



**Principles governing the
accession and participation
of the members of the SESAR Joint
Undertaking**

- SESAR Research and Innovation Programme 2020 -

Preamble

The SESAR Joint Undertaking ("SJU") was created under Article 187 of the Treaty on the Functioning of the European Union by Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR), to which the SJU *Statutes* are annexed, and amended by Council Regulation (EC) 1361/2008 of 16 December 2008 and Council Regulation (EU) No 721/2014 of 16 June 2014 amending Regulation (EC) No 219/2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) as regards the extension of the Joint Undertaking until 2024. The SJU has been established to answer the need for the rationalisation of activities and efforts made by all the different actors involved in the *Programme* for the benefit of all the airspace users for the initial period of up to 31 December 2016¹. The aim of the SJU is to ensure the modernisation of the European air traffic management system by coordinating and concentrating all relevant research and development efforts in the Union. It shall, *inter alia*, be responsible for the execution of the *ATM Master Plan*.

Whereas Council Regulation (EC) 1361/2008 *inter alia* awarded to the SJU the status of an EU body, Council Regulation (EU) 721/2014 ensures the legal extension of the SJU until 2024 in order to reflect the duration of the Union's 2014-2020 financial framework and allowing 4 additional years for completion of the SJU's Work Programme and the closing of projects that would be initiated by the end of that financial framework.

The SJU has two *Founding Members*: the European Union, represented by the European Commission, and EUROCONTROL, represented by its Agency. In order to achieve its objectives and mobilise the necessary experience and expertise the SJU is conceived to establish a public-private partnership, within the meaning of Regulation (EU) No 1291/2013, with membership also open to any other public or private entity including those from non-EU countries.

Under Regulation (EU) No 1291/2013, public private partnerships should be based on a long-term commitment, including a balanced contribution from all partners, be accountable for the achievement of their objectives and be aligned with the Union's strategic goals relating to research, development and innovation. The governance and functioning of those partnerships should be open, transparent, effective and efficient and give the opportunity to a wide range of stakeholders active in their specific areas to participate. Union involvement in these partnerships can take the form of financial contributions to joint undertakings established on the basis of Article 187 of the Treaty under Decision No 1982/2006/EC.

As the SJU is a body set up under the TFEU within the meaning of Article 208 of the Financial Regulation², it is therefore subject to the provisions applicable to such bodies. The SJU's financial rules are based on the financial rules applicable to Union bodies. Any principles or rules governing the participation of *Members* or *Third parties* in the SJU shall be compliant with the SJU's financial rules as well as any other relevant rules and regulations approved by its Administrative Board.

In accordance with Article 5 of the *Statutes*, the principles and rules included in this decision, and any modifications to them, shall be adopted by the Administrative Board. The present principles modified in view of the SESAR 2020, once adopted, shall replace the principles adopted by the Administrative Board on 1 December 2008 while the latter remain applicable for the Programme ending in 2016.

1. Purpose of this document

¹ Or until eight years after the endorsement by the Council of the European ATM Master Plan, whichever is the earlier, in accordance with Art. 1.2 of Council Regulation (EC) No 219/2007.

² Regulation (EU, EURATOM) No 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002.

The purpose of this document is to define, without prejudice to the basic acts mentioned in the Preamble, the principles for establishing the rules and procedures that shall govern the accession of the entities defined in Article 1.2 of the *Statutes* and the participation of *Members* in the SJU. These principles are based on the rules of *Horizon 2020*, taking into account the particular characteristics of the SJU as a public-private partnership. Specific agreements, defined in Articles 1.3 and 9 of the *Statutes*, between the SJU and its *Members* shall be established on the basis of these principles.

The provisions of this document shall be completed by detailed implementing rules and procedures that shall be defined in the *Agreements* or other specific documents approved by the Administrative Board to serve the operational needs of the *Programme*. All related documents (Membership Agreements, Multilateral Framework Agreement, technical annexes, the SJU annual and multi-annual work programme, etc) will comply with these principles.

These principles and any related implementing rules or procedures adopted by the SJU shall ensure a sound financial management of the SJU. In particular they shall allow the SJU to provide the required reporting on its activities to the European Parliament, to the Council of the European Union, to Member States, its Founding Members and to its auditing bodies.

2. Definitions

Where in the document terms are written in italics, these terms shall have the meaning set forth in this section.

Access Right(s) means non-exclusive licences and user rights to *Foreground* or *Background* which shall not include the right to sublicense unless otherwise agreed upon in the Multilateral Framework Agreement.

Affiliate(s) means any legal entity that:

- is under the direct or indirect control of a *Member*, or
- is under the same direct or indirect control as the *Member*, or
- directly or indirectly controls a *Member*.

'Control' may take any of the following forms:

- a) the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity or
- b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.

However, the following relationships between legal entities do not constitute control relationships:

- a) the same public investment corporation, institutional investor or venture-capital company has a direct or indirect holding of more than 50% of the nominal value of the issued share capital or a majority of voting rights of the shareholders or associates;
- b) the legal entities concerned are owned or supervised by the same public body.

