

THE 2001 CAPE TOWN CONVENTION  
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT



## INSIDE TRACK



"Inside Track" keeps RWG members and colleagues up to date on the progress of the Luxembourg Protocol. You can be added onto the mailing list by clicking on "subscribe" at the bottom of the newsletter.

- [Luxembourg in Prague](#)
- [Hungary could benefit by 40 billion forints through the Luxembourg Protocol](#)
- [Briefing at InnoTrans](#)
- [Topic of the month: Maintenance of Rolling Stock](#)
- [Madrid stakeholder seminar 17<sup>th</sup> October](#)
- [Save the date – East AfricaRail 2018](#)
- ["The Railway Market in Africa and the Middle East" – special offer for members](#)
- [Official Commentary - special deal for RWG members](#)

### [Luxembourg in Prague](#)

RWG Chairman Howard Rosen and Registrar Designate Elizabeth Hirst met government officials in the Czech Ministry of Transport and the Ministry of Industry and Trade in Prague in August to discuss the Luxembourg Rail Protocol. There will be an on-going dialogue as the RWG builds up its contact group in the Czech Republic.

### **Hungary could benefit by 40 billion forints through the Luxembourg Protocol**

According to a recent report by economists Oxera, Hungary could expect a benefit of Euro 135 million (40 billion forints) with the enactment of the Luxembourg Rail Protocol, attendees were told at a stakeholder seminar held earlier this month in Budapest hosted by law firm Baker McKenzie.

"The Protocol is a forward-looking framework for the whole rail industry which, along with having a huge potential for Hungary, can help simplify the financing structures in the industry," said Dr. József Vági, partner at Baker McKenzie. "Signing the Cape Town Convention and the Luxembourg Protocol will lead to several legal changes, including new regulations for the leasing and acquisition of rolling stock. It is advisable that all stakeholders prepare for these changes," added Dr. Vági.

"The Luxembourg Protocol will help Hungary, along with other states and operators in Europe, implement much needed renovation of Europe's railway rolling stock. Furthermore, it will contribute to improving and harmonizing the relationship between the public and private sectors by opening up private finance for the railways private sector," concluded Howard Rosen, Chairman of the Rail Working Group, at the Budapest seminar.

### **Briefing at InnoTrans**

The RWG held an industry briefing, in Berlin, hosted by Alpha Trains at their stand at InnoTrans 2018, on Wednesday 19<sup>th</sup> September, attended by various RWG members and other interested parties. Alpha Trains CEO Shaun Mills introduce proceedings and emphasised the benefits of the Luxembourg Rail Protocol to the rail industry. RWG Treasurer, Professor Benjamin von Bodungen then provided a summary of the Luxembourg Rail Protocol and an update on the work that the RWG was doing to support ratifications by interested states. RWG Secretary Martin Fleetwood gave a short presentation on the economic studies that the RWG had commissioned from Oxera and the positive financial case for the Rail Protocol. Martin concluded the presentation with and update of the work of the Ratification Task Force. He noted that progress was being made in a number of countries, including the UK, France and China and that, following the accession of Sweden earlier in the year, only one further ratification was required before the first of the two requirements for the Rail Protocol's entry into force would be met.

### **Topic of the month: Maintenance of Rolling Stock**

The Luxembourg Rail Protocol is designed to record and protect a creditor's interest in an item of railway rolling stock and to allow its recovery from a defaulting debtor. It is not specifically concerned about the quality of the underlying maintenance of the relevant

rolling stock. Given the wide variety of maintenance options which are available under an operating lease and levels of maintenance which could be applied, this has to be a sensible option.

All three alternatives under Article IX (Remedies on Insolvency) require the insolvency administrator or debtor to cure all defaults other than a default constituted by the opening of insolvency proceedings in the event that either party retain the rolling stock. This would include a maintenance default. However providing limited maintenance may not create a default under the agreement or a much longer period of time may be needed to elapse before a maintenance default finally occurs. If the creditor is permitted to receive the rolling stock under Article IX then little or no maintenance may have been undertaken. While a lack of maintenance in the short term does not have the same dramatic effect in the value of railway rolling stock as it does to aircraft equipment, underlying poor maintenance may mean that additional costs are incurred before the rolling stock can be re-leased. This would need to be dealt with as a contractual claim under the lease and be subject to local law.

The provision of maintenance under Article IX should be compared to the effects of Article XXV (Public service railway rolling stock). Article XXV(2) specifically states that the party exercising a power to take possession, use or control of any public service railway rolling stock is required to preserve and maintain such railway rolling stock from the time of the exercise of such power until possession, use or control is restored to the creditor. Note that the maintenance obligation starts from when possession, use or control begins, so dealing with outstanding maintenance prior to that date would be the subject of a discussion between the creditor and the party taking possession. However, the creditor is likely to be in a better position than if the Article IX remedy applied. It is possible for a contracting state to make a declaration that Article XXV(2) does not apply but, as noted in a previous Inside Track article (Issue 3), it is thought unlikely that any State would do so due to the confiscatory nature of its effect.

#### **Madrid stakeholder seminar 17<sup>th</sup> October**

The RWG Spanish Contact Group will be running a special seminar on the Luxembourg Rail Protocol in Madrid on Wednesday 17<sup>th</sup> October between 4 and 7 p.m. If you would like to register please click [here](#). For more information on the event please read our [background briefing paper](#).

### **Save the date – East AfricaRail 2018**

The East Africa Rail Conference will be taking place this year in Nairobi 21<sup>st</sup>/22<sup>nd</sup> November 2018. The RWG will again be negotiating a special deal for its members. More information [here](#).



### **“The Railway Market in Africa and the Middle East” – special offer for members**

SCI Verkehr, has just published a new study on the market for railway technology products and services in Africa and the Middle East. Rail Working Group members are entitled to purchase the study at a 10% discount if you announce your membership during the order process. To place an order click [here](#).

### **Official Commentary - special deal for RWG members**

Rail Working Group members are entitled to purchase Professor Goode's official commentary on the Luxembourg Protocol at a 15% discount. If you wish to use this facility, please use the official form which you can find [here](#).

For copies of past newsletters click [here](#).

For information about membership of the RWG click [here](#).

Published by the Rail Working Group, a not for profit Association established under Swiss law.

[www.railworkinggroup.org](http://www.railworkinggroup.org)

Contact: [info@railworkinggroup.org](mailto:info@railworkinggroup.org)

The opinions expressed in articles or reports in this publication do not necessarily reflect the opinions or policy of Rail Working Group and information contained herein is for information only and does not constitute legal or other advice.

© 2018 Rail Working Group.

---

[unsubscribe from this list](#) | [subscribe to this list](#) | [update subscription preferences](#)