocontrol, the definition phase as part of the TEN-Transport programme. Without the Community's participation, this phase would not have been able to be launched or it would have been seriously delayed which might have compromised the project.

The participation of the public authorities in the implementation phase adds a strategic and institutional dimension to the project. It is fully in line with the Lisbon strategy in that it creates a public-private partnership in the field of research. As the regulatory authority, the Commission ensures consistency with the single sky legislation and ensures quick and efficient decision-making which is essential for the modernisation of air traffic management in Europe.

The financial participation of the Community is an important incentive for industry which would not be able to finance the modernisation of the system on its own at the same time as bearing the operational cost of the current system.

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

The SESAR project is in line with the ABM objective of “completing the internal market in energy and transport services and ensuring its implementation” of the activity “Inland, air and maritime transport”.

The objective of the SESAR project is to modernise the European air traffic management system. The objective of the Joint Undertaking is to organise and coordinate the project by combining research and development efforts in the European Community.

The definition phase of the project is currently under way and will produce in 2007 *the plan for the modernisation of air traffic management in Europe*. **This plan will provide the key elements for defining the operational objectives of the Joint Undertaking.** The plan will define the performance needs of the new system for 2020 and beyond and will identify solutions for the creation of a standardised and fully interoperable air traffic management system. It will define the work programme for the research, development and validation activities as well as a detailed plan, in terms of costs and priorities, of the development and deployment phases.

Consequently, it will not be possible to define operational objectives and precise indicators before the modernisation plan has been drawn up.

Nevertheless, we can already identify “specific” objectives:

- Establishing the Joint Undertaking, setting up the management bodies and recruiting staff;
- Organising and coordinating the implementation of the project, in accordance with the modernisation plan;
- Organising the research, development, validation and study work carried out under its authority;
- Organising invitations to tender for the development of joint products.

The indicators that could be considered at this stage are: the establishment of the management structure (fitting out of the headquarters (seat), establishment of the Administrative Board, adoption of the rules of procedure and the financial regulation, recruitment of the Executive Director and staff); starting up activities (establishment of work programme, conclusion of the agreement with Eurocontrol, calling on the financial commitments of members); continuing activities and evaluating them (attracting new members, launching calls for tender, producing reports on progress made, benchmarking with the United States).

5.4. Method of Implementation (indicative)

Show below the method(s)³⁶ chosen for the implementation of the action.

Centralised Management

Directly by the Commission

Indirectly by delegation to:

Executive Agencies

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)

³⁶ If more than one method is indicated please provide additional details in the “Relevant comments” section of this point

6. MONITORING AND EVALUATION

6.1. Monitoring system

The draft statutes of the Joint Undertaking provide for specific measures regarding internal control.

6.2. Evaluation

6.2.1. Ex-ante evaluation

The impact assessment attached to this proposal, based on a preparatory cost-benefit study carried out on the SESAR project and its governance, already provides most of the information required by an ex-ante evaluation on the establishment of the SESAR Joint Undertaking.

However, for the reasons indicated in paragraph 5, the key elements for defining the operational objectives of the Joint Undertaking will only be available in 2007. Consequently, as it is not possible to carry out a comprehensive ex-ante evaluation at this stage of the project, the Commission will complete its evaluation at the end of the definition phase.

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

Not applicable

6.2.3. Terms and frequency of future evaluation

The internal evaluation of the Joint Undertaking is based on an annual report on the progress of the project.

In addition, every three years the Commission evaluates the implementation of the regulation and the results obtained. A final evaluation is also planned.

7. ANTI-FRAUD MEASURES

The statutes of the Joint Undertaking contain specific measures regarding anti-fraud measures.

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								
OBJECTIVE NO 1³⁷ Establishment of the Joint Undertaking																
Sub-total Objective 1	=	=		1												1
OBJECTIVE NO 2³⁸ Organise and coordinate the implementation of the project																

³⁷ As described under Section 5.3

³⁸ As described under Section 5.3

Sub-total Objective 2	=	=		2		4		4		4		4		8		26
OBJECTIVE No 3																
Sub-total Objective 3	=	=		0		48		48		48		48		96		288
OBJECTIVE No 4																
Organise calls for tender																
Sub-total Objective 4	=	=		0		48		48		48		48		96		288
TOTAL COST	=	=		3		100		100		100		100		200		603

The figures given in table 8.1 are indicative. A more detailed breakdown by objective will follow from the definition phase of the project.

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	2012-2013
Officials or temporary staff ³⁹ (06 01 01)	A*/AD	2	1	1	1	1	2
	B*, C*/AST	1	1	1	1	1	2
Staff financed ⁴⁰ by Art. 06 01 02		1	1	1	1	1	2
Other staff financed ⁴¹ by Art. 06 01 04/05		=	=	=	=	=	=
TOTAL		4	3	3	3	3	6

8.2.2. Description of tasks deriving from the action

- Preparatory work for the establishment of the Joint Undertaking;
- Liaison with the various political, economic, technical and social stakeholders;
- Management of Community grants.

8.2.3. Sources of human resources (statutory)

(When more than one source is stated, please indicate the number of posts originating from each of the sources)

2 Posts currently allocated to the management of the project to be replaced or extended

Posts pre-allocated within the APS/PDB exercise for year n

1 Post to be requested in the next APS/PDB procedure

1 Post to be redeployed using existing resources within the managing service (internal redeployment)

³⁹ Cost of which is NOT covered by the reference amount.

⁴⁰ Cost of which is NOT covered by the reference amount.

⁴¹ Cost of which is included within the reference amount.

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

8.2.4. *Other administrative expenditure included in reference amount (06 01 04/05 – Expenditure on administrative management)*

Not applicable

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 ⁴²							
Other technical and administrative assistance	=	=	=	=	=	=	=
- intra muros							
- extra muros							
Total Technical and administrative assistance	0	0	0	0	0	0	0

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)	0.324	0.216	0.216	0.216	0.216	0.432
Staff financed by Art. 06 01 02	0.065	0.065	0.065	0.065	0.065	0.130
Total cost of Human Resources and associated costs (NOT in reference amount)	0.389	0.281	0.281	0.281	0.281	0.562

Calculation– Officials and Temporary agents

Reference should be made to Point 8.2.1, if applicable

Standard cost €108 000/year per agent

Calculation – Staff financed under Art. 06 01 02

Reference should be made to Point 8.2.1, if applicable

⁴² Reference should be made to the specific legislative financial statement for the Executive Agency(ies) concerned.

<u>Cost of a seconded national expert</u>		
Daily subsistence allowance	41 000	€/year
Travel	4 000	€/year
<u>Administrative expenses</u>	19 985	€/year
Total	64 985	€/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 **	pm	pm	pm	pm	pm	pm	pm
06 01 02 11 02 – Meetings & Conferences							
06 01 02 11 03 – Committees ⁴³							
06 01 02 11 04 – Studies & consultations							
06 01 02 11 05 - Information systems							
2. Total Other Management Expenditure (06 01 02 11)							
3. Other expenditure of an administrative nature (specify including reference to budget line)				0.200		0.600	0.800
evaluations 06.010503 - 06.010404***							
Total Administrative expenditure, other than human resources and associated costs (NOT included in reference amount)				0.200		0.600	0.800

Calculation - Other administrative expenditure not included in reference amount:

** The missions of Commission staff assigned to the project will depend on the location of the seat of the Joint Undertaking.

*** two interim evaluations and one final one.

Human resources and administrative requirements will be covered from the allocation given to the managing DG under the annual allocations procedure.

⁴³ Specify the type of committee and the group to which it belongs.