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THE EUROPEAN UNION**

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REPORT

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To:	Council
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Subject:	Proposal for a Council Regulation establishing the Shift2Rail Joint Undertaking
	- Adoption of the Council position

1. INTRODUCTION

On 17 December 2013, the Commission transmitted to the Council the above-mentioned proposal.

2. CONTENT OF THE PROPOSAL

The proposed Regulation aims at developing a coordinated EU approach to research and innovation in the rail sector via the establishment of a joint undertaking to support the completion of the Single European Railway Area and to increase the competitiveness of the EU rail sector vis-à-vis the other transport modes and vis-à-vis foreign competition. The S2R Joint Undertaking should be established for a period ending on 31 December 2024. It will be founded by the Union, represented by the European Commission, and by the Founding Members other than the Union, listed in Annex II to the proposed Regulation. The activities of the S2R Joint Undertaking will be jointly funded by the Union and the members of the S2R Joint Undertaking other than the Union.

3. WORK WITHIN COUNCIL BODIES

As from January 2014, the Land Transport Working Party ("the Working Group") has examined the proposed Regulation at a number of meetings.

On 7 March 2014, the draft Council position was examined by Coreper. The Presidency took note of the delegations comments in view of proposing a compromise text to be examined at the TTE Council. During this Coreper meeting, most outstanding issues were solved. The changes in the Annex to this report compared to the report to Coreper are indicated in **bold underlined** and ~~strikethrough~~.

A final alignment of some of the text in Annex with the agreed text of the Innovation Investment Package may still be necessary during the legal-linguistic revision.

In accordance with Article 188 TFEU, on 12 February 2014, the Council sent two letters of consultation to the European Parliament and the Economic and Social Committee.

4. OUTSTANDING ISSUES

Minimum contribution to become an Associated Member (clause 4(6))

The minimum own contribution to become an Associated Member is 2.5% of the total budget of the Innovation Programme in which it participates. The Presidency text proposal also allows a railway undertaking in the form of a single legal entity to become an Associated Member if its own contribution amounts to a minimum of EUR 12 million across all Innovation Programmes. As a large number of delegations indicated that they wished to open the possibility to all actors, including consortia, of becoming Associated Members, the Presidency presented a revised compromise proposal at Coreper providing that consortia composed of railway undertakings and/or infrastructure managers may become an Associated Member with a minimum own contribution of EUR 15 million across all Innovation Programmes.

It should be noted that all delegations have a scrutiny reservation on this specific Presidency compromise proposal.

Other issues

Other concerns and reservations expressed by delegations appear in the footnotes in the Annex to this report.

5. CONCLUSION

The Council is invited examine the text as set out in the Annex to this report, to resolve the last outstanding issues, and to adopt a Council position on the text at its session on 14 March 2014.

2013/0445 (NLE)

Proposal for a
COUNCIL REGULATION
establishing the Shift2Rail Joint Undertaking

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 187 and the first paragraph of Article 188 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the Economic and Social Committee²,

Whereas:

- (1) Europe 2020 Strategy³ underscores the need to develop favourable conditions for investment in knowledge and innovation, including eco-innovation, so as to achieve smart, sustainable and inclusive growth in the Union.

¹ OJ C , , p. .

² OJ C , , p. .

³ COM(2010)2020 final

- (2) The Commission White Paper on a Roadmap to a Single European Transport Area, adopted on 28 March 2011 (the "2011 White Paper")⁴, emphasises the need to create a Single European Railway Area to achieve a more competitive and resource-efficient Union transport system, and to address major societal issues such as rising traffic demand, congestion, security of energy supply and climate change. It adds that innovation will be essential for this strategy and that EU research needs to address the full cycle of research, innovation and deployment in an integrated way through focusing on the most promising technologies and bringing together all actors involved.
- (3) Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation for the period 2014-2020 ("Horizon 2020 Framework Programme")⁵ aims to achieve a greater impact of research and innovation efforts by combining EU and private-sector funds in public-private partnerships (PPPs) in areas where research and innovation can contribute to the Union's wider competitiveness goals, leverage private investment, and help tackle societal challenges. Those partnerships should be based on a long-term commitment, including a balanced contribution from all partners, be accountable for the achievement of their objectives and be aligned with the Union's strategic goals relating to research, development and innovation. The governance and functioning of those partnerships should be open, transparent, effective and efficient and give the opportunity to a wide range of stakeholders active in their specific areas to participate. Union involvement in these partnerships can take the form of financial contributions to joint undertakings established on the basis of Article 187 of the Treaty.

⁴ White Paper on a Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system, COM/2011/0144 final.

⁵ OJ ... [H2020 FP].

- (4) In accordance with Regulation (EU) No 1291/2013 and Decision (EU) No 2013/743/EU of the Council establishing the Specific Programme implementing Horizon 2020 (2014-2020)⁶ support may be provided to joint undertakings established in the Horizon 2020 Framework Programme under the conditions specified in that Decision.
- (5) The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Public-private partnerships in Horizon 2020: a powerful tool to deliver on innovation and growth in Europe⁷ identifies specific public-private partnerships to be supported, including the five Joint Technology Initiative joint undertakings and the SESAR (Single European Sky ATM Research) Joint Undertaking. In addition, it calls for a joint undertaking in the railway sector in light of the scale of research and innovation efforts required to build EU leadership in rail technologies and the policy need to complete the Single European Railway Area.
- (6) The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Fourth Railway Package – Completing the single European railway area to foster Union competitiveness and growth (the "Fourth Railway Package")⁸ highlights the need for a joint undertaking in the railway sector to help develop rail as a transport mode by promoting step-change innovations for passenger rolling stock, freight transport, traffic management systems and rail infrastructure. It stresses the importance of achieving better value for money in rail given the scarcity of public funds, thanks to the creation of a single market, and calls for a more European approach to rail in order to facilitate modal shift from road and air.

⁶ OJ ... [H2020 SP].

⁷ COM(2013) 494 final.

⁸ COM (2013) 25 final.

- (7) The Shift2Rail Joint Undertaking (hereinafter "S2R Joint Undertaking") should be a PPP aimed at stimulating and better coordinating Union research and innovation investments in the rail sector with a view to accelerating and facilitating the transition towards a more integrated, efficient, sustainable and attractive EU railway market, in line with the business needs of the rail sector and with the general objective of achieving a Single European Railway Area. In particular, the S2R Joint Undertaking should contribute to specific objectives defined in the 2011 White Paper and in the Fourth Railway Package, including the improved efficiency of the rail sector for the benefit of the public purse; a considerable expansion or upgrading of the capacity of the rail network, so as to enable rail to compete effectively and take a significantly greater proportion of passenger and freight transport; an improvement in the quality of rail services by responding to the needs of rail passengers and freight forwarders; the removal of technical obstacles holding back the sector in terms of interoperability; and the reduction of negative externalities linked to railway transport. The progress of the S2R Joint Undertaking towards meeting these objectives should be measured against key performance indicators.
- (8) The rules for the organisation and operation of the S2R Joint Undertaking should be laid down in the Statutes of the S2R Joint Undertaking as part of this Regulation.
- (9) The founding members of the S2R Joint Undertaking should be the Union, represented by the Commission, and the Founding Members other than the Union, listed in Annex II, so long as they accept the Statutes set out in Annex I to this Regulation. These Founding Members other than the Union are financially sound single legal entities who have the financial capacity and have expressed their agreement, in writing, following intensive stakeholder consultations, to make a major financial contribution to pursue the research activities in the area of the S2R Joint Undertaking, within a structure well adapted to the nature of a public-private partnership.

- (10) Substantial participation from industry is an essential element of the S2R initiative. It is therefore fundamental that the public budget for the S2R initiative be at least matched by contributions from industry. Membership will therefore be open to other public or private entities willing to commit the necessary resources to carry out research and innovation activities in the area of the S2R Joint Undertaking.
- (11) The objective of the S2R Joint Undertaking should be to manage the research, development and validation activities of the S2R initiative by combining public and private sector funding provided by its members and by drawing on internal and external technical resources. It shall establish new forms of collaboration, that are consistent with competition rules, between stakeholders from the entire rail value chain and from outside the traditional rail sector, and shall bring in the experience and expertise of the European Railway Agency on issues relating to interoperability and safety.
- (12) In order to achieve its objectives, the S2R Joint Undertaking should provide financial support, mainly in the form of grants to members and through the most appropriate measures, such as procurement or the award of grants following calls for proposals.
- (13) The S2R Joint Undertaking should operate in an open and transparent way providing all relevant available information in a timely manner to its appropriate bodies as well as promoting its activities, including through information and dissemination activities to the wider public. The rules of procedure of the bodies of the Joint Undertaking should be made publicly available.
- (13a) With a view to the overall aim of Horizon 2020 to achieve greater simplification and coherence, all calls for proposals under S2R should in principle take into account the duration of the Horizon 2020 Framework Programme.

