



## DECISION OF THE GOVERNING BOARD

### Regarding the amendment of the membership agreements between the Shift2Rail Joint Undertaking and the members other than the Union

N°16/2018

THE GOVERNING BOARD OF THE SHIFT2RAIL JOINT UNDERTAKING (“S2R JU”),

Having regard to Council Regulation (EU) No 642/2014 of 16 June 2014 establishing the Shift2Rail Joint Undertaking (“S2R JU Regulation”)<sup>1</sup>, in particular Article 3(2), Article 8(f), (u), Article 10 (4)(w) and Article 17 of the S2R JU Statutes annexed thereto,

Whereas:

- 1) The role and contribution of members other than the Union should be defined in a membership agreement with the S2R JU.
- 2) By Decision N°14/2015 the S2R JU Governing Board approved a “Template Membership Agreement” based on which the individual membership agreements were negotiated. By Decision N° 23/2015 the S2R JU Governing Board approved these membership agreements of the members of the S2R JU other than the Union.
- 3) Article 2(2) of this template and the signed membership agreements lists the eligibility criteria for the Member's in-kind contribution in implementing indirect actions.
- 4) In order to ensure more flexibility in prioritizing the implementation of the programme research and innovation activities and to contribute to the achievement of the S2R JU objectives, there is a need to amend the provisions of Article 2(2) of the template membership agreement. In particular, the maximum limit of the reimbursement requests set out in Article 2(2) at the level of 44.44% of the project cost should relate to the totality of the Member's costs in implementing indirect actions calculated cumulatively, rather than, for each indirect action, to the total costs in implementing that indirect action.
- 5) With a view to bringing about an amendment to Article 2(2) of the membership agreements, the Governing Board of the S2R JU should adopt a new “Template Membership Agreement” and empower the S2R JU Executive Director to draft amended membership agreements in line with this template.
- 6) The Executive Director of the S2R JU should transmit the draft amended membership agreements to the Governing Board for approval.
- 7) Upon the approval of the amended membership agreements by the Governing Board, the S2R JU Executive Director should sign them on behalf of the S2R JU.

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

HAS DECIDED AS FOLLOWS:

*Article 1*

The “Template Membership Agreement of the Shift2Rail Joint Undertaking” annexed to this Decision is adopted.

*Article 2*

The Decision of the Governing Board n° 14/2015 on the template membership agreement of the Shift2Rail Joint Undertaking is repealed.

*Article 3*

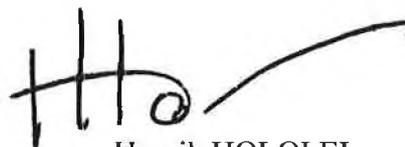
1. The Governing Board of S2R JU empowers the S2R JU Executive Director to draft amended membership agreements with the members of the S2R JU other than the Union in accordance with the “Template Membership Agreement of the Shift2Rail Joint Undertaking” referred to in Article 1 and annexed to this Decision.
2. The Executive Director of the S2R JU shall transmit the draft amended membership agreements to the Governing Board for approval.
3. Upon approval of the amended membership agreements by the Governing Board and based on a delegation of signature, the S2R JU Executive Director shall sign them on behalf of the S2R JU.

*Article 4*

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

Done at Brussels, on .....2018.

For the Governing Board,



Henrik HOLELEI  
*The Chairperson*

Annex:       Template Membership Agreement of the Shift2Rail Joint Undertaking

# Template MEMBERSHIP AGREEMENT

between the Shift2Rail Joint Undertaking and [COMPLETE]

THE SHIFT2RAIL JOINT UNDERTAKING ("the S2R JU"), which is represented for the purposes of the signature of this Membership Agreement by the Executive Director or his/her representative, [forename and surname], and

[full official name of the member (short name)], [legal form], [official registration No], established in [official address in full], [VAT number], represented for the purposes of signing the Agreement by [function, forename and surname] ("the Member")

*[OPTION for consortia: [full official name of the consortium (short name)] consortium, represented<sup>2</sup> by [full official name of the legal entity representing the consortium (short name)], [legal form], [official registration No], established in [official address in full], [VAT number]], represented for the purposes of signing the Agreement by [function, forename and surname] ("the Member")]*

HAVING REGARD TO Council Regulation (EU) No 642/2014 of 16 June 2014 establishing the Shift2Rail Joint Undertaking ("the S2R Regulation"); in particular Articles 3(1), 4(1), 4(2) and 4(5) thereof and Article 3(2) of the Statutes of the S2R JU;

HAVING REGARD TO Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" and repealing Regulation (EC) No 1906/2006 ("the H2020 Rules for participation");

HAVE AGREED AS FOLLOWS:

## *Article 1*

### **The role of the Member**

The Member shall contribute to the proper implementation of the S2R programme in accordance with the objectives and requirements set out in the S2R Regulation and with the provisions herein.

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<sup>2</sup> A Member that constitutes a consortium of legal entities shall be represented by a legal entity, which is one of its members. Prior to the signature of the Membership Agreement, the legal entity representing the consortium shall provide the necessary documents to the S2R JU secretariat in order to verify its mandate to represent the consortium.

