

DECISION
ADB(D) 13-2008

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

The Administrative Board of the SESAR Joint Undertaking,

Having regard to Council Regulation (EC) 219/2007, in particular to Articles 5 of the Statutes of the SESAR Joint Undertaking,

Having regard to document SJU/AB/08/08/DOC/12 on the "Principles governing the accession and participation of the members of the SEAR Joint Undertaking presented by the Commission;

Whereas the above mentioned document sets the basic general principles, in line with the general principles of FP7 and TENT programmes, which shall govern the accession and the rules for participation of members to the SJU;

Whereas this document will serve, inter alia, as a basis for establishing the detailed implementing measures that are the model membership agreements and the financial and contractual specifications for the invitation for the best and final offers;

Whereas model membership agreements and the above mentioned specifications must be compliant with the current financial regulation but also with the new Financial rules for Community bodies that will have to be adopted under the new Statutes;

In its ordinary meeting of 1st December 2008, has adopted the following decision:

Article 1

The Principles governing the accession and participation of the members of the SESAR Joint Undertaking, annexed to this decision with reference SJU/AB/08/08/DOC/12, are hereby adopted and should be published on the SJU website.

This decision shall enter into force on the date of its approval.

Done in Brussels, 1 December 2008

For the Administrative Board

Daniel Calleja Crespo
The Chairperson



Decision of the Administrative Board on

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

Adopted on 1.12.2008

Preamble

The SESAR Joint Undertaking (“SJU”) was created under Article 171 of the Treaty establishing the European Community by Council Regulation (EC) n° 219/2007 of 27 February 2007, to which the SJU Statutes are annexed. The SJU has been established to answer the need for the rationalisation of activities and efforts made by all the different actors involved in ATM (Air Traffic Management) research and development for the benefit of all the airspace users. The Council of the European Union in two main resolutions – 6/2007 and 10/2008 – reiterated the importance it attributes to the SJU in relation to the *ATM Master Plan* and strongly supported the operational and effective launch of the SESAR Programme.

In this respect, 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 Community. It shall, *inter alia*, be responsible for the execution of the *ATM Master Plan*.

The SJU has two *Founding Members*: the European Community, 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 as a public-private partnership, with membership also open to any other public or private entity including those from third countries.

The SJU is a Community body within the meaning of Article 185 of the Financial Regulation of the European Community and therefore subject to the provisions applicable to such bodies. The SJU's financial rules are based on the financial rules applicable to Community 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.

1. Purpose of this document

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 largely based on the rules of the FP7 and TEN-T, taking into account the particular characteristics of the SJU as a public-private partnership. The agreements, defined in Articles 1.3 and 9 of the SJU 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.

<i>Access Right(s)</i>	means non-exclusive licences and user rights to <i>Foreground</i> or <i>Background</i> which shall not include the right to sublicense unless otherwise agreed upon in the <i>Multilateral Framework Agreement</i> .
<i>Affiliate(s)</i>	<p>means:</p> <ul style="list-style-type: none"> (i) any legal entity directly or indirectly Controlled by, or under common Control with that Member, for so long as such Control lasts; and (ii) any other legal entity of that Member, where such legal entity is: <ul style="list-style-type: none"> – one in which that Member (or a legal entity qualified as an <i>Affiliate</i> of that Member under (i) above) has a 50% equity share or is the single largest equity shareholder; or – under common Control with that Member, or a legal entity qualifying as an <i>Affiliate</i> of a Member under (i) above through government. <p>For the above purposes, "Control" of any entity shall exist through the direct or indirect:</p> <ul style="list-style-type: none"> – ownership of more than 50% of the nominal value of the issued share capital of the entity or of more than 50% of the issued share capital entitling the holders to vote for the election of directors or persons performing similar functions, or – right by any other means to elect or appoint directors of the entity (or persons performing similar functions) who have a majority vote. Common Control through government does not, in itself, create <i>Affiliate</i> status and any legal entity under common government Control must be specified in accordance with (ii) above in order to qualify as an <i>Affiliate</i>.
<i>Agreement(s)</i>	means a Membership Agreement and/or the Multilateral Framework Agreement together with their Schedules and Annexes.
<i>ATM Master Plan</i>	means European Air Traffic Management Master Plan referred to in Article 1.2 of Regulation 219/2007, based on the results of the definition phase of the SESAR Programme and endorsed by the Council of the European Union.
<i>Background</i>	means the <i>Background</i> Information and <i>Background IPR</i> which is held by a Member and/or its <i>Affiliate</i> prior to the entry into force of the <i>Agreement</i> . " <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>IPR</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 body interested in becoming a <i>Member</i> of SJU and pre-selected for accession to SJU membership.
<i>Deliverable(s)</i>	means any result of a Work Package, Sub-Work Package or <i>Project</i> identified in the Agreements and required to be delivered to the SJU.