- (14) The activities undertaken by the S2R Joint Undertaking are mainly research and innovation activities. Therefore, Union funding should be paid from the Horizon 2020 Framework Programme. To achieve maximum impact, the S2R Joint Undertaking should develop close synergies with other Union programmes and funding instruments and, in particular, with the Connecting Europe Facility or the Risk Sharing Funding Facility to support actions for the deployment of innovative solutions of the S2R Joint Undertaking. Furthermore, Horizon 2020 should contribute to the closing of the research and innovation divide within the Union by promoting synergies with the European Structural and Investment Funds (ESIF). Therefore the S2R Joint Undertaking should seek to develop close interactions with the ESIF, which can specifically help to strengthen local, regional and national research and innovation capabilities in the area of the S2R Joint Undertaking and underpin smart specialisation efforts.
- (15) Contributions from members other than the Union should be defined in a membership agreement with the S2R Joint Undertaking. These contributions should not only be limited to the administrative costs of the S2R Joint Undertaking and to the co-financing required to carry out research and innovation actions supported by the S2R Joint Undertaking. Their contributions should also relate to additional activities to be undertaken by them; in order to ensure a strong leverage effect. Those additional activities should represent contributions to the broader S2R initiative.

- (16) Participation in indirect actions funded by the S2R Joint Undertaking should comply with Regulation (EU) No ... /2013 of the European Parliament and of the Council of ... 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)"⁹ The S2R Joint Undertaking should, moreover, ensure consistent application of these rules based on relevant measures adopted by the Commission.
- (16a) The S2R Joint Undertaking should also use electronic means managed by the Commission to ensure openness, transparency and facilitate participation. Therefore, the calls for proposals launched by the S2R Joint Undertaking should also be published on the single portal for participants as well as through other Horizon 2020 electronic means of dissemination managed by the Commission. Moreover, relevant data on inter alia proposals, applicants, grants and participants should be made available by the S2R Joint Undertaking for inclusion in the Horizon 2020 reporting and dissemination electronic systems managed by the Commission, in an appropriate format and with the periodicity corresponding to the Commission's reporting obligations.
- (17) The Union financial contribution to the S2R Joint Undertaking should be managed in accordance with the principle of sound financial management and with the relevant rules on indirect management laid down in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council¹⁰ and Commission Delegated Regulation (EU) No 1268/2012.¹¹

⁹ OJ ... [H2020 RfP]

¹⁰ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

¹¹ OJ L 362, 31.12.2012, p. 1.

- (18) Audits of recipients of Union funds under this Regulation should be carried out in such a manner that the administrative burden is reduced, in compliance with Regulation (EU) No .../2013 [the Horizon 2020 Framework Programme].
- (19) The financial interests of the Union and of the other members of the S2R Joint Undertaking should be protected through proportionate measures throughout the expenditure cycle including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, administrative and financial penalties in accordance with Regulation (EU, Euratom) No 966/2012.
- (20) The Commission's internal auditor should exercise the same powers over the S2R Joint Undertaking as those exercised in respect of the Commission.
- (21) In view of the specific nature and the current status of the Joint Undertakings, and in order to ensure continuity with the 7th Framework Programme, the Joint Undertakings should continue to be subject to a separate discharge. By way of derogation from Articles 60(7) and 209 of Regulation (EU, Euratom) No 966/2012, discharge for the implementation of the budget of the XXX Joint Undertaking should therefore be given by the European Parliament on the recommendation of the Council. Hence, the reporting requirements set out in Article 60(5) should not apply to the contribution of the Union to the S2R Joint Undertaking but they should be aligned to the extent possible to the ones foreseen for bodies under Article 208 of Regulation (EU, Euratom) No 966/2012. The auditing of accounts and of the legality and regularity of the underlying transactions should be undertaken by the Court of Auditors.

- (22) In order to facilitate the establishment of the S2R Joint Undertaking, the Commission should be responsible for the establishment and initial operation thereof until the S2R Joint Undertaking has the operational capacity to implement its own budget.
- (23) Since the objectives of the S2R Joint Undertaking in strengthening industrial research and innovation across the Union cannot be sufficiently achieved by the Member States and can be better achieved at Union level, thereby avoiding duplication, retaining critical mass and ensuring that public financing is used in an optimal way, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

HAS ADOPTED THIS REGULATION:

Article 1– Establishment

1. In order to coordinate and manage Union research and innovation investments in the European rail sector, a joint undertaking within the meaning of Article 187 of the Treaty (the "Shift2Rail Joint Undertaking" or "S2R Joint Undertaking") is hereby established until 31 December 2024. In order to take into account the duration of the Horizon 2020 Framework Programme, calls for proposals under S2R shall be launched at the latest by 31 December 2020. In duly justified cases, calls for proposals may be launched until 31 December 2021.
2. The S2R Joint Undertaking shall constitute a body entrusted with the implementation of a public-private partnership referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council¹². The S2R Joint Undertaking shall be represented by its Executive Director.

¹² OJ L 298, 26.10.2012, p. 1.

3. The S2R Joint Undertaking shall have legal personality. In every Member State, it shall enjoy the most extensive legal capacity accorded to legal persons under the law of that State. It may acquire or dispose of movable and immovable property and may be a party to legal proceedings.
4. The seat of the S2R Joint Undertaking shall be located in Brussels, Belgium.
5. The Statutes of the S2R Joint Undertaking are set out in Annex I.

Article 2 – Objectives

1. The S2R Joint Undertaking shall have the following as general objectives:
 - (a) to contribute to the implementation of Regulation (EU) No .../2013 of the European Parliament and of the Council of ...2013 establishing the Horizon 2020 Framework Programme and in particular part of the Smart, Green and Integrated Transport Challenge under the Societal Challenges pillar of Decision No ... /2013 EU of the Council of ...2013 establishing the Horizon 2020 Specific Programme.
 - (b) to contribute to the achievement of the Single European Railway Area, to a faster and less costly transition to a more attractive, user-friendly (including for persons with reduced mobility), competitive, efficient and sustainable European rail system, and to the development of a strong and globally competitive European rail industry. This will be achieved through a comprehensive and co-ordinated approach addressing the research and innovation needs of the rail system and its users facilitating amongst others a modal shift from road and air to rail. This approach shall cover rolling stock, infrastructure and traffic management for the market segments of freight and of long-distance, regional, local and urban passenger traffic, as well as intermodal links between rail and other modes, providing users with an integrated end-to-end solution for their rail travel and transport needs – from transaction support to en-route assistance.

- (c) to establish and develop – and ensure the effective and efficient implementation of – a strategic Master Plan (the "S2R Master Plan"), as referred to in clause 1(4) of the Statutes contained in Annex I.
- (d) to play a major role on rail-related research and innovation, ensuring coordination among projects and providing all stakeholders with relevant and available information on projects funded across Europe. It shall also manage all rail-focused research and innovation actions co-funded by the EU.
- (e) to actively promote the participation and close involvement of all relevant stakeholders from the full rail value chain and from outside the traditional rail industry, in particular: manufacturers of railway equipment (both rolling stock and train control systems) and their supply chain, infrastructure managers, railway undertakings (both passenger and freight), metro, tram and light rail operators, rail vehicle leasing companies, notified and designated conformity assessment bodies, professional staff associations **(including labour representatives)**, user associations (both passenger and freight), as well as the relevant scientific institutions or the relevant scientific community. In particular, the involvement of small and medium sized enterprises (SMEs), as defined in Commission Recommendation 2003/361/EC¹³, shall be ensured.
- (f) ~~in so far as possible~~, to develop demonstration projects in interested Member States including those that do not currently have a railway system established within their territory.

