



DECISION OF THE GOVERNING BOARD

Adopting rules on the prevention and management of conflicts of interests applicable to the bodies of Shift2Rail Joint Undertaking

N° 07/2018

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

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

Having regard to Council Regulation (EU) No 642/2014¹ of 16 June 2014 establishing the Shift2Rail Joint Undertaking ("the S2R JU Regulation"),

Having regard to the Statutes annexed to the S2R JU Regulation ("the Statutes"), and in particular Article 23 thereof,

Whereas:

- (1) Joint Undertakings are public-private partnerships and as a consequence public and private interests are intertwined;
- (2) It is understood that the members of the Governing Board, the Innovation Programmes' Steering Committees, the Scientific Committee, and the States Representatives Group of the S2R JU have a professional interest to work for the S2R JU and to act for the good of the S2R JU, notably pursuing its objectives, observing the applicable rules and protecting its general interest;
- (3) Provisions on conflict of interests applicable to the S2R JU are already included in various documents, such as the Staff Regulations, the Conditions of Employment of Other Servants of the European Union (hereinafter to as the "CEOS")², the Financial Rules of the S2R JU for what concerns the staff employed by the S2R JU, the Rules of Procedure of the Governing Board, the Rules of Procedure of the Scientific Committee, the appointment letters of the Scientific Committee Members and the Rules of Procedure of the States Representatives Group, and the appointment letters of the Scientific Committee Members;

¹ OJ L/177, 17.6.2014, p.7

² Council Regulation (EEC, Euratom, ECSC) No 259/682 (01 L 56, 4.3.1958, 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.

- (4) In accordance with Article 23(2) of the Statutes, it is therefore necessary to adopt at Governing Board level two separate decisions applying respectively to the S2R JU staff and to the bodies of the S2R JU, aiming to provide a comprehensive overview and complement the existing rules on the prevention and management of potential conflicts of interest, which would serve as a reference for all persons working or involved in the activities of the S2R JU, and ensure a comprehensive and coherent approach on conflicts of interest and the highest standards of administration, professional ethics, integrity and independence;
- (5) For the sake of clarity, this decision shall apply only to the members of the bodies of the S2R JU, other than the Union staff members as already subject to the CEOS, and should be adopted without prejudice to the existing rules and provisions on prevention and management of conflicts of interest as provided in any other applicable document as mentioned above under recital (3);

HAS DECIDED AS FOLLOWS:

Article 1 – Subject

The present decision lays down rules for the prevention and management of conflicts of interest applicable to the members of the bodies of the S2R JU listed under Article 5(1) of the Statutes in order to ensure the handling of situations where potential conflicts of interest may arise in a transparent and consistent manner.

Article 2- — Scope and persons concerned

1. This decision shall apply to the following categories of members of the bodies of S2R JU other than Union staff members as already subject to the CEOS, and persons involved in the work and activities of the S2R JU:
 - a) Members of the Governing Board,
 - b) Members of Scientific Committee³,
 - c) Members of States Representatives Group,
 - d) Members of the Innovation Programmes' Steering Committees,
 - e) Members of working groups set up based on Art. 8(q) of the Statutes.

collectively referred hereinafter as “members of the bodies of the S2R JU”.

2. Where applicable, this decision shall also cover any other participant, observer, or expert invited to the meetings of the bodies of the S2R JU.

³ Throughout the text, when referred to "Members of the Scientific Committee ", equals to other than Union members.

Article 3 – General obligations

1. Members of the bodies of the S2R JU shall carry out their duties and conduct themselves when acting under their statutory function in the interests of the S2R JU. Members of the bodies of the S2R JU shall carry out their duties objectively and impartially and in keeping their duty of loyalty to the S2R JU. Members of the bodies of the S2R JU shall abstain from any action adversely affecting the reputation of the Joint Undertaking.
2. Members of the bodies of the Joint Undertaking shall not seek or act in any way to take undue advantage of, or exercise undue influence on the implementation of the Programme and the activities of the S2R JU.

