



DECISION OF THE GOVERNING BOARD

on the outcome of the “Invitation to S2R JU Associated Members to submit an answer in view of the realignment of their activities and additional commitment to the S2R Programme” and repealing Governing Board Decision n° 09/2018

N° 18/2018

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

Having regard to Council Regulation (EU) No 642/2014 of 16 June 2014 establishing the S2R JU and in particular Articles 3, 4, 8(f) and 10(4)(w) of the Statutes annexed thereto,

Having regard to the European Commission Decision C(2015) 8674 of 8 December 2015 on the selection of associated members of the S2R JU, and in particular Article 1,

WHEREAS:

- (1) In addition to its 9 Founding Members, the S2R JU counts 19 Associated Members selected through an open, competitive and transparent procedure, which was launched and managed by the European Commission in accordance with Article 4(2) of the Statutes of the S2R Regulation. The Commission adopted its final decision on the selected S2R JU Associated Members on 8 December 2015.
- (2) The Decision 02/2017 of the Governing Board of 7 June 2017 amended the Annual Work Plan 2017 to include the “Invitation to S2R JU Associated Members to submit an answer in view of the realignment of their activities and additional commitment to the S2R Programme”. As a result of the aforementioned procedure and the ensuing negotiations, the selected Associated Members’ net contribution to S2R activities amounts to EUR 144.1 million against the minimum requirement of Article 4(2)a of the S2R Regulation of EUR 150 million. A similar gap appears in terms of the co-funding to be allocated by the S2R JU to the Associated Members. In accordance with Article 17(1)(b) of the S2R Statutes, as further agreed within the Governing Board on 7 June 2017, “up to 30 % [of the Union contribution] shall be allocated to Associated Members and their affiliated entities”. Out of EUR 131.0 million, a remaining amount of EUR 5.6 million remains to be allocated.
- (3) The Decision of the S2R JU Executive Director ED-17-15 of 20 June 2017 adopted the procedure for the assessment of the answers to the Associated Members to the Invitation, and in particular the “Procedure to establish the recommendation of the Executive Director to the Governing Board for the approval of the amendments to the relevant Membership Agreements as well as the final decision” annexed thereto.

- (4) By the deadline indicated in the Invitation of 20 June 2017 to S2R JU Associated Members to submit an answer in view of the realignment of their activities and additional commitment to the S2R Programme, twelve (12) Associated Members submitted such an answer to the Invitation. In accordance with the Invitation, the S2R JU Executive Director held individual negotiations with each concerned Associated Member. The recommendations were discussed with a Committee consisting of representatives of the Founding Members (Union and Other Members), the States Representatives Group, the Scientific Committee and the European Agency for Railway.
- (5) The Report of the S2R JU Executive Director on the Invitation to the Associated Members of 20 June 2017 (ref. S2R.17.AM) was sent to the Governing Board on 19 March 2018, with the exclusion of those S2R JU Members considered in Conflict of Interest. In this report it is mentioned that the “*version takes into consideration the fact that the legal status of HaCon as Associated Member of the S2R after the acquisition by Siemens is not yet clarified within the JU*” and that “*as it is not clear at this stage the possibility for HaCon to have access to additional funds as a result of this re-allocation due to issues related to the eligibility conditions, it is proposed to reject the request of reallocation from HaCon*”.
- (6) On 23 March 2018, the Governing Board adopted the Decision 09/2018 which approved the Report of S2R JU Executive Director on the “*Outcome of the Invitation to S2R JU Associated Members to submit an answer in view of the realignment of their activities and additional commitment to the S2R Programme*”,
- (7) At the Governing Board meeting of 29 June 2018, it was confirmed by the European Commission and not objected by any Governing Board Member that the status of HaCon as Associated Member of the S2R JU and HaCon’s membership of the Governing Board should not be considered as affected by the acquisition of its shares by Siemens AG as there is no legal basis in the S2R JU Regulation for ceasing the Associated Membership of HaCon following the acquisition by Siemens AG.
- (8) At the same meeting of 29 June, the Governing Board agreed with the proposal of the Executive Director that the clarification of the situation of the HaCon Membership should result in changes to the outcome of the Invitation to the Associated Members of 20 June 2017, in particular Decision No 09/2018 as far as the realignment of the HaCon’s activities and additional commitments are concerned.
- (9) In this respect, the Executive Director invited HaCon to negotiations on 5 and 10 July and he submitted to the Governing Board the Consolidated Report dated 26 September 2018 taking into account the Governing Board’s conclusions on HaCon’s membership and the outcome of the negotiations with HaCon.
- (10) The Consolidated Report proposes specific recommendations per each of the Associated Members concerned and the impact on the overall Programme.
- (11) Following the approval by the Governing Board of the aforementioned Consolidated Report of the S2R JU Executive Director, the Governing Board should empower the

S2R JU Executive Director to conduct consultations and negotiations on the draft membership agreements with the S2R JU's Associated Members concerned.

- (12) Upon approval of the membership agreements, the Governing Board should empower the S2R JU Executive Director to sign the amendments on behalf of the S2R JU with the Associated Members concerned in order to implement the outcome of the aforementioned Invitation as set out in the Consolidated Report.

HAS DECIDED AS FOLLOWS:

Article 1

The Governing Board of S2R JU approves the "Consolidated report of the Executive Director to the Governing Board on the Invitation to the Associated Members of 20 June 2017 (ref. S2R.17.AM)" set out in the Annex.

Article 2

1. The Governing Board of the S2R JU empowers the S2R JU Executive Director to draft the amended membership agreements and to conduct consultations and negotiations with the concerned Associated Members in order to implement the Governing Board approval of the Consolidated Report referred to in Article 1.
2. The Executive Director of the S2R JU shall transmit the draft amended membership agreements to the Governing Board for approval.
3. Upon approval by the Governing Board of the amended membership agreements, and based on a delegation of signature, the S2R JU Executive Director shall sign them on behalf of the S2R JU.

Article 3

The S2R JU Governing Board Decision n° 09/2018 "Outcome of the Invitation to S2R JU Associated Members to submit an answer in view of the realignment of their activities and additional commitment to the S2R Programme" is repealed.

Article 4

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

Done at Brussels, on2018.

For the Governing Board,


Henrik HOLELEI
The Chairperson

Annex: Consolidated Report of the Executive Director to the Governing Board on the Invitation to the Associated Members of 20 June 2017 (ref. S2R.17.AM)