



**EUROPEAN
DEFENCE
AGENCY**

SESAR
JOINT UNDERTAKING



MEMORANDUM OF COOPERATION

between

the European Defence Agency

and

**the Single European Sky ATM Research
(SESAR) Joint Undertaking**

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THE EUROPEAN DEFENCE AGENCY,

As originally established by the Council Joint Action 2004/551/CFSP, repealed by Council Decision 2011/411/CFSP, in its turn repealed by Council Decision (CFSP) 2015/1835 of 12 October 2015¹ defining the statute, seat and operational rules of the European Defence Agency,

Located at Rue des Drapiers 17-23, B- 1050 Brussels, Belgium,

Hereinafter referred to as "EDA",

Represented for the purpose of the signature of this Memorandum of Cooperation by Mr Jorge DOMECCQ, its Chief Executive,

OF THE ONE PART,

and

THE SESAR JOINT UNDERTAKING,

A Joint Undertaking within the meaning of Article 187 of the Treaty on the Functioning of the European Union ("Union"), set up by 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), as amended by Council Regulation (EC) 1361/2008 of 16 December 2008 and Council Regulation (EU) No 721/2014 of 16 June 2014,

Located at 100 Avenue de Cortenbergh, B-1000 Brussels, Belgium,

Hereinafter referred to as "SJU",

Represented for the purpose of the signature of this Memorandum of Cooperation by Mr Florian Guillermet, Executive Director,

OF THE OTHER PART,

Hereinafter referred to individually as a "Party" and collectively as the "Parties",

¹ OJ L 266, 13.10.2015, p.55

WHEREAS the SESAR Project, technological pillar of the Single European Sky, aims to modernise air traffic management in Europe in three consecutive and overlapping phases: the definition phase to define the content of the next generation of ATM systems; the development phase to develop and validate the new generation of technological systems, components and operational procedures; and the deployment phase that consists of the industrialisation and implementation of the new air traffic management system;

WHEREAS the SJU is responsible for the modernisation of the European Air Traffic Management (ATM) system by coordinating, rationalising and concentrating all relevant research and development efforts in the European Union, in accordance with Article 1.5 of Regulation (EC) No. 219/2007 on the establishment of a Joint Undertaking to develop the new generation Air Traffic Management system (SESAR) as amended by Council Regulation (EC) No. 1361/2008 and Council Regulation (EU) No. 721/2014;

WHEREAS the EDA was entrusted by its Steering Board at its meeting of November 2010 to evaluate the operational risks and financial implications of the Single European Sky (SES) for military aviation;

WHEREAS this EDA role was extended in May 2013, pursuant to the adoption of Commission Implementing Regulation (EU) No 409/2013, Article 8.4 b), which entrusted the EDA with the task of facilitating the coordination of military views from and in support of the Member States and the relevant international military organisations on SESAR deployment and of informing military planning mechanisms of the requirements stemming from SESAR deployment;

WHEREAS on 30 September 2015 an EDA SES Military Aviation Board (ESMAB) was created according to the Modalities for Single European Sky approved by the EDA Steering Board in order to provide coordination and cooperation with Member States and international organisations to prevent any adverse impact of the SES on national and collective defence capabilities;

WHEREAS the Parties have in place an exchange of letters establishing cooperation between the two organisations since 10th April 2012;

WHEREAS the Parties wish to establish permanent and coordinated cooperation in the implementation of certain areas of their respective work programmes;

WHEREAS the Parties share the common objective to identify possible synergies in common areas of activity in order to avoid unnecessary overlapping or duplication of activities and costs;

WHEREAS the SJU and the EDA have as a common purpose the success of the SESAR Project for the modernisation of Air Traffic Management in Europe;

In consideration of the above, the Parties have agreed as follows:

1 PURPOSE AND KEY PRINCIPLES OF COOPERATION

- 1.1 The purpose of this Memorandum of Cooperation (“MoC”) is to establish the general terms for cooperation, including exchange of information between the Parties, in order to ensure and enhance strategic, efficient and effective cooperation and support between the Parties in the performance of their respective tasks under European Union law and in conformity with their respective decision making procedures.
- 1.2 In the exercise of their respective responsibilities under their respective legal mandates and under Commission Implementing Regulation (EU) No 409/2013, the Parties agree to cooperate closely . For this purpose, the Parties agree to ensure that the concerns and specific needs of the military community are considered to avoid any adverse impact on defence capabilities, and that the military community is made aware of the opportunities that SESAR represents for consideration in their respective activities by:
- a) ensuring that the SJU consults EDA for military requirements in relation to the tasks of the SJU, utilising EDA to facilitate the coordination of Military views for the purposes of SESAR, pursuant to its mandate;
 - b) ensuring that EDA consults the SJU for ATM Research and Development aspects having a military dimension;
 - c) aligning civil and military technological development initiatives, wherever possible;
 - d) optimising the use of expertise and available resources thereby avoiding a duplication of work between the Parties, where possible;
 - e) ensuring mutual and timely sharing of relevant information for the purpose of efficient and effective cooperation and communication.