Affiliate is a *linked Third Party*.

Agreement(s) means a Membership Agreement and/or the Multilateral Framework Agreement together with their Schedules and Annexes.

ATM Master Plan means the ATM Master Plan (European Air Traffic Management Master Plan) referred to in Regulation 219/2007.

<i>Associate Partner(s)</i>	Organisation bound to a Member in accordance with the decision of the Administrative Board ADB(D) 02(2010) on "Associate Partners of an SJU Member".
<i>Background</i>	means the <i>Background</i> Information and Background IPR which is held by a Member and/or its <i>Affiliate</i> or/and <i>linked Third Party</i> prior to the Effective Date as described in the Technical Schedules of the Multilateral Framework Agreement. " <i>Background</i> Information" means any Information which is owned or controlled by a Member on the effective date of its Membership to the SJU, or in respect of which ownership or control is acquired by a Member as a result of activities outside the framework of the <i>Programme</i> and of the activities performed under the <i>Programme</i> . " <i>Background IPR</i> " means any <i>IPRs</i> which are owned or controlled by a Member on the Effective Date of its Membership to the SJU, or in respect of which ownership or control is acquired during the performance of the activities under the <i>Programme</i> and/or of activities outside the framework of the <i>Programme</i> .
<i>Candidate Member</i>	means any public/private undertaking or entity interested in becoming a <i>Member</i> of or wishing to confirm its membership to the SJU and pre-selected for accession to SJU membership.
<i>Deliverable(s)</i>	means any result of a <i>Project</i> identified in the <i>Agreements</i> and required to be delivered to the SJU.
<i>Development Phase</i>	means the second phase of the SESAR Project as defined in Regulation (EC) No 219/2007.
<i>Dissemination</i>	means the disclosure of <i>Foreground</i> by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of <i>Foreground</i> in any medium.
<i>Foreground</i>	means <i>Foreground</i> information and <i>Foreground IPR</i> and includes, without limitation, systems, prototypes, material and equipment. " <i>Foreground</i> Information" means any Information that is generated as a result of the activities conducted within the framework of the <i>Programme</i> . " <i>Foreground IPR</i> " means any intellectual property rights that are generated as a result of the activities conducted within the framework of the <i>Programme</i> .
<i>Gross In-Kind Contribution</i>	means the actual in kind contribution of a selected Member to the SJU, taking into consideration its actual direct and indirect costs as well as overhead.
<i>Horizon 2020</i>	means the Framework Programme for Research and Innovation (2014-2020) that determines the framework governing Union support to research and innovation activities as established by Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013; Horizon 2020 is the successor programme of FP7 - Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013).
<i>Horizon 2020 rules</i>	refers mainly to the Regulation (EU) No 1291/2013 and Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013, but also any other applicable rules to <i>Horizon 2020</i> .

<i>Intellectual Property Rights (IPR)</i>	means any intellectual property rights, including patents, utility models and utility certificates, industrial design rights, copyrights, trade secrets, database rights, topographies of semiconductor products' rights, as well as any registrations, applications, divisions, continuations, re-examinations, renewals or reissues of any of the foregoing, excluding trademarks and trade names.
<i>Linked Third Party</i>	means <u>an Affiliate or</u> any legal entity which has a legal link to the Member, implying collaboration that is not limited to the <i>Programme</i> .
<i>Member(s)</i>	means private or public entities referred to in Article 1(2) of the <i>Statutes</i> that have signed a membership agreement with the SJU and EUROCONTROL.
<i>Need or Needed</i>	means "technically essential" for the implementation of the activities under the <i>Programme</i> and/or in respect of use of <i>Background</i> and / or <i>Foreground</i> and, where Intellectual Property Rights are concerned, shall mean that those Intellectual Property Rights would be infringed if the <i>Access Rights</i> were not granted.
<i>Net Contribution</i>	means the difference between the <i>Gross In Kind Contribution</i> , to which the cash contribution to the <i>Operational expenditure of the SJU</i> shall be added, and the co-financing provided by the SJU.
<i>Operational expenditure (of the SJU)</i>	means staff costs, running expenditure, cost for technical facilities and costs for capital expenditure incurred by the SJU.
<i>Programme</i>	means the work programme defining the <i>Tasks</i> of the <i>SESAR Development Phase</i> , in accordance with the <i>Statutes</i> and the description of work approved by the Administrative Board, and its subsequent amendments, included in an <i>Agreement</i> .
<i>Project(s)</i>	means a temporary research and/or development activity with a start date, specific goals and conditions, defined responsibilities, a budget, a schedule, a fixed end date and multiple parties involved. A <i>Project</i> must be connected to a direct benefit, particularly in terms of performance improvement, be associated with milestones and make clear reference to the ATM Master Plan.
<i>Proposals for Standards and Norms</i>	means those results of the Development phase which shall be used for defining amongst other, uniform technical and/or operational Specifications for engineering or technical criteria, configurations, materials, equipments, methods, procedures and practices, and aim ultimately at ensuring interoperability of air traffic management systems in Europe and at enhancing air traffic management capabilities in Europe (such as safety, capacity, security, environment), which may become compulsory upon approval and adoption of the duly empowered authority.
<i>Research organisation(s)</i>	Means a legal entity established as a non-profit organisation which carries out research or technological development as one of its main objectives.
<i>SJU Foreground</i>	means: <ul style="list-style-type: none"> i. any tangible and intangible asset fully funded with SJU Resources and/or transferred to the SJU for the implementation of the <i>Programme</i>, ii. <i>Foreground</i> consisting in common specifications, validation reports and, in

