



DECISION OF THE GOVERNING BOARD

laying down rules on the secondment of national experts and national experts in professional training to the Shift2Rail Joint Undertaking

N°20/2016

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

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

Having regard to Council Regulation (EU) No 642/2014 of 16 June 2014 establishing the S2R JU¹, and in particular Article 7 (2) thereof;

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

WHEREAS:

- (1) Seconded national experts (SNEs) should enable the S2R JU to benefit from the high level of their professional knowledge and experience, in particular in areas where such expertise is not readily available;**
- (2) It is highly desirable to foster the exchange of professional experience in, and knowledge of, European policies by temporarily assigning experts from Member States to the S2R JU, even for short periods. For the same reason, steps should also be taken to facilitate the use of experts drawn from Member States of the European Free Trade Area (EFTA) and public intergovernmental organisations (IGOs);**
- (3) In order to ensure that S2R JU's independence is not compromised by private interests, it should be stipulated that SNEs must come from a national, regional or local public administration or an IGO. The secondment of an SNE by an employer other than a national, regional or local public administration or an IGO should be authorised only on a case-by-case basis, once it has been ascertained that the SNE's employer is part of the public sector or is an independent university or research organisation that does not seek to make profits for redistribution;**
- (4) In order to avoid any conflict of interests, the rights and obligations of SNEs, as set out in this Decision, should ensure that they carry out their duties solely in the interests of the S2R JU;**

¹ OJ L 177, 17.06.2014, p.9.

- (5) In view of their special status, it should be stipulated that SNEs acting alone will not exercise any of the responsibilities that belong to S2R JU by virtue of the powers conferred upon it, unless specially empowered to do so in writing by the Executive Director;
- (6) In view of the importance of training officials of the Member States - and, where appropriate, of EFTA countries, and IGOs - in Union policies and the Joint Undertaking's working methods, a specific legal and administrative framework for the induction and professional training of these officials, to be known as national experts in professional training (NEPTs), should be set up.
- (7) The Permanent Representations of the European Union Member States play a crucial role in implementing these Rules and should therefore enjoy a particularly close working relationship with the S2R JU.

HAS DECIDED AS FOLLOWS:

TITLE I - SECONDED NATIONAL EXPERTS

Chapter I - General provisions

Article 1 Scope and definitions

These Rules shall apply to national experts seconded to the S2R JU (hereinafter referred to as SNEs or seconded national experts).

Seconded national experts are staff employed by a national, regional or local public administration or an intergovernmental organisation (IGO), who are seconded to the S2R JU so that it can use their expertise in a particular field.

For the purposes of this Decision, the public administration means all State administrative services at central, federal and regional level, comprising ministries, government and parliament services, the courts, central banks, and the administrative services of local authorities, as well as the decentralised administrative services of the State and of such authorities.

The persons covered by these Rules must have worked for their employer on a permanent or contract basis for at least 12 months before their secondment and shall remain in the service of that employer throughout the period of secondment.

The SNE's employer shall thus undertake to continue to pay his salary, to maintain his administrative status (permanent official or contract staff member) throughout the period of secondment and to inform the Executive Director of the S2R JU (hereinafter referred to as "the Executive Director") of any change in the SNE's situation in this regard. The SNE's employer shall also continue to be responsible for all his social rights, particularly social security and pension. The termination of or change in the SNE's administrative status (permanent official or contract staff member) may lead to the termination of his secondment by the S2R JU, without notice, in accordance with Article 10(2)(c).

- An SNE must be a national of an EU or EFTA Member State or a country with which the Council has decided to open accession negotiations and which has concluded a specific agreement with the Commission on staff secondments.
- When a secondment is being planned, the S2R JU shall ensure the geographical and gender balance and compliance with the principle of equal opportunities, in accordance with the principles set out in Article 1d and Article 27 of the Staff Regulations.
- Any reference in these Rules to a person of the male sex shall be deemed also to constitute a reference to a person of the female sex, and vice-versa, unless the context clearly indicates otherwise.

