

ICB/11/2
22nd June 2006

INDUSTRY CONSULTATION BODY

**Report by the ICB SESAR Sub-group on the
DRAFT REGULATION ESTABLISHING A JOINT UNDERTAKING FOR SESAR**

This paper summarises the activities of the ICB SESAR Sub-group between ICB/10 and ICB/11 regarding the draft regulation establishing a SESAR JU.

During this time the draft regulation has been subject to modification by the Aviation Working Group, the COREPER process and the Council of Ministers of Transport which approved a 'general approach'.

This paper concludes with the proposed ICB position on the general approach and recommends further lobbying activities.

1 Purpose

This paper summarises the activities of the ICB SESAR Sub-group between ICB/10 and ICB/11 regarding the draft regulation establishing a SESAR JU. During this time the draft regulation has been subject to modification by the Aviation Working Group, the COREPER process and the Council of Ministers of Transport which approved a 'general approach' on the 9th June.

This paper concludes with the proposed ICB position on the general approach and recommends further lobbying activities.

2 Overview of activities

The ICB SESAR Sub-group met on the 8th May to discuss the draft regulation dated 24th April 2006. The key concerns were:

- **Scope of JU:** Scope of the JU must either include or support implementation. The meeting was concerned that the legal scope of the JU would always be limited to R&D if the legal basis was not extended (e.g. Article 171 of the Treaty limits a JU to 'development' activities). The agreed position was that the legal basis should be modified; if this was not possible explicit statements on how implementation would be achieved should be added.
- **Reserved Rights:** Reserved rights should protect the interests of stakeholders bearing the risk and cost of implementation. The meeting agreed that the reserved rights should be exercised by the 'Network users' (defined as the airspace users, ANSPs and airports) but co-ordinated with the professional staff associations on issues relating to safety and Human Factors. The professional staff associations undertook to liaise with their individual associations on this proposal. The meeting agreed that reserved rights were required for decisions relating to adoption and modification of the plan; implementation of the plan and adoption of the work programmes.
- **Accountability for execution:** The meeting agreed that accountability for the execution of the plan should rest with the JU. The meeting found that the regulation contained a presumption that the role of Eurocontrol would encompass "implementing the plan". The meeting agreed that the work of the JU should be achieved by contract with the most suitable entity and that the regulation should contain less detail on the role of Eurocontrol.
- **Role of Single Sky Committee:** The meeting was concerned that the role of the Single Sky Committee (SSC) should not lead to co-management. The current draft was welcomed but it was felt that co-management could still re-surface.
- **Definition of stakeholders:** The meeting agreed that the Research and Development establishments should not be considered as a stakeholder in this regard and should not have voting rights on the Administrative Board.
- **Intellectual Property rights:** The meeting agreed that further work was required on the IPR section, in particular to protect background information.

The meeting agreed that these points should be conveyed, in a letter and associated paper to the Chair of the Council Aviation Working Group (AWG) prior to the AWG meeting on the 18th May. The ICB SESAR Group also met with representatives of the Commission and Eurocontrol on the 8th May. The meeting with the Commission was constructive and supported the development of the ICB position. The meeting with Eurocontrol was inconclusive; it was "agreed to disagree" on the respective roles within the JU.

The Chairman and AEA met with the Chair of the AWG on the 15th May. This meeting led to a number of ICB positions being incorporated in the draft regulation.

The ICB sub-group obtained the output of the AWG on the 18th May which was largely consistent with the meeting on the 15th May with some ICB concerns remained unaddressed. The sub-group wrote a further letter on the 22nd May to the Chair of the AWG reinforcing concerns over the provision of reserved rights and the nature of decisions for which the SSC would apply the comitology process to influence the COREPER process.

The COREPER meeting on the 24th May was unable to agree a final text and left several issues open for the Council of Ministers of Transport. In turn, the Council of Transport Ministers meeting on the 8th and 9th June reached agreement of a 'general approach' broadly in line with the COREPER process.

Due to the lobbying actions of the ICB, a number of the ICB's original concerns are addressed by the general approach - particularly over scope of the JU, accountability including assurances that the JU would be responsible for the execution of the ATM Masterplan, the revised role of Eurocontrol and IPR issues. However, the following concerns were not addressed:

- **Provision of reserved rights:** The amended regulation did not include the work programme in the list of decisions for which industry would have reserved rights. The ICB sub-group members considered the annual work programme to be a key document in setting the content and pace of implementation programmes that the industry will have to bear all the risk and the full cost. The original position was therefore that approval of the work programme should be included in the in the decisions for which the reserved rights can apply. In the amended regulation the application of the reserved rights would require agreement of the Network Users and the professional staff associations. The original position adopted was that this should be limited to the Network Users, with other ICB stakeholders included by co-ordination method.
- **Role of Single Sky Committee:** In the amended regulation the SSC could co-manage the JU through a process of comitology. It is important to the success of the JU that day to day operations are free from political control. The role of the SSC should be limited to those decisions which protect the use of public money.

3 Proposed ICB Position on General Approach

The ICB Sub-group met on the 19th June to discuss the outcome of the general approach. The following positions were adopted and will be used in on-going lobbying activities.

Reserved Rights

ASD requested that the position regarding the reserved rights on the adoption of the work programmes was dropped. ASD argue that the work programme was important in deciding how the JU funds would be used and should be decided upon using the normal voting procedures in line with the "he who pays decides" principle; it could harm the financial case for joining (financing) the JU if this principle was not upheld.

Airspace Users argued that control of the work programme was important in controlling how the ATM Masterplan would be implemented including the timetable.

It was agreed that the ICB position would be to include the work programme in the reserved rights but to add the supply industry to the members exercising the veto.

It was also agreed that the ICB position would include the professional staff associations on the members exercising the reserved rights. The co-ordination of the common position between the five representatives will be important.

Role of Single Sky Committee

The sub-group agreed that the SSC should not apply comitology to the decisions relating to significant modifications of the ATM Masterplan. The ICB position is that technical and operational decisions should not be subject to political influence.

Voting Rights

During the COREPER process, the UK had proposed that ANSPs are also provided with 10% of the vote as is already the case for the Airspace Users. These votes would be in addition to the Airspace User's votes. As this is in line with the initial ICB position, the meeting agreed that it would be supported by the ICB.

Financial contribution by industry

The conditions for financial contribution by industry will be discussed further based on the outcome of the final text of the regulation.

4 Proposed Lobbying Activities

Lobbying should be directed at the European Parliament and in particular the TRAN and ITRE groups. It was agreed to request a working meeting with key members of TRAN and ITRE in early September to discuss the ICB's position.

The ICB sub-group also agreed that continued lobbying was required at a national level. Associations should contact national members to achieve this.

5 Requested Action

The ICB is requested to:

- Endorse the proposed position on the general approach defined in Section 3.
- Support the lobbying actions in Section 4, and in particular endorse the request for a joint meeting with the European Parliament.