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EUROPEAN COURT OF AUDITORS
COUR DES COMPTES EUROPÉENNE
CÚIRT INIÚCHÓIRÍ NA HEORPA



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Report on the annual accounts of the
SESAR Joint Undertaking
for the financial year ended 31 December 2009

together with the replies of the Joint Undertaking

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INTRODUCTION

1. The SESAR Joint Undertaking was set up in February 2007¹, located in Brussels, in order to manage the activities of the SESAR (Single European Sky Air Traffic Management Research) project.
2. The SESAR project aims to modernise Air Traffic Management (ATM) in Europe and is divided into three phases:
 - (a) "Definition phase" started in 2005 and led by the European Organisation for Safety of Air Navigation (Eurocontrol), with co-financing from the EU budget through the Trans European Network - Transport programme. The outcome is the European ATM Master Plan, which defines the content, the development and deployment plans of the next generation of ATM systems.
 - (b) "Development phase" (2008-2013) managed by the SESAR Joint Undertaking (see also **Table**) and leading to the production of new technological systems, components and operational procedures as defined in the European ATM Master Plan.
 - (c) "Deployment phase" (2014-2020) to be led by industry and stakeholders, for the large-scale production and implementation of the new air traffic management infrastructure.
3. The Joint Undertaking is designed as a public-private partnership. The founding members are the European Union represented by the European Commission, and Eurocontrol represented by its Agency. Following a call for expressions of interest, fifteen public and private enterprises from the air navigation industry are members of the Joint Undertaking. These include air

¹ 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) (OJ L 64, 2.3.2007, p. 1) amended by Regulation (EC) No 1361/2008 of 16 December 2008 (OJ L 352, 31.12.2008, p. 12).

navigation service providers, ground and aerospace manufacturing industry, aircraft manufacturers, airport authorities and airborne equipment manufacturers.

4. The budget for the development phase of the SESAR project is 2,1 billion euro, to be provided in equal parts by the EU, by Eurocontrol and by the participating public and private partners. The EU contribution is funded from the Seventh Research Framework Programme and the Trans-European Networks – Transport programme. Around 90 % of the funding from Eurocontrol and the other stakeholders will take the form of in-kind contributions.

5. The SESAR JU started to work autonomously on 10 August 2007.

STATEMENT OF ASSURANCE

6. Pursuant to the provisions of Article 287(1) of the Treaty on the Functioning of the European Union, the Court has audited the annual accounts² of the SESAR Joint Undertaking, which comprise the “financial statements”³ and the “reports on implementation of the budget”⁴ for the financial year ended 31 December 2009 and the legality and regularity of the transactions underlying those accounts.

² These accounts are accompanied by a report on the budgetary and financial management during the year which gives *inter alia* an account of the rate of implementation of the appropriations with summary information on the transfers of appropriations among the various budget items.

³ The financial statements include the balance sheet and the economic outturn account, the cashflow table, the statement of changes in capital and the annex to the financial statements which includes the description of the significant accounting policies and other explanatory information.

⁴ The budget implementation reports comprise the budget outturn account and its annex.

7. This Statement of Assurance is addressed to the European Parliament and the Council in accordance with Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002⁵.

The Director's responsibility

8. As authorising officer, the Director implements the revenue and expenditure of the budget in accordance with the financial rules of the Joint Undertaking⁶ under his own responsibility and within the limits of the authorised appropriations⁷. The Director is responsible for putting in place⁸ the organisational structure and the internal management and control systems and procedures relevant for drawing up final accounts⁹ that are free from material misstatement, whether due to fraud or error, and for ensuring that the transactions underlying those accounts are legal and regular.

The Court's responsibility

9. The Court's responsibility is to provide, on the basis of its audit, a statement of assurance as to the reliability of the annual accounts of the Joint Undertaking and the legality and regularity of the transactions underlying them.

⁵ OJ L 248, 16.9.2002, p. 1.

⁶ SESAR Financial Rules adopted by the Administrative Board on 28 July 2009.

⁷ Article 33 of Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 (OJ L 357, 31.12.2002, p. 72).

⁸ Article 38 of Regulation (EC, Euratom) No 2343/2002.

⁹ The rules concerning the presentation of the accounts and accounting by EU bodies are laid down in chapter 1 of Title VII of Regulation (EC, Euratom) No 2343/2002 as last amended by Regulation (EC, Euratom) No 652/2008 of 9 July 2008 (OJ L 181, 10.7.2008, p. 23) and are incorporated in the Financial Rules of the SESAR Joint Undertaking.