¹³ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

2. More specifically, the S2R Joint Undertaking shall seek to develop, integrate, demonstrate, and validate innovative technologies and solutions that uphold ~~the~~ strictest safety standards and the value of which can be measured against the following key performance indicators, inter alia:
- (a) a 50% reduction of the life-cycle cost of the railway transport system, through a reduction of the costs of developing, maintaining, operating and renewing infrastructure and rolling stock, as well as through increased energy efficiency;
 - (b) a 100% increase in the capacity of the railway transport system, to meet increased demand for passenger and freight railway services;
 - (c) a 50% increase in the reliability and punctuality of rail services (measured as a 50% decrease in unreliability and late arrivals);
 - (d) the removal of remaining technical obstacles holding back the rail sector in terms of interoperability and efficiency, in particular by endeavouring to close points which remain open in Technical Specifications for Interoperability (TSIs) due to lack of technological solutions and by ensuring that all relevant systems and solutions developed by the S2R Joint Undertaking are fully interoperable;
 - (e) the reduction of negative externalities linked to railway transport, in particular noise, vibrations, emissions and other environmental impacts.

Article 3 – Union financial contribution

1. The maximum Union financial contribution to the Shift2Rail initiative shall be EUR 450 million, including EFTA contributions, paid from the appropriations in the general budget of the Union allocated to the Horizon 2020 Specific Programme implementing the Horizon 2020 Framework Programme, in accordance with the relevant provisions of Article 58(1)(c)(iv) and Articles 60 and 61 of Regulation (EU, Euratom) No 966/2012 for bodies referred to in Article 209 of that Regulation. This amount includes:
 - (a) a maximum contribution to the S2R Joint Undertaking, to cover administrative costs and operational costs, of EUR 398 million. The maximum Union contribution to cover administrative costs shall be EUR 13.5 million.
 - (b) an additional amount of maximum EUR 52 million, earmarked under the H2020 Transport Work Programme 2014-2015. The management of this additional contribution may be taken over by S2R Joint Undertaking once it achieves the operational capacity to implement its own budget.
2. Additional funds complementing the contribution referred to in paragraph 1 may be allocated from other Union instruments to support actions for the deployment of innovative solutions of the S2R Joint Undertaking.
3. The arrangements for the Union contribution shall be set out in a delegation agreement and annual transfer of funds agreements, which shall be concluded between the Commission, on behalf of the Union, and the S2R Joint Undertaking.

4. The delegation agreement referred to in paragraph 3 shall address the elements set out in Article 58(3) and Articles 60 and 61 of Regulation (EU, Euratom) No 966/2012 and in Article 40 of Commission delegated Regulation (EU) No 1268/2012 as well as inter alia the following:
- (a) the requirements for the S2R Joint Undertaking's contribution regarding the relevant performance indicators referred to in Annex II to Decision No .../EU [the Specific Programme implementing the Horizon 2020 Framework Programme];
 - (b) the requirements for the S2R Joint Undertaking's contribution in view of the monitoring referred to in Annex III to Decision No .../EU [the Specific Programme implementing the Horizon 2020 Framework Programme];
 - (c) the specific performance indicators related to the functioning of the S2R Joint Undertaking;
 - (d) the arrangements regarding the provision of data necessary to ensure that the Commission is able to draft its research and innovation policy and to meet its dissemination and reporting obligations, including on the single portal for participants as well as through other Horizon 2020 electronic means of dissemination managed by the Commission;
 - (e) provisions for the publication of calls for proposals of the S2R Joint Undertaking also on the single portal for participants as well as through other Horizon 2020 electronic means of dissemination managed by the Commission;
 - (f) the use of and changes to human resources, in particular recruitment by function group, grade and category, the reclassification exercise and any changes to the number of staff members.

Article 4 – Contributions of Members other than the Union

1. Each member of the S2R Joint Undertaking other than the Union shall make or arrange for its affiliated entities to make its respective contribution. The total contribution from all members other than the Union shall be of at least EUR 470 million over the period defined in Article 1.
2. The contribution referred to in paragraph 1 shall consist of the following:
 - (a) contributions to the S2R Joint Undertaking of at least EUR 350 million, as laid down in clause 15(2) and clause 15(3)(b) of the Statutes set out in Annex I, including at least EUR 200 million from the Founding Members other than the Union and their affiliated entities, and at least EUR 150 million from Associated Members and their affiliated entities;
 - (b) in-kind contributions of at least EUR 120 million, of which at least EUR 70 million from the Founding Members other than the Union and their affiliated entities, and at least EUR 50 million from Associated Members and their affiliated entities, consisting of the costs incurred by them in implementing additional activities outside the work plan of the S2R Joint Undertaking, which are complementary to this work plan and contribute to the objectives of the S2R Master Plan. Other Union funding programmes may support those costs in compliance with the applicable rules and procedures. In such cases, Union financing shall not substitute for the in-kind contributions from the Members other than the Union or their affiliated entities.

The costs referred to in point (b) shall not be eligible for financial support by the S2R Joint Undertaking. The corresponding activities shall be set out in the membership agreement referred to in clause 3(2) of the Statutes in Annex I, indicating the estimated value of those contributions.

3. The Members of the S2R Joint Undertaking other than the Union shall report each year by 31 January to the Governing Board of the S2R Joint Undertaking on the value of the contributions referred to in paragraph 2 made in each of the previous financial years. The States Representatives Group shall also be informed in a timely manner.
4. For the purpose of valuing the in kind contributions referred to in point (b) of paragraph 2 and clause 15(3)(b) of the Statutes set out in Annex I, the costs shall be determined according to the usual cost accounting practices of the entities concerned, to the applicable accounting standards of the country where each entity is established, and to the applicable International Accounting Standards / International Financial Reporting Standards. The costs shall be certified by an independent external auditor appointed by the entity concerned. The valuation of the contributions may be verified by the S2R Joint Undertaking should there be any uncertainty arising from the certification. For the purposes of this Regulation, the costs incurred in additional activities shall not be audited by the XXX Joint Undertaking or any Union body.
5. Any member of the S2R Joint Undertaking other than the Union that fails to meet its commitments concerning the contributions referred to in paragraph 2 within six months of the time-limit set out in its membership agreement as defined in clause 3(2) of the Statutes set out in Annex I shall be disqualified from voting in the Governing Board until such time as its obligations have been met. If the obligations have still not been met upon expiry of an additional six-month period, its membership shall be revoked.
6. Further to paragraph 5, the Commission may terminate, proportionally reduce or suspend the Union financial contribution to the S2R Joint Undertaking or trigger the winding up procedure referred to in clause 23(2) of the Statutes set out in Annex I if those members or their affiliated entities do not contribute, contribute only partially or contribute late with regard to the contributions referred to in paragraph 2. The Commission decision shall not hinder the reimbursement of eligible costs already incurred by the Members by the time of the notification of the decision to the Joint Undertaking.

Article 5 – Financial Rules

Without prejudice to Article 12, the S2R Joint Undertaking shall adopt its specific Financial rules in accordance with Article 209 of Regulation (EU, Euratom) No 966/2012 and Regulation (EU) No... [Delegated Regulation on the Model Financial Regulation for bodies referred to in Article 209 of the Financial Regulation].

Article 6 – Staff

1. The Staff Regulations of Officials and the Conditions of Employment of other Servants of the European Union as laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68¹⁴ and the rules adopted by agreement between the institutions of the Union for the purpose of giving effect to those Staff Regulations and Conditions of Employment of Other Servants shall apply to the staff employed by the S2R the Joint Undertaking.
2. The Governing Board shall exercise, with respect to the staff of the S2R Joint Undertaking, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude Contract of Employment (hereinafter "the appointing authority powers").

The Governing Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2 paragraph 1 of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants delegating the relevant appointing authority powers to the Executive Director and defining the conditions under which this delegation of powers can be suspended. The Executive Director is authorised to sub-delegate those powers.

¹⁴ OJ 56, 4.3.1968, p. 1

Where exceptional circumstances so require, the Governing Board may, by way of a decision, temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member of the S2R Joint Undertaking other than the Executive Director.

3. The Governing Board shall adopt the appropriate implementing rules to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations.
4. The staff resources shall be determined in the staff establishment plan of the S2R Joint Undertaking indicating the number of temporary posts by function group and by grade and the number of contract staff expressed in full-time equivalents, in line with its annual budget.
5. The staff of the S2R Joint Undertaking shall consist of temporary staff and contract staff.
6. All costs related to the staff shall be borne by the S2R Joint Undertaking.

