

International Railway Summit Vienna, 17-19 February 2016

**WHY THE LUXEMBOURG PROTOCOL WILL
MAKE A DIFFERENCE**

Introduction

- Need for substantial investment in transportation infrastructure in Europe
- Europe is committed, through the 4th railway package, to developing a more competitive and dynamic rail sector through open access, but new entrants need access to funding
- Direct correlation between liberalisation of the rail sector and the need for private finance (Roland Berger report 2016)



Where's the money?

- 88% of rolling stock in Europe is directly or indirectly state funded (Berger report). Why?
- Governments subject to spending constraints
- Potential private sector finance
 - Banks
 - Lessors
 - Pension funds and institutions



Where's the money?

- Private sector reluctant to come in to provide finance without a good state credit because only limited security on rolling stock:
 - Little domestic or international legislation or judicial precedent to support creditors' enforcement of rights
 - No national title or security interest registries
 - Cross border issues and conflicts
 - No stable identification system
 - Very limited secondary market to support operating leases
 - Public Policy and Public Interest
- So it's risky



Risk = Cost

- Repossession risks on default
- Legal uncertainties and mitigating structures
- Bank's capital requirements and Basel II and III
- Limited tracking of assets
- Maximum tenor of debt
- Why the Luxembourg Rail Protocol will make a difference



Cape Town October/November 2001

participants from 58 States and 11 international organisations at the Diplomatic Conference

- adopted the Cape Town Convention on International Interests in Mobile Equipment
- and the Aviation Protocol thereto
- Operating already in over 60 countries

THE LUXEMBOURG PROTOCOL TO THE CAPE TOWN CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

Agreed in Luxembourg 2007

Participants from 42 States and 12 international organisations at the Diplomatic Conference

What does the Luxembourg Rail Protocol do?

The Protocol creates

- ✓ An “international interest” - a new type of global security interest for railway rolling stock, internationally recognised with established priorities
- ✓ Registrable and searchable in a public registry, 24/7
- ✓ New uniform system for unique and permanent identification of assets (URVIS)



What does the Luxembourg Rail Protocol do?

The Protocol :

- ✓ Creates a new legal framework, even for financing of domestic rail transactions
- ✓ Eliminates complex documentation and structures
- ✓ Resolves cross border security and conflict of laws issues
- ✓ Facilitates operating and finance leasing and other private sector finance



When does the Luxembourg Rail Protocol Protect the Creditor?

The Protocol applies to secure:

- Lessor under a leases
- Creditor under a secured loan and
- Vendor's rights under a conditional sale (where title is retained)



What does Luxembourg apply to?

- “..vehicles movable on a fixed railway track or directly on, above or below a guideway” so covers
- Inter-urban and urban rolling stock
- Specialist boring and other rail mounted equipment
- Metro trains and trams
- People movers/shuttles at airports
- Cranes and gantries at ports
- Cable cars



When does the Luxembourg Protocol apply?

- Protocol must be in force
- And in force in the jurisdiction where the debtor is principally located
- When an International Interest is created in the rolling stock
- Which must be identified in accordance with the Protocol with a unique number



More on identification

- Item must be uniquely identifiable
- Why running numbers do not work for creditors
- The problems with manufacturer numbers
- Unique Vehicle Rail Identification System (URVIS) is the answer
- 20 digit number allocated by registrar
- Affixed to the rolling stock permanently
- Brings separate benefits to manufacturers, operators, insurers, maintainers and creditors by facilitating tracking of assets



The Status of the Luxembourg Protocol

- Adopted 2007 (not yet in force)
- Appointment of Registrar December 2014
- Ratified by EU and Luxembourg
- Signed by Italy, Germany, Switzerland and Gabon and UK about to sign
- Other EU and non European countries now actively working on ratifications



Luxembourg Rail Protocol will make a difference

Economic benefits of the Protocol:

- ✓ More financiers (so more supply of debt, therefore cheaper and longer term debt) ↑
- ✓ Lower capital requirements; risk margin ↓
- ✓ Documentation and legal costs ↓
- ✓ (Probably) ECA charges ↓
- ✓ operating leasing ↑
- ✓ Multiplier effect ↑



Luxembourg Rail Protocol will make a difference

- A new strategic tool for the public and private sector
- Providing a new pragmatic global regulatory framework which will
 - ✓ facilitate more and cheaper private sector investment in the railways
 - ✓ lower barriers to entry to private operators
 - ✓ stimulate a more competitive and dynamic industry



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