view of future standardisation, proposals for standards and norms, including the related preparatory documents, identified in detail in each *Project's* Technical Schedules and/or in accordance with procedures and guidelines to be established by the SJU Administrative Board and transferred to the SJU by the Member having generated it.

<i>SME(s)</i>	Means micro-, small- and medium-sized enterprises within the meaning of Recommendation 2003/361/EC of 6.05.2003.
<i>Specification(s)</i>	means the necessary details, approved by the SJU, on the specific operational and technical requirements for repeated or continuous application with which compliance is not compulsory.
<i>Statutes</i>	means the Statutes of the SESAR Joint Undertaking annexed to Regulation (EC) 219/2007.
<i>Subcontractor</i>	means any <i>Third Party</i> engaged by a Member to carry out any of that <i>Member's</i> <i>Tasks</i> in relation to a <i>Project</i> .
<i>Task</i>	means activities in a <i>Project</i> as described in the Technical Schedules of the Multilateral Framework Agreement.
<i>Third Party</i>	means any entity that is not a <i>Founding Member</i> , a <i>Member</i> , an <i>Affiliate</i> , a <i>linked Third Party</i> , a party to or an owner of a Consortium Member.
<i>Validation Report</i>	means a <i>Deliverable</i> defined in the Agreements that contributes to the validation of operational threads ensuring overall consistency with the <i>Programme</i> .
<i>Voting Rights</i>	means the number of votes allocated to the SJU Member in the Administrative Board, which are proportional to its <i>Net Contribution</i> to the <i>Programme</i> and specified in the <i>Agreements</i> .

3. Accession of members

The SJU shall promote and facilitate the widest participation of relevant stakeholders in the development phase of SESAR. For this purpose, forms of participation other than membership shall be explored by the SJU.

In compliance with Articles 1 and 5.1(d) of the *Statutes*, the accession of a Member, which includes the possibility for present Members to continue with their engagement into the SJU until 2024 confirming their membership, shall require the prior acceptance of the application by the Administrative Board which shall then authorise the Executive Director to negotiate the conditions of accession. On the basis of the results of the evaluation of the *Candidate Member's* offers and of the negotiation of the conditions of accession, the Board shall decide on the accession of the new and current *Members* and on the related *Agreements*.

The accession of a *Member* contributing to the *Programme* shall be subject to its unconditional acceptance of the principles contained in this decision and of any other relevant rules or regulations adopted by the Administrative Board and shall adhere, where appropriate, to any existing *Agreements* defined below.

The selection of the *Candidate Members* shall be established respecting the principles of transparency and equal treatment ensuring the most effective participation to the SJU for the achievement of the *Programme*.

On the basis of the needs of the *Programme*, the SJU may issue calls for the selection of new *Members* to implement the *Programme*. The SJU, may however consider spontaneous applications for accession. The SJU shall publish the rules governing the procedure for the submission of proposals, as well as the related evaluation, selection and award procedures, which shall comply with the *Statutes* and shall be in line with *Horizon 2020* rules. The SJU shall verify the compliance of applications for membership with the criteria set out in Article 4 of the *Statutes* and the legal status and financial capacity of the *Candidate Members*.

In evaluating proposal for accession to SJU membership, the SJU shall, in particular, take into account the following elements:

- Documented knowledge and experience with air traffic management, and/or with the manufacture of equipment and/or services for use in air traffic management.
- The quality and level of contribution that the *Candidate Member* can be expected to give to the execution of *ATM Master Plan* and the *Candidate Member* 's experience and the added value of the contribution for the benefit of the *Programme*.
- The financial solidity of the *Candidate Member*. The *Candidate Members* will have to prove their long term capacity to co-finance the activities they propose as contribution to the SJU and to mobilise all the necessary resources.
- Capacity to manage, coordinate and carry out large scale research, development and validation projects involving multiple participants.
- Commitment to provide a technical (in kind) and financial (cash) contributions to the SJU and readiness of the *Candidate Member* to conclude the *Agreements*.
- Participation of wide range of stakeholders from different areas of the ATM sector in Europe and in particular of *SMEs* and research organisations.
- Contribution to the rationalisation of research, development and validation activities, including the optimal use of existing developments and enhancing interoperability of the ATM system.
- Compliance with the principles for participation of entities from third countries established in section 4 below.
- The existence of potential conflicts of interest which may affect their quality as *Member* of the SJU.