Article 2

Cost-free seconded national experts

- For the purposes of this Decision, “cost-free SNEs” means SNEs for whom the S2R JU does not pay any of the allowances provided for in Chapters III or cover any of the expenses provided for in this Decision, other than those related to the performance of their duties during their secondment.
- Cost-free SNEs may be seconded from the public administration, as defined in Article 1(1), of an EU or EFTA Member State or a country with which the Council has decided to open accession negotiations and which has concluded a specific agreement with the Commission on staff secondments, or from an IGO, as part of an agreement and/or exchange programme with the Commission.
- In addition, the Executive Director may authorise the secondment of cost-free SNEs on a case-by-case basis, taking into consideration their place of origin, the geographical balance and the work to be carried out.

Article 3

Selection procedure

- SNEs shall be selected according to an open and transparent procedure, the practical details of which shall be decided by the Executive Director.
- Applications shall be forwarded by the Permanent Representations and, where provided for in the vacancy notice, by the EFTA Secretariat, the diplomatic missions of the non-member countries whose nationals are eligible for the secondment and the administrations of the IGOs.
- The secondment shall be authorised by the Executive Director and effected by an exchange of letters between that Director-General and the Permanent Representation of the Member State concerned or, as the case may be, the EFTA Secretariat, the diplomatic missions of the non-member countries whose nationals are eligible for the secondment and the IGOs.

Article 4

Period of secondment

■ The initial period of secondment may not be less than six months or more than two years. It may be renewed once or more, up to a total period not exceeding four years. Exceptionally, where the interests of the service warrant it, the Executive Director may authorise one or more extensions of the secondment for a maximum overall period of secondment of not more than six years which shall not exceed the lifetime of the Joint Undertaking.

■ In cases where an SNE has been seconded as a national expert in professional training within the meaning of Article 23 during the six years preceding his secondment as an SNE, the period of the traineeship shall be deducted from the maximum period of six years provided for in the previous paragraph.

■ The initial duration of the secondment shall be specified in the exchange of letters referred to in Article 3(3). Any extension of the period of secondment shall be the subject of a new exchange of letters.

Article 5 *Place of secondment*

SNEs shall be seconded in Brussels where the seat of S2R JU is located.

Article 6 *Tasks*

■ SNEs shall assist S2R JU statutory staff. They may not perform middle or senior management duties, even when deputising for their immediate superior.

■ An SNE shall take part in missions or external meetings only as part of a delegation led by an S2R JU staff member or, if on his own, as an observer or for information purposes.

■ In all other cases, by way of derogation from paragraph 2, the Executive Director may give a specific mandate to the SNE to participate on his own in one or more missions or external meetings, after having ensured that there is no potential conflict of interest.

In such cases the Executive Director shall give the SNE clear and specific written instructions on the position to be adopted during the missions or meetings in question.

Under no circumstances may an SNE on his own represent the S2R JU with a view to entering into commitments, whether financial or otherwise, or negotiating on its behalf.

An SNE may, however, represent the S2R JU in legal proceedings as co-agent with a S2R JU staff member.

■ The S2R JU shall remain solely responsible for approving the results of any tasks performed by an SNE and for signing any official documents arising from them.

■ The S2R JU, the SNE's employer and the SNE must ensure that there is no conflict of interest in relation to the SNE's duties while seconded to the S2R JU.

For this purpose, the department to which the SNE is to be seconded shall inform the SNE and his employer before the start of the secondment about the intended duties and ask them to confirm in writing that they do not know of any reason why the SNE should not be assigned to those duties.

The employer and the SNE shall also undertake to inform the S2R JU of any change of circumstances during the secondment which could give rise to any such conflict.

Failure on the part of the SNE to comply with his obligations arising from paragraphs 2, 3 or 5 shall entitle the S2R JU, if it sees fit, to terminate the secondment of the SNE pursuant to Article 10(2)(c).

