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## **REPORT**

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

Committee on Industry, Research and Energy

Rapporteur: Erna Hennicot-Schoepges

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

(\*): Enhanced cooperation between committees - Rule 47 of the Rules of Procedure

### ***Symbols for procedures***

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

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

### ***Amendments to a legislative text***

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

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(\*) Enhanced cooperation between committees - Rule 47



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

### (Consultation procedure)

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2005)0602)<sup>1</sup>,
  - having regard to Article 171 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0002/2006),
  - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
  - having regard to Rules 51 and 35 of its Rules of Procedure,
  - having regard to the report of the Committee on Industry, Research and Energy and the opinion of the Committee on Transport and Tourism (A6-0382/2006),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
  5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

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Amendments by Parliament

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#### Amendment 1 Citation 1

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

- Having regard to the Treaty establishing the European Community, and in particular **Articles 171 and 173** thereof,

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<sup>1</sup> Not yet published in OJ.

### *Justification*

*In line with the applicable case-law, especially the judgments of 26 March 1987 (Case 45/86, Commission v. Council, ECR I-1493), 11 February 1991 (Case 300/89, Commission v. Council, ECR I-2867) and 26 April 1996 (Case C-271/94, Parliament v. Council, ECR I-1689), this amendment aims to enable Parliament to be more fully involved in the creation, development and establishment of the Joint Undertaking.*

### Amendment 2

#### Recital 2

(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 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.

(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 high-performance air traffic control infrastructure which will enable the safe, ***energy efficient*** and environmentally friendly development of air transport, benefiting fully from the technological advances of programmes such as Galileo. ***It also aims to integrate both aircraft speed management, for reasons of energy efficiency, and intensive cooperation with weather forecasting services, so as to reduce the climate change impact of aviation.***

### *Justification*

*The higher performance of ATM bears the potential to manage better adapted speed for saving kerosene consumption and allows to guide the planes on routes that are, according to weather forecast, less sensitive for the building of vapour contrails.*

### Amendment 3

#### Recital 3

(3) The SESAR project aims to integrate and coordinate activities which were previously undertaken in a dispersed and uncoordinated manner in the Community.

(3) The SESAR project aims to integrate and coordinate activities which were previously undertaken in a dispersed and uncoordinated manner in the Community, ***including the most remote and outlying regions thereof, referred to in Article 299(2) of the Treaty.***

### *Justification*

*This amendment supplies legal clarification in line with the Treaty.*

Amendment 4  
Recital 6

(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).***

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

*Justification*

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

Amendment 5  
Recital 6 a (new)

***(6a) Each phase should lay down the main elements of its content and for the deployment phase the legal provisions should be stated in a separate proposal.***

*Justification*

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

Amendment 6  
Recital 7

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

***deleted***

*Justification*

*An additional levy on air navigation charges must be avoided. User charges will already contribute to the programme via Eurocontrol. A successful definition phase should deliver a*

*clear business case triggering the necessary private investment (and public funding).*

Amendment 7

Recital 11

(11) The public budget for the **implementation** phase of the SESAR project should be supplemented by contributions from the private sector.

(11) The public budget for the **development and deployment phases** of the SESAR project should be supplemented by contributions from the private sector. ***During the development phase these contributions should amount to 50% of the budget.***

*Justification*

*SESAR should allow industry to fully bring in its expertise. But if SESAR is to be an industry-led initiative, this has also to be reflected in the financing of the development phase.*

Amendment 8

Recital 12

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

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

*Justification*

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

Amendment 9

Recital 13

(13) This entity, **which is** responsible for managing a public research programme of European interest, **must be considered as an international organisation** within the meaning of the second indent of Article 15(10) of the Sixth Council Directive

(13) This entity **will be** responsible for managing a public research programme of European interest within the meaning of the second indent of Article 15(10) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws

77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, and the second indent of Article 23(1) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products.

of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, and the second indent of Article 23(1) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products.

#### *Justification*

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

#### Amendment 10 Recital 14

(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.

(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 ***in line with the conditions of employment of other servants of the European Communities.***

#### *Justification*

*For reasons of legal and social consistency, it is important to clarify that wage levels should be in line with the 'Rules applicable to other servants of the European Communities'.*

#### Amendment 11 Recital 15

(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

(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 **Articles 171 and 173** of the Treaty in order to enable considerable progress to be made in the development of technologies relating to air traffic control systems during

development phase (2008-2013) *phases*.

the development phase (2008-2013).

*Justification*

*This is in line with the twofold legal basis proposed, i.e. Articles 171 and 173 of the EC Treaty.*

Amendment 12

Recital 17

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

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

*Justification*

*The reference to EUROCONTROL's experience has to be completed by mentioning the 40 years of civil and military expertise of this Organisation.*

TRAN Amendment 13

Recital 17a (new)

***(17a) It is desirable for the private sector to be appropriately involved in all phases, especially in the development phase, so as to ensure the liability of private-sector participants during the deployment phase.***

*Justification*

*The industry can have some problems related their liability when install a new system if they are not appropriately involved in the development of the technological bases.*

Amendment 14

Recital 20

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

(20) The rules for the organisation and operation of the Joint Undertaking ***and for the avoidance of conflicts of interests within the Joint Undertaking and the procedure for the appointment of its officials*** should be laid down by drawing up the statutes of the Joint Undertaking ***as***

*set out in the Annex.*

*Justification*

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

Amendment 15  
Recital 20 a (new)

***(20a) The European Parliament should be granted observer status on the administrative board of the Joint Undertaking.***

*Justification*

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

Amendment 16  
Recital 20 b (new)

***(20b) Applications for the accession to the Joint Undertaking of new members should be welcomed, subject to the provisions of Article 1(3) of the Annex.***

*Justification*

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

Amendment 17  
Recital 22 a (new)

***(22a) The Commission should report to the European Parliament and the Council every three years on the application of this Regulation and, if appropriate, should propose amendment of it.***

*Justification*

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

Amendment 18  
Article 1, paragraph 1

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

**1. A Joint Undertaking (hereinafter referred to as "the Joint Undertaking") is hereby established. Its primary objective shall be to manage the activities of the development phase of the project to modernise air traffic management (ATM) in Europe, hereinafter referred to as the “SESAR project”, for a period starting on the date on which the Council endorses the ATM Master Plan referred to in point (a) of paragraph 1a below, and ending at the end of the development phase.**

*Justification*

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

Amendment 19  
Article 1, paragraph 1 a (new)

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

**(a) a “definition phase” which aims to define the technical options and steps to be taken and the priorities in the modernisation programme as well as the operational implementation plans. It began in October 2005 and is expected to finish in December 2007, resulting in an ATM Master Plan. The ATM Master Plan is to be developed by a consortium of undertakings under the supervision of the Eurocontrol;**

**(b) a “development phase” which will start on 1 January 2008, once the Council has endorsed the ATM Master Plan, acting on a proposal from the Commission and after**

***consulting the European Parliament. The development phase will end on 31 December 2013;***

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

***(i) the transition from the development phase to the deployment phase,***

***(ii) the reimbursement mechanisms which shall apply to any body succeeding the SESAR Joint Undertaking, and***

***(iii) the transfer of selected tangible and intangible assets to the new body succeeding the SESAR Joint Undertaking.***

#### *Justification*

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

#### Amendment 20

Article 1, paragraph 1 b (new)