Although there is not an established maximum number of members which can join the SJU, a significant expansion in membership could affect the efficient running of its governance. For this reason, the SJU shall encourage the participation of groupings or consortia of stakeholders.

4. Accession of *Members* from non-EU countries

Entities covered by Article 10(1) of Regulation (EU) no 1290/2013³ are eligible for funding.

The participation in the SJU of other entities established in countries which are not members of the European Union shall aim at creating opportunities for European industry in terms of development of European know-how and technological partnerships and strengthening the European voice in standardisation bodies, such as ICAO to ensure the achievement of global interoperability.

The participation of entities from non-EU countries (hereafter referred to as third country entities) will follow the applicable *Horizon 2020* rules and, on a subsidiary basis, Commission Communication of 14 September 2012 entitled "Enhancing and focusing EU international cooperation in research and innovation: a strategic approach" (COM(2012) 497).

³ For the purpose of SESAR the following categories, referred to in Article 10(1) of Regulation (EU) No 1290/2013, apply:
(a) any legal entity established in a Member State or associated country, or created under Union law;
(b) any international European interest organisation.

To this respect, under Horizon 2020 rules, third country entities may become SJU members and receive funding from the SJU if they fulfill the following conditions:

- funding is provided for in a bilateral scientific/technological agreement or similar arrangement between the EU and the non-EU country and
- their participation is deemed essential for carrying out SESAR 2020.

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In addition the following conditions apply to third country entities:

1. The non-EU country has signed at least one aviation agreement with the European Union;
2. Membership should be based on proven added value for SESAR 2020 and for the European Union. Such added value shall be assessed on the following elements:
 - Operational and technical continuity of the European airspace: In particular this concerns countries which have signed the ECAA Agreement and Iceland, Norway, Morocco, Switzerland; These countries are part of the Single European Sky and therefore they should be fully part of SESAR;
 - Technological partnerships: In particular this concerns countries participating in Research Framework Programmes, which are natural technological partners of Europe; Organisations or undertakings around the world which have a technological partnership with European industry should also be considered in this category, in order to promote global interoperability;
 - Market access: For emerging countries which will need to invest into new technologies; These countries represent considerable market opportunities for European aviation industry;
 - Competence/expertise of the third country entity;
 - Access to research infrastructure, to particular geographical environments and to data.
3. If an equivalent programme to SESAR exists in the non-EU country, reciprocity in terms of access for European industry to equivalent funding possibilities is an absolute necessity.
4. The transfer of technological know-how should benefit the European society in terms of building European technological competence and creating jobs in Europe. Transfers of know-how to third country members should be managed by the European members.

5. Involvement of small and medium enterprises (SME) and research organisations

The SJU should continue to be open to and encourage the widest possible participation and representation of stakeholders from all Member States, including small-medium enterprises and research organisations through the accession of new *Members* or other forms of participation.

6. The Agreements

The accession of new *Members* to the SJU and their participation in implementing the *Programme* shall be formalised and governed by *Agreements* with the SJU.

The Union shall transfer its contribution to the SJU through a general agreement and annual agreements in accordance with its financial rules. The role and contribution of EUROCONTROL shall be defined in a specific agreement with the SJU in accordance with Article 9.2 of the *Statutes*.

The relationship between individual *Members*, other than the *Founding Members*, and the SJU shall be governed by a Membership Agreement (MA), which shall define in particular:

- the bilateral relationship that each *Member* will have with the SJU,
- the terms and value of the contribution of the *Member* to the SJU,
- the *Member's Voting Rights*.

The MAs of the current *Members* shall be amended in case their membership is renewed in SESAR 2020.

Furthermore, a Multilateral Framework Agreement (MFA) shall be concluded between the *Members*. The MFA shall define the rules, rights, obligations and the technical and financial details relating to the *Members'* participation in the *Programme*. The MFA shall define, in particular:

- Technical description of the work to be carried out by each *Member*;
- Description of the project/programme management structure;
- *Project* processes;
- *Deliverables* and Reports;
- Payment modalities;
- Maintenance of financial records;
- Provisions on audits;
- Provisions on *IPRs*;
- Remedies and liabilities;
- Settlement of disputes;
- Provisions on termination;
- Provisions on amendments.

The MFA shall be signed by the SJU and all the *Members* participating in the implementation of the *Programme*, including EUROCONTROL.

7. Intellectual property rights policy

In the SESAR *Development Phase* the SJU's *IPR* policy shall be governed by principles of *Horizon 2020* and shall be without prejudice to the European Union competition rules. This policy shall promote competition in the market of ATM products while ensuring that existing *IPR* are not violated. It shall ensure that standards, including *IPR* they might contain, are used by market operators on fair, reasonable and non-discriminatory conditions.

