Council Regulation (EU) No 642/2014 of 16 June 2014 establishing the Shift2Rail Joint Undertaking

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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 Parliament[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Whereas:

(1) The Europe 2020 Strategy: A strategy for smart, sustainable and inclusive growth' 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.

(2) The Commission White Paper on a Roadmap to a Single European Transport Area, of 28 March 2011 (the 'White Paper'), emphasised 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 added that innovation will be essential for this strategy and that Union 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) The Framework Programme for Research and Innovation 2014-2020 ('Horizon 2020') established by Regulation (EU) No 1291/2013 of the European Parliament and of the Council[(3)] aims to achieve a greater impact of research and innovation efforts by combining Union 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

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) No 642/2014. (See end of Document for details)*

established on the basis of Article 187 of the Treaty on the Functioning of the European Union (TFEU).

(4) In accordance with Regulation (EU) No 1291/2013 and Council Decision 2013/743/EU[(4)] support may be provided to joint undertakings established pursuant to Horizon 2020 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 entitled 'Public-private partnerships in Horizon 2020: a powerful tool to deliver on innovation and growth in Europe' identified 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 called for a joint undertaking in the railway sector, given the scale of research and innovation efforts required to build Union 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 entitled 'The Fourth Railway Package — Completing the Single European Railway Area to foster Union competitiveness and growth (the "Fourth Railway Package")' highlighted the need for a joint undertaking in the railway sector to help develop rail as a mode of transport by promoting step-change innovations for passenger rolling stock, freight transport, traffic management systems and rail infrastructure. It stressed the importance of achieving better value for money in rail given the scarcity of public funds, as result of the creation of a single market, and called for a more European approach to rail in order to facilitate modal shift from road and air.

(7) The Shift2Rail Joint Undertaking (the '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 Union 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 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.

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(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 to this Regulation, on the condition that they accept the Statutes of the S2R Joint Undertaking. Those 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 of industry is an essential element of the Shift2Rail initiative (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 covered by 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 should 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 should 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.

(14) In light of the overall aim of Horizon 2020 to achieve greater simplification and coherence, all calls for proposals launched by the S2R Joint Undertaking should in principle take into account the duration of Horizon 2020.

(15) The activities undertaken by the S2R Joint Undertaking are mainly research and innovation activities. Therefore, Union funding should be paid from Horizon 2020. 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

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national research and innovation capabilities in the area of the S2R Joint Undertaking and underpin smart specialisation efforts.

(16) Contributions from members other than the Union should be defined in a membership agreement with the S2R Joint Undertaking. These contributions should not be limited to only covering the administrative costs of the S2R Joint Undertaking and 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.

(17) Participation in indirect actions funded by the S2R Joint Undertaking should comply with Regulation (EU) No 1290/2013 of the European Parliament and of the Council[(5)]. The S2R Joint Undertaking should, moreover, ensure the consistent application of the rules laid down in that Regulation based on relevant measures adopted by the Commission.

(18) 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.

(19) 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 Council[(6)] and Commission Delegated Regulation (EU) No 1268/2012[(7)].

(20) 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 1291/2013.

(21) 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.

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

(23) 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 S2R Joint Undertaking should continue to be subject to a separate discharge. By way of derogation

from Article 60(7) and Article 209 of Regulation (EU, Euratom) No 966/2012, discharge for the implementation of the budget of the S2R Joint Undertaking should therefore be granted by the European Parliament on the recommendation of the Council. Hence, the reporting requirements set out in Article 60(5) of Regulation (EU, Euratom) No 966/2012 should not apply to the contribution of the Union to the S2R Joint Undertaking but they should be aligned to the extent possible to those 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.

(24) 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.

(25) Since the objectives of this Regulation, namely the strengthening of industrial research and innovation across the Union by means of the implementation of the S2R initiative by the S2R Joint Undertaking, cannot be sufficiently achieved by the Member States, but can rather, by reason of avoiding duplication, retaining critical mass and ensuring that public financing is used in an optimal way, be better achieved at the Union level, 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 TFEU (‘S2R Joint Undertaking’) shall be established until 31 December 2024. In order to take into account the duration of Horizon 2020, calls for proposals by the S2R Joint Undertaking shall be launched by 31 December 2020 at the latest. 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. The S2R Joint Undertaking shall be represented by its Executive Director.

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 (‘the Statutes’) are set out in Annex I.