

DECISION
ADB(D)09-2020

**Early repayment of the excess financial contributions received from SESAR
JU Members involved in SESAR JU first mandate ('SESAR 1')**

THE ADMINISTRATIVE BOARD OF THE SESAR JOINT UNDERTAKING (SESAR JU),

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 2008 ⁽²⁾ and by Council Regulation (EU) No 721/2014 of 16 June 2014 ('SESAR JU Regulation') ⁽³⁾, in particular Article 1(2) thereof and the SESAR JU Statutes annexed thereto ('SESAR JU Statutes') and in particular Articles 4(5), 5(1)(k), 13(1), 23 and 25 thereof,
- Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 ⁽⁴⁾ ('EU Financial Rules'), and in particular Articles 105(1) and 105(2) thereof,
- The SESAR JU Financial Rules adopted by the Administrative Board on 9 October 2019 (ref. ADB(D)-21-2019),
- Decision ADB(D)03-2020 adopting the first amended version of the SESAR JU Single Programming Document (SPD) 2020-2022 adopted by the Administrative Board on 1 April 2020, and in particular the SESAR JU 2020 Budget, Section III - Chapter 2 and subparagraph 2.6.10 thereof,
- The Multilateral Framework Agreement ref. SJU/LC/0028-CTR governing the implementation of the activities performed by the SESAR JU Members under its initial mandate set until 31 December 2016 ('SESAR 1');
- Each individual SESAR 1 Membership Agreement (MA), and in particular Article 4 of the MA ("Co-Financing") and Schedule 2 of the MA ("Contribution of the Member and indicative maximum Co-Financing per Project") and its subsequent amendments.

⁽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.

⁽⁴⁾ OJ L 193, 30.7.2018, p. 1.

Whereas:

- (1) The initial mandate of the SESAR JU initially set until 31 December 2016 ('SESAR 1') was later extended until 31 December 2024 in order to complete the execution of the European ATM Master Plan ('SESAR 2020') as per Article 1(2) of SESAR JU Regulation;
- (2) The ex-post audit of the SESAR 1 Programme conducted in 2019 identified a financial revenue of EUR 30.767.098,22 paid by the Members to the SESAR JU participating in SESAR 1 ('Contributions') in excess of its actual needs, as detailed in the amended version of the SESAR JU Single Programming Document (SPD) 2020-2022 as adopted under Decision ADB(D)03-2020;
- (3) The proportion of this excess revenue due to each SESAR JU Member participating in SESAR 1 is detailed in Annex A attached hereto;
- (4) While acknowledging the time limits set under Article 105(1) and (2) of the EU Financial Rules limits to claim any entitlement from the EU and its bodies, the SJU and its Members agree on these amounts, which include any potential unclaimed positive adjustment arising from the ex-post audits performed under SESAR 1 and constitute an immaterial amount compared to the overall value of SESAR 1;
- (5) Article 13(1) of SJU statutes states "[...] *Subject to Article 25 [Dissolution of the SESAR JU], no payment by way of division of any excess revenue over expenditure shall be made to the members of the Joint Undertaking*";
- (6) The European Commission⁽⁵⁾ and the European Court of Auditors⁽⁶⁾ requested the repayment of the contributions from the SESAR 1 Members received in excess by the SESAR JU ahead of the dissolution of the SESAR JU;
- (7) The European Commission considers that the COVID-19 crisis presents significant economic challenges for private parties and public authorities in particular in the ATM sector, and create a situation where the compliance with obligations resulting from Article 13(1) of the SESAR JU Regulation appears disproportionate and inadequate;
- (8) In accordance with Article 9 of the SJU Administrative Board's Rules of Procedure, a Written Procedure for the approval of the current decision was
 - launched on 10 June 2020 and
 - concluded with positive results 8 October 2020.

HAS DECIDED AS FOLLOWS:

Article 1

In view of the very exceptional circumstances due to COVID-19, the SESAR JU Executive Director shall authorise the repayment of the excess revenue over expenditure to the members of the Joint Undertaking, which participated to SESAR 1, upon signature by each member of individual bilateral agreement with the SESAR JU as per Annex B.

⁽⁵⁾ DG BUDG e-mail dated 25/11/2019 answering to several letters from SESAR JU dated 18 May 2018 and 1 April 2019, and closing several exchanges of emails on this topic between the services of the SESAR JU and DG BUDG (dated respectively of 5 June 2018, 21 May 2019 and 28 June 2019)

⁽⁶⁾ European Court of Auditors findings on the SESAR JU annual accounts 2019 ref. 10109/1 - Finding Title: SESAR_M1: implementation of new internal control framework (ICF) -

Article 2

For the purpose of Article 1, the SESAR JU Executive Director shall take all the necessary measures to conclude any transaction that would be necessary to complete the repayment. This includes also, but is not limited to, issuing any required recovery orders any still due cash contributions under SESAR 1.

Article 3

Payment by some Members of any cash contributions still due under SESAR 1 and repayment of the SESAR 1 excess revenue over expenditure to the members of the Joint Undertaking under this decision finalises the financial closure of SESAR 1.

Article 4

This decision shall enter into force on the day following that of its adoption.

Done in Brussels, 8 October 2020.

For the SESAR JU Administrative Board



*The Chairperson
Henrik Hololei*

Annexes:

- Annex A: Basis for and calculation of the due proportion of excess revenue perceived by the SJU from its Members under SESAR 1
- Annex B : Template of Bilateral Agreements between the SESAR JU and its Members other than the Union involved SESAR 1 allowing early repayment of excess financial contributions