***1b. The scope, governance, funding and duration of the Joint Undertaking shall, where appropriate, be reviewed by the Council, in accordance with the development of the project and the ATM Master Plan. The Council shall take into account the assessment referred to in Article 6 and the provisions of Article 6a.***

#### *Justification*

*This amendment is a necessary legal provision, judging from the experience of the Galileo Joint Undertaking.*

Amendment 21

Article 1, paragraph 2, introductory part

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

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

*Justification*

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

Amendment 22

Article 1, paragraph 2, indent 1

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

- organising and coordinating the ***activities of the development phase*** of the SESAR project, in accordance with ***the ATM Master Plan resulting from the definition phase of the project managed by Eurocontrol, by combining and managing under a single structure*** public and private sector funding;

*Justification*

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

Amendment 23

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

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

*Justification*

*The question of funding merits special mention.*

Amendment 24  
Article 1, paragraph 2, indent 2 b (new)

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

*Justification*

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

Amendment 25  
Article 1, paragraph 3

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

3. The seat of the Joint Undertaking shall be **established in accordance with Council Regulation (EC) No58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes<sup>1</sup>**.

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<sup>1</sup> OJ L 11, 16.1.2003, p. 1.

*Justification*

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

Amendment 26  
Article 2, paragraph 2

**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.**

**deleted**

*Justification*

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

Amendment 27  
Article 2, paragraph 3

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.**

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 **shall be paid to staff of the Joint Undertaking pursuant to the conditions of employment of other servants of the European Communities.**

*Justification*

*For reasons of legal and social consistency, it is important to clarify that wage levels should be in line with the 'Rules applicable to other servants of the European Communities'.*

Amendment 28  
Article 3, paragraph 1

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

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

*Justification*

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

Amendment 29  
Article 3, paragraph 2

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

2. The statutes may be modified in accordance *with* the procedure referred to

**paragraph 2 of Article 5, and in particular Articles 3, 4, 5, 6 and 8 thereof.** in **Article 6a.**

*Justification*

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

Amendment 30  
Article 4, paragraph 1, point (a)

a) contributions from its members in accordance with **Article 1** of its statutes **and**

a) contributions from its members in accordance with **Articles 1, 3 and 11** of its statutes.

*Justification*

*The rapporteur has not yet seen any alternative mechanism imposing on the private sector its financial contribution. Yet a legal provision is proposed because it sets out the financial obligations of the private sector in a public-private partnership (PPP). It is only proper and desirable that these matters be debated in the EP and certain guidelines on PPPs be defined.*

Amendment 31  
Article 4, paragraph 1, point (b)

***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.***

***deleted***

*Justification*

*An additional levy on air navigation charges must be avoided. User charges will already contribute to the programme via Eurocontrol. A successful definition phase should deliver a clear business case triggering the necessary private investment (and public funding).*

Amendment 32  
Article 4, paragraph 3

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

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

*Justification*

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

Amendment 33  
Article 5, paragraph 1

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.

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 *the work of the Joint Undertaking*. To this end, the Commission shall put the SESAR project as an item on the agenda of the Committee’s meetings.

*Justification*

*Simple clarification is added.*

Amendment 34  
Article 5, paragraph 2 a (new)

***2a. The Commission's position in relation to decisions within the Administrative Board concerning technical adjustments to the ATM Master Plan shall be adopted in accordance with the procedure referred to in Article 3 of Decision 1999/468/EC.***

*Justification*

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

Amendment 35  
Article 5 a (new)

**Article 5a**

**Accession of new members**

***The Commission shall report to the European Parliament and the Council on the accession of new members of the Joint Undertaking. The accession of new members, including members from third countries, shall be subject to the approval of the European Parliament and of the Council.***

*Justification*

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

Amendment 36  
Article 6

***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.

***Pursuant to Article 173 of the Treaty***, 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. ***The Commission shall submit to the European Parliament and the Council reports on the results of these assessments and on the conclusions to be drawn therefrom.***

*Justification*

*It must be ensured that Parliament and the Council are kept fully and constantly informed of the results and working methods of the Joint Undertaking.*

*The SESAR Joint Undertaking is a long-term project for which regular assessments are indispensable in order to identify shortcomings and delays at the earliest possible stage. Parliament's involvement in this process should be made clear.*

Amendment 37  
Article 6 a (new)

**Article 6a**

**Review**

***If the Commission considers it necessary or if either the European Parliament or the Council requests, under the comitology procedure, the revision of this Regulation or of the statutes of the Joint Undertaking, the Commission shall submit the appropriate legal proposal in accordance with the procedure laid down by the Treaty.***

*Justification*

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

Amendment 38  
Annex, Article 1, paragraph 2, indent 3

- any other public or private undertaking or body.

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

*Justification*

*Given the PPP nature of the SESAR Joint Undertaking, there should be reasonable conditions attached to the membership of the Joint Undertaking. This amendment seeks to insert one condition, i.e. an agreement with the EC.*

Amendment 39  
Annex, Article 1, paragraph 3

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

The Administrative Board shall ***decide*** whether to accept or reject the request. If the request is accepted, the Executive

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

The Administrative Board shall ***advise the Commission*** whether to accept or reject the request ***and the Commission, pursuant to***

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.

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

#### *Justification*

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

#### Amendment 40 Annex, Article 1, paragraph 3 a (new)

***3a. In proposing whether to authorise negotiations on accession with a public or private undertaking or body, given the agreement referred to in the third indent of Article 1 (2) of the Annex, the Administrative Board shall take particular account of the following criteria:***

***- documented knowledge and experience with air traffic management and/or with the manufacture of equipment and/or the provision of services for air traffic management;***

***- the contribution that the undertaking or body can be expected to give to the execution of the ATM Master Plan;***

***- the financial security of the undertaking or body;***

***- any potential conflict of interests.***

#### *Justification*

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

Amendment 41  
Annex, Article 3, paragraph 1, point (a a) (new)

***(aa) a representative of the military;***

*Justification*

*The representatives of the industry should be nominated by the relevant representative organisations at the European level. The representative of the Military should be nominated by the relevant representative organisation dealing with ATM at the European level.*

Amendment 42  
Annex, Article 3, paragraph 2

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

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

*Justification*

*The addition concerns the role of the European Parliament in a "joint undertaking" of a public-private partnership. The Observer status to be granted to the European parliament is justified on two grounds: Parliamentary monitoring of a PPP involved in transforming research funding into a public service and fulfilment of its budgetary role on equal grounds with the Council.*

Amendment 43  
Annex, Article 3, paragraph 2 a (new)

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

*Justification*

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

Amendment 44  
Annex, Article 4, paragraph 1

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

***1. All representatives referred to in Article 3(1) shall have a weighted vote in***

*right to vote.*

*proportion to their contribution to the funds of the Joint Undertaking and subject to the provisions of paragraph 2.*

*Justification*

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

Amendment 45  
Annex, Article 4, paragraph 2

2. The members of the Joint Undertaking shall have a number of votes in proportion to their contribution to the funds of the Joint Undertaking. However, the Community and Eurocontrol shall each have at least 30% of the total number of votes and the *air passengers'* representative referred to in point (b) of Article 3(1) shall have at least 10% of the total number of votes.

**2. Pursuant to paragraph 1**, 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 *airspace users'* representative referred to in point (b) of Article 3(1) shall have at least 10% of the total number of votes.