Article 7 *Rights and obligations*

During the period of secondment:

- a) The SNE shall carry out his duties and conduct himself solely with the interests of the Communities in mind. He shall neither seek nor take instructions from any government, authority, organisation or person outside the S2R JU. He shall carry out the duties assigned to him objectively, impartially and in keeping with his duties of loyalty to the S2R JU.
- b) An SNE wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside the S2R JU shall be subject to the Commission's rules on prior authorisation for officials². The S2R JU shall consult the SNE's employer before issuing an authorisation.
- c) The SNE shall refrain from any action or behaviour which might reflect adversely upon his position and from any form of psychological or sexual harassment³.
- d) The SNE shall not, in the performance of his duties, deal with a matter in which, directly or indirectly, he has any personal interests such as to impair his independence, and, in particular, family and financial interests. If he has occasion in the performance of his duties to deal with such a matter, he shall immediately inform the Executive Director, who will take any appropriate measure and may, in particular, relieve the SNE of responsibility in this matter.

The SNE shall declare any gainful activity performed in a professional capacity by his spouse, as defined by the Staff Regulations.

- e) The SNE shall refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public.
- f) The SNE has the right to freedom of expression, with due regard for the principles of loyalty and impartiality.

² Article 12b of the Staff Regulations and the provisions implementing this Article shall apply *mutatis mutandis*.

³ Article 12a of the Staff Regulations and the provisions implementing this Article shall apply *mutatis mutandis*.

The SNE who intends to publish or cause to be published, whether alone or with others, any text on a matter relating to the work of S2R JU shall inform the Executive Director in advance. Where the Executive Director is able to demonstrate that the publication is liable seriously to prejudice the legitimate interests of S2R JU, he shall inform the SNE of his decision in writing within 30 working days of receipt of the information. If no such decision is notified within the specified period, the Executive Director shall be deemed to have had no objections.

- g) All rights in any work done by the SNE in the performance of his duties shall be the property of the S2R JU.
- h) The SNE shall reside at the place of secondment or at no greater distance therefrom as is compatible with the proper performance of his activities.
- i) Based on his professional knowledge and experience, the SNE shall assist and tender advice to the superiors in the S2R JU to whom he is assigned and shall be responsible to his superiors for performance of the tasks entrusted to him.

■ Failure to comply with any of the provisions of paragraph 1 during the period of secondment shall entitle the S2R JU, if it sees fit, to terminate the SNE's secondment pursuant to Article 10(2)(c).

■ At the end of the secondment the SNE shall continue to have a duty of loyalty to the S2R JU and be bound by the obligation to act with integrity and discretion in the exercise of new duties assigned to him and in accepting certain posts or advantages.

Article 8

Professional experience and knowledge of languages

■ To qualify for secondment to the S2R JU a national expert must have at least three years' experience of administrative, legal, scientific, technical, advisory or supervisory functions which can be regarded as equivalent to those of function groups AD or AST – this latter function group being taken into consideration only for highly specialised job profiles – as defined in the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities.

■ The SNE must produce evidence of a thorough knowledge of one of the Community languages and a satisfactory knowledge of another Community language to the extent necessary for the performance of his duties. An SNE from a non-member country must produce evidence of a thorough knowledge of one Community language necessary for the performance of his duties.

Article 9

Suspension of secondment

■ At the written request of the SNE or his employer, and with the latter's agreement, the S2R JU may authorise suspensions of periods of secondment and specify the terms applicable. During such suspensions:

- a) the subsistence allowances referred to in Article 16 shall not be payable;

- b) the travel expenses referred to in Article 18 shall be payable only if the suspension is at the S2R JU's request.

■ The period of suspension shall not be counted in the period of secondment as defined in Article 4.

Article 10

Termination of periods of secondment

■ Subject to paragraph 2, the expert's secondment may be terminated at the request of the S2R JU or the SNE's employer, subject to three months' notice, or at the SNE's request, subject to the same period of notice and with the agreement of the S2R JU and the SNE's employer.

