

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.

- [Mozambique signs the Protocol](#)
- [Swiss stakeholders press for ratification](#)
- [UK to begin public consultation on the Protocol](#)
- [Sweden moving forward](#)
- [RWG at the OECD](#)
- [Topic of the month: Who watches over the Registrar?](#)
- [RWG country contact groups](#)
- [Special deal for RWG members](#)

[Mozambique signs the Protocol](#)

This month Her Excellency, Honourable Ms Nyeleti Brooke Mondlane, Deputy Minister of Foreign Affairs and Cooperation of the Republic of Mozambique, signed the Luxembourg Rail Protocol at a ceremony held at the UNIDROIT Headquarters in Rome, accompanied by H.E. Ms Maria Manuela Lucas, Ambassador of the Republic of Mozambique in Italy, and by Mr Inacio Tomas Muzime, Diplomatic Counsellor of the Embassy. The delegation was received by Deputy Secretary-General Professor Anna Veneziano and Ms Marina Schneider, Senior Legal Officer and Treaty Depositary.

Mozambique became the second African nation and the first SADC country to sign the Luxembourg Rail Protocol. The signature follows high level meetings in Maputo over the summer.

Mozambique is already a Party to the Cape Town Convention and the Aircraft Protocol. With Mozambique, through its ports at the Indian Ocean, playing such a pivotal role for SADC freight traffic, this should move neighbouring states forward on the Luxembourg project.

### **[Swiss stakeholders press for ratification](#)**

In a letter to Swiss Federal Transport Minister Leuthard, key Swiss rail stakeholders have urged the Swiss government to move ahead with ratification of the Luxembourg Protocol. The signatories, which included the Swiss Rail Association, the International Union of Wagon Keepers (UIP), HEROS Helvetic Rolling Stock GmbH and advisers in the industry, pointed out to Federal Councillor Leuthard that the Luxembourg Rail Protocol “will not only be important in opening up more opportunities for public and private operators in Switzerland to securely finance railway equipment on a highly cost effective commercial basis with the private sector (e.g. banks and private equity funds), but will also support Swiss exporters of railway equipment and be vital to protect the rights of creditors of foreign operators moving rolling stock through Swiss territory.”

Switzerland has already signed the Luxembourg Protocol and OTIF, which will act as the secretariat to the Supervisory Authority for the Protocol, is based in Berne.

[Full text of letter in German](#)

[English translation](#)

### **[UK to begin public consultation on the Protocol](#)**

In the last week of November the UK Contact Group of the RWG met Paul Maynard MP, Rail Minister at the UK Department for Transport. The UK signed the Luxembourg Protocol earlier this year and at the meeting the Minister confirmed that the official public consultation process, required prior to the UK moving to formal ratification, will commence in January 2017. It is expected that the consultation will be open for a period of 3 months.

Martin Fleetwood, Chairman of the UK Contact Group said “This is great news and is an important next step on the UK moving to ratify the Luxembourg Protocol. Combining the benefits of the Luxembourg Protocol with the UK’s expertise in rail finance should provide good opportunities both locally and globally. I would urge the RWG members based in the UK to engage positively with the consultation when it begins in January.”

### **Sweden moving forward**

Following the publication of its favourable report on adoption of the Luxembourg Protocol earlier this year, the Swedish government has now launched its official consultation process on the Protocol, consulting with various stakeholders and interest groups across Sweden. The closing date for comments is 3<sup>rd</sup> February 2017.

### **RWG at the OECD**

On 15th November, the RWG made a presentation at the annual meeting between Civil Society Organisations and the OECD export credits committee in Paris. RWG Chairman Howard Rosen set out a detailed request for Export Credit Agencies to extend the “Cape Town discount” to the rail sector when the Luxembourg Protocol is in place, following the precedent under the Aircraft Sector Understanding where, if the equivalent aircraft Protocol to the Cape Town Convention is in place, under certain circumstances ECAs discount their risk premium by 10%. Rosen said that the rail industry should not be at a competitive disadvantage with the aviation industry, particularly considering that the Luxembourg Protocol underwrites private investment in rolling stock and the railways are a key component of a sustainable development agenda. He pointed out that the paradox of the high country risk rating for developing countries, resulting in a much higher premium rate for the ECAs, was constraining them from developing their way out of their current economic situation through investment in the railways, and he asked for a constructive review of the limitations on ECAs under the current Rail Sector Understanding (RSU). The RSU in place at the moment makes no mention of the Luxembourg Protocol. It expires at the end of 2017 and so there will be intensive discussions during the course of next year as to whether, and how, it continues.