*Justification*

*This provides legal clarification.*

Amendment 46  
Annex, Article 4, paragraph 5

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

**deleted**

*Justification*

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

Amendment 47  
Annex, Article 4, paragraph 5 a (new)

***5a. Decisions concerning the adoption of the ATM Master Plan and any relevant amendments to it shall require the favourable vote of all the founder members. Notwithstanding the provisions of paragraph 1, such decisions may not be taken where the representatives referred to in Article 3(1) (c) to (f) unanimously express disagreement.***

*Justification*

*This amendment concerns the need to ensure consistent decision-making when proposing modifications to the ATM Master Plan.*

Amendment 48  
Annex, Article 4, paragraph 5 b (new)

***5b. The ATM Master Plan shall be communicated and forwarded to the European Parliament.***

Amendment 49  
Annex, Article 5, paragraph 1, point (b)

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

b) ***proposing*** accession of new members;

*Justification*

*This is to be consistent with amendments to Article 5 a (new) and to Annex, Art. 1(3) and Art. 4(5). The Administrative Board simply "proposes" - given the fulfilment of the criteria- and does **not** decide. It is up to the EU institutions to decide on the accession of new members.*

Amendment 50  
Annex, Article 5, paragraph 1, point (c)

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

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

### *Justification*

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

### Amendment 51 Annex, Article 5 a (new)

#### *Article 5 a*

##### *Avoidance of conflicts of interests*

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

***2. Members of the Joint Undertaking and participants in the Administrative Board must disclose any direct or indirect personal or corporate interest in the outcome of the deliberations of the Administrative Board in relation to any matter on the agenda. This requirement also applies to the staff of the Joint Undertaking in relation to the tasks which are assigned to them.***

***3. On the basis of any disclosures as mentioned in paragraph 2, the Administrative Board may decide to exclude members, participants or staff from making decisions or undertaking tasks where a conflict of interests is likely to arise. Excluded members, participants and staff shall have no access to information relating to matters where there is a potential conflict of interests.***

### *Justification*

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

Amendment 52  
Annex, Article 6, paragraph 1

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

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

*Justification*

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

Amendment 53  
Annex, Article 6, paragraph 1 a (new)

***1a. The term of office of the Executive Director shall be five years. On a proposal from the Commission, after hearing the opinion of the representative appointed by the European Parliament and after an evaluation, it may be extended once for a period of no more than three years.***

*Justification*

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

Amendment 54  
Annex, Article 8, introductory part

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

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

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

*Justification*

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

Amendment 55  
Annex, Article 8, points (a) and (b)

a) ***Eurocontrol shares*** the results of the definition phase ***with*** the Joint Undertaking;

a) ***establish the modalities of the transfer and the use of*** the results of the definition phase ***to*** 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:***

b) ***describe Eurocontrol's tasks and responsibilities in the implementation of the ATM Master Plan, such as:***

*Justification*

*It seeks to clarify the role and responsibilities of Eurocontrol during the 'development phase'.*

Amendment 56  
Annex, Article 11, paragraph 3, subparagraph 1

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***

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.

***12 months of its constitution.***

*Justification*

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

Amendment 57

Annex, Article 11, paragraph 3, subparagraph 2

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

In the case of undertakings, subscribing individually or collectively, which may be regarded as small or medium-sized enterprises within the meaning of the Commission recommendation of 6 May 2003 concerning the definition of small and medium-sized enterprises, this amount shall be reduced to EUR 250 000 regardless of when they become members. ***Founder members shall have the option of staggering this payment over several instalments, over a period to be agreed by the parties concerned.***

*Justification*

*SMEs do not have the resources to pay the sum of EUR 250 000 all at once: should they be obliged to do so, they will ask for a loan on the financial markets. As an SME's credit rating is generally lower than that of a big company, it is important to enable SMEs' maximum contribution to be divided into several instalments, thus increasing the chances of external funding, reducing the short-term financial burden and enhancing the probability of long-term returns.*

Amendment 58

Annex, Article 11, paragraph 5

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.

5. Contributions in kind are *permissible and shall be set out in the agreements referred to in Article 8 of this Annex*. They shall be subject to an evaluation of their value and their utility for carrying out the tasks of the Joint Undertaking.

*Justification*

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

Amendment 59  
Annex, 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.

Property rights

The Joint Undertaking shall own all the tangible and intangible assets created **by it** or transferred to it for the **development** phase of the SESAR project **in accordance with the membership agreements it concluded. The Joint Undertaking may grant access rights to the knowledge resulting from the project, in particular to its members but also to the Member States of the European Union and/or Eurocontrol for their own, non commercial purposes.**

*Justification*

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

## EXPOSE DES MOTIFS

### Historique

En 2004, la législation Ciel unique européen pose la base institutionnelle et réglementaire pour une gestion défragmentée et interopérable du trafic aérien.

Nous sommes maintenant dans la phase d'implémentation du ciel unique et il devient urgent d'adresser le problème du développement des technologies requises.

A cet effet, la Commission européenne a lancé le projet européen de modernisation du contrôle aérien (SESAR), en coopération avec l'Organisation européenne pour la sécurité de la navigation aérienne (Eurocontrol) et, en principe, avec le support financier du secteur privé. Cette conformation constitue un partenariat privé-public (PPP) avec une contribution financière tripartite.

L'objectif de SESAR est la constitution d'une entreprise commune pour la réalisation du système européen de nouvelle génération pour la gestion du trafic aérien.

### Pourquoi SESAR est nécessaire?

Les prévisions laissent envisager un doublement voire un triplement du volume du trafic aérien d'ici 2025. Le secteur contribue par ailleurs à hauteur de 220 Mrd d'euro au PIB européen et emploie 3,1 Mio. de personnes.

Les goulots d'étranglement dans les infrastructures de transport aérien, en particulier dans le domaine de la gestion du trafic aérien sont inéluctables. Ceci est d'autant plus vrai que les systèmes ATM actuels sont basés sur des techniques qui datent d'il y a vingt ans, ou même plus. A l'âge des communications via satellites, GALILEO, et le réseau à haut débit, les pilotes et les contrôleurs communiquent toujours par radio.

Le système actuel peut assurer le fonctionnement et la sécurité de la gestion du trafic aérien mais il est évident qu'il approche ses limites. L'infrastructure de gestion du trafic aérien, fragmentée et seulement partiellement interopérable, ne pourra pas faire face aux défis des années à venir: sécurité renforcée, augmentation du trafic, efficacité énergétique et contraintes environnementales. Le besoin d'innovation est pressant.

SESAR, comme le volet technologique du Ciel unique européen, doit :

- adapter le contrôle du trafic aérien aux nouvelles technologies,
- assumer la sécurité et la régularisation des vols,
- organiser les services de navigation aérienne,
- définir les rôles et responsabilités entre les autorités de surveillance et les prestataires de services.

Il s'agit aujourd'hui de mettre à profit les systèmes de navigation par une gestion automatisée

en temps réel des trajectoires des aéronefs. Mais, en allant plus loin, le rapporteur insiste sur la nécessité de l'interopérabilité de deux systèmes, SESAR et GALILEO.

Outre l'impact important sur la sécurité, l'impact pour l'environnement est aussi considérable. La Commission estime la réduction de gaz à effet de serre de 4 à 6% par vol.