■ In exceptional circumstances the secondment may be terminated without notice:

- a) by the SNE's employer, if the employer's essential interests so require;
- b) by the S2R JU and the employer acting jointly, at the request of the SNE addressed to both parties, if the SNE's personal or professional interests so require;
- c) by the S2R JU in the event of failure by the SNE or his employer to respect their obligations under this Decision; the S2R JU shall immediately inform the SNE and his employer accordingly.

Chapter II - Working conditions

Article 11

Social security

■ Before the period of secondment begins, the national public administration or IGO from which the SNE is to be seconded shall certify that he will remain, throughout the period of secondment, subject to the social security legislation applicable to the public administration that employs him and is responsible for expenses incurred abroad. To this end, the SNE's employer shall provide the S2R JU with the certificate referred to in Article 11(1) of Council Regulation (EEC) No 574/72⁴.

■ From the day on which their secondment begins, SNEs shall be covered by the S2R JU against the risk of accident. The S2R JU shall provide them with a copy of the terms of this cover.

Article 12

Working hours

■ The working hours for SNEs shall be the same as those in force at the S2R JU⁵.

⁴ OJ L 74, 27.3.1972, p. 1.

⁵ Articles 55, 56 and 56c of the Staff Regulations and the provisions implementing these Articles shall apply *mutatis mutandis*.

■ An SNE shall serve on a full-time basis throughout the period of secondment. The Executive Director may allow an SNE to work part time, provided the SNE's employer agrees and the arrangement is compatible with the smooth running of the S2R JU.

Article 13
Sick leave

■ The rules in force at the S2R JU on absence due to sickness or accident shall apply to SNEs⁶.

■ Where the period of sick leave exceeds three months or the length of time worked by the SNE, whichever is longer, the subsistence allowances referred to in Article 16 shall be automatically suspended.

Sick leave may not extend beyond the duration of the secondment of the person concerned.

■ SNEs who are the victim of a work-related injury which occurs during the secondment shall continue to receive the subsistence allowances in full throughout the period during which they are unfit for work. These allowances shall not, however, be paid beyond the end of the period of secondment.

Article 14
Annual and special leave

■ With the exception of the provisions relating to grade, the rules in force at the S2R JU on annual and special leave, applicable to the JU staff, shall apply to SNEs⁷.

■ Leave shall be subject to prior authorisation by the department to which the SNE is seconded. In the event of unauthorised absence within the meaning of Article 60 of the Staff Regulations, subsistence allowances shall not be paid.

■ Upon a duly justified request from the SNE's employer, the SNE may be granted up to two days of special leave by the S2R JU in a 12-month period to visit his employer.

■ Days of annual leave not taken by the end of the period of secondment shall be forfeited.

Article 15
Maternity leave

■ The rules in force at the S2R JU on maternity leave shall apply to SNEs⁸. While on maternity leave the SNE shall receive the subsistence allowances referred to in Article 16.

⁶ Articles 59 and 60 of the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis.

⁷ Articles 57 and 59a of and Annex V to the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis.

⁸ Article 58 of the Staff Regulations and the provisions implementing this Article shall apply mutatis mutandis.

- Where the rules that are binding upon the SNE's employer provide for a period of maternity leave longer than that granted by the S2R JU, the secondment may, at the SNE's request, be interrupted for the period by which that leave exceeds the leave granted by the S2R JU.
- A period equivalent to the break may be added to the end of the secondment if the interests of the S2R JU warrant it.
- An SNE may, as an alternative, apply for a break in the secondment to cover the sum of the periods allowed for maternity leave. In that case, the second subparagraph of paragraph 2 shall apply.

Chapter III - Allowances and expenses

Article 16 *Subsistence allowances*

- An SNE shall be entitled, throughout the period of secondment, to a daily subsistence allowance and a monthly subsistence allowance.

On the date of entry into force of this Decision, the daily subsistence allowance shall be €131.76.

