Council Regulation (EC) No 1361/2008 of 16 December 2008 amending Regulation (EC) No 219/2007 on the establishment of a joint undertaking to develop the new generation European air traffic management system (SESAR)

COUNCIL REGULATION (EC) No 1361/2008

of 16 December 2008

amending Regulation (EC) No 219/2007 on the establishment of a joint undertaking to develop the new generation European air traffic management system (SESAR)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 171 and 172 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Whereas:

(1) Since the establishment of the SESAR Joint Undertaking (Joint Undertaking), Council Regulation (EC) No 71/2008 of 20 December 2007 has set up the Clean Sky Joint Undertaking[(3)], Council Regulation (EC) No 72/2008 of 20 December 2007 set up the ENIAC Joint Undertaking[(4)], Council Regulation (EC) No 73/2008 of 20 December 2007 set up the Joint Undertaking for the implementation of the Joint Technology Initiative on Innovative Medicines[(5)], and Council Regulation (EC) No 74/2008 of 20 December 2007 set up the ARTEMIS Joint Undertaking to implement a Joint Technology Initiative in Embedded Computing Systems[(6)]. Those Joint Undertakings are bodies set up by the Communities within the meaning of Article 185(1) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities[(7)]. Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of other Servants of the European Communities[(8)] applies to their staff, and the Protocol on Privileges and Immunities of the European Communities applies to them and to their staff.

(2) As a body set up by the Communities, it is appropriate to align the legal status of the SESAR Joint Undertaking with that of the other newly established Joint Undertakings, in order to ensure that this Joint Undertaking benefits from the same treatment as that afforded to the other newly established Joint Undertakings.

(3) Council Decision 2006/971/EC of 19 December 2006 concerning the specific programme ‘Cooperation’ implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013)[(9)] states that research will develop and implement an innovative

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Air Traffic Management (ATM) system within the context of the SESAR initiative, which will also ensure the most effective coordination of the development of the ATM systems in Europe.

(4) According to the annual work programmes for 2007 and 2008 concerning the Specific Programme 'Cooperation', Transport (including aeronautics), implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013), the Commission will provide annual contributions from the Seventh Framework Programme to the SESAR Joint Undertaking for a total estimated amount of EUR 350 million over the entire programme.

(5) The multi-annual work programme for grants in the field of trans-European Transport networks for the period 2007-2013 identifies the SESAR project to modernise ATM in Europe as a major horizontal priority by allocating to it an estimated budget of EUR 350 million over that period.

(6) The Commission estimates that the Community's contribution to the SESAR Joint Undertaking will be EUR 700 million, which will come in equal parts from the 7th Framework Programme for Research and Development and from the Trans-European transport networks programme.

(7) As the Joint Undertaking is a body set up by the Communities, its decision-making process should guarantee the Community's decision-making autonomy, in particular in respect of; issues having an impact on the strategic orientation of the Joint Undertaking, the Community's contribution, and the independence and equal treatment of the Joint Undertaking's staff.

(8) An administrative agreement should be concluded between the SESAR Joint Undertaking and Belgium concerning privileges and immunities and other support to be provided by Belgium to the Joint Undertaking.

(9) In order to ensure the efficient management of the resources provided to the Joint Undertaking for its research activities and to ensure that, as far as possible, the Joint Undertaking receives the same treatment as other comparable undertakings, it is necessary to ensure that the fiscal matters of the Protocol on Privileges and Immunities of the European Communities are applied retroactively from an appropriate date.

(10) Regulation (EC) No 219/2007 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 219/2007

Regulation (EC) No 219/2007 is hereby amended as follows:

1. in Article 1, paragraph 2 shall be replaced by the following:

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2. The Joint Undertaking shall cease to exist on 31 December 2016 or eight years after an endorsement by the Council of the European Air Traffic Management Master Plan (the ATM Master Plan) resulting from the definition phase of the SESAR project, whichever is the earlier. The Council shall decide on such endorsement acting on a proposal from the Commission.;

2. Article 2 shall be replaced by the following:

Article 2

Legal status

The Joint Undertaking shall be a Community body and shall have legal personality. In every Member State, it shall enjoy the most extensive legal capacity accorded to legal persons under the law of that State. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.;

3. the following Articles shall be inserted:

Article 2a

Staff

1 The Staff Regulations of Officials of the European Communities, the Conditions of Employment of other servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for the purpose of applying these Staff Regulations and the Conditions of Employment shall apply to the staff of the Joint Undertaking and its Executive Director.