The objectives of the *IPR* policy of the SJU shall be to promote the creation of knowledge under the SESAR *Development phase* and its exploitation through the Deployment phase, to achieve fair allocation of rights, to reward innovation while protecting public interests and to achieve broad and effective participation of private and public entities in the SESAR project.

This policy shall ensure that intellectual property generated during the SESAR *Development phase* by the SJU and its *Members* is protected and that the resulting knowledge is used and disseminated. It shall anticipate the deployment phase activities taking into account the role that the successor in right of the SJU will play in the deployment phase. For this purpose, the SJU *IPR* policy shall ensure that:

- the ownership required by the SJU on *Proposals for standards and norms, validation reports* and technical *Specifications* is meaningful,
- the investment made in the preparation, adoption and application of *SJU Foreground* is maximised, and
- cases where *SJU Foreground* cannot be used/ implemented at a broad level because of *IPR* issues are prevented.

Without prejudice to Article 18 of the *Statutes* and the competences of the Administrative Board defined in Article 5(l) of the *Statutes*, the SJU shall develop and include in the *Agreements* detailed implementing rules on *IPR* based on the following principles:

Ownership

IPRs related to *Background* information shall remain with their owner(s), unless otherwise agreed with the SJU. For this purpose, the *Background* needed for the activities of *SESAR Development Phase* shall be declared in advance and identified in the *Agreements*.

IPRs related to results (*Foreground*) of the *Development phase* fully funded by or transferred to the SJU, those related to common *specifications*, to *validation reports* and, in view of future standardisation, to *proposals for standards and norms*, including the related preparatory documents, shall be owned by the SJU.

IPRs related to technical systems (e.g. new prototypes, products) co-financed by the SJU shall be owned by the *Member(s)* who created them.

Joint ownership

Joint ownership shall occur when several *Members* have jointly carried out work generating *Foreground* and where their respective shares of the *Tasks* cannot be ascertained. The *Members* shall then either:

- establish an *Agreement* regarding the allocation and terms of exercising that joint ownership of the *Foreground*, or
- be entitled to use the Joint *Foreground* to carry out their own work under the *Programme* as well as to exploit it for their own purposes and grant on fair and reasonable conditions licences to other *Members* or Third Parties in accordance with the *Agreements* for the performance of the *Programme* or for the purposes of pursuing further research activities.

Access Rights to Background and Foreground

Access Rights to a *Member's Background* shall be granted by that *Member* to the SJU or to other *Members* who *Need* it to carry out their own work under the *Agreements*. In this case *Access Rights* shall be granted on non-exclusive, non-transferable, non-discriminatory and royalty-free conditions that shall be agreed by the *Members* concerned.

Access Rights to *Members' Foreground* shall be granted to the SJU and its *Members* if such *Foreground* is needed to carry out their own work under the *Agreements*. Such *Access Rights* shall be granted on a royalty-free, non-exclusive, non-transferable basis and for non-commercial purposes.

Members may be granted *Access Rights* to *Members' Foreground* for their own use on a non-transferable non-exclusive basis either royalty-free or on fair, reasonable and non-discriminatory conditions.

Access Rights to *SJU Foreground* shall be granted by the SJU to the *Members* having a *Need* to use such *Foreground* to carry out their own *Tasks* for the performance of the *Programme*. The SJU may also grant *Access Rights* to *SJU Foreground* to *Members* for their own use outside the scope of the *Programme*. In such cases, the Administrative Board shall decide on the conditions for granting *Access Rights* to *SJU Foreground*.

The Member States of the European Union and of EUROCONTROL may be entitled, free of charge, to *Access Rights* to the *SJU Foreground* for their own and non-commercial purposes.

The SJU and its successor in right shall automatically be granted *Access Rights* to the *Foreground* of the *Members* on fair, reasonable and royalty-free basis for research activities pursued by the SJU, its successor in right or on behalf of the SJU or its successor in right, including research activities occurring after the end of the *Programme*.

Licenses granted to Affiliates, linked Third Parties and Subcontractors

As a general rule, an *Affiliate* ~~and/or a linked Third Party~~ of a *Member*, specifically identified in the Agreement/s, shall also enjoy *Access Rights* to *Foreground* or *Background* under the same conditions as the *Member* to which it is affiliated/~~linked~~.

The *Members' Subcontractors* shall be granted *Access Rights* to the other *Members' Foreground* or *Background* if it is strictly *Needed* for the performance of its obligations under its subcontract with the *Member* and upon prior written consent of the owner of the *Needed Background* or *Foreground*.

The termination of SJU Membership

The termination of membership to the SJU shall entail:

- The immediate cessation of all *Access Rights* granted to the terminated *Member*, its *Affiliates*, ~~other linked Third Parties~~ and/or *subcontractors*.
- That all *Access Rights* granted by the terminated *Member*, its *Affiliates*, ~~other linked Third Parties~~ and/or *subcontractors* to the other *Members*, their *Affiliates*, ~~other linked Third Parties~~, the SJU or its successor in right remain in full force and effect.