The monthly subsistence allowance shall be paid in accordance with the following table:

Distance between place of origin and place of secondment (km)	Amount in €
0 – 150	0
> 150	84,69
> 300	150,56
> 500	244,68
> 800	395,25
> 1300	621,10
> 2000	743,46

- These subsistence allowances shall be granted under the same conditions as the expatriation allowance for officials⁹.
- In the case of cost-free SNEs, the exchange of letters referred to in Article 3(3) shall stipulate that these allowances will not be paid.
- The adjustments to remuneration adopted by the Council pursuant to Article 65 of the Staff Regulations shall apply automatically to the subsistence allowances in the month following their adoption.

⁹ Article 4 of Annex VII to the Staff Regulations and the provisions implementing this Article shall apply *mutatis mutandis*.

■ These allowances are intended to cover SNEs' living expenses in the place of secondment on a flat-rate basis and shall in no circumstances be construed as remuneration paid by the S2R JU.

Before the secondment, the SNE's employer shall certify to the S2R JU that during the secondment it will maintain the level of remuneration the SNE was receiving at the time of his secondment.

The SNE shall inform the S2R JU of any allowance similar to the subsistence allowances paid by the S2R JU received from other sources. This amount shall be deducted from the subsistence allowances paid by the S2R JU. Following a duly justified request from the employer, the S2R JU may decide not to make this deduction.

■ Subsistence allowances shall be payable for every day of the week, including during periods of mission, annual leave, special leave and holidays granted by the S2R JU.

■ When the SNE starts the secondment, the first 75 days of the subsistence allowances to which he is entitled shall be advanced in the form of a lump sum, and the allowances shall not be paid during the corresponding period. This lump sum shall be paid by the 25th day of the month for SNEs starting on the first day of the same month. For SNEs starting on the 16th day of the month, this lump sum shall be paid by the 10th day of the following month. If the secondment is ended during the first 75 days, the SNE shall return the amount corresponding to the remainder of that period.

■ Subsistence allowances shall be paid no later than the 25th day of each month.

Article 17 *Place of origin*

■ For the purposes of this Decision, "place of origin" means the place where the SNE performed his duties for his employer at the time of his secondment. The place of secondment shall be the place where the S2R JU to which the SNE is seconded is located. Both places shall be identified in the exchange of letters referred to in Article 3(3).

■ If, six months before his secondment to the S2R JU as an SNE, a national expert already has his main residence in a place other than that in which the employer's headquarters is located, the place of origin shall be deemed to be whichever of the places is closer to the place of secondment.

Article 18 *Travel expenses*

■ SNEs other than those seconded cost-free, shall be entitled to reimbursement of the cost of their travel between their place of origin and the place of secondment, as defined in Article 17, at the beginning and end of their secondment.

■ Travel expenses shall be reimbursed in accordance with the relevant rules and conditions in force at the S2R JU¹⁰.

■ By way of derogation from paragraph 1, an SNE who proves that he will be assigned to a place other than his place of origin at the end of the secondment shall be entitled to reimbursement of the travel expenses to that new place under the conditions laid down in paragraph 2. However, this reimbursement may not be more than the amount that would have been paid had the SNE returned to his place of origin.

■ The S2R JU shall not reimburse any expenses referred to in the preceding paragraphs if they have been met by the employer or any other body. The Permanent Representation concerned or, as the case may be, the EFTA Secretariat, IGOs or diplomatic missions of the non-member countries concerned shall inform the S2R JU to this effect.

Article 19
Missions and mission expenses

■ SNEs may be sent on mission subject to Article 6.

■ Mission expenses shall be reimbursed in accordance with the relevant rules and conditions in force at the S2R JU¹¹.

Article 20
Training

SNEs shall be entitled to attend training courses organised by the S2R JU if the interests of the S2R JU warrant it. The interests of the SNE, in particular with a view to his reinstatement into his original administration after the secondment, may be considered when a decision is taken on whether to allow him to attend a training course.

Article 21
Administrative provisions

SNEs shall report to the Human Resources Representative on the first day of secondment to complete the requisite administrative formalities.

TITLE II - NATIONAL EXPERTS IN PROFESSIONAL TRAINING

Article 22
General provisions and definitions

■ National experts in professional training (hereinafter referred to as NEPTs) are staff from the public administrations of EU or EFTA Member States or, depending

¹⁰ Article 7(1) and (2) of Annex VII to the Staff Regulations and the provisions implementing these Articles shall apply *mutatis mutandis*.

