



## DECISION OF THE GOVERNING BOARD

### **Concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Union's interests**

**N° 7/2016**

THE GOVERNING BOARD OF THE SHIFT2RAIL JOINT UNDERTAKING,

Having regard to Council Regulation (EU) No 642/2014 of 16 June 2014 establishing the Shift2Rail Joint Undertaking<sup>(1)</sup>, and in particular Article 14(2) thereof,

Whereas:

- (1) Regulation (EURATOM, EC) No 2185/96<sup>(2)</sup> and Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office<sup>(3)</sup> provide that the European Anti-Fraud Office (hereinafter "the Office") is to initiate and conduct administrative investigations within the institutions, bodies and offices and agencies established by or on the basis of the Treaties;
- (2) The responsibility of the Office as established by the Commission extends beyond the protection of financial interests to include all activities relating to the need to safeguard Union interests against irregular conduct liable to give rise to administrative or criminal proceedings;
- (3) The scope of the fight against fraud should be broadened and its effectiveness enhanced by exploiting existing expertise in the area of administrative investigations;
- (4) Therefore, on the basis of their administrative autonomy, all the institutions, bodies and offices and agencies should entrust to the Office the task of conducting internal administrative investigations with a view to bringing to light serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials and servants of the Union, as referred to in Articles 11, 11a, 12b, 13, 16 and 17 of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union (hereinafter referred to as 'the Staff Regulations'), detrimental to the interests of the Union and liable to result in disciplinary or, in appropriate cases, criminal proceedings, or serious misconduct, as referred to in Article 22 of the Staff Regulations, or a failure

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<sup>(1)</sup> OJ L 177, 17.06.2014, p. 9.

<sup>(2)</sup> OJ L 292, 15.11.1996, p. 2.

<sup>(3)</sup> OJ L 248 18.09.2013.

to comply with the analogous obligations of the Members, managers or staff of the institutions, bodies and offices and agencies of the Union not subject to the Staff Regulations;

- (5) This decision shall therefore be fully applicable to the officials and servants of the Shift2Rail Joint Undertaking (“the Joint Undertaking”), to the members of the Governing Board, of the advisory bodies of the Joint Undertaking and to members of staff not subject to the Staff Regulations;
- (6) Such investigations should be conducted in full compliance with the relevant provisions of the EU Treaties, in particular the Protocol on privileges and immunities, of the texts implementing them and the Staff Regulations;
- (7) Such investigations should be carried out under equivalent conditions in all the Union institutions, bodies and offices and agencies; assignment of this task to the Office should not affect the responsibilities of the institutions, bodies, offices or agencies themselves and should in no way reduce the legal protection of the persons concerned;

HAS DECIDED AS FOLLOWS:

*Article 1*  
*Duty to cooperate with the Office*

The Executive Director, the members of the Joint Undertaking's bodies, any official or servant of the Joint Undertaking and members of the staff not subject to the Staff Regulations shall be required to cooperate fully with the Office's agents and to lend any assistance required to the investigation. With that aim in view, they shall supply the Office's agents with all useful information and explanations.

*Article 2*  
*Duty to supply information*

1. Any official or servant of the Joint Undertaking, member of the Joint Undertaking's bodies or member of staff not subject to the Staff Regulations who becomes aware of evidence which gives rise to a presumption of the existence of possible cases of fraud, corruption or any other illegal activity detrimental to the interests of the Union, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials or servants of the Union liable to result in disciplinary or, in appropriate cases, criminal proceedings, or a failure to comply with similar obligations of members of the Joint Undertaking's bodies or members of staff not subject to the Staff Regulations, shall inform without delay his/her immediate supervisor or the Executive Director or the Chairperson of the Governing Board, as the case may be or, if he/she considers it useful, the Office directly.

Information mentioned in the first subparagraph shall be given in writing.

2. The Chairperson of the Governing Board, the Executive Director or the supervisors mentioned in the first paragraph shall transmit without delay to the Office any

evidence of which they are aware from which the existence of irregularities as referred to in the first paragraph may be presumed.

3. Officials or servants of the Joint Undertaking, members of the Joint Undertaking's bodies or staff not subject to the Staff Regulations must in no way suffer inequitable or discriminatory treatment as a result of having communicated the information referred to in the first and second paragraphs.
4. Paragraphs 1 to 3 shall not apply to documents, deeds, reports, notes or information in any form whatsoever held for the purpose of, or created or disclosed in the course of proceedings in legal cases, whether pending or closed.

*Article 3*  
*Assistance from the Joint Undertaking's staff*

At the request of the Executive Director, members of the Joint Undertaking's staff shall assist the Office in the practical conduct of investigations.

*Article 4*  
*Informing the interested party*

1. Where the possible implication of an official or servant of the Joint Undertaking, a member of the Joint Undertaking's bodies or a member of staff not subject to the Staff Regulations emerges, the interested party shall be informed rapidly as long as this would not be harmful to the investigation. In any event, conclusions referring by name to an official or servant of the Joint Undertaking, a member of the Joint Undertaking's bodies, or a member of staff not subject to the Staff Regulations may not be drawn once the investigation has been completed without the interested party's having been given the opportunity to express his/her views on all the facts which concern him/her.
2. In cases necessitating the maintenance of absolute secrecy for the purposes of the investigation and requiring the use of investigative procedures falling within the remit of a national judicial authority, compliance with the obligation to invite the official or servant of the Joint Undertaking, a member of the Joint Undertaking's bodies, or a member of staff not subject to the Staff Regulations to give his/her view may be deferred in agreement with the Chairperson of the Governing Board or the Executive Director.

*Article 5*  
*Information on the closing of the investigation with no further action taken*

If, following an internal investigation, no case can be made out against an official or servant of the Joint Undertaking, a member of the Joint Undertaking's bodies, or a member of staff not subject to the Staff Regulations against whom allegations have been made, the internal investigation concerning him/her shall be closed, with no further action taken, by decision of the Director of the Office, who shall inform the interested party in writing.

*Article 6*  
*Waiver of immunity*

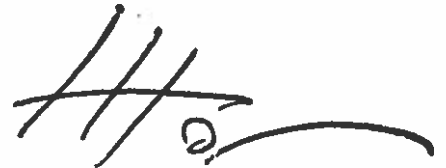
Any request from a national police or judicial authority regarding the waiver of the immunity from judicial proceedings of an official or servant of the Joint Undertaking or a member of the Joint Undertaking's bodies, if applicable, concerning possible cases of fraud, corruption or any other illegal activity shall be transmitted to the Director of the Office for his/her opinion.

*Article 7*  
*Entry into force*

This Decision shall enter into force on the date of its adoption by the Governing Board and shall be published on the website of the S2R JU.

Done at Brussels, on 18 March 2016.

For the Governing Board

A handwritten signature in black ink, consisting of several vertical strokes followed by a horizontal line and a small circular flourish.

Henrik HOLELEI  
The Chairperson