Article 7 – Seconded national experts and trainees

1. The S2R Joint Undertaking may make use of seconded national experts and trainees not employed by the S2R Joint Undertaking. The number of seconded national experts expressed in full-time equivalents shall be added to information on staff as referred to in Article 6(4) of this Regulation in line with the annual budget.
2. The Governing Board shall adopt a decision laying down rules on the secondment of national experts to the S2R Joint Undertaking and on the use of trainees.

Article 8 – Privileges and immunities

The Protocol on the Privileges and Immunities of the Union shall apply to the S2R Joint Undertaking and its staff.

Article 9 – Liability of the S2R Joint Undertaking

1. The contractual liability of the S2R Joint Undertaking shall be governed by the relevant contractual provisions and by the law applicable to the agreement, decision or contract in question.
2. In the case of non-contractual liability, the S2R Joint Undertaking shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its staff in the performance of their duties.
3. Any payment by the S2R Joint Undertaking in respect of the liability referred to in paragraphs 1 and 2 and the costs and expenses incurred in connection therewith shall be considered as expenditure of the S2R Joint Undertaking and shall be covered by its resources.
4. The S2R Joint Undertaking shall be solely responsible for meeting its obligations.

Article 10 – Jurisdiction of the Court of Justice and applicable law

1. The Court of Justice shall have jurisdiction under the conditions laid down in the Treaty as well as in the following cases:
 - (a) in any dispute between the members which relates to the subject matter of this Regulation;
 - (b) pursuant to any arbitration clause contained in agreements, decisions or contracts concluded by the S2R Joint Undertaking;
 - (c) in disputes related to compensation for damage caused by the staff of the S2R Joint Undertaking in the performance of their duties;
 - (d) in any dispute between the S2R Joint Undertaking and its servants within the limits and under the conditions laid down in the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union.
2. For any matter not covered by this Regulation or by other acts of Union law, the law of the State where the seat of the S2R Joint Undertaking is located shall apply.

Article 11 – Evaluation

1. By 30 June 2017, the Commission shall carry out, with the assistance of independent experts, an interim evaluation of the S2R Joint Undertaking. The Commission shall send the conclusions of the evaluation, and its observations, to the European Parliament and to the Council by 31 December 2017. The results of the interim evaluation of S2R shall be taken into account in the in-depth assessment and in the interim evaluation referred to in Article 32 of Regulation (EU) No 1291/2013.

2. On the basis of the conclusions of the interim evaluation referred to in paragraph 1 the Commission may act in accordance with Article 4(6) or take any other appropriate actions.
3. Within six months after the winding up of the S2R Joint Undertaking, but in any event no later than two years after the triggering of the winding up procedure referred to in clause 23 of the Statutes contained in Annex I, the Commission shall conduct a final evaluation of the S2R Joint Undertaking. The results of that final evaluation shall be presented to the European Parliament and to the Council.

Article 12 – Discharge

1. By way of derogation from Articles 60(7) and 209 of Regulation No 966/2012, the discharge of the budget implementation of the S2R Joint Undertaking shall be given by the European Parliament, upon recommendation of the Council, in accordance with the procedure provided for in the financial rules of the S2R Joint Undertaking.

Article 13 – Ex-post audits

1. Ex-post audits of expenditure on indirect actions shall be carried out by the S2R Joint Undertaking in accordance with Article 23 of Regulation (EU) No ... [the Horizon 2020 Framework Programme] as part of the Horizon 2020 Framework Programme indirect actions.
2. To ensure coherence, the Commission may decide to carry out the audits referred to in paragraph 1.

Article 14 – Protection of the financial interests of the members

1. The S2R Joint Undertaking shall grant Commission staff and other persons authorised by the S2R Joint Undertaking or the Commission, as well as the Court of Auditors, access to its sites and premises and to all the information, including information in electronic format, needed in order to conduct their audits.
2. The European Anti-fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council¹⁵ and Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996¹⁶ with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with an agreement or decision or a contract funded under this Regulation.
3. Without prejudice to paragraphs 1 and 2, contracts, agreements and decisions, resulting from the implementation of this Regulation shall contain provisions expressly empowering the Commission, the S2R Joint Undertaking, the Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.
4. The S2R Joint Undertaking shall ensure that the financial interests of its members are adequately protected by carrying out or commissioning appropriate internal and external controls.

¹⁵ OJ L 248, 18.9.2013, p.1.

¹⁶ OJ L 292, 15.11.1996, p. 2-5.

5. The S2R Joint Undertaking shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council and the Commission concerning internal investigations by OLAF¹⁷. The S2R Joint Undertaking shall adopt the necessary measures needed to facilitate internal investigations conducted by OLAF.

Article 15 – Confidentiality

Without prejudice to Article 16, the S2R Joint Undertaking shall ensure the protection of sensitive information whose disclosure could damage the interests of its Members or of participants in the activities of the S2R Joint Undertaking.

Article 16 – Transparency

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding access to European Parliament, Council and Commission documents¹⁸ shall apply to documents held by the S2R Joint Undertaking.
2. The S2R Joint Undertaking shall adopt practical arrangements for implementing Regulation (EC) No 1049/2001.
3. Without prejudice to Article 10, decisions taken by the S2R Joint Undertaking pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman under the conditions laid down in Article 228 of the Treaty.

¹⁷ OJ L 136, 31.5.1999, p. 15.

¹⁸ OJ L 145, 31.5.2001, p. 43.

4. The Governing Board may adopt practical arrangements for implementing Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies¹⁹.

Article 17 – Rules for participation and dissemination

Regulation (EU) No ... [Rules for participation and dissemination in Horizon 2020] shall apply to the actions funded by the S2R Joint Undertaking. In accordance with that Regulation, the S2R Joint Undertaking shall be considered as a funding body and shall provide financial support to indirect actions as set out in clause 2 of the Statutes contained in Annex I.

Article 18 – Support from the host State

An administrative agreement may be concluded between the S2R Joint Undertaking and the State where its seat is located concerning privileges and immunities and other support to be provided by this State to the S2R Joint Undertaking.

Article 19 – Initial actions

1. The Commission shall be responsible for the establishment and initial operation of the S2R Joint Undertaking until it has the operational capacity to implement its own budget. The Commission shall carry out, in accordance with Union law, all necessary actions in collaboration with the other Members and with the involvement of the competent bodies of the S2R Joint Undertaking.

¹⁹ OJ L 264, 25.9.2006, p. 13-19.

2. For that purpose,
 - (a) until the Executive Director takes up his duties following his/her appointment by the Governing Board in accordance with clause 9 of Annex I, the Commission may designate an interim Executive Director and exercise the duties assigned to the Executive Director who may be assisted by a limited number of Commission officials;
 - (b) by derogation from Article 6 (2) of this Regulation, the interim Director shall exercise the appointing authority powers;
 - (c) the Commission may assign a limited number of its officials on an interim basis.
3. The interim Executive Director may authorise all payments covered by the appropriations provided in the annual budget of the S2R Joint Undertaking once approved by the Governing Board and may conclude agreements, decisions and contracts, including staff contracts following the adoption of the S2R Joint Undertaking's staff establishment plan.
4. The interim Executive Director shall in common accord with the Executive Director of the S2R Joint Undertaking and subject to the approval of the Governing Board determine the day on which the S2R Joint Undertaking has the capacity to implement its own budget. From that day, the Commission shall abstain from making commitments and executing payments for the activities of the S2R Joint Undertaking.

Article 20 – Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States.

Done at Brussels,

For the Council

The President

ANNEXES

to the Proposal for a Council Regulation establishing the Shift2Rail Joint Undertaking

ANNEX I - STATUTES OF THE JOINT UNDERTAKING

1- Definitions

1. 'Associated Member' means a legal entity or a grouping or consortium of legal entities, established in a Member State or in a country associated to the Horizon 2020 Framework Programme, that has been selected according to the procedure set out in clauses ~~4(2)~~ **to 4(4)**, that fulfils the conditions set out in clauses ~~4(3) and 4(4)~~, and that has accepted the present Statutes by signing a letter of endorsement;
2. 'Founding Member other than the Union' refers to single legal entities having individually committed to an own contribution of at least EUR 30 million for the duration of the S2R Joint Undertaking, based on a shared vision, and accepted the present Statutes by signing a letter of endorsement. These are listed in Annex II;
3. 'Innovation Programmes' or 'IPs' refer to the thematic areas around which the S2R Master Plan, referred to in paragraph 4, shall be structured. The IPs shall be selected for their capacity to best deliver performance benefits to one or more operating environments and reflect a railway system and customer-oriented approach. Notwithstanding a decision of the Governing Board to modify this structure, the S2R Master Plan should foresee the creation of at least the five following IPs:

- (a) Cost-efficient and Reliable Trains, including High Capacity Trains and ~~or~~ High Speed Trains;
- (b) Advanced Traffic Management & Control Systems;
- (c) Cost-efficient and Reliable High Capacity Infrastructure;
- (d) IT Solutions for Attractive Railway Services;
- (e) Technologies for Sustainable & Attractive European Freight.