2 SCOPE OF COOPERATION

- 2.1 In accordance with their respective legal mandates, the cooperation and exchange of information between the Parties relates to the following areas:
- a) European ATM Masterplan;
 - b) Military capabilities and technologies evolution planning relevant to SESAR;
 - c) SESAR developments relevant to the Military especially in relation to in particular:
 - Space Based systems;
 - RPAS;
 - Projects of common interest;
 - Consequence of Cyber security threats and system vulnerabilities;
 - ATM standards developments.

2.2 Further potential areas of cooperation can be determined by mutual agreement between the Parties pursuant to Section 4.4 below.

3 LEGAL NATURE

3.1 This MoC is a statement of intent and does not create any enforceable rights. The Parties will fulfil their responsibilities under this MoC on a best-effort basis.

3.2 This MoC does not modify or supersede any European Union law or any national laws nor does it affect any provisions under other multilateral or bilateral agreements in force and applicable to the Parties.

3.3 There will be no third party beneficiaries to this MoC.

4 GOVERNANCE AND IMPLEMENTATION

4.1 The Parties agree to implement this MoC and manage their cooperation activities through the creation of a specific EDA/SJU Steering Committee ("SC").

4.2 In this framework, each of the Parties will appoint at least two representatives to the SC, who:

- a) shall be designated by the Chief Executive of the EDA and the Executive Director of SJU upon the signature of this MoC;
- b) will respectively act as primary Points of Contact (PoCs) and jointly act as the secretariat within each organisation, facilitating an effective implementation of this MoC;
- c) may invite staff members of their organisation to participate in discussions relating to any particular matter addressed in the SC meeting;

4.3 The SC will convene once a year and upon request of either Party to ensure the effective monitoring and execution of the MoC. A joint report with agreed actions stemming from the SC meeting shall be prepared by the SC secretariat, agreed between them and distributed within a month from the meeting date. These reports will be subject to the respective managements' approval (the Chief Executive for EDA and the Executive Director for SJU).

4.4 The SC will provide guidance and leadership regarding the cooperation activities between the Parties and, in particular:

- ensure that this MoC is operated in a manner which optimises the synergies between the Parties and provides operational benefit for the Parties;
- define clear cooperation objectives at short, mid and long terms;
- assess opportunities for new areas of cooperation in the framework of this MoC;
- deal with any governance and management issues affecting the cooperation between the Parties at operational level; and
- recognise and promote as appropriate, participation of each Party in their respective initiatives.

4.5 In parallel to the SC activities, the SJU will continue to invite the EDA to attend any meeting deemed relevant for the implementation of this MoC. The EDA will similarly invite the SJU to attend any equivalent meeting deemed relevant for the implementation of this MoC.

5 PROVISION OF INFORMATION

5.1 The Parties agree to provide each other with all information necessary for the performance of their respective tasks in a timely manner, either upon request or on a voluntary basis in the absence of an explicit request, subject to their respective rules on exchange of information.

5.2 With regard to information that is provided on request, the request will:

- a) contain a general description of the required information;
- b) specify the purpose for which the information is sought;
- c) state why the information is necessary in order to perform the requesting Party's tasks; and
- d) describe the urgency of the request, the level of classification of the required information, if known at the time of the request, and the desired time limit for the reply.

5.3 Requests for information may be made in writing or orally. The format of the request will take the respective rules on exchange of information into account.

5.4 It is noted that EDA is bound by Council Decision of 23 September 2013 on the security rules for protecting EU classified information (2013/488/EU). In the unlikely event that the exchange of classified information between the parties is necessary, such exchange is only possible if all requirements are met in accordance with the procedures established in annex VI of the above mentioned Council Decision.

5.5 The Parties shall, as far as possible, respond to requests within the timeframe indicated taking into account the stated urgency of the request and subject to the Parties' respective rules on exchange of information.

5.6 The Parties agree that in order to achieve the objectives of this MoC, each Party may request, be given access to or come into possession of information related to technologies, techniques, processes, inventions, research and development, business plans, policies, new or modified product plans, financial or commercial conditions.

5.7 Any information requested or received by the Parties under this MoC will be used exclusively for lawful purposes and only in relation to the exercise by the Parties of their respective duties and tasks.