### **Contenu de SESAR:**

La nouvelle génération de systèmes de gestion du trafic aérien va intégrer des liens complexes entre le sol et l'avion ainsi que des outils automatisés pour les contrôleurs et les pilotes. Le transport aérien étant par essence international, l'implémentation ne peut pas se faire de manière désynchronisée. Avec 60 systèmes différents ATM installés au sol et environ 5000 avions, SESAR sera la législation manquante grâce à laquelle, l'Union européenne peut, avec les instruments législatifs du Ciel unique, synchroniser efficacement l'implémentation de la nouvelle technologie. Nous pouvons souligner que SESAR apporte une valeur ajoutée communautaire, aucun État membre ne pouvant développer un système pareil à lui tout seul.

L'entreprise commune SESAR constitue à ce jour le premier partenariat européen privé-public conduit avec la participation de la Communauté européenne.

Le projet est organisé en trois phases.

La **phase de définition**, lancée en 2005 et qui durera jusqu'en 2007 définit la feuille de route (ATM Master Plan), c'est-à-dire les technologies à développer et les modes d'organisation. Le financement de 60 Mio d'euros est assuré par le budget européen et par Eurocontrol (50/50).

La **phase de développement** (2008-2013) dans laquelle il s'agit de concevoir les systèmes et d'en réaliser les éléments critiques est estimée à environ 300 Mio d'euros par an (1/3 Budget européen, 1/3 Eurocontrol, 1/3 Secteur privé).

La **phase de déploiement** (2014-2020), selon la communication de la Commission, serait financée par le secteur privé et installé à une large échelle en Europe et dans les pays associés.

### **Position du Rapporteur:**

Votre rapporteur tient à rappeler que le respect de ce calendrier revêt une importance déterminante pour la portée du programme.

Les États-Unis travaillent aussi sur un système de gestion du trafic aérien de nouvelle génération. Pour la compétitivité européenne, il est important de préserver notre avance technologique.

La proposition de la Commission relative à la création de l'entreprise commune SESAR laisse néanmoins en suspens quelques problèmes fondamentaux tels que la définition précise des phases, les garanties de la participation financière du secteur privé, les droits de propriété intellectuelle, les conflits d'intérêts potentiels, les statuts de l'entreprise commune et la révision de ceux-ci, la procédure d'accèsion de nouveaux membres et le droit de vote au sein du conseil d'administration et finalement, l'implication du Parlement européen.

Votre rapporteur considère nécessaire d'apporter des clarifications quant à la **définition des**

**phases.** Les amendements définissent de manière claire les trois phases de la SESAR et limitent l'existence de l'entreprise commune à la deuxième phase. La Commission devra présenter une proposition législative établissant la troisième phase.

Le rapporteur souligne aussi l'importance d'une **clause de révision** de l'objectif, de la gouvernance et de la durée de l'entreprise commune. Vu les problèmes avec la mise en route de GALILEO, il est essentiel de prévenir de tels obstacles.

Pour l'admission de **nouveaux membres** à l'entreprise commune, le rapporteur demande l'approbation du Parlement européen et du Conseil. Etant donné la nature PPP de l'entreprise commune, il importe aussi de fixer des conditions d'accès spécifiques. Il faut garantir que les nouveaux adhérents ont déjà conclu au préalable avec l'Union, un accord dans le domaine du trafic aérien. Ils devront aussi produire de la documentation quant à leur expérience dans le domaine ATM, leur contribution à l'exécution du Master Plan, leur contribution financière et les conflits d'intérêts potentiels.

### Financement :

La première phase du projet étant entièrement financée par l'Union européenne et Eurocontrol, il convient de préciser les modalités de la contribution du secteur privé pour la deuxième phase. La proposition de la Commission relative à la constitution de l'entreprise commune prévoit la participation financière du secteur privé à la phase de développement du programme en instaurant un prélèvement éventuel sur les redevances de navigation aérienne.

Phase	Années	Financement	Acteurs
<b>Définition</b>	2005-2007	<b>60 Mio €:</b> Eurocontrol (30 m€) Communauté (30 m€)	Eurocontrol
<b>Développement</b>	2008-2013	<b>300 Mio € par an:</b> Communauté (100 m€) Eurocontrol (100 m€) Industrie et autres (100 m€)	Entreprise Commune
<b>Déploiement</b>	2014-2020	Industrie	Industrie

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

Ce qui précède montre que l'adhésion d'entreprises privées à l'entreprise commune peut engendrer des **conflits d'intérêts**. Des conflits d'intérêt apparaissent aussi lorsqu'un membre de l'entreprise commune, privé ou public, est en position d'exploiter sa capacité professionnelle ou officielle. Les intérêts des secteurs public et privé diffèrent aussi fondamentalement: Alors que le programme présente essentiellement un intérêt commercial pour le secteur privé, le secteur public doit assumer d'autres objectifs, qui présentent un intérêt général et doit impérativement agir indépendamment d'intérêts industriels ou commerciaux.

L'une des missions essentielles de l'entreprise commune consiste à préparer et à exécuter les

appels d'offres nécessaires pour la phase de développement. Afin d'éviter des conflits d'intérêts, les membres de l'entreprise commune doivent être à l'abri des conflits d'intérêts potentiels. À l'issue de la procédure, des contrats spécifiques, définissant les modalités de fond, techniques et financières, seront passés entre l'Entreprise commune et ses membres.

Le rôle d'Eurocontrol, membre fondateur de l'entreprise commune est aussi clarifié. Des accords spécifiques avec l'entreprise commune doivent définir les modalités de partage et l'utilisation des résultats de la phase de définition.

### **Implication du Parlement européen :**

Le rapporteur fait remarquer que la proposition ne fait nulle mention de l'autorité de contrôle budgétaire, alors qu'une grande partie des activités de l'entreprise commune doit être financée par le budget communautaire. Étant donné qu'elle emploiera du personnel et sera tributaire d'un soutien communautaire, il semblerait approprié que l'entreprise commune se conforme aux procédures budgétaires générales de manière que l'on puisse mieux contrôler ses activités et améliorer le suivi des dépenses administratives. Le Parlement européen devrait être consulté sur la nomination du directeur exécutif, sur des changements des statuts, sur le prolongement du financement éventuel de l'entreprise commune et devrait avoir observateur au conseil d'administration.

Étant donné les nombreuses missions importantes du **conseil d'administration**, il convient de mieux balancer les représentations d'après les critères suivants: organismes publics, organisations intergouvernementales, secteur privé. Le droit de vote sera équilibré et pondéré en fonction de la participation financière.

Pour la nomination du **directeur exécutif**, la Commission, après consultation du représentant du Parlement européen, doit présenter au conseil d'administration une liste de trois candidats potentiels. Le mandat, valable cinq ans, est renouvelable pour une période maximale de trois ans.

### **Conclusions:**

- SESAR sera la première entreprise commune basée sur un partenariat public-privé (PPP) et créera dans ce sens un précédent.
- SESAR et GALILEO sont des projets jumeaux avec des objectifs et des retours financiers fixés à moyen et à long terme.
- SESAR et la législation ciel unique pourront garantir de nombreux emplois stables et cette opportunité est un autre argument en faveur de sa réalisation.

## OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Mr Giles Chichester  
Chairman  
Committee on Industry, Research and Energy  
BRUSSELS

Subject: Legal basis of the Proposal for a Council Regulation on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) (COM(2005)0602 – C6-0002/2006 – 2005/0235(CNS))<sup>1</sup>

Dear Mr Chairman,

By letter of 26 March 2006 you asked the Committee on Legal Affairs pursuant to Rule 35(2) to consider whether the legal basis of the above Commission proposal was valid and appropriate.

The Committee considered the above question at its meeting of 20 April 2006.

Your letter reads as follows:

"By this letter, I am seeking the opinion of your committee, pursuant to Rule 35 of the Rules of Procedure, concerning the appropriateness of the legal basis as proposed by the Commission for the above mentioned proposal on SESAR.

The ITRE rapporteur, Mrs Erna Hennicot-Schoepges, and the TRAN draftsman, Mr Philip Bradbourn, have discussed the appropriateness of the legal basis proposed, i.e. *TEC article 171* (consultation), and they dispute the choice of the Commission on two grounds; namely its *objective* and its *purpose*.

First, the proposal has a single objective: "*to ensure the modernisation of the European air traffic management system*" (Art.1 (2)). Yet this objective is the same as the one stipulated in Regulation (EC) N° 551 of 10 March 2004 on the organisation and use of the air space in the context of the Single European Sky<sup>2</sup>. However, the four regulations that constitute the Single European Sky have as legal basis the TEC article 80(2) (co-decision).

Both the SESAR proposal and the Airspace Regulation share a derivative aim of modernisation. This is the *restructuring* of the European airspace in order to accommodate air traffic flow more efficiently and cost-effectively. However, they do *not* share the same

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<sup>1</sup> Not yet published in the OJ.

<sup>2</sup> The Single European Sky is governed by four Regulations (EC): Nos. 549/2004 (the Framework Regulation); 550/2004 (the service provision Regulation); 551/2004 (the airspace Regulation) and 552/2004 (the interoperability Regulation).

procedural legal basis; the SESAR proposal is based on consultation but the Airspace regulation has been based on co-decision.

Second, the attainment of the overall objective is proposed to be accomplished by borrowing the *method* and the *means* from the proposal for the GALILEO programme on the implementation of the deployment and commercial operating phases (see COM (2004) 0477).

As regards the *method*, SESAR will be accomplished in these phases: Definition phase (2005-2007), Development phase (2008-2013) and Deployment phase (2014-2020). Yet the GALILEO programme entails the *same* three phases but at different time periods. However, SESAR will be decided by consultation and GALILEO be decided by co-decision.

As regards the *means*, SESAR will be financed by a three-party undertaking: EC budget, Eurocontrol and private sector. GALILEO is to be financed by the EC budget and the private sector. SESAR will be financed by the 7FP budget line (06.06 01) and the Trans-European transport network (06.03 01). Yet GALILEO's legal basis is based on the TENs (TEC article 156) and is a *co-decision* while SESAR's is a consultation.

The coordinators of the ITRE committee have unanimously expressed the view that the Committee on Legal Affairs should be consulted for the verification of the legal basis of the SESAR proposal. And the ITRE committee has reiterated the long standing position of the EP that Parliament's rights in the field of co-decision should not be endangered by risking to create a precedent by accepting SESAR's legal basis."

### Appraisal

#### *The relevant articles of the EC Treaty*

The article used in the proposal for a directive as the legal basis is Article 171:

#### *Article 171*

*The Community may set up joint undertakings or any other structure necessary for the efficient execution of Community research, technological development and demonstration programmes.*

It should be noted that the first paragraph of Article 172 provides as follows:

*"The Council, acting by qualified majority on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt the provisions referred to in Article 171."*

The article proposed as the legal basis by the ITRE committee is Article 80(2), which applies to the common transport policy:

## Article 80

1. *The provisions of this title shall apply to transport by rail, road and inland waterway.*
2. *The Council may, acting by a qualified majority, decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport.*

*The procedural provisions of Article 71 shall apply.*

The relevant Treaty articles relating to TENs (GALLILEO having been based on Article 156) are as follows:

## Article 155

1. *In order to achieve the objectives referred to in Article 154, the Community:*

*- shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest,*

*- shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation,*

*- may support projects of common interest supported by Member States, which are identified in the framework of the guidelines referred to in the first indent, particularly through feasibility studies, loan guarantees or interest-rate subsidies; the Community may also contribute, through the Cohesion Fund set up pursuant to Article 161, to the financing of specific projects in Member States in the area of transport infrastructure.*

*The Community's activities shall take into account the potential economic viability of the projects.*

2. *Member States shall, in liaison with the Commission, coordinate among themselves the policies pursued at national level which may have a significant impact on the achievement of the objectives referred to in Article 154. The Commission may, in close cooperation with the Member State, take any useful initiative to promote such coordination.*

3. *The Community may decide to cooperate with third countries to promote projects of mutual interest and to ensure the interoperability of networks.*

## Article 156

*The guidelines and other measures referred to in Article 155(1) shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.*

*Guidelines and projects of common interest which relate to the territory of a Member State shall require the approval of the Member State concerned.*

*General remarks on legal basis*

All Community acts must be founded upon a legal basis laid down in the Treaty (or in another

legal act which they are intended to implement). The legal basis defines the Community's competence *ratione materiae* and specifies how that competence is to be exercised, namely the legislative instrument(s) which may be used and the decision-making procedure.

In view of the consequences of the legal basis, its choice is of basic importance, particularly for Parliament, since it determines what say, if any, Parliament has in the legislative process. However, according to the Court of Justice the choice of legal basis is not a subjective one, but "must be based on objective factors which are amenable to judicial review"<sup>1</sup>, such as the aim and content of the measure in question<sup>2</sup>. Furthermore, the decisive factor should be the main object of a measure.<sup>3</sup> This means that Parliament's preference for codecision as opposed to consultation cannot override what appears from the analysis of the aim and content of the proposed measure.

According to the case-law of the Court of Justice, a general Treaty article constitutes a sufficient legal basis even though the measure in question also seeks, in a subordinate manner, to attain an aim sought by a specific Treaty article<sup>4</sup>.

### *Analysis*

The first question to be asked is what is the aim and content of the proposed measure. This can be ascertained by examining the recitals and provisions of the proposed regulation.

Recital (1) refers simply to the four regulations mentioned in ITRE's letter creating the single European sky.

Recital (2) describes the SESAR project to modernise air traffic control management in Europe as the "technological element of the single European Sky".

Recital (3) states that SESAR "aims to integrate and coordinate activities which were previously undertaken in a dispersed and uncoordinated manner in the Community".

Recitals (4), (5) and (6) explain that the definition phase of SESAR is already underway, being carried out by Eurocontrol and financed by the EC under the heading of trans-European networks and financed by Eurocontrol. The definition phase is to be followed by the development and deployment phases.

Recital (7) states how route charges can provide income to finance projects.

Recital (8) states that the EU will contribute to the development of space-based applications.

Recital (9) explains that by avoiding duplication of research and deployment activities, SESAR will not lead to an increase in air users' overall contribution to R&D.

Recital (10) explains that, following the Community's accession to Eurocontrol, a cooperation framework agreement has been signed for the implementation of the single European sky and for research and development in the field of air traffic control.

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<sup>1</sup> Case 45/86, *Commission v. Council* [1987] ECR 1439, para. 5.

