

DECISION
ADB(D) 02-2010

“Associate Partners of the SJU” and “Associate Partners of an SJU Member”

The Administrative Board of the SESAR Joint Undertaking,

Having regard to Article 1.5 of Council Regulation (EC) 219/2007 as last modified by Council Regulation (EC) 1361/2008, hereinafter the “SJU Regulation”;

Having regard to Article 5.1 (m) and (o) of the Joint Undertaking Statutes annexed to the SJU Regulation (hereinafter the “SJU Statutes”);

Whereas an “Associate of the SJU” or an “Associate Partner of an SJU Member” are not members of the SJU within the meaning of Article 1 of the SJU Statutes;

After having taken into account the adjustments requested by the Board members,

has adopted the following decision:

Article 1

The “Draft Paper on Associate Partners of an SJU Member” (document SJU-AB-012-09-DOC-05bis) and the “Draft Paper on Associates to the SJU” (SJU-AB-012-09-DOC-06bis) are approved.

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

Done in Brussels, 18 January 2010.

For the Administrative Board

Daniel Calleja Crespo
The Chairperson

DRAFT PAPER ON “ASSOCIATE PARTNERS” OF AN SJU MEMBER

1. Background

Article 1 (5) of the SJU regulation states that the SJU shall be responsible for ensuring the involvement of the stakeholders of the air traffic management sector in Europe, in particular: air navigation service providers, airspace users, professional staff associations, airports, manufacturing industry as well as the relevant scientific institutions or the relevant scientific community.

The SJU membership is defined in Article 1 of the SJU Statutes and in the decision of the Administrative Board dated of 1 December 2008 on the “*Principles governing the accession and participation of the members of the SESAR Joint Undertaking*”.

Fifteen organisations representing the air navigation service providers, ground and aerospace manufacturing industry, aircraft manufacturers, airports and airborne equipment manufacturers were selected in accordance with the aforementioned rules and principles and became Members of the SJU on 12 June 2009.

This membership accession process had started with a call for expression of interest launched by the European Commission, on behalf of the SJU, on 27 June 2007.

On 12 October 2007, the Administrative Board of the SJU, while validating the list of pre-selected candidates to become members of the SJU, established that the “*Executive Director should organize discussions [...] in view of defining the participation in the SJU also exploring the possibility of forms of association other than membership*”.

In its decision ADB(D)22-2008 dated 1st December 2008, the Board reiterated this request in subsequent Board meetings and explicitly mandated the Executive Director to “*...explore other possibilities to associate interested organisations, other than membership, and report to the Board at its next meeting*”.

This document provides the constitutive elements of the “Associate Partners of an SJU Member”, an entity to whom a Member of the SJU, in the overarching interest of the Programme, decides to assign a specific role in implementing the SJU Programme activities after having received the agreement of the Administrative Board.

only charge the costs incurred by its Associate Partner in carrying out the tasks subcontracted.

ii. Administrative Board and working groups

Associate Partners shall not be represented in the Administrative Board, but may participate in its meetings upon invitation.

iii. Voting rights

Associate Partners shall not be allocated Voting Rights. The work realized by the Associate Partner(s) of a Member will be considered as this Member Contribution together with the associated Voting Rights.

iv. Intellectual Property Rights (“IPRs”)

Each Member shall remain fully responsible for the respect of the IPRs provisions of the MFA by the Associate Partner and shall ensure in particular that the Associate Partner:

- remains the owner of its Background, and
- identifies a list of its Background which is needed to perform the activities and provides the SJU with this list through the Member to which it is associated.

Each Member shall also be solely responsible for managing the relationship with its Associate Partner and shall therefore ensure, in particular, that:

- the other Members’ Access Rights are fully preserved;
- the Associate Partner shall have no access to any other Member’s and/or the SJU’s Foreground or Background save to the extent strictly necessary for the performance of its activities under the *subcontract for research assistance*² and upon prior written consent, not unreasonably withheld or delayed, of the owner of the Background or Foreground (in line with the conditions of Article 15.2.3.3 of the MFA);
- it is in the contractual position to guarantee the compliance with Articles 15.1 and 15.2 of the MFA with regard to the Foreground produced by the Associate Partner.

v. Financial aspects

The use of *subcontracting for research assistance* shall fulfil the following financial conditions

- a. the costs incurred by the Associate Partner related to the *subcontracting for research assistance* shall be identified *mutatis mutandis* in accordance with the provisions of the MFA, in particular Schedule 2.
- b. the costs of the *subcontracting for research assistance* shall be charged by the concerned Member in accordance with the MFA and, in particular, Schedule 2.
- c. in accounting for the eligible costs of a given project, the Member shall provide a Cost Breakdown Form for its own eligible costs, the Cost Breakdown Form of the costs sustained by the Associate Partner in realizing the *subcontracting for research assistance*, and a consolidated Cost Breakdown Form which sums up the eligible costs of the concerned Project.
- d. the co-financing paid by the SJU to the Member for the *subcontracting for research assistance* shall be transferred by the Member to the Associate Partner and proof of payment shall be submitted to the SJU. In any case the amount of co-financing for the activities realized by the Member

² As defined under Section 5 v. below.