10. The Court conducted its audit in accordance with the IFAC and ISSAI¹⁰ International Auditing Standards and Codes of Ethics. Those standards require that the Court complies with ethical requirements and plans and performs the audit to obtain reasonable assurance about whether the accounts are free from material misstatement and whether the underlying transactions are legal and regular.

11. The Court's audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and about the legality and the regularity of the transactions underlying them. The procedures selected depend on its audit judgement, including the assessment of the risks of material misstatement of the accounts or of illegal or irregular transactions, whether due to fraud or error. In making those risk assessments internal control relevant to the entity's preparation and presentation of accounts is considered in order to design audit procedures that are appropriate in the circumstances. The Court's audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the accounts.

12. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for the opinions set out below.

Opinion on the reliability of the accounts

13. In the Court's opinion, the SESAR Joint Undertaking's annual accounts present fairly, in all material respects, its financial position as of 31 December 2009 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its Financial Regulation.

¹⁰ International Federation of Accountants (IFAC) and International Standards of Supreme Audit Institutions (ISSAI).

Opinion on the legality and regularity of the transactions underlying the accounts

14. In the Court's opinion, the transactions underlying the annual accounts of the SESAR Joint Undertaking for the financial year ended 31 December 2009 are, in all material respects, legal and regular.

15. The comments which follow do not call the Court's opinions into question.

COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT***Implementation of the budget***

16. The final 2009 budget adopted by the Administrative Board included commitment appropriations of 325 million euro and payment appropriations of 157 million euro. The utilisation rates for commitment and payment appropriations were 97,1 % and 43,2 % respectively.

17. In 2009, the contributions from members (38,8 million euro) together with the outturn of the previous year (115,6 million euro) amounted to 154,4 million euro, against payments of 67,9 million euro and carryover of appropriations of 2,5 million euro. This led to a positive budget outturn of 84 million euro and deposits in bank accounts at the end of the year totalling 86,8 million euro. This is at odds with the budgetary principle of equilibrium.

18. According to Article 51 of the SESAR Joint Undertaking Financial Rules, the funds paid to the Joint Undertaking by the Commission by way of the subsidy bear interest for the benefit of the EU general budget. At the end of 2009, the Joint Undertaking had not received a request to transfer the interest of 1,7 million euro accrued in the period 2007 to 2009.

Presentation of the accounts: members' contributions

19. The Court notes that the activities of the EU Joint Undertakings are funded by contributions from their members, and that the Joint Undertakings have no

capital as such. The Court recommended that this specific feature of the Joint Undertakings is clearly disclosed in the accounts.

20. The Court therefore welcomes the fact that, in accordance with EU Accounting Rule 1 (Group Accounting), the contributions from members are presented under Net Assets in the Balance Sheets of the Joint Undertakings, and that further information on the nature of the contributions is provided in the Notes to the Accounts.

21. This is a change to the accounting policy applied by the SESAR Joint Undertaking in the 2008 accounts, where the members' contributions were recognised as revenue in the Economic Outturn Account. The relevant figures are restated in the 2008 accounts in order allow comparison with the 2009 accounts.

22. The Court considers that the presentation of members' contributions in the Accounts of the Joint Undertakings should be harmonised as far as possible and notes the intention of the Commission to issue detailed guidance in this respect to the Joint Undertakings.

OTHER MATTERS

Internal control systems

23. While recognising that the Joint Undertaking was in a start-up phase in 2008, the Court observed in its previous Report that the Joint Undertaking had not completely implemented its internal controls and financial information system.

24. Although important steps were taken during 2009¹¹, it remains the case that at the end of 2009, key activities of the organisation are not sufficiently

¹¹ Including the entry into force of Council Regulation No 1361/2008 amending Regulation (EC) No 219/2007 and the adoption of new Financial Rules of the SESAR Joint Undertaking on 28 July 2009.

formalised and that an integrated tool to manage the financial, budget and operational information was not put in place. As already observed in 2008, the underlying business processes have not yet been validated by the Accounting Officer as required by the Financial Regulation of the Joint Undertaking.

25. The Court's testing of a sample of 36 transactions identified several cases where internal controls had not operated correctly. For example, in one case the Joint Undertaking concluded a contract for cleaning services for an annual value of 19 572 euro, without following the negotiated procedure laid down in the General Financial Regulation and the SESAR Financial Regulation. For another contract amounting to 922 000 euro for assistance in the preparation of membership agreements, the Court was able to obtain evidence that the services had been performed, but could not be provided with a formal statement of services rendered as required by the Financial Rules.