## *Article 2*

### **Quantitative and qualitative contribution of the Member**

1. The Member's in-kind contribution to the indirect actions supported by the S2R JU and its financial contribution to the administrative costs of the S2R JU are described in Annexes A and B.
2. The Member's in-kind contribution in implementing indirect actions will be eligible for financial support by the S2R JU in accordance with Regulation (EU) No 1290/2013. In view of ensuring budgetary accuracy and sound financial management of the S2R JU, and guaranteeing the fair and equal treatment of all S2R JU members, the Member agrees to limit its reimbursement request in indirect actions funded under Article 3(1)(a) of the S2R JU Regulation to an amount not exceeding 44.44% of the Member's total eligible costs in implementing indirect actions. In case of research and innovation activities delivering the expected results through a series of intertwined actions throughout successive S2R JU Annual Work Plans, and without prejudice to the provisions concerning co-funding rates established in the S2R JU Annual Work Plans, this 44.44% threshold shall be applied cumulatively taking into account the final amount of reimbursement requested at the end of the last action implementing the specific intertwined research and innovation activities. This rule shall apply to all calls for proposals launched by the S2R JU and allocated to the Members. The minimum financial contribution to the S2R JU referred to in Article 4(2)(a) of the S2R Regulation shall thus be respected.
3. The S2R JU shall be entitled to take any appropriate measure to ensure that the provisions in paragraph 2 are respected.

## *Article 3*

### **Payment of the Member's financial contribution to the administrative costs of the S2R JU**

1. The Member's financial contribution to the administrative costs of the S2R JU shall be paid twice a year. The amount of each Member's annual contribution towards the administrative costs of the S2R JU shall be set out in annex to the annual budget adopted each year by the Governing Board.
2. The S2R JU shall submit a request for payment, with the relevant supporting documents determined by the Governing Board, to the Member not less than thirty (30) calendar days after the adoption of the relevant annual budget by the Governing Board, and in any case not before 1 January of the relevant year.
3. Should the Governing Board fail to adopt the budget of the S2R JU by the end of the year, the S2R may issue monthly payment requests to Members for a maximum of one twelfth of the expenditure authorised for administrative costs for the previous financial year. At the request of the S2R JU Executive Director, if the continuity of action by the S2R JU and management needs so require, the Governing Board may simultaneously authorise requests to Members for the payment of two or more provisional twelfths.

4. The Member shall pay its contribution to the S2R JU no later than 45 (forty-five) calendar days from the date of receipt of the payment request to the S2R JU bank account, as detailed in the payment request from the S2R JU.

5. If, at the end of a budgetary year, a part of the contributions for administrative costs remains unused, the S2R Governing Board shall decide whether the amount in question will be carried over to the following year and the sum reflected in the budget associated with that year, reimbursed to the Members, or made available to cover the operational costs of the S2R JU.

#### *Article 4*

#### **Additional activities implemented by the Member outside the work plan of the S2R JU**

The plan for in-kind contributions in the form of additional activities implemented by the Member outside the work plan of the S2R JU, including their estimated value, is detailed in Annex B. The S2R JU shall keep confidential the contents of Annex B, which shall not be shared with any other Member.

#### *Article 5*

#### **Representation of the Member within the Governing Board**

In accordance with the Rules of procedure of the Governing Board of the S2R JU, provisions on the Member's representation within the Governing Board and its voting rights, shall be adopted by means of a Governing Board decision, once the final composition of the Governing Board has been established in accordance with Article 6 of the Statutes of the S2R JU.

#### *Article 6*

#### **Confidentiality and prevention of conflicts of interests**

1. The Member shall ensure that any person representing it shall comply with the rules on the prevention and management of conflict of interest adopted by Governing Board Decision N° XX/2015, in particular by signing the relevant declaration of confidentiality and of conflict of interest annexed to those rules.

#### *Article 7*

#### **Compliance with antitrust law**

1. The Member acknowledges that antitrust law (including EU competition law) may apply to their cooperation and undertakings in the course of the S2R programme. In particular, the Member understands that they shall not use the forum provided by the S2R JU to coordinate commercial activities outside the scope of the S2R JU.

2. The Member further acknowledges that in order to be able to achieve the objectives of the S2R JU, it will have to share information in the framework of the latter's activities. When

sharing such information in this context, the Member shall comply with any applicable antitrust law prohibiting the exchange of competitively sensitive information among competitors. The Member shall therefore omit any discussions or information exchange in any matters falling outside the scope of S2R JU, and is not allowed to exchange competitively sensitive information such as, but not limited to, information about market shares, investments, strategies, R&D roadmaps and marketing plans.

*Article 8*

**Final provisions**

This Membership Agreement shall be governed by European Union law, complemented, where necessary, by the law of Belgium.

This Membership Agreement shall enter into force on the date on which it is signed by the last party.

**SIGNATURES**

For the Member,

For the S2R JU,

[*Company name/forename/surname/function*]

[*forename/surname/function*]

Signature[s]: \_\_\_\_\_

Signature: \_\_\_\_\_

Done at [COMPLETE], [date]

Done at Brussels, [date]

In duplicate in English.

**ANNEX A – MEMBER'S CONTRIBUTION TO THE S2R JOINT UNDERTAKING  
FOR IMPLEMENTING INDIRECT ACTIONS**

**Member's financial contribution to administrative costs of the S2R JU**

The Member's overall financial contribution to the administrative costs of the S2R JU shall equal a total maximum value of [XX€]

**Member's in-kind contribution in implementing indirect actions**

The Member's in-kind contribution in implementing indirect actions under the S2R JU shall amount to a total estimated value of [XX€] for IP[X].

The overall own contribution will serve towards implementing the S2R Multi-annual action plan (MAAP) and, more specifically, the Research & Innovation activities in the following Innovation Programmes and Technology Demonstrators:

[TO BE NEGOTIATED WITH THE EXECUTIVE DIRECTOR]

## **ANNEX B – MEMBER'S PLAN OF ADDITIONAL ACTIVITIES**

The Member shall make an overall own contribution in implementing additional activities outside the work plan of the S2R JU for a total estimated value of [XX€].

The overall own contribution will serve towards implementing the following plan of additional activities:

[TO BE FURTHER DEVELOPED BY THE MEMBER]