<i>Development Phase</i>	means the second phase of the SESAR Programme as defined in 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) and the SJU Statutes.
<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 Information</i> " 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>FP7</i>	means the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) established by Decision of the European Parliament and of the Council 1982/2006/EC of 18.12.2006.
<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>Member(s)</i>	means EUROCONTROL and private or public entities referred to in Article 1(2) of the <i>Statutes</i> that have signed a membership agreement with the SJU .
<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 Contributions</i>	means the individual cash and in kind contributions from Founding Members and Members net of Co-Financing.
<i>Operational expenditure (of the SJU)</i>	means staff costs, running expenditure, cost of technical facilities and costs of capital expenditure incurred by the SJU.
<i>Programme</i>	means the work programme defining the <i>Tasks</i> of the SESAR <i>Development Phase</i> , in accordance with the <i>Statutes</i> and the description of work approved by the Administrative Board, and its subsequent amendments as included in the Technical Schedules of the Multilateral Framework Agreement.

- Project(s)* 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 *Project* 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. A *Project* implements a part of a specific Work Package and/or Sub-Work Package of the *Programme*.
- Proposals for Standards and Norms* 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.
- Research organisation(s)* means a legal entity established as a non profit organisation which carries out research or technological development as one of its main objectives.
- SJU Foreground* means:
- any tangible and intangible asset fully funded with SJU Resources and/or transferred to the SJU for the implementation of the *Programme*,
 - *Foreground* 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.
- SME(s)* means micro, small and medium sized enterprises within the meaning of Recommendation 2003/361/EC in the version of 6.05.2003.
- Specification(s)* 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.
- Statutes* means the Statutes of the SESAR Joint Undertaking annexed to Regulation (EC) 219/2007.
- Subcontractor* means any *Third party* engaged by a Member to carry out any of that *Member's Tasks* in relation to a Work Package, Sub-Work Package and/or *Project*.
- Task* means activities in a Work Package or Sub-Work Package or *Project* as described in the Technical Schedules of the Multilateral Framework Agreement.
- TEN-T* means Framework Programme on Trans-European networks for the period 2007-2013.
- Third Party* means any entity that is not a *Founding Member*, a *Member*, an *Affiliate*, a party to or an owner of a Consortium Member.

Validation Report means a *Deliverable* defined in the Agreements that contributes to the validation of operational threads ensuring overall consistency with the *Programme*.

Voting Rights means the number of votes allocated to the SJU Member in the Administrative Board, which are proportional to its *Net Contribution* to the *Programme* and specified in the *Membership Agreement*.

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 and the adequate funding made available by the SJU.

In compliance with Articles 1 and 5.1(d) of the *Statutes*, the accession of a new Member to the SJU 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's offer and of the negotiation of the conditions of accession, the Board shall decide on the accession of the new *Member* and on the related *Agreements*.

The entry of a new *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.

New *Members* will be selected 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 the broad principles of FP7. The SJU shall verify the compliance of applications 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's experience and the added value of the contribution for the benefit of the *Programme*.
- The financial solidity of the candidate. The candidates 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 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.
- 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 third countries

The participation in the SJU of entities from countries which are not members of the European Union (hereinafter referred to as third countries) 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 global standardisation bodies, such as ICAO.

The participation of organisations from third countries will follow the guidelines provided by the European Commission in its Communication to the Council and the European Parliament on a Strategic European Framework for International Science and Technology cooperation and subsequently any orientation that the Council and the Parliament will take further to this Communication.

Public and private entities from third countries may accede to SJU membership subject to the following conditions:

1. The third country has signed at least one aviation agreement with the European Community.
2. Membership should be based on proven added value for the SESAR programme 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 industry.
3. If an equivalent programme exists in the third 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 know-how to a third country partner should be managed by the European partner.

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

The SJU shall ensure the involvement of the widest range of stakeholders and benefit from the widest range of expertise in the interest of the achievement of the objectives of the *ATM Master Plan*. For this purpose, the SJU shall encourage and facilitate the participation of *SMEs* and *research organisations* as members of the SJU, as participants in projects carried out by its *Members* and in the activities launched directly by the SJU, and in working groups or other bodies established by the SJU.

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 Community 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 the bilateral relationship that each *Member* will have with the SJU, in particular:

- the terms and value of the contribution of the *Member* to the SJU,
- the *Member's Voting Rights*.

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* initiation processes and timetable;
- *Deliverables* and Reports;
- Financial Provisions (including modalities to evaluate *Members'* contributions);
- Payment modalities;
- Maintenance of financial records;
- Provisions on audits;
- Provisions on *IPR*;
- Remedies and liabilities;
- Settlement of disputes;
- Provisions on termination;
- Provisions on amendments of *Projects*;
- Provisions on risk management and mitigation measures.

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 inspired to those set out in FP7 and shall be without prejudice to the European Community 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 (FRAND)¹.

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, 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 programme.

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 the provisions of Article 18 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

IPR 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*.

IPR 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.

IPR related to the results of tasks carried out by *Members* and co-financed by the SJU, including technical systems (e.g. new prototypes) shall be owned by the *Members* 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* 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.

¹ Commission Communication COM(2008) 133 final, 11.3.2008.