Article 4 - Definition of conflict of interest and personal interest

1. A conflict of interest refers to a situation where the impartiality and objectivity of a decision, opinion or recommendation of the S2R JU is or might be perceived as being compromised by a personal interest held by or entrusted to a member of the S2R JU bodies.
2. All members of the S2R JU bodies should not, in the performance of their duties, deal with a matter in which, directly or indirectly, they may have any personal interests such as to impair their independence.
3. Relevant personal interest may be of a financial or non-financial nature and it may concern a personal or family relationship or representation of any other interests of third parties or professional affiliation and other outside activities.
4. The appearance of a conflict of interest can constitute a reputational risk to the S2R JU, even if turns out to be unsubstantiated. Therefore, taking due consideration of proportionality, specific backgrounds, all relevant facts and mitigating circumstances, a risk of perceived conflict of interest shall be treated as if it were an actual conflict of interest.
5. It is the responsibility of all members of S2R JU bodies to ensure that their conduct is in line with the rules regarding the conflict of interest in both letter and spirit. Each member of the S2R JU bodies shall assume an individual responsibility by declaring in good faith his/her interests and information to the S2R JU in compliance with the applicable provisions.
6. Any member of the S2R JU bodies, who becomes aware of a potential conflict of interest, must immediately inform in writing the relevant competent body referred to in Article 6.
7. To prevent conflicts of interest, members of the bodies of the S2R JU shall not occupy

the position of external expert for the evaluation of proposals or tenders submitted in the framework of the calls for proposals or calls for tenders launched by the S2R JU.

Article 5 — Obligation to make declarations on conflicts of interest

1. A member of any S2R JU body shall submit to the to the secretariat of the respective S2R JU body- before appointment- a Declaration on confidentiality and conflict of interest using the template set out in **Annex 1**.
2. After appointment, a member of any S2R JU body shall submit to the secretariat of the respective S2R JU body an updated Declaration on conflict of interests using the template set out in **Annex 2**, except when there is no change from the situation mentioned in the declaration filled in for the preceding year.
3. A member of any S2R JU body shall declare in writing and notify the chair of the respective body of any potential conflict of interest in accordance with their respective rules of procedures and appointment letters.

In cases where the Declarations referred to in paragraphs (1) and (2) or the notification referred to in paragraph (3) show a potential or apparent conflict of interests, it must be managed and solved by the competent body referred to in Article 6 before the member takes up/resumes his/her duties.

5. All members of the S2R JU bodies must promptly disclose all relevant information about a personal interest when circumstances change following their initial disclosure or when new situations arise. If at any time in the course of his duties a member of the bodies becomes aware of any potential conflict of interest or any appearance of a conflict of interest, the member is obliged to inform the relevant competent body referred in Article 6 by spontaneously submitting an ad-hoc Declaration on conflict of interest using the template set out in **Annex 3**.
6. Any permission granted by the competent body referred in Article 6 pursuant to a Declaration submitted by a member of the body shall be limited to the specific situation described in the Declaration and cannot be extended to any other similar situation.
7. Any change of the initial situation described in the Declaration and approved by the respective S2R JU body shall be considered as a new situation and must be brought to the attention of the body according to the above mentioned rules and applicable provisions”.

Article 6 – Specific Obligations related to the conduct of the Governing Board members

1. The Governing Board members shall act independently, in the general interest of the S2R JU and in the common interest of the sound management of the S2R JU

Programme and its objectives without allowing themselves to be influenced by personal interests or relationships.

2. When communicating on a matter on which the S2R JU has taken a view, the Governing Board members shall represent the views of the S2R JU; when communicating on a matter that falls within the remit of the S2R JU but on which the JU has not taken a view so far, they may give their own personal view, but shall make clear that this does not necessarily represent the official view of S2R JU.

Article 7 – Procedures to manage a conflict of interest

1. A member of the S2R JU body who becomes aware of a potential conflict of interests related to its activities shall immediately inform the Chairperson of the relevant body or group, who shall inform without delay the S2R JU Executive Director. If the conflict of interest regards the Chairperson, the person to be informed is the Vice-Chair of the respective body or group.
2. After hearing the concerned member, the S2R JU body shall decide on the appropriate measures to be taken in compliance with the applicable Rules of Procedure of the respective S2R JU body and shall inform the S2R JU Executive Director. If such rules do not exist in relation to a non-statutory group, the issue shall be referred to the S2R JU Executive Director.