Protection

Any *Member* shall declare to the SJU, without delay, any invention created within the framework of the *Programme*. *Members* owning *Foreground* capable of industrial or commercial applications shall ensure an appropriate and effective protection by patent or other form of *IPR*, including protection by secret and/or confidentiality. Such protection shall be made having due regard to the *Member's* and the other parties' legitimate interests in the *Programme* (particularly commercial interests).

In the event the *Member* owner of the *Foreground* does not wish to protect its *Foreground* and does not transfer it to one of its *Affiliates* or to another *Member*, the SJU may require, unless the *Member* concerned can demonstrate that its legitimate interests would suffer great harm, the transfer of *Member's* rights free of charge to the SJU who may take such action in its stead. In this event, the *Foreground*, as a consequence of a transfer from the *Member*, shall be considered as SJU *Foreground*.

Use and Dissemination

Each *Member* shall use the *Foreground* or ensure that it is used. Nevertheless, *Members* shall be required to consult the Administrative Board before launching any activities that aim at early deployment of *Foreground* during the *Development phase*.

Each *Member* ensure that the *Foreground* it owns is disseminated, provided that all dissemination activities are compatible with the protection of *IPRs* including the right to keep secret an invention, confidentiality obligations and the legitimate interests of the owners of the *Foreground*, the other *Members'* and the SJU's legitimate interests.

All publications, patent applications filed by or on behalf of the SJU or a *Member*, or any other dissemination relating to *Foreground* shall include a statement that the *Foreground* concerned was co-financed by the European Union`.

8. *Members' Contributions*

Members shall contribute to financing the SJU's activities. *Members'* contribution may also, but not entirely, be in kind. All members shall contribute to the *Operational expenditure of the SJU*.

Members' contribution shall be deemed to include all contributions proposed to be made by the prospective *Member*, their ~~*Affiliates*, *Associate Partners*~~ *linked Third Parties* and any subcontractors identified as forming part of a candidate membership proposal.

In-kind contribution shall consist in man-hours, services, the use of tangible and intangible assets and of special facilities and/or equipment (including associated services), provided by the *Members* to the SJU in order to achieve the *Programme*, after the entry into force of their MA and MFA.

The *Background* brought by a *Member* shall not be valued as in-kind contribution, unless its ownership is transferred to the SJU. In any case, the *Background* that has been created with the financial support from European Union or EUROCONTROL programmes shall not be valued as an in-kind contribution.

The initial value of *Members'* in-kind contribution shall be based on their final offer that has been evaluated and accepted by the SJU. These contributions shall be subject to periodic assessments carried out as appropriate by the SJU. The value of the in-kind contribution shall be updated taking into account the actual contribution transferred to the SJU.

The principles applied by the SJU in assessing *Members'* in kind contributions shall be those of *Horizon 2020* and shall be compliant with the SJU's financial rules. The assessment shall be transparent, based on the actual value of the contribution and its relevance in carrying out the *Tasks* of the *Programme*.

The *Member* shall submit the methodology applied to determine its in-kind contribution and shall have this methodology audited by an independent auditor. The SJU shall decide if this methodology is acceptable.

The *Member* shall estimate its in-kind contributions according to the provisions referred here-below "Financial Provisions". *Members* will have to provide a clear identification of their proposed in-kind contribution, specifying the relevance to the *Programme* and their estimated value in the format requested by the SJU.

9. Financial provisions

The SJU shall ensure that the public and private sector funding provided by all its *Members* is combined and used in accordance with the principle of sound financial management⁴ in order to achieve the objectives of the SJU. The SJU shall apply *Horizon 2020* rules governing the eligibility of costs for the co-financing, in particular those set forth in Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013.

Gross In Kind Contribution and Net Contribution

Each Member shall determine its Gross In Kind contribution adding:

- the direct costs estimated for the activities to be performed in SESAR 2020 in accordance with the eligibility criteria defined in Regulation (EU) 1290/2013
- the estimated indirect costs and overhead related to the aforementioned direct costs and activities to be performed in SESAR 2020 in accordance with its accounting principles as certified by their statutory auditors in their annual accounts.

The difference between the *Gross In Kind Contribution*, to which the cash contribution to the *Operational expenditure of the SJU* shall be added, and the co-financing provided by the SJU constitutes the *Net Contribution* of a Member to the SJU and the basis for the establishment of the voting rights.

⁴ In accordance with SJU financial rules and Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002

The *Members* shall contribute to the activities to be performed in the SESAR R&I Programme 2020 in cash and/or with in kind contributions which will be subject to the necessary assessment before their acceptance. The *Members* shall contribute to the *Operational expenditure of the SJU with a cash contribution of at least 5% of their Gross In Kind Contribution* less the co-financing received from the SJU. Their eligibility shall be in compliance with the rules of Horizon 2020, i.e. Regulation (EU) No 1290/2013. In front of the *Gross In Kind Contribution*, the *Members* may be receiving co-funding established in accordance with the provisions of Regulation (EU) No 1290/2013, in particular on eligible costs.