2. Definition¹

The creation of the new category of stakeholders in the SESAR Programme, "Associate Partners of an SJU Member" (hereinafter referred to as "Associate Partners"), answers to the need to secure the additional input and added value of critical partners in the ATM research and development activities.

The arrangement between the Member and its Associate Partner is a "*subcontract for research assistance*". The *subcontract for research assistance* is a specific type of subcontract meaning a contractual arrangement between a Member and a third party for the performance of part of the work awarded to the Member by the SJU.

The Associate Partner shall be accepted by the Administrative Board on a proposal by a Member following the process and satisfying the criteria described below.

Member(s) with Associate Partner accepted by the Administrative Board shall remain liable in all aspects for the obligations stemming from the MA and MFA.

3. Eligible candidates

Any public or private legal entity, including those from non EU Member States, provided that the minimum conditions laid down in this decision have been met with particular regard to those specified in Section 4 below.

With regard to entities from non EU Member States, the notions of reciprocity, added value for the SESAR Programme and for the European Union and benefits for the European society as detailed in the "Principles governing the accession and participation of the members of the SESAR Joint Undertaking" adopted by the SJU Administrative Board on 1st December 2008 (Decision ref. ADB(D) 13-2008) shall be complied with.

4. Specific conditions

i. *The contractual arrangements with the Associate Partner*

The Member shall establish a *subcontract for research assistance* with the Associate Partner(s) which

- a. shall only cover the execution of a limited part of the activities awarded to the Member and within the budget. The cumulative amount of subcontracts for research assistance for each Member cannot exceed 20% of its total estimated eligible costs defined in the MFA,
- b. may not affect the rights and obligations of the Member regarding IPRs (see also point iv. below) ,
- c. shall contain provisions to ensure that the Associate Partner does not further subcontract the activities in the scope of the subcontract,

Moreover, an estimation of the eligible costs for the tasks to be carried out by the Associate Partner shall be provided in accordance with Schedule 2 of the MFA and it is excluded that the SJU may provide any co-financing for profit margin. The Member can

¹ Capitalized terms in the present memo shall have the meaning ascribed to them in the Multilateral Framework Agreement Ref. SJU/LC/0028-CTR entered into by the SJU and its Members (hereinafter referred to as the "MFA"), and in the Membership Agreement entered into by each of the SJU Members with the SJU (hereinafter referred to as the "MA(s)").

excluding the *subcontracting for research assistance* - ie excluding the eligible costs for the activities performed by the Associate Partner - shall not exceed 50% of the Member eligible costs per Project and, in any case, shall comply with the limits defined in Article 9 of the MFA.

- e. the provisions of Article 13 (Audit) of the MFA shall apply *mutatis mutandis* to the Associate Partner(s).

The Member shall remain fully responsible for consolidating its own financial data and those of its Associate Partner in all the Reports and payment requests it owes to the SJU.

5. Procedure

In order to ensure equal treatment and transparency the following procedure shall be established:

i. Invitation to the Members to indicate Associate Partner(s)

The SJU shall issue one initial invitation to its Members to propose the entity(ies) to be considered by the Administrative Board for the status of "Associate Partners".

Taking into consideration the specific needs of the Programme, the Administrative Board may decide to establish new invitations or to maintain the invitation open indefinitely.

ii. Submission of the proposal

The initial invitation will be open for a period of minimum 60 calendar days during which the Members shall submit their proposal(s) in the form and with the content described in Annex 1.

In particular, in its proposal the Member shall indicate its commitment to ensure that the *subcontract for research assistance*³ it will establish with the Associate Partner will comply with the provisions of the MA and MFA with particular regard to Deliverables and Reports, financial Records/Audits/Eligible Costs, IPRs and governance.

iii. Assessment of the answer to the invitation

Within 60 calendar days from the receipt of the proposals from its Members, the SJU will prepare a report which the Executive Director shall submit to the Administrative Board for its decision on the acceptance of the Associate Partner proposed. This report will contain an assessment of the following overarching criteria set out in Article 1 of the SJU Statutes:

- *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 contribution that the undertaking or body can be expected to make to the execution of the ATM Master Plan,*
- *the financial soundness of the undertaking or body,*
- *potential conflicts of interest."*

³ As defined in Section 5. v. below.