¹¹ Articles 11 and 12 of Annex VII to the Staff Regulations and the provisions implementing these Articles shall apply *mutatis mutandis*.

on the places available, of countries with which the Council has decided to open accession negotiations and which have concluded a specific agreement with the Commission on staff secondments, or from IGOs, who are admitted to the S2R JU for professional training purposes.

■ The provisions of Article 1(1), (2), (3) and (4) shall apply by analogy to NEPTs.

Article 23

Purpose of the professional training

■ The purpose of the professional training is:

- to give NEPTs experience of the S2R JU's working methods and policies;
- to enable them to gain practical experience and understanding of the day-to-day work of the S2R JU and to give them the opportunity to work in a multicultural, multilingual environment;
- to enable staff of national administrations to put into practice the knowledge they have acquired in their studies, particularly in their respective areas of responsibility.

■ For its part, the S2R JU:

- benefits from the input of people who can offer a new point of view and up-to-date knowledge which will enrich the daily work of the institution;
- builds up a network of people with direct experience of its procedures.

Article 24

Eligibility

The provisions of Article 8 on professional experience and knowledge of languages shall apply by analogy to NEPTs.

Article 25

Selection of candidates

■ Applications shall be forwarded by the Permanent Representations or, as the case may be, the EFTA Secretariat, administrations of non-member countries or IGOs to the Executive Director in accordance with the procedure and methods decided by S2R JU.

■ After considering the situation, the Executive Director shall decide how many NEPTs are to be admitted to the S2R JU for each period.

Article 26

Duration of the professional training

■ The professional traineeships shall last between three and five months. The duration shall be fixed at the outset and may not be changed or extended.

■ An NEPT may complete only one professional traineeship.

Article 27
Organisation of the professional training

■ Throughout the professional traineeship NEPTs shall be supervised by a training advisor. The training advisor must inform the Human Resources Representative of any significant incidents during the professional traineeship (in particular absences, illness, accidents or interruption) which he knows of or has been informed of by the NEPT.

■ NEPTs must obey instructions given by their training advisor, their superiors in the S2R JU and the Human Resources Representative.

■ NEPTs shall be allowed to attend meetings, unless they are restricted or confidential, to receive documentation and to participate in the activities of the department to which they are seconded.

Article 28
Suspension of the professional traineeship

At the written request of the NEPT or his employer, and with the latter's prior agreement, the Human Resources Representative may authorise a very brief suspension of the professional traineeship or its early termination. The NEPT may return to complete the remaining period of the professional traineeship, but only up until the end of that period. Under no circumstances may the traineeship be extended.

Article 29
Working conditions and remuneration

■ The following Articles shall apply by analogy to NEPTs:

- Article 6 on tasks;
- Article 7 on rights and obligations;
- Article 11(1) and (2) on social security;
- Article 12(1) on working hours;
- Article 13 on sick leave;
- Article 14 on annual leave and special leave;
- Article 19 on missions and mission expenses.

■ NEPTs shall be regarded as cost-free SNEs within the meaning of Article 2. They shall continue to be paid by their employer without any financial compensation being paid by the S2R JU.

The S2R JU will accept no requests for grants or fees or the reimbursement of travel or other expenses other than the reimbursement of mission expenses incurred as part of the professional traineeship.

Article 30
Reports and certificate of attendance

NEPTs who have completed the stipulated professional training period shall complete the evaluation reports requested by the Human Resources representative at the end of their traineeship. Training advisors must also complete the relevant evaluation report.

Subject to the completion of these reports, NEPTs who have completed their professional traineeships shall receive a certificate showing the dates of the professional training and the department in which it took place.

TITLE III - FINAL PROVISIONS

Article 31 Entry into force

This Decision shall take effect on the date of its adoption.

Done at Brussels, on 25 October 2016

For the Governing Board,



Henrik HOLOLEI
The Chairperson