4. 'S2R Master Plan' refers to a common, forward-looking strategic roadmap, to be established and developed by the S2R Joint Undertaking, in consultation with the European Railway Agency and the European Rail Research Advisory Council (ERRAC) Technology Platform, to drive innovation in the rail sector on the long term. It shall identify the key priorities and the essential operational and technological innovations required from all stakeholders to achieve the objectives of the S2R Joint Undertaking outlined in Article 2. It shall be performance driven and structured around a limited number of key thematic areas, or Innovation Programmes ("IPs"), referred to in paragraph 3. Once approved by the Governing Board of the S2R Joint Undertaking, ~~it~~ the Master Plan and any subsequent modification shall be endorsed by the Council, acting on a proposal from the Commission, and communicated to the European Parliament. Following this process, the Master Plan and any subsequent modification shall be adopted by the Governing Board.

2 – Tasks

The S2R Joint Undertaking shall carry out the following tasks:

- (a) define, in the S2R Master Plan referred to in clause 1(4), the priority research and innovation activities, including large-scale demonstration activities, required to accelerate the penetration of integrated, interoperable and standardised technological innovations necessary to support the Single European Railway Area and to achieve operational excellence of the railway system, while increasing capacity and reliability and driving down costs of railway transport;
- (b) mobilise public and private sector funds for financing the activities in each of the Innovation Programmes defined in the S2R Master Plan;
- (c) translate the S2R Master Plan into detailed, result-oriented annual work plans, accompanied by detailed investment plans, that allow for continuity, synchronicity, and long-term investment, and ensure its effective and efficient implementation;
- (d) ensure the supervision of activities related to the development of common products duly identified in the S2R Master Plan;
- (e) support financially research and innovation indirect actions, mainly through grants to its members and to participants through the most appropriate measures, such as procurement or the award of grants following calls for proposals to achieve the programme objectives, in accordance with Regulation (EU) No[...] laying down the rules for participation and dissemination in 'Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020);
- (f) organise the technical work of research, development, validation and study, to be carried out under its authority while avoiding fragmentation of such activities;

- (g) ensure the effectiveness and efficiency of rail research and innovation activities and follow progress towards the achievement of the S2R Joint Undertaking objectives through adequate monitoring and evaluation processes;
- (h) pool user requirements and propose interoperability standards to guide investment in research and innovation towards operational and marketable solutions;
- (i) develop close cooperation and ensure coordination with related European, national and transnational research and innovation activities in the rail sector, in particular under previous Framework Programmes and the Horizon 2020 Framework Programme, thereby enabling the S2R Joint Undertaking to play a major role on rail-related research and innovation. It shall also manage all rail-focused research and innovation actions co-funded by the EU;
- (j) establish and develop close and long-term cooperation between the Union, the rail manufacturing industry, the rail operating community and other rail private and public stakeholders required to develop pioneering innovations and ensure a strong market uptake of innovative solutions, including bodies representing customers (passengers and freight), as well as actors outside the traditional rail sector;
- (k) liaise with a broad range of stakeholders including research organisations and universities and establish links with national and international research and innovation activities in the rail technical domain, in particular via the European Rail Research Advisory Council (ERRAC) Technology Platform, as well as with those in other domains, such as the European Road Transport Research Advisory Council (ERTRAC), the Advisory Council for Aviation Research and Innovation in Europe (ACARE), the Waterborne European Technology Platform, the European Construction Technology Platform (ECTP), the Future Manufacturing Technologies Platform (Manufuture), the Alliance for Logistics Innovation (ALICE), the Advanced Engineering Materials and Technologies Platform (EuMaT), and others;

- (l) stimulate the involvement of SMEs in its activities, in line with the objectives of the Horizon 2020 Framework Programme;
- (m) seek a geographically balanced involvement of members and partners in its activities;
- (n) undertake information, communication and dissemination activities by applying *mutatis mutandis* the provisions of Article 22 of Regulation (EU) No .../2013 [the Horizon 2020 Framework Programme], including making the detailed information on results from calls for proposals available and accessible on the single portal for participants as well as through other Horizon 2020 electronic means of dissemination managed by the Commission;
- (o) any other task needed to achieve the objectives set out in Article 2 of this Regulation.

3 –Members

1. The following shall be members of the S2R Joint Undertaking:
 - (a) the Union, represented by the Commission,
 - (b) upon acceptance of these Statutes by means of a letter of endorsement, the Founding Members of the S2R Joint Undertaking other than the Union, listed in Annex II to this Regulation, as well as the Associated Members to be selected in accordance with clause 4. These members shall jointly be referred to as the members other than the Union.
2. The role and contribution of members other than the Union shall be defined in a membership agreement with the S2R Joint Undertaking. This agreement shall be negotiated with the Executive Director and transmitted to the Governing Board for approval. It shall provide a quantitative and qualitative description of the member's contribution to the S2R Joint Undertaking, defined in Article 4(2)(a), as well as the plan of additional activities referred to in Article 4(2)(b), and shall include provisions relating to the member's representation within the Governing Board.

4 –Changes to membership

1. Provided that it accepts the Statutes of the S2R Joint Undertaking and commits to contributing to the funding referred to paragraph 6 to achieve the objectives of the S2R Joint Undertaking set out in Article 2 of this Regulation, any legal entity, grouping or consortium of legal entities, established in a Member State or in a country associated to the Horizon 2020 Framework Programme, may apply to become an Associated Member of the S2R Joint Undertaking.
2. The Associated Members of the S2R Joint Undertaking shall be selected through an open, non-discriminatory and competitive call launched by the Commission and subject to a transparent evaluation by the Governing Board. This evaluation shall take into account, inter alia, the relevance and the potential added value of the applicant for the achievement of the objectives of the S2R Joint Undertaking, the financial soundness of the applicant, and conflicts of interest regarding the objectives of S2R.
3. Taking into account the results of the evaluation, the Commission shall make the final decision with a view to ensuring geographical balance, as well as balanced participation of SMEs, of the research community and of actors from the entire rail value chain, including from outside the traditional rail sector.
4. The first call for Associated Members shall be launched within three months at the latest following the establishment of the S2R Joint Undertaking. Any additional calls shall be driven by the need for key capabilities to implement the S2R Master Plan. All calls shall be published on the S2R website and communicated through the States Representatives Group and other channels in order to ensure the widest possible participation in the interest of the achievement of the objectives of the S2R Master Plan.

6. The minimum own contribution required in order to become an Associated Member shall be 2.5% of the total budget of the Innovation Programme in which it participates. ~~or, for railway undertakings in the form of a single legal entity, a minimum own contribution of EUR 12 million across all Innovation Programmes.~~ **Alternatively, railway undertakings in the form of a single legal entity may become an Associated Member with a minimum own contribution of EUR 12 million across all Innovation Programmes. Furthermore, consortia composed of railway undertakings and/or infrastructure managers may become an Associated Member with a minimum own contribution of EUR 15 million across all Innovation Programmes.**
7. Any member may terminate its membership to the S2R Joint Undertaking. The termination shall become effective and irrevocable six months after notification to the other members. As of then, the former member shall be discharged from any obligations other than those approved or incurred by the S2R Joint Undertaking prior to terminating the membership.
8. Membership of the S2R Joint Undertaking may not be transferred to a third party without the prior and unanimous agreement of the Governing Board.
9. The S2R Joint Undertaking shall publish on its website immediately upon any change to membership pursuant to this clause, an updated list of members of the S2R Joint Undertaking together with the date when such change takes effect.