Operationally, the assessment shall consist of:

- the exclusion and selection criteria included in Annex 2
- the following award criteria:
 - o the added value for the SESAR Programme, the SJU and the Member brought by the candidate Associate Partner in the field of expertise required (Air Service Navigation Providers, Airports, Ground Industry, Airborne Industry),
 - o the understanding of the SESAR Programme, the SJU framework and the ATM context by the candidate Associate Partner,
 - o the relevant experience and expertise of the candidate Associate Partner,
 - o the activities to be carried out by the Associate partner within the scope of *subcontracting for research assistance*,
 - o adequacy of the proposed arrangements to carry out the activities and ensure the respect of the compliance with the MA and MFA provisions.

The SJU Executive Director shall be responsible to set up the necessary procedures for the assessment of the proposals.

iv. Administrative Board Decision

Based on the report submitted by the Executive Director, the Administrative Board, with the exclusion of the Members in conflict of interest, shall decide on the acceptance or refusal of the proposed Associate Partners. In this respect, Member(s) having a conflict of interest is(are) defined as the Member(s) proposing the Associate Partner to the Administrative Board.

The decision on the acceptance of the proposals shall nevertheless be subject to the conclusion of a subcontract between the interested Member and its respective Associate Partners in accordance with the provisions of paragraph v. below.

The Administrative Board decision shall be notified to each Member and candidate Associate Partner and published on the SJU website.

v. Signature of the subcontract between the Member and its Associate Partner

Each Member will enter into a subcontract with its Associate Partner according to which the Associate Partner shall undertake to abide by the terms and conditions of the MFA and the MA.

Each Member shall remain fully and solely responsible for the performance of its obligations under the Multilateral Framework Agreement and the Membership Agreement by its Associate Partner.

Therefore, each Member shall be solely responsible for managing the relationship with its Associate Partner and shall therefore ensure, in particular, that the subcontract placed with the Associate Partner fully complies with the requirements of the MA, MFA and this decision.

No contract will be placed between the SJU and the Associate Partners.

Before signing a subcontract, Members shall provide a copy of the draft subcontract to the Executive Director of the SJU. If the Executive Director deems that the draft subcontract is not compliant with the requirements defined in paragraph v., he shall:

- request the Member to adapt the draft subcontract accordingly, within a given timeframe that cannot exceed 90 calendar days,
- or, if necessary, submit the case to the Administrative Board for its decision, to validate or not the Associate Partner status.

6. Number of Associate Partners

Although the number of the Associate Partners depends on the operational needs of the Programme in order to achieve its objectives, the total number of Associate Partners will be initially limited to fifteen (15) legal entities, it being specified that a member may have more than one Associate Partner and that one legal entity may become the Associate Partner of one or more SJU Member(s) for the same period of time.

7. Amendment of the MFA

In order to ensure consistency between the documents governing the execution of the Programme it is proposed to amend the MFA, in particular adding a new Article 14 BIS on the “*subcontracting for research assistance*” and a new Schedule 15 for the specific provisions.

ANNEXE 1

CONTENT OF THE PROPOSAL TO BECOME ASSOCIATE PARTNER OF A SJU MEMBER

Executive Summary

Administrative Information

- Identification of the "fostering" Member
- Identification of the proposed Associate Partner
- Legal entity form
- Proof of registration
- Proof economic and financial capacity
- If appropriate, agreement of the other consortium participants

Technical information

Information to be provided by the Member

- presentation by the Member on the added value for the SESAR Programme, the SJU and the Member brought by the candidate Associate Partner in the field of expertise required (Air Service Navigation Providers, Airports, Ground Industry, Airborne Industry),
- summary description and justification of the activities to be entrusted to the Associate Partner,
- description of the arrangements to ensure the respect of the compliance with the MA and MFA provisions;
- If appropriate, proof of compliance with the SJU principles governing the participation of entities from third countries

Information to be provided by the Candidate Associate Partner

- Technical and professional capacity to perform the activities under the subcontract:
 - o a detailed account of the main current activities of the components of the candidate Associate Partner,
 - o a brief presentation of the structure of each of its companies and the structure of the extended group, ideally by means of charts which clearly show the lots to be undertaken by each company,
 - o evidence of the candidate Associate Partner's expertise and experience to carry out the activities,
- understanding of the SESAR Programme, the SJU framework and the ATM,
- Detailed description of the proposed activities including the resources allocated to them, related planning, reporting, etc...
- major risks related to these activities and propose risk management framework
- IPR Declaration (if any)
- proposed key personnel and CVs