The SJU and its *Members* shall endeavour to keep administrative and management costs to a minimum ensuring, however, the sound and efficient management of the SJU while optimising usage of SJU resources for research, development and validation activities.

Co-financing

The SJU co-financing shall correspond to:

- For exploratory research, up to 100% of the eligible costs in accordance with Regulation (EU)1290/2013 and in particular Article 28.4,
- For all other activities, which are considered "innovation actions" up to 70% of the eligible costs in accordance with Regulation (EU) 1290/2013 and in particular Article 28.5.

The eligible costs shall be determined in accordance with Regulation (EU) 1290/2013 and in particular Article 26. They differ from the *Gross In Kind Contribution* due to the fact that the indirect costs are determined by applying a flat rate corresponding to 25% of the direct costs net of subcontracting.

In no circumstance can the co-financing provided by the SJU give rise to any profit for any *Member* or *Affiliate* or *linked Third Party* in accordance with *Horizon 2020* rules. For this purpose, the final amount of the SJU co-financing shall take into account any receipts in relation to the *Programme* received by the *Member*.

Payments

The SJU may transfer its co-funding to *Members* through pre-financing, interim and final payments. All interim and final payments shall be subject to the acceptance and approval of the deliverables and reports required in the *Agreements*. As a rule the total amount of the pre-financing and interim payments shall not exceed 85% of the maximum co-financing for each Member.

In justified cases and, in particular, taking into account the results of audits, the SJU may suspend, reduce or recover all or part of the pre-financing and interim payments until the approval of the final payment.

Guarantee Fund

In order to protect financial interests of the Union, an amount of 5% of the maximum co-financing amount shall be retained by the SJU from the pre-financing payment and transferred into the Guarantee Fund in accordance with *Horizon 2020* rules, i.e. in particular to Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013. At the end of the *Programme* the amount contributed to the Fund shall be returned to the *Member*.

10. Audit

The main objectives of the audit activities shall be to gather assurance that the management and control systems put in place by the *Members* provide reasonable assurance with regard to the eligibility of the expenditure for the achievements of the *Programme* objectives. Audit and reviews activities shall be carried out in accordance with the related provisions of the Statutes and applicable *Horizon 2020* rules.

In particular:

- the SJU may, at its own costs and at any time during the implementation of a *Project* and up to two (2) years after the final payment related to such *Project*, perform reviews and audits, in relation to the Member, its *Affiliates* and **other** linked Third Parties participating in the *Project*, its *Subcontractors* or any other *Third Party* who has received funding from the SJU;
- the reviews and audits may cover the proper implementation of the *Projects*, compliance with the obligations of the *Agreements* and continued scientific or technological relevance of the *Project*;
- the SJU may carry out interim and final evaluations of the impact of the *Projects* measured against the objectives of the *Programme* up to five (5) years after the final payment;
- all audit work and results shall be carried out on a confidential basis. The SJU's staff and/or external persons who has access to such work and results shall enter into a non-disclosure agreement or equivalent with the *Member*;
- all *Agreements* and contracts concluded by the SJU and its *Members* shall include provisions that allow the SJU, the European Commission, OLAF (the European Anti-Fraud Office) and ECA (the European Court of Auditors) to carry out checks, reviews and audits in accordance with its *Statutes*.

11. Implementation of the *Agreements*

Reporting

The *Agreements* shall define the *Deliverables* and financial and technical reports and their related time schedule that *Members* are required to submit in relation to the *Projects* in which they participate. *Members* shall be required to provide publishable versions of technical reports.

The schedule for submitting *Deliverable* and reports shall be defined in order to guarantee the efficient and timely monitoring by the SJU of the *Projects* and the *Members'* contributions. They shall also allow the SJU to fulfil its reporting obligations towards its *Founding Members*, Member States, EU Institutions and auditing bodies.

Subcontracting and involvement of *Third Parties*

The subcontracted *Tasks* or the involvement of *Third Parties* - such as subcontractors - shall be agreed in the negotiation phase and defined in the *Agreements*.

Should the need to subcontract a *Task* arise during the course of the *Projects*, the concerned *Member* shall have to obtain the prior approval of the SJU before authorising the work.

Any subcontract, the costs of which are to be claimed as eligible costs, shall be awarded taking into account the principles of best value for money, transparency and equal treatment and the optimal participation of *SME* and *research organisations*.

Members shall be entirely responsible for the work carried out under a subcontract and the work entrusted to a *third party*. *Subcontractors* and *third parties* must be auditable at the same conditions as the *Member*. *Members* shall ensure that:

- subcontracts fully comply with the requirements of the *Agreements*
- the other *Members'* *Foreground*, *Background* and *Access Rights* are fully preserved

Performance obligations of each *Member*

Each *Member* and their *Affiliate* or *linked Third Party* shall carry out the *Tasks* assigned to them in the *Agreements* in a correct and timely manner.