5 – Organisation of the Joint Undertaking

1. The bodies of the S2R Joint Undertaking shall be:
 - (a) the Governing Board;
 - (b) the Executive Director;
 - (c) the Scientific Committee;
 - (d) the States Representatives Group.
2. The Scientific Committee and the States Representatives Group are advisory bodies to the S2R Joint Undertaking.

6 – Composition of the Governing Board

1. The Governing Board shall be composed of a maximum of twenty-two members, including:
 - (a) two representatives from the Commission;
 - (b) one representative from each of the Founding Members of the S2R Joint Undertaking other than the Union;
 - (c) one representative of each Associated Member, as referred to in clause 1(1) that also fulfils, as a single legal entity, the criteria listed in clause 1(2);
 - (d) a maximum of nine representatives of Associated Members as referred to in clause 1(1), of which at least one per Innovation Programme, referred to in clause 1(3) selected according to the procedure laid down in clause 10a(4)(a).

2. The final composition of the Governing Board shall ensure, in so far as possible, a balanced representation of SMEs, of the research community and of actors from the entire rail value chain, including from outside the traditional rail sector. To this end, it shall include at least three representatives of railway undertakings.

7– Functioning of the Governing Board

1. The Governing Board shall be chaired by the Commission.
2. The members of the S2R Joint Undertaking in the Governing Board shall have a number of votes in proportion to the contribution to the funds of the Joint Undertaking of the Members they represent. Notwithstanding the first sentence of this paragraph, the Commission shall have 50% of the voting rights. The vote of the Commission shall be indivisible and shall reflect the Union's position in the Governing Board.
3. The representatives shall use their best endeavours to achieve consensus. Failing consensus and notwithstanding paragraph 4, decisions of the Governing Board shall be adopted by a majority of at least two thirds of all votes, including the votes of those who are not in attendance, unless otherwise provided for in these Statutes.
4. On decisions pertaining to the representation of Associated Members in the Governing Board, the Commission shall have the casting vote if the majority of two thirds cannot be achieved.

5. The Governing Board shall adopt its rules of procedure which shall ensure that its proceedings run in a smooth and efficient manner. These rules shall include specific procedures for identifying and avoiding conflicts of interest.

The Governing Board shall meet at least three times a year. Extraordinary meetings shall be convened either at the request of one-third of the members of the Governing Board representing at least 30 % of the voting rights, at the request of the Commission or of the Executive Director;

The meetings shall normally take place at the seat of the Joint Undertaking;

The Executive Director shall have the right to take part in the deliberations, but shall have no voting rights.

A representative of the European Railway Agency and the chairperson or the vice-chair person of the States Representatives Group shall have the right to attend meetings of the Governing Board as observers and take part in its deliberations, but shall have no voting rights.

The Governing Board may invite other persons to attend its meetings as observers. In particular, the chairperson of the Scientific Committee shall be invited, whenever issues falling within its tasks are discussed, to attend meetings of the Governing Board as an observer and take part in its deliberations, but shall have no voting rights.

8 – Tasks of the Governing Board

The Governing Board shall have overall responsibility for the strategic orientation and the operations of the S2R Joint Undertaking and shall supervise the implementation of its activities. In particular, the Governing Board shall carry out the following tasks:

- (a) adopt the S2R Master Plan and any proposal to modify it;
- (b) adopt the S2R Joint Undertaking's annual work plan and the corresponding expenditure estimates, as proposed by the Executive Director after having consulted the Scientific Committee and the States Representatives Group;
- (c) define the detailed list of criteria to select Associated Members in accordance with clause 4 and assess, accept or reject applications for new membership on that basis;
- (d) decide on the final composition of the Governing Board, in particular by selecting the representatives of Associated Members, other than those fulfilling the criteria in clause 1(2), on the basis of a proposal from each Steering Committee;
- (e) decide on the termination of the membership in the S2R Joint Undertaking of any Member that does not fulfil its obligations and on the conditions of this termination;
- (f) approve the membership agreements referred to in clause 3(2) after having consulted, where appropriate, an ad hoc advisory group;
- (g) adopt the financial rules of the Joint Undertaking in accordance with Article 5 of this Regulation;

- (h) adopt the S2R Joint Undertaking's annual budget, as proposed by the Executive Director, including the staff establishment plan indicating the number of temporary posts by function group and by grade as well as the number of contract staff and seconded national experts expressed in full-time equivalents;
- (i) exercise the appointing authority powers with respect of the staff, in accordance with Article 6(2) of this Regulation;
- (j) appoint, dismiss, extend the term of office of, provide guidance to and monitor the performance of the Executive Director;
- (ja) develop a common model of rules of procedure for the Steering Committees;
- (k) approve the organisation chart upon recommendation of the Executive Director;
- (l) approve the annual accounts;
- (m) approve the annual activity report, including the corresponding expenditure;
- (n) arrange, as appropriate, for the establishment of an internal audit capability of the S2R Joint Undertaking;
- (o) develop procedures for open and transparent calls and approve the calls as well as, where appropriate, the related rules for submission, evaluation, selection, award and review procedures;
- (p) approve the list of actions selected for funding;
- (q) where appropriate, set up working groups referred to in clause 14 in addition to the bodies to the S2R Joint Undertaking;

- (r) where appropriate, establish implementing rules in line with Article 6(3) of this Regulation, as well as rules on the secondment of national experts to the S2R Joint Undertaking and on the use of trainees in line with Article 7 of this Regulation;
- (s) where appropriate, submit to the Commission any request to amend this Regulation proposed by any Member of the S2R Joint Undertaking;
- (t) decide on proposals to the Commission on the extension or the winding up of the Joint Undertaking;
- (u) exercise any task that is not specifically allocated to one of the bodies of the S2R Joint Undertaking, which it may assign to one of those bodies.

9 – Appointment, dismissal or extension of the term of office of the Executive Director

1. The Executive Director shall be appointed by the Governing Board, from a list of candidates proposed by the Commission, following an open and transparent selection procedure.
2. The Executive Director is a member of staff and shall be engaged as a temporary agent of the S2R Joint Undertaking under Article 2(a) of the Conditions of employment of other servants of the Union.
3. For the purpose of concluding the contract with the Executive Director, the S2R Joint Undertaking shall be represented by the chairperson of the Governing Board.
4. The term of office of the Executive Director shall be five years. By the end of that period, the Commission shall undertake an assessment that takes into account an evaluation of the performance of the Executive Director and the S2R Joint Undertaking's future tasks and challenges.

5. The Governing Board, acting on a proposal from the Commission, which takes into account the assessment referred to in paragraph 4, may extend once the term of office of the Executive Director for no more than five years²⁰.
6. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.
7. The Executive Director may be removed from office only upon a decision of the Governing Board acting on a proposal from the Commission.

10 – Tasks of the Executive Director

1. The Executive Director shall be the chief executive responsible for the day-to-day management of the S2R Joint Undertaking in accordance with the decisions of the Governing Board.
2. The Executive Director shall be the legal representative of the S2R Joint Undertaking. He/she shall be accountable to the Governing Board and perform his duties with complete independence within the powers assigned to him.
3. The Executive Director shall implement the budget of the S2R Joint Undertaking. He shall provide the Governing Board with all information necessary for the performance of its functions.
4. The Executive Director shall in particular:
 - (a) prepare and submit for adoption to the Governing Board the draft annual budget, including the corresponding staff establishment plan indicating the number of temporary posts in each grade and function group and the number of contract staff and seconded national experts expressed in full-time equivalents;

²⁰ AT, DE wish to limit the extension of the term of office of the Executive Director to 4 years.