ANNEXE 2

EXCLUSION CRITERIA

The candidate Associate Partners cannot be in any of the following exclusion grounds:

- (a) be bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) have been convicted of an offence concerning their professional conduct by a judgement which has the force of *res judicata*;
- (c) have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;

Nota Bene:

The candidate Associate Partner shall provide in case of approval of its participation by the Administrative Board, within 30 calendar days following notification of award and preceding the signature of the subcontract, the following documentary proofs to confirm the declaration referred to above:

- For points a) and b) above a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied.
- For point d) recent certificates issued by the competent authorities of the States concerned.

Where the document or certificate referred to above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in its country of origin or provenance.

SELECTION CRITERIA

The candidate Associate Partner must have the overall capabilities (legal, economic, financial) to perform the proposed entrusted activities.

If one of the selection criteria listed below is not satisfied, the offer may not be further evaluated.

Legal capacity

Any candidate Associate Partner is asked to prove that it is authorised to perform the proposed entrusted activities under the national law as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation or entry in the VAT register.

The candidate Associate Partner shall provide a dully filled in and signed Legal Entity Form accompanied by the documents requested therein, for each of its components.

Economic and financial capacity

In order to prove its sufficient economic and financial capacity to perform the proposed entrusted activities, the candidate Associate Partner will be asked to present the following documentation for each of its components:

- Evidence of professional risk indemnity insurance;
- Balance sheets (or extracts from balance sheets) for at least the last two years for which accounts have been closed;

- Statement of overall turnover and turnover concerning the services/supplies to be covered by the subcontract(s) during the last three financial years.

If, for some exceptional reason which the SJU considers justified, the candidate Associate Partner is unable to provide the references requested here above, the candidate Associate Partner may prove its economic and financial capacity by any other means which the SJU considers appropriate.

DRAFT PAPER ON ASSOCIATES OF THE SJU

1. Background

Article 1 (5) of the SJU regulation states that the SJU shall be responsible in particular for ensuring the involvement of the stakeholders of the air traffic management sector in Europe, in particular: air navigation service providers, airspace users, professional staff associations, airports, manufacturing industry as well as the relevant scientific institutions or the relevant scientific community.

The SJU membership is defined in Article 1 of the SJU Statutes and in the decision of the Administrative Board dated of 1 December 2008 on the *“Principles governing the accession and participation of the members of the SESAR Joint Undertaking”*.

Fifteen organisations representing the air navigation service providers, ground and aerospace manufacturing industry, aircraft manufacturers, airports and airborne equipment manufacturers were selected in accordance with the aforementioned rules and principles and became Members of the SJU on 12 June 2009.

This membership accession process had started with a call for expression of interest launched by the European Commission, on behalf of the SJU, on 27 June 2007.

On 12 October 2007, the Administrative Board of the SJU, while validating the list of pre-selected candidates to become members of the SJU, established that the *“Executive Director should organize discussions [...] in view of defining the participation in the SJU also exploring the possibility of forms of association other than membership”*.

In its decision ADB(D)22-2008 dated 1st December 2008, the Board reiterated this request and explicitly mandated the Executive Director to *“...explore other possibilities to associate interested organisations, other than membership, and report to the Board at its next meeting”*.

This document provides a description of the constitutive elements of the “Associate of the SJU”, status which identifies entities interested to participate to the Programme activities bringing additional expertise in specific areas of the Programme complementing or completing the SJU Members’ expertise.

The “Associate of the SJU” shall be distinguished from the “Associate Partner” (see document SJU-AB-012-09-DOC-05-bis), due to its status as direct contractor of the SJU.

2. Definition¹

The creation of the new category of stakeholders in the SESAR Programme of "Associates of the SJU" answers the need to complement and complete the expertise brought by the SJU Members to the SESAR Programme in specific ATM fields. Only eligible entities which are selected following the procedure detailed below may become "Associate of the SJU".

3. Eligible candidates

Any SME², Research Organisation³, University, and Institute of higher education, including those from non EU Member states⁴, which express a substantiated interest to add value and to take part in the achievement of the SESAR Programme, may become "Associate of the SJU", provided that the minimum conditions laid down in this paper have been met including any conditions specified pursuant to Section 5 below.

4. Status of "Associate of the SJU"

i. Administrative Board and working groups

"Associate of the SJU" shall not be represented in the Administrative Board, but may participate in its meetings upon invitation.

ii. Voting rights

"Associates of the SJU" are not allocated voting rights.

iii. Intellectual Property Rights ("IPRs")

The "Associates of the SJU" shall:

- remain the owner of their Background, and
- identify a list of their Background which is needed to perform the activities they will be awarded and provide the SJU with this list.

