

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.

- [Sweden signs the Protocol](#)
- [The Protocol in the Equipment Leasing Newsletter](#)
- [The Luxembourg Protocol in Russian](#)
- [South African government internal workshop on the Luxembourg Protocol](#)
- [Topic of the month: Recovering Manuals and Records](#)
- [RWG Seminar in Stockholm – save the date](#)
- [Cape Town Convention Academic Project: 6th Annual Conference](#)
- [RWG supporting EastAfrica 2017 – special rates for RWG members](#)
- [Special deal for RWG members](#)

[Sweden signs the Protocol](#)

On 27th June Sweden became the latest signatory of the Luxembourg Rail Protocol. At a ceremony at the UNIDROIT head office in Rome, the Swedish Ambassador to Italy, HE Mr Robert Rydberg formally signed the Protocol and the RWG will be working closely with the Swedish Government on taking the Protocol through to ratification. Sweden has already signed the Convention and the Aircraft Protocol.

The Protocol in the Equipment Leasing Newsletter

The article “Financing Rolling Stock: Luxembourg Rail Protocol steams ahead” published by Barbara Goodstein and Howard Rosen in the New York Journal on-line in April has been reproduced in LGN’s Equipment Leasing Newsletter. The article explores the current legislative restrictions in the United States on perfecting a creditor’s security interest in rolling stock. To access the article click [here](#).

The Luxembourg Protocol in Russian

An unofficial translation of the Luxembourg Rail Protocol into Russian has now been published on our website. The text may be found [here](#).

South African government internal workshop on the Luxembourg Protocol

This internal workshop convened by the South African Department of Transport took place on 15th June at the Transnet facility at Koedoespoort just north of Pretoria with representatives from key government departments and agencies as well as parastatals PRASA and Transnet. Preparatory Commission joint chair Peter Bloch, Registrar Designate, Elizabeth Hirst and RWG Chairman Howard Rosen together with members of the RWG South African Contact Group made presentations to the workshop. The DOT is now taking detailed soundings both in the public and private sectors on the Protocol. Delegates to the workshop were briefed on not just the way that the Protocol works but also on why it will present advantages for the South African rail community both in relation to domestic operations and for the sale, lease or even operation of rolling stock outside of South Africa, within the African continent.

Topic of the month: Recovering Manuals and Records

The definition of “railway rolling stock” states that it includes various physical parts of the vehicle, such as traction systems, engines and bogies but importantly goes on to include “all data, manuals and records relating thereto”. This is significant as it recognises that a rail vehicle may be quite a complex piece of machinery and simply being given the right to take possession of the physical asset is only half the story. While a freight wagon may be a simple box with 4 wheels, a locomotive can be a highly complex piece of machinery, with many sub-systems controlled by specialist software and physical parts having specific maintenance requirements. Without the relevant manuals, a party exercising its security can take possession of, maybe, 100 tonnes of metal which has limited use. It is therefore important for a creditor who is taking security to know both where the physical rolling stock is and also where the manuals and records are kept.

Where rolling stock operates across borders, it is possible that the physical item of railway rolling stock can be repossessed in one country when the records relating to it are held in

another country. This should not be an issue for the creditor where Articles IX and X of the Rail Protocol apply. An application under Article IX is made in the Contracting State which is the primary insolvency jurisdiction and then can be carried out in the relevant Contracting States under Article X. While there may be an issue over the exact timing of each Contracting State providing assistance under Article X, the requirement in Article X to cooperate “to the maximum extent possible” should reduce this risk to a manageable amount. The creditor is then able to bring together the physical rolling stock, its manuals and maintenance records which will enable it to either sell or re-lease that item of rolling stock for best value.

While the Rail Protocol does provide the ability to recover the data, manuals and records held by the debtor, it does not create any additional rights to the data or systems to those which the debtor itself has. This is particularly important in respect of software and source codes which are used to control a number of systems on a locomotive or multiple unit. Manufacturers are often keen to preserve their rights to such intellectual property and may only provide such software under licence with source codes held in escrow arrangements which are accessible to the debtor only if there are specific defaults by the manufacturer under warranty arrangements. It is therefore important for a creditor to ensure that specific security arrangements are put in place to gain access to such escrow arrangements or to be able to licence the operating systems on which vehicle data is held. Article IX will only provide the creditor with the rights to recover the data that is controlled by the debtor. Without the additional licensing rights that the debtor has the data and records which are released through use of the Rail Protocol will have limited use.

RWG Seminar in Stockholm – save the date

The RWG will be running a stakeholder seminar on the Luxembourg Protocol in Stockholm on 26th October. Speakers will include Professor Anna Veneziano, Deputy Secretary General UNIDROIT, Elizabeth Hirst, Registrar Designate for the Luxembourg Registry and RWG Chairman Howard Rosen.

Cape Town Convention Academic Project: 6th Annual Conference

The 6th Annual Conference of the Cape Town Convention Academic Project will take place 12th/13th September 2017 in Oxford (UK). Registration is now open and you can register [here](#). The draft programme may be accessed [here](#).

RWG supporting EastAfrica 2017 - special rates for RWG members

The East AfricaRail 2017 conference will take place on 21st/22nd November in Nairobi, Kenya. The RWG is an official media partner and has negotiated a 15% discount for its members and RWG members should mention their membership when applying for tickets.



Register [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

Contact: 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.

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

www.railworkinggroup.org

Contact: 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.

© 2017 Rail Working Group.

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