Article 8 – Ex-post treatment of situation of non-compliance with the obligations

1. In case of failure by a member of the S2R JU body to declare an actual or potential conflict of interest or failure to comply with the applicable rules on conflict of interest, the competent body shall decide the appropriate measures taking into account the respective Rules of Procedure after consulting the S2R JU Executive Director and hearing the respective member.
2. If the concerned person was involved in a decision-making procedure without having declared an interest, the respective body or group may undertake remedial actions, in particular to review or cancel the decision if seriously affected by the conflict of interest. This implies carrying out an ex post review of the person's activities and contributions to the S2R JU deliberation and vote.
3. The Chairperson of a S2R JU body shall immediately inform the S2R JU Executive Director of any conflict of interest related to its members and observers and the measures taken to prevent and manage the respective conflict of interest. The Executive Director may report the issue to the Governing Board for any necessary follow-up.

Article 9 — Register

1. The Declarations related to a member or observer of a S2R JU body shall be recorded in a Register kept by the S2R JU Data Protection Officer S2R JU for a period of 5 years.
2. The register referred to in paragraph (1) above shall be maintained in compliance with the applicable provisions of Regulation (EC) No 45/2001⁴ of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Union institutions and bodies and on the free movement of such data.

Article 9 — Transparency

1. The S2R JU shall publish on its website the present rules for the prevention of conflict of interest.

Bearing in mind the legal rights of individuals in relation to personal data protection, in particular Regulation (EC) no 45/2001, the name of the Members of Governing Board, Scientific Committee, States Representatives Group together with the name of their employer or any organisation which pays them⁵ shall be published on the S2R JU's website.

3. The declarations of interest by the Members of the Governing Board shall be available for public scrutiny with due respect to the applicable EU rules on protection of personal data and access to documents.
4. In accordance with European Parliament's resolutions on the budgetary discharge applicable to all EU bodies, including Joint Undertakings⁶, the CVs of Members of the Governing Board, or a summary of their professional experience, shall be published on the S2R JU web site.

Article 10 - Final provisions

1. The templates in Annexes 1 to 3 shall be used when no template is available in the rules of procedure of the respective S2R JU body and for the purpose of which their titles suggest they are respectively intended.
2. The Executive Director of the S2R JU may adopt subsequent guidelines to facilitate the implementation of the present Decision.

⁴ OJ L 8/1 of 12.1.2001, p.1

⁵ For stakeholders' representatives, it would suffice to list the organisation represented.

⁶ P8_TA(2015)0130 and P7_TA(2014)0337.

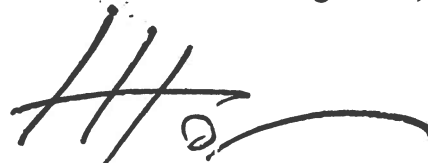
3. The present Decision establishes a minimum level of requirements and obligations applicable to all members and observers of the S2R JU bodies in view of management and prevention of conflict of interest.
4. The present Decision complements the rules of procedure relating to the S2R JU bodies or any other rules or appointment letters which may provide for increased obligations.

These rules shall enter into force on the day following that of their adoption by the Governing Board.

They shall be published on the website of the S2R JU.

Done at Brussels, on

For the Governing Board,

A handwritten signature in black ink, consisting of several stylized, overlapping strokes that form a unique, cursive-like mark.

Henrik HOLOLEI

The Chairperson

Annexes:

Annex 1- Declaration of confidentiality and of conflict of interest for members of bodies or groups of the S2R JU - before appointment.

Annex 2 – Annual Declaration of interests for members of bodies or groups of the S2R JU- after appointment.

Annex 3– Spontaneous Declaration of conflict of interest for member of bodies or groups of the S2R JU



Annex 1 - Declaration of confidentiality and of conflict of interest for members of bodies or groups of the Joint Undertaking - before appointment

DECLARATION OF CONFIDENTIALITY AND CONFLICT OF INTEREST

Surname:

First name:

Professional address:

Phone:

E-mail:

Position*:

☐ Chairperson or Deputy Chairperson of the [Governing Board], [Scientific Committee], [States Representatives Group] or [other advisory body/group]

☐ Representative /lead delegate/ alternate of [...]

☐ Other (please specify)

I hereby undertake to act in the performance of my duties in the general interest of the S2R JU.

At each meeting of the Governing Board/Scientific Committee/States Representatives Group/Innovation Programmes' Steering Committee/ [...] working group or before any decision is taken by written procedure, I shall declare any interest which might be considered to influence or bias my judgment and therefore be prejudicial to the way an item on the agenda is handled.

I undertake to ensure the confidentiality of sensitive information whose disclosure could damage the interests or the reputation of the S2R JU, the Members of the S2R JU or of the participants in the activities of the S2R JU.

I shall not disclose sensitive information learnt during the activities of the S2R JU even after my duties have ended.