The SJU shall ensure that the other Members' Access Rights are fully preserved.

"Associates of the SJU" shall:

- have no access to any other Member's and/or the SJU's Foreground or Background save to the extent strictly necessary for the performance of the defined activities and upon prior written consent, not unreasonably withheld or delayed, of the

¹ Capitalized terms in the present memo shall have the meaning ascribed to them in the Multilateral Framework Agreement Ref. SJU/LC/0028-CTR entered into by the SJU and its Members (hereinafter referred to as the "MFA"), and in the Membership Agreement entered into by each of the SJU Members with the SJU (hereinafter referred to as the "MA(s)").

² "SMEs" means micro, small and medium-sized enterprises within the meaning of Commission Recommendation 2003/36/EC.

³ "Research Organisation" means here, in line with the principles governing the 7th Framework Programme, a legal entity established as a non-profit organisation which carries out research or technological development as one of its main objectives.

⁴ In accordance with the SJU policy on third country participation.

owner of the Background or Foreground, at the same conditions as those for subcontractors (in line with the conditions of Article 15.2.3.3 of the MFA). Since Associates of the SJU shall have no contractual relationship with the Members, any such request for access rights shall be addressed to and dealt with by the SJU;

- own the Foreground generated during the performance of the awarded activities within the SESAR Programme and comply with the rules governing the access rights to Foreground and Background under the MFA. In particular, Associates of the SJU shall automatically transfer to the SJU any Foreground consisting of Specifications, Standards and Norms Proposals and Validation Reports under the conditions set forth in Article 15.1.2.1 of the MFA.

iv. Financial aspects

- “Associates of the SJU” shall not pay the initial contribution provided for under Article 12.3 of the SJU Statutes nor the cash contribution equivalent to 5% of Total Contribution.
- Activities performed by the “Associates of the SJU” may be co-financed by the SJU up to 50% of the related costs that are deemed eligible in accordance with the provisions of the SJU Financial Rules and the MFA (including no profit rule). However, for “*research and technological development activities*” and in the case of non-profit public bodies, secondary and higher education establishments, research organisations and SMEs, the SJU level of co-financing may reach a maximum of 75 % of the total eligible costs.

5. Selection procedure

“Associates of the SJU” shall be selected pursuant to the following procedure.

i. Publication of a call to become “Associate of the SJU”

This call shall follow the rules governing the open procurements launched by the SJU.

This call will:

- be divided into different lots corresponding to identified areas of activity that the SJU intends to cover resulting from a gap analysis performed by the SJU together with its Members,
- include an indicative amount in value and efforts to be requested,
- contain a draft agreement applicable to all Associates of the SJU including provisions which ensure compliance with the principles established in this decision, and
- specify the number of agreements the SJU will place in total and per lot.

ii. Submission of an offer to become “Associate of the SJU”

The candidates shall specify for which area of activity (“lot”) they submit an offer and express the reasons for their interest to become “Associates of the SJU”, their possible added value to the SESAR Programme, their commitment to make available the necessary resources, etc.

iii. Evaluation of the received offers

For each lot the SJU will evaluate, mark and establish a ranking of the candidates “Associates of the SJU” on the basis of published criteria. The proposal analysis board in charge of the evaluation will record its findings and formulate recommendations for the

placing of the specific agreements. In accordance with SJU procurement rules, this report will be submitted to the SJU Executive Director for approval.

iv. Endorsement by the Administrative Board of the Executive Director recommendation

Before awarding the activities, the SJU Executive Director shall submit its recommendations on the final list of “Associates of the SJU” together with the activities to be awarded to the Administrative Board for final endorsement.

v. Signature of the agreements

Following the endorsement of the Executive Director’s recommendation by the Administrative Board, the SJU will notify the candidate “Associates of the SJU” of the results of the selection process and will establish the necessary steps for the signature of the agreements.

The SJU will enter into an agreement – in principle a grant agreement or a framework contract - with its “Associates of the SJU” according to which they shall undertake to abide by the terms and conditions of the MFA and the MA.

The SJU shall remain fully responsible for the performance of its obligations under the Multilateral Framework Agreement by the “Associates of the SJU”. Therefore, the SJU shall be solely responsible for managing the relationship with the “Associates of the SJU” and shall therefore ensure, in particular, that the agreement placed with them fully complies with the requirements of the MAs and MFA.

6. Number of Associates of the SJU

The total number of Associates will be limited to ten (10) legal entities.