

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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### **New study shows private financing of railway rolling stock in Europe growing at a snail's pace**

The latest study, published on 20th May, by Roland Berger for the Rail Working Group covering the period 2015-2017 shows private financing involved in almost a quarter of rolling stock orders in Europe by volume (actual figure: 23%). This is up from 13% in the period 2011-2013, and 20% in the years 2013-2015.

According to the new study, countries with major rail liberalization programmes (e.g. the UK and Germany) will continue to be the main markets for private finance, reinforcing the correlation between market liberalisation and private capital. But progress is far too slow, according to industry insiders, with continuing reluctance in the private sector to invest in rail equipment, combined with reticence by governments and public sector operators to embrace the opportunities and disciplines of shifting the burden of financing procurement to the private sector. [More](#) [Study in full](#)

### **RWG files response to EBA Consultation Paper**

The RWG has filed a detailed response to the European Banking Authority (EBA) Consultation Paper which sets out draft guidelines on Credit Risk Mitigation for financial institutions. Specifically the response focused on draft guidelines 19-21 and the suggested expansion of the requirement to obtain legal opinions to provide more legal certainty of, and legal effectiveness and enforceability in relation to, railway rolling stock as movable physical collateral. The response argued that the expanded requirement was too burdensome and should be limited to covering only key jurisdictions. It further reasoned that the guidelines should take into account international treaties such as the Luxembourg Rail Protocol and that when the debtor was in a contracting state, there should only be a requirement for legal opinions in the jurisdiction in which the debtor has its principal place of business and the jurisdiction whose laws govern the relevant agreement providing the collateral, thereby significantly reducing the financial burden on the financial institutions which would otherwise be passed on to the debtors.

The submission concluded that “as currently stated, the draft guidelines will significantly constrain, or make more expensive, the provision of private credit at a time when more private sector investment in the rail sector is urgently needed. The requirement for legal opinions should be limited to a level which is reasonable in the context of how the rail industry and financing works in practice.”

The RWG's detailed response may be found [here](#).

### **Luxembourg meets SARA**

For the first time the Luxembourg Rail Protocol was introduced to CEOs of railway companies operating in Southern Africa. At the Annual Meeting of SARA, the Southern African Railways Association, RWG Chairman Howard Rosen made a detailed presentation on the Luxembourg Rail Protocol. SARA is working hard to revitalise a regional rail network in Southern Africa and the presentation, which was warmly received, spelt out how the Protocol could make a material difference to that programme.

### **Topic of the month: New Technology and Guideways**

The Topic of the Month for November 2018 looked at whether buses could be covered by the Rail Protocol if they were used on a guided busway. This was because the definition of "railway rolling stock" used in the Rail Protocol refers to "vehicles moveable on a railway track or directly on, above or below a guideway". As noted in the earlier article, the Oxford English Dictionary definition of a "guideway" referred to "a groove or track along which something moves".

All seems fairly straightforward, but over the past 10 years there has been a significant arrival of new technology and disruptors within the transport sector, such as power systems, types of fuel and diagnostics, not to mention the arrival of artificial intelligence and prototypes of autonomous vehicles. Freight vehicle platooning has started to be used which involved communication between freight vehicles to allow those vehicles to operate closer together and save road space. Ultimately the intention would be to have a single driver effectively managing the other trucks in the platoon by remote control. While the second and subsequent trucks are guided by the first truck, this would not create a guideway, as the expectation for a guideway is for there to be some form of permanent infrastructure, which provides the guidance. In the case of platooned vehicles, wherever the first truck goes, the rest of the platoon follow, so there is no certainty of route or external controls.

But what about an electronic guideway? An example of this is the Autonomous Rail Rapid Transit (ART) which has been developed in China and has been introduced in the city of Zhuzhou. The vehicle is guided by a set of white markings in the roadway which sensors in the tram read, together with other guidance sensors set along the route. These combine to create a set of virtual rails which the vehicle runs along and that guide its route. It is, of course, relatively easy to change or extend the route by simply painting additional white lines and installing additional roadside sensors. Little physical infrastructure keeps the vehicle on its dedicated route. However, the vehicle is clearly being guided by the infrastructure and without it would cease to function in its intended way. This arguably makes the ART vehicle an item of railway rolling stock and capable of benefiting from the Rail Protocol. It makes an interesting contrast to a trolley bus, which has its area of operation controlled by the availability of the wires that give it its power, but which is free to

move anywhere on the road within the range of its trolley pole. The power wires are not considered sufficient to guide the route of the vehicle (it has a steering wheel for this) and so the trolley bus is not considered to be railway rolling stock for the purposes of the Rail Protocol.

The arrival of new technology can arguably create additional opportunities for the Rail Protocol and the transport community needs to consider whether the Rail Protocol will be applicable when a new transport solution appears. If the Rail Protocol does apply, it could provide additional support to the introduction of such technology.

### **Save the date – AfricaRail 2019**

Africa's largest rail exhibition & conference will be taking place at the Sandton Convention Centre in Johannesburg, South Africa on 19<sup>th</sup>/20<sup>th</sup> June 2019. *The RWG is an official media partner and RWG Chairman Howard Rosen will chair, and present a paper at, one of the streams at the conference. The RWG has negotiated a 15% discount for its members and RWG members should mention their membership when applying for tickets.*

For more information click [here](#).



### **Save the date – Cape Town Convention Academic Project Conference 2019**

This year's conference will be held in Oxford on 10<sup>th</sup>/11<sup>th</sup> September 2019. As will be seen from the [draft programme](#), there will be a major discussion of the Oceanair litigation in Brazil. Fundamental Cape Town Conventions issues are present in that case, including the interpretation and application of its substantive and cross border insolvency provisions. Oceanair is the first large scale insolvency in which the treaty plays a central role. With the Diplomatic Conference coming up in November this year, there will be two sessions on the MAC protocol: one looking critically at provisions in that protocol that are based on those in the other protocols, and the other looking at the relationship between the MAC protocol and domestic secured transactions law. There will also be a session on the interpretation of the Cape Town Convention in the various language versions, and a discussion of the CTC Compliance Index.



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### **Subscription discount for RWG members for “Railways Africa”**

Rail Working Group members are entitled to purchase the South African online publication “[Railways Africa](#)” at 25% discount off R6500 - place promo code *railworkinggroup2019* when checking out. The code expires at the end of 2019.

### **“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 – consultation**

The next Edition of Professor Goode's official commentary on the Luxembourg Protocol is already being prepared. The RWG has been invited to submit comments. If you would like to suggest changes or additions to the commentary or, as an RWG member, would like to be part of our team evaluating the commentary, please contact [Professor Benjamin von Bodungen](#).

### **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](#).

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