Members shall inform the SJU and the other *Members* in due time of any event which might affect the implementation of or its participation in a *Project* or the *Programme*, or the interests of the SJU.

In particular, *Members* and their *Affiliates* or *linked Third Party* shall:

- Immediately inform the SJU any change in their legal name, address and of its legal representatives, and any change with regard to its legal, financial, organisational or technical situation including change of control;
- provide the *Commission* including the European Anti-Fraud Office (OLAF) and Court of Auditors directly with all information requested in the framework of controls and audits;
- take part in meetings concerning the supervision, monitoring and evaluation of the *Project* which are relevant to it;
- take all necessary steps to avoid commitments that are incompatible with the obligations provided for in the *Agreements* and inform the other *Members* or its *Affiliates* and the SJU of any unavoidable obligations which may have implications for any of its obligations under the *Agreements*;
- ensure that it complies with the provisions of the state aid framework;
- carry out the *Projects* in accordance with fundamental ethical principles;
- endeavour to promote equal opportunities between men and women in the implementation of the *Projects*;
- have regard to the general principles of the Commission Recommendation of 11 March 2005 on the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers, in particular concerning the working conditions, transparency of recruitment processes, and career development of the researchers recruited for the *Projects*;
- take every necessary precaution to avoid any risk of conflict of interest relating to economic interests, political or national affinities, family or emotional ties or any other interests liable to influence the impartial and objective performance of the *Projects*.

Suspension and termination of Projects

Agreements shall include clear provisions on suspension and termination of *Projects* and the related consequences on membership. The SJU Executive Director shall have the right to require to suspend or to terminate a *Project*.

Amendments

Any amendments to *Agreements* or any part of them shall be made in writing and shall require the prior approval of the SJU. For the sake of efficiency, the *Agreements* shall establish appropriate procedures for facilitating minor adaptations of the *Projects* without, however, prejudice to the SJU's right to oppose to these adaptations.

12. Voting rights

The Voting Rights of Member determine the number of votes allocated to the *Member* in the Administrative Board. Without prejudice to the provisions on *Voting rights* defined in the *Statutes*, the Administrative Board shall adopt specific implementing rules for allocation of *Voting Rights*, based on the following principles:

- The Administrative Board shall decide on the allocation of *Voting Rights* to the *Members*;
- The number of votes for each *Member* shall be decided upon at the Administrative Board meeting in which the accession of the *Member* is approved and shall be stated in the *Member's MA*;

- The number of votes shall be in proportion to the value of *Member's* total *Net Contribution* in respect of the total amount of contributions transferred to the SJU by all its *Members*, as provided for in Article 4 of the *SJU Statutes*;
- The *Voting Rights* initially allocated to the *Member* shall be adjusted as and when appropriate, based on the *Member's* actual *Net Contribution* to the SJU;
- The *Voting Rights* allocation shall also be adjusted upon accession of any new *Member*;
- Each adjustment of the *Voting Rights* and their allocation shall be decided by the Administrative Board and shall be stated in the minutes of the related Board meeting.

13. Termination of membership

The *Agreements* shall define the conditions for their termination and the consequences on membership to the SJU. In particular, the termination of a *Member's* MA shall entail the termination of their membership to the SJU. Furthermore, the SJU shall be allowed to terminate a MA if the MFA is terminated in relation to the *Member*. The MFA shall be terminated in relation to a *Member* if that *Member's* MA is terminated.

The provisions on termination of Membership shall ensure the protection of the financial interests of the SJU and allow the SJU and the remaining *Members* to achieve the objectives of the *Programme*.

14. Liability, remedies and penalties

No *Member* shall be liable to any other *Member* nor to the SJU for any direct, indirect, consequential or incidental loss or damage, except in case of gross negligence or wilful misconduct.

The SJU shall not be liable to any *Member* for any direct, indirect, consequential or incidental loss or damage, except in case of gross negligence or wilful misconduct.

In any event, each *Member* shall hold harmless the SJU against any and all claims from *Third Parties* in relation to the achievement of the *Programme* in accordance with the *Agreements*.

The SJU shall establish in the *Agreements* measures that allow remedying situations arising from conflicts or from faulty performance of *Members* including appropriate penalties.

15. Risk assessment and mitigation

In line with the Council's Resolution of 9 October 2008 on the launch of the development phase of the SESAR project as well as the Internal Control Framework of the European Commission set out in documents SEC(2007)1341 and SEC(2005)1327, the SJU will put in place a risk assessment process.

This process shall include the necessary mitigation measures for the *Programme* based, in particular, on the risks and mitigation actions identified in the ATM Master Plan and that ensure appropriate safeguards against possible faulting commitments or performance of *Members* and a balanced risk allocation.