5.8 Except when otherwise provided, the Parties will not disclose any information exchanged in connection with this MoC to any third party other than those officially entitled to neither handle such information without the written consent of the other; nor will they use it for commercial purposes. Such disclosure will extend only so far as may be necessary for the purpose of this MoC and will be treated in strict confidence when and if requested by either Party.

- 5.9 The Parties will ensure that all persons under their responsibility dealing with or having access to sensitive information are bound by the obligation of professional secrecy in accordance with the general principle of professional secrecy stated in Article 339 of the Treaty on the Functioning of the European Union and in compliance with relevant Union law.

6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 Each Party shall ensure that their respective employees, agents, contractors and professional advisers respect the Intellectual Property Rights (IPR) (including but not limited to patents, copyright and trade marks) of the other Party at all times.
- 6.2 Unless otherwise further agreed to in writing, neither Party shall display, publish, reproduce, exploit or otherwise use the symbols, logos, names, trademarks or other identification or protected intellectual property of the other Party.
- 6.3 The creation, ownership, licensing or enforcement of IPR arising from any cooperative initiative under this MoC shall be determined by prior mutual agreement of the Parties. This MoC does not affect any IPR of each Party existing before the date of entry into force of this MoC.
- 6.4 Neither Party is obliged to grant to the other Party rights in inventions, copyright material or technology that belong to it, as a result of work preceding or independent of this MoC.
- 6.5 Provisions governing IPR shall be agreed in writing among the Parties, as necessary, at the project level, for each specific project before the commencement, with the understanding that specific provisions shall be put in place to record the Parties' understanding governing IPR.

7 FINANCIAL

Each Party will bear the costs of the activities it performs pursuant to this MoC, unless otherwise agreed between the Parties, for a particular activity, and subject to their respective financial rules.

8 SETTLEMENT OF DISPUTES

In the event of any disagreement between the Parties arising out of or in connection with the interpretation or application of this MoC, any agreements entered into, or documents executed pursuant to this MoC, the Parties will seek, in good faith, to resolve the disagreement through direct negotiations between the PoCs referred to at Article 4.2 above.

9 LIABILITY

- 9.1 The Parties agree that, with respect to the Activities undertaken pursuant to this MoC, one Party will not make any claim against the other Party with respect to injury or death of its employees or contractors or any person acting on its behalf, or with respect to damage of any kind to or loss of its own or contractors' property whether such injury, death, loss or damage arises through negligence or otherwise, except in the case of gross negligence or wilful misconduct.

- 9.2 Each Party shall bear the responsibilities and liabilities respectively deriving from its own obligations under this MoC.
- 9.3 The application and utilisation of information or deliverables exchanged in pursuance of this MoC will confer no liability on the Party from which such information originated.
- 9.4 Nothing in or relating to this MoC can be construed as establishing joint liability, a joint venture, an exclusive arrangement, or other similar relationship between the Parties.
- 9.5 In any event, EDA and SJU agree to hold each other harmless of all claims raised by any third party.

10 AMENDMENTS AND REVIEW

- 10.1 Any amendments to this MoC will be made in writing and will be duly signed by both Parties.
- 10.2 Both Parties agree to a review of the functioning and effectiveness of cooperation and information exchange under this MoC every two years after its signature or earlier when deemed necessary by the Parties, based on experience and lessons learnt.

11 ENTRY INTO FORCE AND TERMINATION

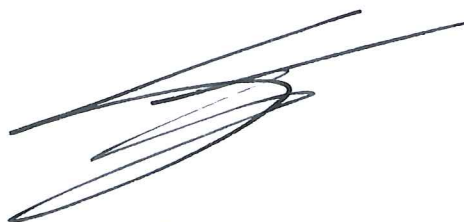
- 11.1 This MoC as well as any amendments to this MoC will enter into force from the date of signature by both Parties.
- 11.2 This MoC will terminate automatically in the event that the SJU ceases its function.
- 11.3 This MoC may be terminated by either Party, at any time, subject to giving six months' prior written notice to the other Party at any time. If the MoC is terminated by either Party, adequate measures will be taken to ensure that the termination does not adversely affect any activity already in progress under this MoC.
- 11.4 The terms of the Exchange of letters between the EDA and the SJU regarding cooperation dated 10th April 2012 shall no longer be applicable upon entry into force of this MoC.

Signature of the Parties

29/11/2012



For THE EUROPEAN DEFENCE AGENCY (EDA)
Mr. Jorge Domecq
Chief Executive



For the SESAR JOINT UNDERTAKING (SJU)
Mr. Florian Guillermet
Executive Director