The RWG delegation in Paris comprised Howard Rosen, French Contact Group Chairperson, Alexia Russell, Registrar-designate Elizabeth Hirst and Tom Clark from GE.

### **RWG presentation**

#### **Topic of the month: Who watches over the Registrar?**

Once the Luxembourg Rail Protocol is operational, the Registrar is the focal point of its operation. The integrity of the registry both in terms of accessibility and accuracy is absolutely crucial to the proper functioning of the Protocol. Article 17 of the Cape Town Convention provides that a Supervisory Authority will be established in accordance with the respective Protocol. This Authority must provide for the establishment of the relevant international registry and, except where otherwise provided by the Protocol has the power to appoint and dismiss the Registrar. The Supervisory Authority also has the responsibility for making and publishing the regulations dealing with the operation of the International Registry, to set the fee structure for the registry and otherwise to supervise the operation

of the registry. The data held in the International Registry either in its databases or in its archives belong to the Supervisory Authority (and not the Registrar).

In relation to the Aircraft Protocol to the Cape Town Convention, there is a natural candidate as the Supervisory Authority, ICAO, the International Civil Aviation Organisation, which has a global coverage. On the rail side however there is no directly comparable organisation. The nearest to this is OTIF, the Intergovernmental Organisation for International Carriage by Rail, based in Berne, Switzerland, but it only covers about 50 countries. At the Diplomatic Conference to adopt the Luxembourg Protocol in 2007, a number of states were concerned about the International Registry established under the Luxembourg Protocol being supervised by an organisation of which they were not members. Accordingly, Article XII of the Luxembourg Protocol creates a new entity as the Supervisory Authority. The intention is that contracting states, or a group of them if more than 10, would be members of the Supervisory Authority but since there will not be 10 ratifications immediately the Protocol comes into force, the Protocol specifically provides for an interim solution whereby initially the representatives on the Supervisory Authority will be from each contracting state and up to three states appointed by UNIDROIT and three appointed by OTIF. The terms of office of the appointed representatives will then expire no later than 2 years after the date of the 10<sup>th</sup> ratification.

OTIF also has a specific ongoing role as the secretariat of the Supervisory Authority, dealing with day to day issues as well as preparing policy positions. It is anticipated that the Supervisory Authority will effectively have a type of diplomatic immunity pursuant to an agreement between OTIF and the state from which it is administered (Switzerland).

As a new international body, the Supervisory Authority has to establish its own constitution as well as its rules of procedure. The Protocol sets out the basis to establishing the initial rules. It also provides specifically that the Supervisory Authority may establish a commission of experts to advise it. This follows the successful example in relation to the Aircraft Protocol where ICAO has established CESAIR (the Commission of Experts of the Supervisory Authority of the International Registry) as its advisory body.

Since the Supervisory Authority is only constituted by the Protocol, it cannot exist prior to the Protocol coming into force. Accordingly the 2007 Diplomatic Conference resolved in its Final Act (Resolution No. 1) to establish a Preparatory Commission with the authority to establish the Registry, draft the necessary regulations and take other preparatory steps in relation to the logistical implementation of the Protocol. Once the Protocol is in force, the Supervisory Authority takes over this role.

### **[RWG country contact groups](#)**

The Rail Working Group has established country contact groups in about 20 countries, where our membership can work together locally and autonomously to move forward both the stakeholder community and the government with ratification of the Protocol. You can see the current list [here](#). We also have plans to establish contact groups in Ireland, Mozambique and Mauritius. The Nordic Group at the moment comprises membership in Sweden and Denmark but we hope to expand this to other Nordic countries.

RWG membership is a global one so, if you are a member, please do let us know if you or one of your colleagues would like to be part of the RWG's local contact groups (or if indeed has any interest in setting up a new one for us).

### **[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

© 2016 Rail Working Group

---

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