- (b) prepare and submit for adoption to the Governing Board the annual work plans of the Joint Undertaking and the corresponding expenditure estimates;
- (c) submit the annual accounts to the Governing Board for approval;
- (d) prepare and submit for approval to the Governing Board the annual activity report referred to in clause 19(2), and such other reports as may be requested by the Governing Board;
- (e) handle second-instance settlement of disputes within IPs;
- (f) handle first -instance settlement of disputes across IPs;
- (g) manage the calls and submit for approval to the Governing Board the list of actions selected for funding;
- (h) sign individual agreements or decisions;
- (i) sign procurement contracts;
- (j) ensure that the obligations of the Joint Undertaking, with regard to the contracts and agreements it concludes are met;
- (k) ensure the coordination between the different IPs and take appropriate action to manage interfaces, avoid undue overlaps between projects and favour synergies across IPs;
- (l) propose to the Governing Board adaptations of the technical content and budget allocations between IPs;
- (m) ensure that the planned objectives and the schedules are met, coordinate and follow-up the IP activities and propose any appropriate evolution of the objectives and related schedule;

- (n) monitor the progress made by the IPs towards achieving the objectives;
- (o) draw up and implement the S2R Joint Undertaking's communications policy;
- (p) submit to the Governing Board proposals concerning the organisation chart;
- (q) organise, direct and supervise the operations and the staff of the Joint Undertaking, within the constraints of the delegation by the Governing Board as provided for in Article 6(2) of this Regulation;
- (r) ensure that the activities of the Joint Undertaking are carried out with complete independence and without any conflicts of interest;
- (s) establish and ensure the functioning of an effective and efficient internal control system and report any significant change to it to the Governing Board;
- (t) ensure that risk assessment and risk management are performed;
- (u) take any other measures needed for assessing the progress of the S2R Joint Undertaking towards achieving its objectives;
- (v) the States Representatives Group, the Scientific Committee and ~~with~~ the European Railway Agency regularly of all matters relevant to their advisory role. In this respect, the Executive Director of the Joint Undertaking shall, attend the Horizon 2020 smart, green and integrated transport specific configuration programme committee meeting at the request of the committee once per year over the lifetime of the Joint Undertaking in order to outline the progress of the Shift2Rail initiative;
- (w) perform any other tasks entrusted or delegated to the Executive Director by the Governing Board.

5. The Executive Director shall set up a Programme Office for the execution, under his/ her responsibility, of all support tasks arising from this Regulation. The Programme Office shall be composed of the staff of the S2R Joint Undertaking and shall in particular carry out the following tasks:
- (a) provide support in establishing and managing an appropriate accounting system in accordance with the financial rules of the S2R Joint Undertaking;
 - (b) manage the calls as provided for in the annual work plan and administer the agreements or decisions, including their coordination;
 - (c) provide the members and the other bodies of the S2R Joint Undertaking all relevant information and support necessary for them to perform their duties as well as responding to their specific requests;
 - (d) act as the secretariat of the bodies of the S2R Joint Undertaking and provide support to any working group set up by the Governing Board.

10a – Innovation Programmes' Steering Committees

1. Steering Committees shall be established for each of the Innovation Programmes.
2. Each Steering Committee shall be composed of:
 - (a) a representative of each Founding Member and Associated Member fulfilling the criteria listed in clause 1(2) or, for railway undertakings, the criteria listed in clause 4(6);
 - (b) a representative of each Associated Member participating in the Innovation Programme;
 - (c) one or more representatives of the Programme Office, as designated by the Executive Director.

3. Each Steering Committee shall adopt its rules of procedure, based on a common model approved by the Governing Board. It shall elect a chairperson amongst its members. A representative of the Commission and of the European Railway Agency may participate in meetings of the Steering Committee as observers. Other members with an interest in the results of the IP may be invited to attend.
4. Each Steering Committee shall be responsible amongst others for :
 - (a) proposing to the Governing Board a shortlist of minimum two candidates amongst which the IP's representative in the Governing Board will be selected, as well as, where necessary, establishing an order of rotation. Insofar as possible, the shortlist should reflect a balanced representation of SMEs, of the research community and of actors from the entire rail value chain, including from outside the traditional rail sector;
 - (b) providing the relevant technical input to its IP, in particular for the development of the calls for proposals with a view to approval by the Governing Board;
 - (c) establishing the detailed annual implementation plans for the IP in line with the annual work plans adopted by the Governing Board in accordance with clause 2(c);
 - (d) reporting to the Executive Director on the basis of the key performance indicators defined in Article 2(2).

11 – European Railway Agency

The European Railway Agency shall contribute to the definition and implementation of the S2R Master Plan, in particular by performing the following advisory tasks:

- (a) proposing possible amendments to the S2R Master Plan and to the annual work plans, in particular to ensure that research needs relating to the realisation of the Single European Railway Area are covered;
- (b) proposing, after consultation with the stakeholders referred to in Article 2(1)(e) of this Regulation, guidelines for research and development activities leading to technical standards with a view to guaranteeing the interoperability and safety of results;
- (c) reviewing the common developments for the future system and contributing to defining target systems in regulatory requirements;
- (d) reviewing project activities and results with a view to ascertaining their relevance to the objectives identified in Article 2(2) of this Regulation and to guaranteeing the interoperability and safety of research results.

12 – Scientific Committee

1. The Scientific Committee shall consist of no more than twelve members. It shall elect a chairperson from amongst its members.
2. The members shall reflect a balanced representation of world-renowned scientists and engineers from academia, industry, small and medium enterprises, non-governmental organisations and regulatory bodies. Collectively, the Scientific Committee members shall have the necessary scientific competencies and expertise covering the technical domain needed to make science-based recommendations to the S2R Joint Undertaking.
3. The Governing Board shall establish the specific criteria and selection process for the composition of the Scientific Committee and shall appoint its members. The Governing Board shall take into consideration the potential candidates proposed by the States Representatives Group, by the European Rail Research Advisory Council (ERRAC) and by the European Railway Agency.
4. The Scientific Committee shall carry out the following tasks:
 - (a) advise on the scientific and technological priorities to be addressed in the annual work plans;
 - (b) advise on the scientific and technological achievements described in the annual activity report;
 - (c) suggest possible areas of advanced research that could be subject to further developments;

- (d) suggest possible synergies with national and international research and innovation activities in the rail technical domain, in particular via the European Rail Research Advisory Council (ERRAC) Technology Platform, as well as with those in other domains, as identified in clause 2(k).
- 5. The Scientific Committee shall meet at least twice a year. The meetings shall be convened by its chairperson.
- 6. The Scientific Committee may, with the agreement of the chairperson, invite other persons to attend its meetings.
- 7. The Scientific Committee shall adopt its own rules of procedure.

13 –States Representatives Group

- 1. The States Representatives Group shall consist of one representative of each Member State and of each country associated to the Horizon 2020 Framework Programme. It shall elect a chairperson and a vice-chair person among its members.
- 2. The States Representatives Group shall meet at least twice a year. The meetings shall be convened by its chairperson. The Executive Director and the chairperson of the Governing Board or their representatives shall attend the meetings.
- 3. The members of the Single European Rail Area Committee, established by Article 62 of Directive 2012/34/EU of the European Parliament and of the Council²¹, or their representatives, and the members of the Railway Interoperability and Safety Committee, established by Article 29 of Directive 2008/57/EU of the European Parliament and of the Council may take part in the meetings of the States Representatives Group.

²¹ Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32).

4. The States Representatives Group shall be involved and, in particular, review information and provide opinions on the following matters:
- (a) updating of strategic orientation and of the S2R Master plan and progress towards achievement of its targets;
 - (b) the S2R Joint Undertaking annual work plans;
 - (c) links to the Horizon 2020 Framework Programme and to other EU and Member State funding instruments, including the Connecting Europe Facility, the European Structural Funds;
 - (d) links to the EU rail transport legislation and the goal of achieving a Single European Railway Area;
 - (e) involvement of SMEs and relevant actors from outside the traditional rail sector.
5. The States Representatives Group shall also provide information to and act as an interface with the S2R Joint Undertaking on the following matters:
- (a) the status of relevant national or regional research and innovation programmes and identification of potential areas of cooperation, including deployment of relevant technologies to allow synergies and avoid overlaps;
 - (b) specific measures taken at national or regional level with regard to dissemination events, dedicated technical workshops and communication activities.

6. The States Representatives Group may issue, on its own initiative, recommendations and proposals to the Governing Board on technical, managerial and financial matters, as well as on annual plans, in particular when those matters affect national or regional interests. The Governing Board shall take these proposals into account and inform without undue delay the States Representatives Group of the follow up it has given to such recommendations or proposals, including the justifications if they are not taken up.
- 6a. The States Representatives Group shall receive information on a regular basis, among others on the participation in actions funded by the S2R Joint Undertaking, on the outcome of each call and project implementation, on synergies with other relevant Union programmes, and on the execution of the S2R budget.
7. The States Representatives Group shall adopt its own rules of procedure.