26. According to Article 25 of the SESAR Financial Rules, budget appropriations are to be used in accordance with the principle of sound financial management. The contract for office space and facilities, signed on 6 September 2007 for a period of nine years, included the possibility of early termination without penalty at the end of each three-year period. However, the Joint Undertaking moved offices in 2009 and had to pay 380 235 euro for a further 12 months' rent and charges for its vacated offices.

Recognition of Assets

27. As regards of the results of the SESAR programme, the Joint Undertaking will own all the tangible and intangible assets which it creates or which are transferred to it for the development phase of the SESAR project in accordance with specific agreements with its members¹².

28. As pointed out in the Annex to the Financial Statements, at this stage the SESAR Joint Undertaking is not able to forecast the activation of assets that

¹² Article 18 of the Statutes.

might arise from the results of the activities. The Court notes that an integrated management information system to allow the allocation of costs to specific work packages or to identify the funding source of operational costs was not yet in place at the end of 2009. This is necessary to ensure the proper valuation of the costs of the activities and the activation of assets when required.

Financial Regulation of the Joint Undertaking

29. The Financial Rules of the Joint Undertaking were initially adopted by the Administrative Board in July 2007. In 2008, the Court¹³ observed that the Financial Rules of the Joint Undertaking should be amended to be in line with the framework Financial Regulation for EU bodies. After the entry into force of Council Regulation (EC) No 1361/2008 amending Regulation (EC) No 219/2007, establishing the SESAR Joint Undertaking, the Administrative Board adopted on 28 July 2009 the current Financial Rules, repealing the Financial Rules adopted on July 2007.

30. The Court issued its Opinion No 2/2010 on the new Financial Rules of the SESAR Joint Undertaking on 15 April 2010. The Court made a number of recommendations, regarding exceptions to budgetary principles, the role of the Internal Audit Service of the Commission and the provisions concerning membership of the SESAR Joint Undertaking and co-financing of activities.

Internal Audit Function and Commission Internal Audit Service

31. As expressed in its Opinions No 2/2010 on the Financial Rules of SESAR Joint Undertaking and No 4/2008 on the Financial Regulation of the Fusion for Energy Joint Undertaking, the Court considers that the current provision in the Statutes of the Joint Undertaking on the role of the Commission's internal auditor should be clarified.

¹³ Report on the annual accounts of the SESAR Joint Undertaking for the financial year ended 31 December 2008 (OJ C 310, 18.12.2009).

32. Article 7a of the Statutes of the SESAR Joint Undertaking states that the functions of the Commission's internal auditor are to be carried out under the responsibility of the Administrative Board of the Joint Undertaking. In the Courts opinion, such an arrangement is appropriate for the internal auditing function within the Joint Undertaking but not for the Commission's internal auditor, whose responsibilities relate to the general EU budget as a whole.

This report was adopted by Chamber II, headed by Mr Morten LEVYSOHN, Member of the Court of Auditors, in Luxembourg at its meeting of 20 October 2010.

For the Court of Auditors

Vitor Manuel da SILVA CALDEIRA

President

Table - SESAR Joint Undertaking (Brussels)

