

DECISION
ADB(D)13-2016

On Voting rights in the Administrative Board repealing Administrative Board decision ADB(D)14-2008 of 1 December 2008

THE ADMINISTRATIVE BOARD OF THE SESAR JOINT UNDERTAKING

Having regard to:

- Council Regulation (EC) No 219/2007 of 27 February 2007, on the establishment of a Joint Undertaking to develop the new generation of the European Air Traffic Management system (SESAR)¹ as amended by Council Regulation (EC) No 1361/2008 of 16 December 2008² and by Council Regulation (EU) No 721/2014 of 16 June 2014³ ('SJU Regulation'), and in particular Article 4.2 of the Annex to the SJU Regulation, "Statutes of the joint undertaking" ('SJU Statutes'),

Whereas:

- The Administrative Board decision ADB(D)02-2016 of 9 March 2016 confirmed the accession of new members to the SESAR Joint Undertaking;
- The members of the SESAR Joint Undertaking shall have a number of votes, in the Administrative Board, in proportion to their contribution to the funds of the Joint Undertaking;
- The European Union, EUROCONTROL and the Airspace Users' representative referred to in point (c) of Article 3(1) of the Statutes shall have no less than respectively 25%, 25% and 10% of the total number of votes in the Administrative Board,
- Appendix A of the Membership Agreement (Membership Accession and Adherence Forms) include an estimate of the gross contribution to the funds of the Joint Undertaking for each member;
- In accordance with Articles 9 and 11 of the Administrative Board Rules of Procedure, a Written Procedure for the adoption of the current decision was launched on 25 August 2016 and concluded on 23 September 2016 with positive results;

HAS DECIDED AS FOLLOWS:

Article 1: Calculation of the voting rights: principles

The voting rights allocated to each member in the Administrative Board shall be in proportion to the value of each member's total net contribution in respect of the funds of the Joint Undertaking.

The members' total net contribution corresponds to the total value of its contributions to the Joint Undertaking in one or both of the following forms:

- "In-Cash" (financial) contribution paid to the Joint Undertaking;

¹ OJ L 64, 2.3.2007, p. 1

² OJ L 352, 31.12.2008, p. 12

³ OJ L 192, 1.7.2014, p. 1

- “In-Kind” contribution, in line with Article 12(5) of the Statutes, net of non-eligible costs and net of any co-financing received directly or indirectly from the Joint Undertaking.

This allocation shall not affect the minimum percentage of the total number of votes allocated to the Founding Members of the SESAR Joint Undertaking and to the Civil Users of airspace as provided for in Article 4 (2) of the SJU Statutes.

Article 2: Initial allocation of voting rights upon accession to membership

With regard to the European Union and EUROCONTROL, the initial number of votes shall be in proportion to the committed contribution to the Joint Undertaking as provided for in Article 4(2) of the SJU Statutes.

The voting rights allocated to a member as defined in Article 1(2) of the SJU Statutes shall be decided at the Administrative Board meeting held to decide about the concerned member’s membership. It shall be based on the net contribution committed by the member to the Joint Undertaking, as proposed in its offer to contribute to the Joint Undertaking and as finally accepted by the Administrative Board.

The calculation of the number of votes pertaining to a contribution shall be done on the basis of maintaining at least one vote.

Article 3: Adjustment of voting rights during membership

i. Annual Adjustment of Voting Rights

The initial voting rights allocated to each member shall be adjusted annually at the first Administrative Board meeting held after a period of one hundred and twenty (120) calendar days following the end of the Financial Year.

For each financial year, the voting rights shall be adjusted to take into account the effective contribution of each member, in terms of commitment or execution, for the financial year into question compared to the initial stated contribution which originated the allocation of the initial voting rights.

With regard to the European Union, the adjustment shall take into account any variation compared to the initial commitment to the contribution to the SJU in relation with the previous financial years.

With regard to EUROCONTROL and the other members, the adjustment shall take into account the actual net contribution of each member, in terms of commitment or execution, compared to the initial stated contribution which originated the allocation of the initial voting rights, in relation to the previous financial years. This adjustment shall take into account an amount that includes:

- the amount of the “In-Cash” (financial) contribution paid to and received by the Joint Undertaking in relation to the previous financial years;
- the actual value of the “In-Kind” contribution to the Joint Undertaking, as stated in the member’s annual interim financial statements, as accepted by the SJU, and the related cost-breakdown forms detailing each actual cost incurred for each accepted Action submitted together with a certificate derived from an independent auditor’s report.

In the event of deviations from the initial contribution assessment (and as a consequence of the initial voting rights allocated to each member) as a result of a member’s failure to deliver its contribution to the programme, and notwithstanding the possibility for members to propose adequate compensation measures to be approved by the Board, the voting rights shall be adjusted accordingly by Administrative Board decision.

ii. Adjustments Further to New Membership

The voting rights allocation shall be adjusted by Administrative Board decision, taking into consideration the consequences of each new membership on the total amount of contributions to the SESAR Joint Undertaking.

Article 4: Entry into force and transitional provisions

The Administrative Board Decision ADB(D)14-2008 dated 1st December 2008 is repealed.

In the period from the adoption of this Decision to the 31 December 2016, for those matters exclusively affecting SESAR 1 Programme, and for which a Decision from the Administrative Board is required, the applicable voting rights to the members entitled to vote shall be those provided for in the Decision ADB (D)05-2016 adopted on 28 April 2016.

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

Done in Brussels, 23 September 2016.

For the Administrative Board,



Chairperson
Henrik Hololei