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 *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 and Subcontractors

As a general rule, an *Affiliate* of a *Member* shall also enjoy *Access Rights* to *Foreground* or *Background* under the same conditions as the *Member* to which it is affiliated.

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* and/or *subcontractors*
- That all *Access Rights* granted by the terminated *Member*, its *Affiliates* and/or *subcontractors* to the other *Members*, their *Affiliates*, 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 Community and where appropriate by EUROCONTROL.

8. *Members' Contributions*

Members shall contribute to financing the SJU's activities. *Members'* contributions may also, but not entirely, be in kind. All members shall contribute to the *Operational expenditure* of the SJU with a cash contribution of at least 5% of their total contribution to the SJU.

In-Kind Contributions 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 the 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 Community 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 inspired to the ones of *FP7* and *TEN-T* 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 estimate its In-Kind contributions according to the provisions referred here-below "Financial provisions". Only eligible costs shall be considered in the determination of the In-Kind contributions. *Members* will have to provide a clear identification of their proposed in-kind contributions, specifying the relevance to the *Programme* and their estimated value in the format requested by the SJU.

Only In-Kind contributions of the *Members* equivalent to costs accepted as eligible by the SJU, will be co-financed 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 management² in order to achieve the objectives of the SJU.

² As defined in Council Regulation 1605/2002 as further modified.

Eligibility and valuation of In-Kind Contributions

In order to be considered eligible for the determination of the In-Kind Contributions, the costs incurred must

- be actual;
- have been incurred by the *Member* during the duration of the *Agreements*;
- have been determined in accordance with the usual accounting and management principles and practices of the *Member* and used for the sole purpose of achieving the objectives of the *Programme* and its expected results, in a manner consistent with the principles of economy, efficiency and effectiveness;
- be recorded in the accounts of the *Member* and, in the case of any subcontracting or contribution from *Third Parties*, in the accounts of the *Third Parties*.
- be auditable.

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.

Costs categories

The costs related to in-kind contributions shall be separated into the following categories:

- *Direct Costs*, which are all costs directly related to the *Project* and identified as such by the *Member* according to its accounting principles and internal rules.
- *Indirect Costs*, which are all those eligible costs, which cannot be identified by the *Member* as being directly attributed to the *Project* but which can be identified and justified by its accounting system as being incurred in direct relationship with the eligible direct costs attributed to the *Project*. Indirect costs shall represent a fair apportionment of the overall overheads of the *Member*.

For indirect costs, a *Member* may opt for a flat rate regime of 7% of its total direct eligible costs or the actual indirect costs resulting from its audited accounts.

Any receipts and revenues, other than the co-financing received by the *Member* from the SJU, in relation to the expenses incurred in connection with the *Programme* received from the European Community, EUROCONTROL, governments and/or any other organisation shall not be considered as eligible costs.

Co-financing

The SJU co-financing shall be maximum 50% of the *Member's* eligible costs. Only in duly justified cases, and in accordance with the broad principles of the *FP7* and *TEN-T*, the Executive Director may propose to the Administrative Board to approve a higher co-financing rate.

In no circumstance can the co-financing provided by the SJU give rise to any profit for any *Member* or *Affiliate*. 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 *Project*.

In justified cases and, in particular, taking into account the results of audits, the SJU may suspend, reduce or recover all or part of any payment.

Interest accrued on pre-financing payments to *Members* shall be paid back to the SJU.

Financial guarantees

In order to protect its financial interests, the SJU may require financial guarantees from its *Members* on pre-financing payments.

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 activities shall be carried out in accordance with the related provisions of the Statutes and shall be aligned with the broad principles of FP7.

In particular:

- the SJU may, at its own costs and at any time during the implementation of a *Project* and up to five (5) years after the end of such *Project*, perform audits, in relation to the Member, its *Affiliates* participating in the *Project*, its *Subcontractors* or any other *Third Party* who has received funding from the SJU;
- the audits may cover financial, scientific, technological and ethical aspects;
- all audit work and results shall be carried out on a confidential basis. The SJU's staff who has access to such work and results shall enter into a non disclosure *Agreement* with the *Member*.
- all *Agreements* and contracts concluded by the SJU and its *Members* shall include provisions that allow the SJU to carry out 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, Institutions and auditing bodies.

Subcontracting and involvement of Third Parties

The subcontracted *Tasks* or the involvement of *third parties* 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 (best price-quality ratio), transparency, equal treatment, absence of conflict of interest 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* 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* 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 new *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 Contributions* to the SJU
- The *Voting Rights* allocation shall also be adjusted upon accession of new *Members*
- 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 *Deliverables*.

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 as well as the Internal Control Framework of the European Commission SEC(2007)1341 as provided for in Council Regulation 1605/2002 as further amended, the SJU will put in place a risk assessment and management 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 by the SJU that ensure appropriate safeguards against possible faulting commitments or performance of *Members* and a balanced risk

allocation.

In addition an adequate risk assessment and risk management process shall be implemented within the *Programme* for the different Work Packages, Sub-Work Packages and *Projects*.