Areas of Union competence deriving from the Treaty	Competences of the Joint Undertaking as defined in Council Regulation (EC) No 219/2007 as amended by Regulation (EC) No 1361/2008		Governance	Resources made available to the Joint Undertaking in 2009	Main products and services supplied in 2009
<p>Common transport policy</p> <p>“1. The provisions of this Title shall apply to transport by rail, road and inland waterway. 2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may lay down appropriate provisions for sea and air transport. They shall act after consulting the Economic and Social Committee and the Committee of the Regions.</p> <p><i>(Article 100 of the Treaty on the Functioning</i></p>	<p>Objectives</p> <ul style="list-style-type: none"> - to ensure the modernisation of the European air traffic management system by coordinating and concentrating all relevant research and development efforts in the Union; - to execute the ATM Master Plan. 	<p>Tasks</p> <ul style="list-style-type: none"> - manage the research, development and validation activities of the SESAR Project by combining public and private sector funding provided by its members and using external technical resources and in particular by using EUROCONTROL's experience and expertise. <p>In particular</p> <ul style="list-style-type: none"> - organise and coordinating the activities of the development phase of the SESAR project, in accordance with the ATM Master Plan, resulting from the definition phase of the project managed by Eurocontrol, by combining and managing under a single structure public and private sector funding, 	<p>1 - Administrative Board</p> <p><i>Composition</i></p> <ul style="list-style-type: none"> (a) a representative from each of the members of the Joint Undertaking; (b) a representative of the military; (c) a representative of civil users of airspace; (d) an air navigation service providers' representative, designated by their representative organisation at European level; (e) an equipment manufacturers' representative, designated by their representative organisation at European level; (f) an airports' representative; (g) a representative from the bodies representing staff in the air traffic management sector; , designated by their representative organisation at European level (h) a representative of the relevant scientific institutions or the relevant scientific community, designated by their representative organisation at European level. <p>The Administrative Board shall be chaired by the representative of the Union.</p> <p><i>Main tasks</i></p> <ul style="list-style-type: none"> (a) adopt the ATM Master Plan endorsed by the Council as referred to in Article 1(2) of the SESAR Regulation and approve any proposal to modify it; (b) give guidelines and take the decisions 	<p>Budget</p> <p>325,1 million euro Union contribution 16,9 %.</p> <p>Staff at 31 December 2009</p> <p>Posts in the staff establishment plan: 39</p> <p>Post occupied: 18</p> <p>Other posts (auxiliary contracts, seconded national experts, local staff): 8</p> <p>Total staff number: 26</p> <p>Staff seconded from the Joint Undertaking members as part of their in-kind contribution: 4</p> <p><i>assigned to the following duties:</i></p> <ul style="list-style-type: none"> - Operational tasks: 22 	<p>Main achievements in 2009:</p> <ul style="list-style-type: none"> - the Membership process was concluded on 26 March 2009 with the Administrative Board decision to award the Membership to the 15 pre-selected candidate Members together with the award of the activities included in the scope of IBAFO 1. The European Commission had previously (23 March 2009) received the position of EU Member States, following a comitology procedure as provided for under Article 5.4 of the SJU Regulation (EC) 219/2007; - as at the moment of the launch of IBAFO 1 it was not possible to include all the Work Packages, inter alia due to the need to have the final endorsement by the Provisional Council of the contribution of Eurocontrol to the SJU, a new IBAFO was launched in July 2009. The selection process was performed in November and the Executive Director presented its recommendation on the award of the activities to the SJU Administrative Board, who endorsed it, at its meeting on 14 December 2009; - with the completion of the Membership process as planned in 2009 and the process to award the Programme activities, the SESAR Programme has fully entered into operation; - in line with the targets established in the AWP 2009, 69% of the projects were initiated by the end of 2009. 126 R&D projects were kicked-off; 62 Initiation Reports were received by the SJU by year end. 32 Initiation Reports were analysed out of which 13 projects were authorised

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<p><i>of the European Union)</i></p> <p>Research and technological development</p> <p>'The Union may set up joint undertakings or any other structure necessary for the efficient execution of Union research, technological development and demonstration programmes.</p> <p><i>(Article 187 of the Treaty on the Functioning of the European Union)</i></p>	<ul style="list-style-type: none"> - ensure the necessary funding for the activities of the development phase of the SESAR project in accordance with the ATM Master Plan, - ensure 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, and manufacturing industry; as well as the relevant scientific institutions or the relevant scientific community, - organise the technical work of research and development, validation and study, to be carried out under its authority while avoiding fragmentation of such activities, - ensure the supervision of 	<p>necessary for the implementation of the development phase of the Sesar project and exercise overall control over its implementation;</p> <p>(c) approve the Joint Undertaking's work programme and annual work programmes as well as the annual budget, including the staff establishment plan;</p> <p>(d) authorise negotiations and decide on the accession of new members and on the relating agreements;</p> <p>(e) supervise the execution of the agreements between members and the Joint Undertaking;</p> <p>(f) appoint and dismiss the Executive Director and approve the organisation chart and monitoring the Executive Director's performance;</p> <p>(g) decide on the amounts and procedures for the payment of members' financial contributions and the assessment of contributions in kind;</p> <p>(h) adopt the financial regulations rules of the Joint Undertaking;</p> <p>(i) approve the annual accounts and balance-sheet;</p> <p>(j) adopt the annual report on the progress of the development phase of the Sesar project and its financial situation;</p> <p>(k) decide on proposals to the Commission on the extension and the dissolution of the Joint Undertaking;</p> <p>(l) establish procedures for granting rights of access to tangible and intangible assets which are the property of the Joint Undertaking and the transfer of such assets;</p> <p>(m) lay down the rules and procedures for awarding the contracts necessary to implement the ATM Master Plan,</p>	<ul style="list-style-type: none"> - Administrative and support tasks: 16 - Mixed tasks: 1 	<p>by the Executive Director to start execution and 19 were considered as not fulfilling one or more of the acceptance criteria and a revised version was requested. 43 management activities were kicked-off and following the submission of a Management Initiation Reports will be authorised to proceed to the execution phase at the beginning of 2010;</p> <ul style="list-style-type: none"> - following the entry into force on 1 January 2009 of Council Regulation (EC) 1361/2008 of 16 December 2008, the SJU realized and completed the transition to a full European Union's Body. As a result: <ul style="list-style-type: none"> a. new staff was recruited under the "Staff Regulations of Officials and Conditions of Employment of the other Servants of the European Union" as last modified by Council Regulation (EC, Euratom) No 31/2005 of 20 December 2004 (hereinafter the "Staff Regulations"); b. the 13 staff Members in force at the beginning of 2009 were subject to an internal selection process in accordance with Article 2 of Council Regulation (EC) 1361/2008 and were recruited as Temporary Agents under the Staff Regulations; c. as of end of April 2009, the SJU has been in the position to recruit Contract Agents; d. on 30 March 2009, in accordance with Article 2b of the SJU Regulations, the SJU signed an Administrative Agreement with the Belgian Government which implements the provisions of the Protocol on Privileges and Immunities of the European Communities. As a consequence of the application of the Protocol, the SJU has been declared exempted from VAT and

