

## DECISION OF THE GOVERNING BOARD

### on the non-application of the Commission Decision on the maximum duration for the recourse to non-permanent staff in the Commission services

N° 02/2020

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

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Staff Regulations of Officials (‘Staff Regulations’) and the Conditions of Employment of Other Servants (‘CEOS’) of the European Union, laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68<sup>1</sup>, and in particular Article 110(2) of the Staff Regulations,

Having regard to Council Regulation (EU) No 642/2014 of 16 June 2014 establishing the S2R JU<sup>2</sup>, and in particular Article 6 (3) thereof,

Having regard to the rules of procedure of the Governing Board of S2R JU and in particular Article 8 thereof,

Having regard to the agreement of the European Commission pursuant to Article 110(2) of the Staff Regulations C(2019) 6929 final of 25 September 2019,

After consulting the Staff Committee,

Whereas:

- (1) On 26 September 2014 Communication C(2014) 6543 from Vice-President Šefčovič to the Commission on the guidelines on the implementation of Article 110(2) of the Staff Regulations with regard to the implementing rules applicable in the agencies, and in particular Point 2.B thereof, was adopted.
- (2) On 1 October 2019, the Commission informed the S2R JU that it had adopted Decision of 5 April 2019 amending Commission Decision C(2004)1597/6 on the maximum duration for the recourse to non-permanent staff in the Commission services [C(2019)2548]<sup>3</sup>. The amendment limits the scope of the Decision by excluding time served as seconded national experts from the calculation of the seven-year maximum duration spent working in the Commission services.

<sup>1</sup> OJ L 56, 4.3.1968, p. 1, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013, OJ L 287, 29.10.2013, p. 15.

<sup>2</sup> OJ L 177, 17.06.2014, p.9.

<sup>3</sup> Amended by Commission Decisions C(2011)7071 of 5 October 2011 and C(2013)9028 of 16 December 2013.

- (3) Pursuant to Article 110(2) of the Staff Regulations, implementing rules such as those referred to in Recital 2 shall apply by analogy to the S2R JU. By way of derogation, an agency may request the Commission's agreement to the non-application of certain implementing rules.
- (4) In S2R JU, all temporary staff other than those referred to in Article 2(a) of the CEOS are those referred to in Article 2(f) of the CEOS and all contract staff are the ones referred to in Article 3(a) of the CEOS.
- (5) In S2R JU, temporary agents referred to in Article 2(a) of the CEOS is exclusively the head of the Agency. As regards the majority of temporary staff in the Agency, namely those referred to in Article 2(f) of the CEOS, as well as the unique category of contract staff employed in the Agency, namely those referred to in Article 3(a) of the CEOS, they do not fall under the scope of this Commission Decision. Therefore, this Commission Decision is not adapted to the actual situation of S2R JU.
- (6) The maximum duration for recourse to seconded national experts is regulated in the Governing Board's decision on seconded national experts.
- (7) Taking into account the different structure of the staff employed in agencies from that of the Commission, on 26 May 2016 the Commission gave agencies its *ex ante* agreement to the non-application of the Commission Decision on the maximum duration for the recourse to non-permanent staff in the Commission services (C(2016)2421).
- (8) Commission Decision C(2019)2548 does not introduce a modification that could make applicable to S2R JU the Decision on the maximum duration for the recourse to non-permanent staff in the Commission services.
- (9) Therefore, the Commission Decision C(2019)2548 should not apply to S2R JU,

HAS DECIDED AS FOLLOWS:

*Article 1*

Commission Decision of 5 April 2019 amending Commission Decision C(2004)1597/6 of 28 April 2004 on the maximum duration for the recourse to non-permanent staff in the Commission services shall not apply to S2R JU.

*Article 2*

This Decision shall take effect on the day following that of its adoption.

Done at Brussels, on 26 March 2020.

For the Governing Board,



Henrik HOLOLEI

*The Chairperson*