2 Without prejudice to Article 7(2) of its Statutes, the Joint Undertaking shall exercise the powers conferred on the appointing authority by the Staff Regulations of Officials of the European Communities and on the authority empowered to conclude employment contracts by the Conditions of employment of other servants of the European Communities in respect of its staff.

3 The Administrative Board shall, in agreement with the Commission, adopt the appropriate implementing rules referred to in Article 110(1) of the Staff Regulations of Officials of the European Communities and the Conditions of Employment of other Servants of the European Communities.

4 The staff resources shall be determined in the establishment plan of the Joint Undertaking that will be set out in its annual budget.

5 The staff of the Joint Undertaking shall consist of temporary agents and contract agents engaged for a fixed period that may be renewed once and for a fixed period only. The total period of engagement shall not exceed eight years and shall not in any case exceed the duration of the Joint Undertaking.

6 All costs related to the staff shall be borne by the Joint Undertaking.

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Article 2b

Privileges and immunities

1 The Protocol on the Privileges and Immunities of the European Communities shall apply to the Joint Undertaking and, insofar as they are subject to the rules referred to in paragraph 1 of Article 2a, to its staff and its Executive Director. Insofar as taxes and customs duties are concerned, that Protocol shall apply to the Joint Undertaking as from 15 October 2008.

2 An administrative agreement shall be concluded between the Joint Undertaking and Belgium concerning privileges and immunities and other support to be provided by Belgium to the Joint Undertaking.

Article 2c

Liability

1 The contractual liability of the Joint Undertaking shall be governed by the relevant contractual provisions and by the law applicable to the agreement or contract in question.

2 In the case of non-contractual liability, the Joint Undertaking shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its staff in the performance of their duties.

3 Any payment by the Joint Undertaking in respect of the liability referred to in paragraphs 1 and 2 and the costs and expenses incurred in connection therewith shall be considered as expenditure of the Joint Undertaking and shall be covered by its resources.

4 The Joint Undertaking shall be solely responsible for meeting its obligations.

Article 2d

Jurisdiction of the Court of Justice and applicable law

1 The Court of Justice shall have jurisdiction:

a in any dispute between the members, which relates to the subject matter of this Regulation and/or the Statutes referred to in Article 3;

b pursuant to any arbitration clause contained in agreements and contracts concluded by the Joint Undertaking;

c in actions brought against the Joint Undertaking, including decisions of its bodies, under the conditions provided for in Articles 230 and 232 of the Treaty;

d in disputes related to compensation for damage caused by the staff of the Joint Undertaking in the performance of their duties.

2 For any matter not covered by this Regulation or by other acts of Community law, the law of the State where the seat of the Joint Undertaking is located shall apply.;

4. in Article 4, paragraph 2 shall be replaced by the following:

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2. The maximum Community contribution shall be EUR 700 million of which EUR 350 million shall be paid from the budget appropriation allocated to the theme "Transport (Including Aeronautics)" of the Specific Programme Cooperation of the Seventh Framework Programme for research and technological development and EUR 350 million from the budget of the Framework Programme on Trans-European networks for the period 2007-2013. The Community contribution shall be paid in accordance with Article 54(2)(b) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities[(10)] (hereinafter referred to as the Financial Regulation).

The arrangements for the Community contribution shall be established by means of a general agreement and annual financial implementation agreements, which shall be concluded between the Commission, on behalf of the Community, and the Joint Undertaking.

The general agreement shall provide for a right for the Commission to oppose the use of the Community contribution for purposes it considers to be contrary to the principles of the Community programmes mentioned in the first subparagraph or to its Financial Regulation or detrimental to the interests of the Community. In the event of the Commission's opposition, the Community contribution cannot be used by the Joint Undertaking for those purposes.;

5. the following Articles shall be inserted:

Article 4a

Financial Rules

1 The Joint Undertaking shall adopt specific financial rules in accordance with Article 185(1) of the Financial Regulation. They may depart from the rules laid down in Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of the Financial Regulation[(11)] where the specific operating needs of the Joint Undertaking so require and subject to prior consent of the Commission.

2 The Joint Undertaking shall have its own internal audit capability.

Article 4b

Discharge

Discharge for the implementation of the budget of the year *n* of the Joint Undertaking shall be given by the European Parliament, upon recommendation from the Council, before 15 May of the year *n + 2*. The Administrative Board shall, in the financial rules of the Joint Undertaking, provide for the procedure to be followed when giving discharge, taking into account the particular characteristics resulting from the nature of the Joint Undertaking as public-private partnership, and in particular from the private sector contribution to the budget.;

6. in Article 5, paragraph 4 shall be replaced by the following:

4. The position of the Community in the Administrative Board as regards decisions concerning the accession of new members and significant modifications of