<sup>2</sup> Case C-300/89, *Commission v. Council* [1991] ECR I-287, para. 10.

<sup>3</sup> Case C-377/98, *Netherlands v. European Parliament and Council* [2001] ECR I-7079, para. 27.

<sup>4</sup> Case C-377/98 *Netherlands v. European Parliament and Council* [2001] ECR I-7079, paras 27-28; Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paras 93-94.

Recital (11) states that there should be contributions from the private sector to the budget for the implementation phase of SESAR.

Recital (12) states that in view of the number of players involved and the financial and technical resources needed it is necessary to set a legal entity "capable of ensuring the coordinated management of the funds assigned to the SESAR project during its implementation phase".

Recitals (13) and (14) state that that entity should be regarded as being an international organisation for purposes of VAT and excise duty, whilst recital (14) proposes that it should be exempt from national tax other than VAT and excise duty and that its staff should be exempt from national income tax.

Recital (15) provides that since SESAR is a research and development project which justifies funding from the Community research and development framework programmes, it is 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)".

Recital (16) mentions that "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 network, foresees the possibility to finance research and development activities".

Recital (17) deals with the "main task" of the Joint Undertaking: "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".

Recital (18) deals with the Joint Undertaking's seat.

Recital (19) provides for representation within the Joint Undertaking of airspace users, given that they bear the route charges and hence make a financial contribution to R&D in the air traffic management sector.

Recitals (20), (21) and (22), respectively, deal with the statutes of the Joint Undertaking, comitology and the need to set it up before the end of the definition phase.

As for the enacting terms, Article 1 deals with the establishment of the Joint Undertaking. More specifically, paragraph 2 deals with its aim:

*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<sup>1</sup>. 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;

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<sup>1</sup> Emphasis supplied.

- 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;"

Article 2 deals with the legal status of the Joint Undertaking, Article 3 with its statutes, Article 4 with sources of funding and Article 5 with comitology. Article 6 contains an assessment clause and Article 7 is concerned with entry into force. The Annex sets out the Joint Undertaking's statutes.

### *Conclusion*

The assessment made by the rapporteur for the Industry Committee and the draftsman for the Transport Committee appears to be based on a misunderstanding. It is clear from the recitals and Article 1(2) that the aim of the proposal is *not* to ensure the "modernisation of the European air traffic management system", although it will be instrumental to that aim, but to set up a Joint Undertaking responsible for "federating research and development efforts in the Community". This is clear from Article 1(2) of the proposal and from the Joint Undertaking's tasks as set out therein (see above).

This also emerges from the recitals. Whereas recitals (1) to (11) provide the background to SESAR and set out its aims and the clarification that there should be no increase in air users' contribution to R&D, they are not reflected in substantive provisions. In contrast, the subsequent provisions make it clear that the objectives and purpose of the Joint Undertaking are to ensure the coordinated management of the funds assigned to the SESAR project during the implementation phase (recital (12)), to manage a public research programme of European interest (recital (13)), to enable progress to be made in the development of air traffic control technologies (recital (15)) and 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 (recital (16), which is described as the Joint Undertaking's "main task".

Although it is undeniable that the Joint Undertaking is desirable to "ensure the modernisation of the European air traffic management system", that is not the immediate aim of the proposed regulation to establish that Joint Undertaking. It may be contrasted with Regulation No 551/2004, referred to in the letter from the Chairman of the Industry Committee, which had as its objective and purpose the organisation and use of air space.

The main object of the proposal, within the meaning of the case-law, consists of establishing a joint undertaking for the efficient execution of Community research and technological development (see, *inter alia*, recital (9)), nothing more or less.

Consequently, the only legal basis possible is Article 171 (*The Community may set up joint undertakings or any other structure necessary for the efficient execution of Community research, technological development and demonstration programmes.*), since this is the only provision of the EC Treaty that provides for the setting up of joint undertakings for research and technological development. The fact that that provision provides only for consultation of

Parliament, rather than codecision, is irrelevant.

At its meeting of 20 April 2006 the Committee on Legal Affairs accordingly decided, unanimously<sup>1</sup> to advise you that Article 171 of the EC Treaty constitutes the appropriate legal basis.

Yours sincerely,

Giuseppe Gargani

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<sup>1</sup> The following were present for the vote Giuseppe Gargani (chairman), Andrzej Jan Szejna (vice-chairman), Katalin Lévai (vice-chairman), Diana Wallis (draftswoman), Maria Berger, Rosa Díez González, Adeline Hazan (for Nicola Zingaretti), Hans-Peter Mayer, Aloyzas Sakalas and Jaroslav Zvěřina.

20.9.2006

## **OPINION OF THE COMMITTEE ON TRANSPORT AND TOURISM**

for the Committee on Industry, Research and Energy

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

Draftsman(\*): Philip Bradbourn

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

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### **SHORT JUSTIFICATION**

#### **Commission proposal**

According to projections air traffic in Europe will more than double in the next 20 years, and even triple in some regions. The development of an adequate infrastructure for air transport has become a major challenge for Europe: The fast growth of air transport already during the last decades was not accompanied by a substantial modernisation of the air traffic control system.

With the 'single European sky' legislation, adopted in 2004, the organisation of air navigation services was radically reformed: Roles and responsibilities of supervisory authorities and service providers were clearly defined and cross border blocks of airspace were established. This implies a major reorganisation of the sector.

The Commission now has submitted a proposal on a new generation European air traffic management system ("SESAR") and the establishment of a Joint Undertaking. SESAR is the technological element of the single European sky.

The proposal aims at developing technologies, methods of organisation and industrial components that are capable of ensuring the safety of air transport in the next 20 years. SESAR is first and foremost a research and development project and intended to integrate and coordinate research and development activities. It will allow the air traffic control equipment in the European Union to be standardised. The Commission aims to pursue this goal in the framework of a public-private partnership combining resources for a joint objective and proposes to create a Joint Undertaking (Article 171 of the EC Treaty).

SESAR is planned in three phases:

1. The definition phase (2005 - 2007):

In this phase the plan for the modernisation of air traffic management in Europe is to be drawn up: The technological steps are to be taken and the priorities for modernisation as well as the corresponding timetables are to be defined. This phase will require a budget of €60 million, half of which shall be provided by the Community from the TEN-T budget. The other half shall come from Eurocontrol.

2. The development phase (2008 - 2013):

In this phase the technological bases for the new generation of systems will be established. This phase requires a funding of €300 million per year: €100 million of Community funds (this phase ends with the financial framework 2007-2013), €100 million from Eurocontrol and €100 million from the industry. The Community funds would come from the research and development framework programmes and from the trans-European networks.

3. The deployment phase (2014 - 2020): The deployment phase will see the large-scale installation of the new systems and the implementation of the related functions. In the deployment phase the industry will be fully responsible for the financing.

## **Remarks**

Your rapporteur in principle welcomes this Commission proposal. SESAR is a necessary component of the single European sky. However, several aspects of the draft Regulation as well as of the statutes require some clarification and redrafting.