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		<p>activities related to the development of common products duly identified in the ATM Master Plan and if necessary, to organise specific invitations to tender.</p>	<p>including specific procedures for conflicts of interest; (n) decide on proposals to the Commission to amend the Statutes; (o) exercise such other powers and perform such other functions, including the establishment of subsidiary bodies, as may be necessary for the purposes of the development phase of the Sesar project; (p) adopt the arrangements for implementing Article 8 on the secondment of staff to the Joint Undertaking.</p> <p><u>2 - Executive Director</u></p> <p>Appointed by the Administrative Board on a proposal from the Commission.</p> <p><u>3 - External Audit</u></p> <p>Court of Auditors.</p> <p><u>4 - Discharge Authority</u></p> <p>Parliament on a recommendation of the Council.</p>		<p>started the process to recover the VAT paid between the 16 October 2008 until the entry into force of the Administrative Agreement, and the taxes on the interest yielded in the same period. By the end of 2009, the VAT (EUR 0.4 Million) was recovered and cashed while the taxes on the interest will be cashed during 2010;</p> <p>e. on 28 July 2009, the Administrative Board adopted the new SJU Financial Rules in accordance with Article 4a of the SJU Regulation, after having received the prior consent of the European Commission. The SJU Financial Rules should receive an opinion of the European Court of Auditors in 2010.</p> <p>2009 was a critical year of the SJU which had, on the one hand, to go through a 360 degrees restructuring process of its organization due to the change of its Statutes and, on the other hand, to start operationally the activities with the launch of the projects, sub-work packages and work packages while still finalizing the Membership process.</p>

Source: Information submitted by the Joint Undertaking.

REPLY OF THE SESAR JOINT UNDERTAKING

Paragraph 17

The SJU is responsible for the development phase of the SESAR Programme which is expected to last until 2016. The programme was launched in 2009. It is multi-annual and will be characterized during its life by an expected imbalance between revenues and expenditure, particularly in its early years.

Paragraph 24

The SJU depends upon the European Commission services for the implementation of its financial systems, ABAC and SAP, which could not be implemented by the EC at SJU until May 2010. The SJU operational programme management system is effective since the end of 2009.

Paragraph 25

The contract for 19 572 EUR was established and signed by the Temporary Administrator of the SJU in 2007, at a time where the SJU had no staff nor internal organisation. The SJU has launched in 2009 the correct procurement procedure to replace the contract.

The SJU acknowledges the Court's finding that it should have been able to obtain better evidence to support the payment of EUR 922 000 and it already ensures that formal statements of services rendered are available. However, the contract comprised support activities and professional legal advice to be charged on a time basis; these activities were performed on a continuous if not daily basis, in a very dense period of activity for the SJU (completion of negotiations with members) and were continuously monitored by the SJU. The outputs of the contract, such as draft membership and multi-lateral framework agreements, were worked on by SJU staff and support contractors in close and continuous cooperation, in particular through multiple exchanges of documents by email.

Paragraph 26

The SJU inherited the rental contract for the former premises of the Galileo Joint Undertaking in 2007 which were soon found to be inadequate for its needs, as agreed by the Administrative Board in 2008. The SJU, consequently, had to balance the risk of delaying the programme launch with the cost of moving to adequate premises. The SJU negotiated the contract for its new premises within its rental budget without the need to request additional resources from the Administrative Board.

Paragraph 28

The SJU acknowledges the Court's concern but remains confident that it will be able to identify the funding source and costs necessary to activate assets at a proper value when required.

Paragraph 30

The SJU is undertaking the necessary measures together with the European Commission services to implement the recommendations contained in the Court's Opinion No 2/2010.

Paragraph 31

The SJU will consider the necessity to amend its Statutes taking into account the opinion of the EC services.