

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.

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We were devastated to hear the sad news that Aline Bastin, who worked for our member the Community of European Railways, tragically died in the terrorist attacks in Brussels on 22nd March 2016.

We all send our deepest condolences to her family, friends and work colleagues.

[Draft regulations for the International Registry released](#)

Unidroit and the RWG have now published on their respective websites the initial draft of the regulations which will be applicable to the registry once the Protocol comes into force. These regulations are sometimes referred to the base line regulations since they are the first stage in establishing a set of operational guidelines for the international registry. They

will be re-drafted, to take into account the then current software being proposed for the operation of the International Registry, once it is clear that the Protocol is, into force. It is expected that the revised draft will also be published in draft form for interested parties' comments. You can find the published draft regulations [here](#).

Seminar in Paris / another good step forward

Over 50 attendees took part in the seminar in Paris on the Luxembourg Rail Protocol which took place on 7th April. Each Mr. Jean-Pierre Loubinoux, the Director General of UIC, José Angelo Estrella Faria, the Secretary General of Unidroit and François Davenne, the Secretary General of OTIF attended and spoke for the Luxembourg Rail Protocol but there remain some considerable concerns about the approach from the Bank for International Settlements in relation to the way that they would wish banks to provide capital for financing of lease transactions (see below) [Presentations](#).

Industry concern about new Basel rules

Following on from the consultation last December from the Bank for International Settlements, many banking and other industry bodies (including the RWG) filed responses. A further consultation paper has now been issued which again appears to restrict significantly the discretion banks have to allocate capital to financing of leasing transactions. The RWG is now discussing with its members how to respond to the latest consultation. You can see the new BIS consultation paper [here](#).

RWG publishes Luxembourg Clauses

The RWG has published its suggestion for the clause to be inserted into current security agreements anticipating the introduction for the Luxembourg Rail Protocol and ensuring the creditors can take advantage of the Protocol once it comes into force in the jurisdiction where the debtor is located. The detailed clause may be found [here](#). We will shortly be translating this into various languages.

Topic of the month: Export and Physical Transfer of Rolling Stock

Article VII and, subject to a declaration by a contracting state, Article VIII of the Luxembourg Protocol provides an additional remedy on default where the creditor may procure the export and physical transfer of the railway rolling stock from the territory in which it is situated, as long as the debtor has at any time agreed and it has the consent of any party having an international interest with a higher priority than that held by the creditor. This is similar to the provision contained in Article IX of the Aviation Protocol except that in the Aviation Protocol there is an additional right for de-registration. A prudent creditor will ensure a written agreement from the debtor to the use of this remedy at the beginning of the contractual relationship.

The Luxembourg Protocol is clear that where an application has been made to the “relevant administrative authorities” in the contracting state where the rolling stock is located, administrative assistance for the physical transport of the rolling stock is to be given no later than 7 calendar days after the creditor has notified the authorities that the relief is granted.

Where administrative assistance is obtained through the courts, there should be some consideration of the logistics in relation to the physical movement of the rolling stock. The size and weight of some assets may make their removal more problematic than others and this will need to be taken into account in any risk appraisal of the original financing. Having to move rolling stock along a railway line potentially limits the options available to a creditor. The allocated driver will need the appropriate qualifications and route knowledge and track access will need to be granted. It should be noted also that support from administrative authorities will be subject to compliance with applicable safety rules. As such, any court application requesting assistance should take account of all the necessary considerations in requiring such support. This would include being able to ensure that the operator of the railway infrastructure that the relevant rolling stock will move along is not able to hinder the movement of that rolling stock along the infrastructure into a second country. For a small number of rolling stock assets, removal by road may be a more straightforward, although less convenient option.

The Rail Protocol does not cover de-registration as, unlike aviation, there is no global system of national title registries. Many states do however have separate rules concerning admission of rolling stock onto the railways. In Europe, the operator of rolling stock is registered as the keeper in the relevant National Vehicle Registry (“NVR”) in its home country. Where a keeper changes, it is the responsibility of the outgoing keeper to de-register and the NVR has to notify the new keeper of the change of registration. It is expected that the European Vehicle Registry will take over this role in 2018 or 2019 but the principle will be the same. The outgoing keeper has every incentive to deregister (as it remains responsible for the rolling stock until it does so) but it may be obstructive in a dispute and may not be able to deregister if it is in liquidation. The creditor is likely to need deregistration of the keeper as a condition of any re-leasing of the rolling stock to another operator. This would have to be dealt with contractually. It is therefore recommended that the creditor obtains from the debtor a pre-signed form of notification of change of keeper to be used at the end of the lease or credit agreement if the debtor no longer remains in possession of the rolling stock.

RWG supporting Africa Rail 2016

The Africa Rail 2016 conference will be taking place on 28th/29th June 2016 in Johannesburg, South Africa. RWG Chairman Howard Rosen will be presenting a paper at the conference. The RWG has negotiated a 15% discount for its members. For more information about the conference please see [here](#) and RWG members should mention their status when applying for tickets.

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](#).

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