Firstly, it has to be noted that industry has repeatedly expressed its commitment to SESAR as an integrated approach to the modernisation of the air traffic management system in Europe. In order to make SESAR a success, it must be ensured that all parties work closely together and that industry is appropriately involved in all phases. SESAR has to be an industry initiative and the private sector must consequently be enabled to acquire a sufficient number of voting rights in the administrative board. That is why your draftsman suggests reducing the number of voting rights for the Community: Its voting rights should be limited to 25% of the total number of votes. As to Eurocontrol, its role should be reconsidered: Eurocontrol should be a Member of the Administrative Board in a technical / advisory capacity only.

Secondly, on the question of financing the Commission envisages 1/3 Community funds, 1/3 Eurocontrol contributions and 1/3 from the industry in the development phase. Your rapporteur thinks public and private sector financing should be in equal measures during this particular phase and tables an amendment on this point. As for the deployment phase the Commission concept is plausible - this phase is to be financed completely by the industry.

The idea of an additional levy on air navigation charges should be dropped. Your rapporteur feels that user charges are sufficiently high. Via Eurocontrol funds user charges will already contribute to the financing of SESAR. On the basis of a successful definition phase, it should be possible to raise the necessary means from the private and public sectors without creating

yet another levy.

It should be added that there are concerns about the legal base of this proposal: The Commission has chosen Article 171 of the Treaty (consultation procedure), because the legislative proposal concerns the establishment of a Joint Undertaking. On the other hand, the proposal shall ensure the modernisation of the European air traffic management system and is as such closely linked to the single European sky legislation, which was under co-decision. Whereas Parliament's Committee on Legal Affairs (JURI) did not see sufficient grounds for changing the legal base to co-decision, your rapporteur intends to further scrutinise this question in close contact with Mrs Hennicot-Schoepges, rapporteur of the lead Committee on Industry, Research and Energy (ITRE).

Finally your rapporteur suggests some amendments on the appointment of the Executive Director, the possibility of convening extraordinary meetings of the Administrative Board and on the definition of a majority in the Board. Given the importance of the SESAR project, it is also proposed to strengthen the role of the European Parliament by explicitly requesting progress reports from the European Commission every three years.

## AMENDMENTS

The Committee on Transport and Tourism calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission <sup>1</sup>	Amendments by Parliament
<b>Amendment 1</b> Citation 1	
- Having regard to the Treaty establishing the European Community, and in particular <b>Article 171</b> thereof,	- Having regard to the Treaty establishing the European Community, and in particular <b>Articles 171 and 173</b> thereof,
<i>Justification</i>	
<i>In line with the applicable case-law, especially the judgments of 26 March 1987 (Case 45/86, Commission v. Council, ECR 1493), 11 February 1991 (Case 300/89, Commission v. Council, ECR I-2867) and 26 April 1996 (Case C-271/94, Parliament v. Council, ECR I-1689), this amendment aims to enable Parliament to be more fully involved in the creation, development and establishment of the Joint Undertaking.</i>	
<b>Amendment 2</b> Recital 3	
(3) The SESAR project aims to integrate and coordinate activities which were previously undertaken in a dispersed and uncoordinated manner in the Community.	(3) The SESAR project aims to integrate and coordinate activities which were previously undertaken in a dispersed and uncoordinated manner in the Community, <b>including the most remote and outlying regions thereof, as referred to in Article 299(2) of the Treaty.</b>
<i>Justification</i>	
<i>This amendment supplies legal clarification in line with the Treaty.</i>	
<b>Amendment 3</b> Recital 7	
<b>(7) In accordance with Article 15(3) of</b>	<b>deleted</b>

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<sup>1</sup> Not yet published in OJ.

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

*Justification*

*An additional levy on air navigation charges must be avoided. User charges will already contribute to the programme via Eurocontrol. A successful definition phase should deliver a clear business case triggering the necessary private investment (and public funding).*

Amendment 4  
Recital 11

(11) The public budget for the implementation phase of the SESAR project should be supplemented by contributions from the private sector.

(11) The public budget for the implementation phase of the SESAR project should be supplemented by contributions from the private sector. ***During the development phase (2008-2013) these contributions should amount to 50% of the budget.***

*Justification*

*SESAR should allow industry to fully bring in its expertise. But if SESAR is to be an industry-led initiative, this has also to be reflected in the financing of the development phase.*

Amendment 5  
Recital 14

(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.***

(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 ***in line with the conditions of employment of other servants of the European Communities.***

*Justification*

*For reasons of legal and social consistency, it is important to clarify that wage levels should be in line with the 'Rules applicable to other servants of the European Communities'.*

Amendment 6  
Recital 15

(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.

(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 **Articles 171 and 173** 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.

*Justification*

*This is in line with the twofold legal basis proposed, i.e. Articles 171 and 173 of the EC Treaty.*

Amendment 7  
Recital 17 a (new)

***(17a) It is desirable for the private sector to be appropriately involved in all phases, especially in the development phase (2008-2013), so as to ensure the liability of private-sector participants during the deployment phase (2014-2020).***

*Justification*

*The industry can have some problems related their liability when install a new system if they are not appropriately involved in the development of the technological bases.*

Amendment 8  
Article 2, paragraph 3

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.***

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 ***shall be*** paid to staff of the Joint Undertaking ***pursuant to the conditions of employment***

*of other servants of the European Communities.*

*Justification*

*For reasons of legal and social consistency, it is important to clarify that wage levels should be in line with the 'Rules applicable to other servants of the European Communities'.*

Amendment 9

Article 4, paragraph 1, point (b)

***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.*** ***deleted***

*Justification*

*An additional levy on air navigation charges must be avoided. User charges will already contribute to the programme via Eurocontrol. A successful definition phase should deliver a clear business case triggering the necessary private investment (and public funding).*

Amendment 10

Article 4, paragraph 2

2. The Community's contribution can be paid from the budget of the research and technological development ***and the trans-European networks framework programmes.***

2. The Community's contribution can be paid from the budget of the research and technological development.

*Justification*

*The Trans-European Transport networks form a major tool for achieving the Lisbon Strategy and the objectives of the White Paper on Transport Policy. The agreed budget for TEN-T is already not sufficient to implement all existing priority projects.*

Amendment 11

Article 6

***Every three years*** from the start of the

***Pursuant to Article 173 of the Treaty,*** from

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.

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. ***The Commission shall submit to the European Parliament and the Council reports on the results of these assessments and on the conclusions to be drawn therefrom.***

#### *Justification*

*It must be ensured that Parliament and the Council are kept fully and constantly informed of the results and working methods of the Joint Undertaking.*

*The SESAR Joint Undertaking is a long-term project for which regular assessments are indispensable in order to identify shortcomings and delays at the earliest possible stage. Parliament's involvement in this process should be made clear.*

#### Amendment 12

Annex, article 3, paragraph 1, point (f a) (new)

***(fa) a representative of the relevant scientific institutions or scientific community, appointed by the representative organisation at European level.***

#### *Justification*

*This amendment takes account of the obvious need for scientific scrutiny.*

#### Amendment 13

Annex, article 4, paragraph 2

2. ***The*** members of the Joint Undertaking shall have a number of votes in proportion to their contribution to the funds of the Joint Undertaking. However, the Community and Eurocontrol shall each have at least 30% of the total number of votes ***and*** the air passengers' representative referred to in point (b) of Article 3(1) shall have at least 10% of the total number of votes.