Done at [place], [date]

Name and Signature

* Delete, as appropriate.

Annex 2 – Annual Declaration of interests for members of bodies or groups of the S2R JU-
after appointment.

ANNUAL DECLARATION OF INTERESTS

Name:

Professional Address:

Phone:

E-mail:

Position*:

☐ Chairperson or Deputy Chairperson of the [Governing Board], [Scientific Committee], [States Representatives Group], [other]

☐ Representative /lead delegate/ alternate of [...]

☐ Other (please specify)

do hereby declare on my honour that, to the best of my knowledge, the only direct or indirect interests I have in the sectors in which the Joint Undertaking is active, [are][is] those listed below:

1. Past activities:

[Posts held over the last 7 years in foundations or similar bodies, educational institutions, companies or other organisations (the nature of the post and the name of those bodies should also be indicated); other membership/affiliation or professional activities held over the last 3 years including services, liberal professions, consulting activities, and relevant public statements.]

2. Current activities:

[Posts held in foundations or similar bodies, educational institutions, companies or other organisations (the nature of the post and the name of those bodies should also be indicated); other membership/affiliations or professional activities, including services, liberal profession, consulting activities, and relevant public statements.]

3. Current Financial Interests

[Any direct financial interests, (managerial stakes in companies, including ownerships of patents or any other relevant intellectual property rights), or assets (shares and/or securities held in companies) or grants or other funding which might create a conflict of interests in the performance of their duties, with an indication of their number and value, as well as the name of the company/provider of the grant/funding.]

[No Interest Declared]/ [Interest...]

* Delete, as appropriate.

4. Any other relevant interests.

[No Interest Declared]/ [Interest...]

5. Family Member Interest

[Spouse's/partner's/dependent family members' current activity and financial interests that might entail a risk of conflict of interest.]

[No Interest Declared]/ [Interest...]

I confirm the information declared on this form is accurate to the best of my knowledge and I consent to my information being stored electronically by the XXX Joint Undertaking.

Done at [place], [date]

Name and Signature

Annex 3 – Spontaneous Declaration of conflict of interest for members of bodies or groups of the S2R JU

SPONTANEOUS DECLARATION OF CONFLICT OF INTEREST

PART I

TO BE FILLED IN BY THE DECLARANT

Surname and first name:

Professional address:

Phone:

E-mail:

Position:

Describe the situation you are facing - in the performance of your duties - and in which you have, or could be perceived to have, personal interests in particular possible family and financial interests, such as to impair your independence:

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State the reasons why your independence may be impaired:

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If appropriate, propose measures to avoid this conflict of interest:

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Done at [place], [date]

Name and Signature

FOR USE BY THE S2R JU ADMINISTRATION ONLY

PART II

**OPINION OF THE COMPETENT BODY REFERRED IN ARTICLE 6* BASED ON THIS FORM AND ON
THE INFORMATION PROVIDED BY THE DECLARANT**

☐ No (risk of) conflict of interest.

☐ (Potential) conflict of interest.

• Describe the personal interests which would actually or potentially impair the declarant's independence in carrying out his/her duties or any other circumstance which actually or potentially constitutes a conflict of interest.

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• Describe measures which could be taken to mitigate the negative effects of the actual or potential conflict of interest.

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• Explain how the measures proposed are proportionate to the scope of the actual or potential conflict of interest.

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CONCLUSION

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SURNAME/FIRST NAME: POSITION:

SIGNATURE:

DATE: .. / .. / ..

** If the conflict of interest regards a member of the Governing Board/Scientific Committee or*

State Representatives Group, this part can be filled in by the competent body

PART III

OPINION OF COMPETENT BODY REFERRED IN ARTICLE 6

- ☐ No risk of conflict of interest.
- ☐ (Potential) conflict of interest.

• Describe the personal interests which would actually or potentially impair the candidate's independence in carrying out his/her duties in the specific position offered or any other circumstance which actually or potentially constitutes a conflict of interest with respect to the proposed position.

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• Describe measures which could be taken to mitigate the negative effects of the actual or potential conflict of interest.

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• Explain how the measures proposed are proportionate to the scope of the actual or potential conflict of interest.

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CONCLUSION

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SURNAME/FIRST NAME: POSITION:	
SIGNATURE*:	DATE:/../....

** to be signed by Chairperson of the board if the conflict of interest regards a member of the Governing Board/Scientific Committees or States Representatives Group.*