14 – Working groups

1. In order to carry out the tasks provided for in clause 2, the Governing Board of the S2R Joint Undertaking can set up a limited number of working groups to carry out activities which are delegated to them by the Governing Board. These groups shall be composed of experts and shall work in a transparent manner.
2. The experts who take part in the working groups shall not belong to the staff of the S2R Joint Undertaking.
3. In order to ensure the widest range of expertise, the S2R Joint Undertaking shall encourage and facilitate the participation of SMEs, research organisations and actors from outside the traditional rail sector in the working groups.

4. The working groups shall be chaired by a representative of the S2R Joint Undertaking. The Commission and the European Railway Agency shall assist in these working groups as observers.

15– Sources of financing

1. The S2R Joint Undertaking shall be jointly funded by the Union and the members other than the Union and their affiliated entities through financial contributions paid in instalments and in kind contributions, consisting of the costs incurred by them in implementing indirect actions that are not reimbursed by the S2R Joint Undertaking.
2. The administrative costs of S2R Joint Undertaking shall not exceed EUR 27 million, and shall be covered through financial contributions divided equally on an annual basis between the Union and the members of the S2R Joint Undertaking other than the Union, other than research centres and universities. The contribution of the members other than the Union shall be determined proportionately to their respective budget commitment. If part of the contribution for administrative costs is not used, it may be made available to cover the operational costs of the S2R Joint Undertaking.
3. The operational costs of the S2R Joint Undertaking shall be covered through:
 - (a) a financial contribution by the Union;
 - (b) in-kind contributions by the members other than the Union and their affiliated entities, consisting of the costs incurred by them in implementing indirect actions less the contribution of the Joint Undertaking and any other Union contribution to those costs.

4. The resources of the S2R Joint Undertaking entered to its budget shall be composed of the following contributions:
 - (a) members' financial contributions to the administrative costs;
 - (b) Union financial contribution to the operational costs;
 - (c) any revenue generated by the Joint Undertaking;
 - (d) any other financial contributions, resources and revenues.
5. Any interest yielded by the contributions paid by the members of the S2R Joint Undertaking shall be considered to be its revenue.
6. All the resources of the S2R Joint Undertaking shall be devoted to achieving the objectives set out in Article 2 of this Regulation.
7. The S2R Joint Undertaking shall own all assets generated by it or transferred to it for the fulfilment of its objectives set out in Article 2 of this Regulation.
8. Subject to clause 23(4), no payment by way of division of any excess revenue over expenditure shall be made to the members of the S2R Joint Undertaking.

16 – Allocation of the Union contribution

1. The Union financial contribution to the S2R Joint Undertaking dedicated to operational costs referred to in Article 3(1)(a) and the additional contribution referred to in Article 3(1)(b) shall be allocated as follows:
 - (a) up to 40% shall be allocated to Founding Members, other than the Union, and their affiliated entities;
 - (b) up to 30% shall be allocated to Associated Members and their affiliated entities;
 - (c) at least 30% shall be allocated by way of competitive calls for proposals and calls for tenders.
2. Funding under paragraph 1 shall be allocated following evaluation of proposals by independent experts.
3. Financial commitments of the S2R Joint Undertaking shall not exceed the amount of financial resources available or committed to its budget by its Members.

17 – Financial year

The financial year shall run from 1 January to 31 December.

18 – Operational and financial planning

1. The Executive Director shall draw up and submit for adoption to the Governing Board a draft annual work plan, on the basis of the S2R Master Plan, which shall include a detailed plan of the research and innovation activities, the administrative activities and the corresponding expenditure estimates for the coming year. The draft work plan shall also include the estimated value of the contributions to be made in accordance with clause 15(3)(b).
2. The annual work plan for a particular year shall be adopted by the end of the previous year. The annual work plan shall be made publicly available.
3. The Executive Director shall prepare the draft annual budget for the following year and submit it to the Governing Board for adoption.
4. The annual budget for a particular year shall be adopted by the Governing Board by the end of the previous year.
5. The annual budget shall be adapted in order to take into account the amount of the Union contribution as set out in the Union budget.

19 – Operational and financial reporting

1. The Executive Director shall report annually to the Governing Board on the performance of his/her duties in accordance with the financial rules of the S2R Joint Undertaking.
2. Within two months of the closure of each financial year, the Executive Director shall submit to the Governing Board for approval an annual activity report on the progress made by the S2R Joint Undertaking in the previous calendar year, in particular in relation to the annual work plan for that year. That report shall include, inter alia, information on the following matters:
 - (a) research, innovation and other actions carried out and the corresponding expenditure;
 - (b) the actions submitted, including a breakdown by participant type, including SMEs, and by country;
 - (c) the actions selected for funding, including a breakdown by participant type, including SMEs, and by country and indicating the contribution of the S2R Joint Undertaking to the individual participants and actions;
 - (d) progress towards the achievement of the S2R objectives (as defined in Article 2(2)) and proposals for further necessary work to achieve these objectives;
 - (e) Once approved by the Governing Board, the annual activity report shall be transmitted to the States Representatives Group and made publicly available.

3. The S2R Joint Undertaking shall report annually to the Commission in accordance with Article 60(5) of Regulation (EU, Euratom) No 966/2012.
4. By 1 March of the following financial year, the accounting officer of the S2R Joint Undertaking shall send the provisional accounts to the Commission's accounting officer and the Court of Auditors.

By 31 March of the following financial year, the S2R Joint Undertaking shall send the report on the budgetary and financial management to the European Parliament, the Council and the Court of Auditors.

On receipt of the Court of Auditors' observations on the S2R Joint Undertaking's provisional accounts pursuant to Article 148 of Regulation (EU, Euratom) No 966/2012, the accounting officer shall draw up the S2R Joint Undertaking's final accounts and the Executive Director shall submit them to the Governing Board for an opinion.

The Governing Board shall deliver an opinion on the S2R Joint Undertaking's final accounts.

The Executive Director shall, by 1 July following each financial year, send the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Governing Board's opinion.

The final accounts shall be published in the Official Journal of the European Union by 15 November of the following year.

The Executive Director shall send the Court of Auditors a reply to its observations made in its annual report by 30 September. The Executive Director shall also send this reply to the Governing Board.

The Executive Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, in accordance with Article 165(3) of Regulation (EU, Euratom) No 966/2012.

5. The accounts of the S2R Joint Undertaking shall be examined by an independent audit body as laid down in Article 60(5) of Regulation (EU, Euratom) No 966/2012.

20 – Internal Audit

The Commission's internal auditor shall exercise the same powers over the S2R Joint Undertaking as those exercised in respect of the Commission.

21 – Liability of members and insurance

1. The financial liability of the members for the debts of the S2R Joint Undertaking shall be limited to their contribution already made for the administrative costs.
2. The S2R Joint Undertaking shall take out and maintain appropriate insurance.

22 – Conflicts of interest

1. The S2R Joint Undertaking, its bodies and staff shall avoid any conflict of interest in the implementation of their activities.
2. The Governing Board shall adopt rules for the prevention and management of conflicts of interest in respect of its Members, bodies, staff and seconded staff. In those rules provision shall be made to avoid a conflict of interest for the representatives of the Members serving in the Governing Board.

23 – Winding up

1. The S2R Joint Undertaking shall be wound up at the end of the period defined in Article 1 of this Regulation.
2. The winding up procedure shall be automatically triggered if the Commission or all members other than the Union withdraw from the S2R Joint Undertaking.
3. For the purpose of conducting the proceedings to wind up the Joint Undertaking, the Governing Board shall appoint one or more liquidators, who shall comply with the decisions of the Governing Board.
4. When the Joint Undertaking is being wound up, its assets shall be used to cover its liabilities and the expenditure relating to its winding up. Any surplus shall be distributed among the members at the time of the winding up in proportion to their financial contribution to the S2R Joint Undertaking. Any such surplus distributed to the Union shall be returned to the Union budget.
5. An ad hoc procedure shall be set up to ensure the appropriate management of any agreement concluded or decision adopted by the S2R Joint Undertaking as well as any procurement contract with duration longer than its duration.

ANNEX II –FOUNDING MEMBERS OF THE
S2R JOINT UNDERTAKING OTHER THAN THE UNION

1. ALSTOM TRANSPORT
 2. ANSALDO STS
 3. BOMBARDIER TRANSPORTATION
 4. CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES
 5. NETWORK RAIL
 6. SIEMENS AKTIENGESELLSCHAFT
 7. THALES
 8. TRAFIKVERKET
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