2. ***Pursuant to Article 4(1), 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, the air passengers' representative referred to in point (b) of Article 3(1) shall have at least 10% of the total number of votes ***and the navigation service providers' representative referred to***

***in point (c) of Article 3(1) shall also have at least 10% of the total number of votes.***

*Justification*

*This provides legal clarification.*

*In view of the important role played by navigation service providers' representatives it is important that they should have at least 10% of the total number of votes.*

Amendment 14

Annex, article 4, paragraph 5 a (new)

***5a. Decisions concerning the adoption of the ATM Master Plan and any relevant amendments shall require the favourable vote of all the founder members. Notwithstanding the provisions of paragraph 1, such decisions may not be taken where the representatives referred to in Article 3(1) (c) to (fa) unanimously express disagreement.***

*Justification*

*This amendment concerns the need to ensure consistent decision-making when proposing modifications to the ATM Master Plan.*

Amendment 15

Annex, article 5, paragraph 1, point (c)

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

(c) appointing the Executive Director ***pursuant to Article 6(1)*** and approving the organisation chart;

*Justification*

*This is a legal clarification consistent with the amendments tabled.*

Amendment 16

Annex, article 5, paragraph 2, subparagraph 1

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

The Administrative Board shall meet at least twice a year. Extraordinary meetings shall be convened *either* at the request of one-third of the members of the Administrative Board representing at least 30% of the

voting rights, *at the request of the Community* or of the Executive Director.

voting rights or *at the request* of the Executive Director.

*Justification*

*The possibility of convening extraordinary meetings at request of one-third of the members of the Board should be sufficient for the Community. There should be no need for an additional proviso.*

Amendment 17

Annex, article 6, paragraph 1

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

1. The Executive Director shall be 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 Commission, **based on the results of the public recruitment competition**. He shall perform his duties with complete independence.

*Justification*

*The aim of this amendment is to reinforce the total openness and transparency of the appointment process, which should be based on the principle of appointing the best candidate after considering the merits of all.*

Amendment 18

Annex, article 11, paragraph 3, subparagraph 2

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

In the case of undertakings, subscribing individually or collectively, which may be regarded as small or medium-sized enterprises within the meaning of the Commission recommendation of 6 May 2003 concerning the definition of small and medium-sized enterprises, this amount shall be reduced to EUR 250 000 regardless of when they become members. **Founder members shall have the option of staggering this payment over several instalments, over a period to be agreed.**

*Justification*

*SMEs do not have the resources to pay the sum of EUR 250 000 all at once: should they be*

*obliged to do so, they will ask for a loan on the financial markets. As an SME's credit rating is generally lower than that of a big company, it is important to enable SMEs' maximum contribution to be divided into several instalments, thus increasing the chances of external funding, reducing the short-term financial burden and enhancing the probability of long-term returns.*

Amendment 19  
Annex, article 11, paragraph 6

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

*Justification*

*An additional levy on air navigation charges must be avoided. User charges will already contribute to the programme via Eurocontrol. A successful definition phase should deliver a clear business case triggering the necessary private investment (and public funding).*

## PROCEDURE

<b>Title</b>	Proposal for a Council regulation on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR)
<b>References</b>	COM(2005)0602 – C6-0002/2006 – 2006/0235(CNS)]
<b>Committee responsible</b>	ITRE
<b>Opinion by</b> Date announced in plenary	TRAN 17.1.2006
<b>Enhanced cooperation – date announced in plenary</b>	18.5.2006
<b>Drafts(wo)man</b> Date appointed	Philip Bradbourn 6.2.2006
<b>Previous drafts(wo)man</b>	
<b>Discussed in committee</b>	20.6.2006      13.9.2006
<b>Date adopted</b>	13.9.2006
<b>Result of final vote</b>	+:    37 -:    0 0:    1
<b>Members present for the final vote</b>	Gabriele Albertini, Margrete Auken, Philip Bradbourn, Michael Cramer, Arūnas Degutis, Christine De Veyrac, Petr Duchoň, Saïd El Khadraoui, Robert Evans, Emanuel Jardim Fernandes, Luis de Grandes Pascual, Mathieu Grosch, Ewa Hedkvist Petersen, Jeanine Hennis-Plasschaert, Stanisław Jałowiecki, Georg Jarzembowski, Dieter-Lebrecht Koch, Jörg Leichtfried, Fernand Le Rachinel, Bogusław Liberadzki, Eva Lichtenberger, Erik Meijer, Robert Navarro, Janusz Onyszkiewicz, Josu Ortuondo Larrea, Willi Piecyk, Luís Queiró, Reinhard Rack, Renate Sommer, Dirk Sterckx, Ulrich Stockmann, Marta Vincenzi
<b>Substitute(s) present for the final vote</b>	Zsolt László Becsey, Guy Bono, Helmuth Markov, Willem Schuth, Luis Yañez-Barnuevo García
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Brian Simpson
<b>Comments (available in one language only)</b>	...

## PROCEDURE

<b>Title</b>	Proposal for a Council regulation on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR)			
<b>References</b>	COM(2005)0602 – C6-0002/2006 – 2005/0235(CNS)			
<b>Date of consulting Parliament</b>	4.1.2006			
<b>Committee responsible</b> Date announced in plenary	ITRE 17.1.2006			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	BUDG 17.1.2006	TRAN 17.1.2006	JURI 17.1.2006	
<b>Not delivering opinion(s)</b> Date of decision	BUDG 23.3.2006			
<b>Enhanced cooperation</b> Date announced in plenary	TRAN 18.5.2006			
<b>Rapporteur(s)</b> Date appointed	Erna Hennicot-Schoepges 26.1.2006	Philip Bradbourn 6.2.2006		
<b>Previous rapporteur(s)</b>				
<b>Simplified procedure – date of decision</b>				
<b>Legal basis disputed</b> Date of JURI opinion			JURI 20.4.2006	/
<b>Financial endowment amended</b> Date of BUDG opinion				
<b>Parliament to consult European Economic and Social Committee – date decided in plenary</b>				
<b>Parliament to consult Committee of the Regions – date decided in plenary</b>				
<b>Discussed in committee</b>	19.4.2006	30.5.2006	11.9.2006	9.10.2006
<b>Date adopted</b>	23.10.2006			
<b>Result of final vote</b>	+: 38 -: 0 0: 0			
<b>Members present for the final vote</b>	John Attard-Montalto, Jan Březina, Jerzy Buzek, Joan Calabuig Rull, Pilar del Castillo Vera, Jorgo Chatzimarkakis, Giles Chichester, Lena Ek, Nicole Fontaine, Norbert Glante, Umberto Guidoni, Andrés Gyürk, Fiona Hall, David Hammerstein Mintz, Rebecca Harms, Erna Hennicot-Schoepges, Ján Hudacký, Romana Jordan Cizelj, Pia Elda Locatelli, Eluned Morgan, Reino Paasilinna, Miloslav Ransdorf, Vladimír Remek, Herbert Reul, Teresa Riera Madurell, Paul Rübig, Andres Tarand, Britta Thomsen, Patrizia Toia, Catherine Trautmann, Claude Turmes, Nikolaos Vakalis, Alejo Vidal-Quadras, Dominique Vlasto			
<b>Substitute(s) present for the final vote</b>	Den Dover, Jan Christian Ehler, Lambert van Nistelrooij, Vittorio Prodi			
<b>Substitute(s) under Rule 178(2) present for the final vote</b>				
<b>Date tabled</b>	27.10.2006			

<b>Comments (available in one language only)</b>	...
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