

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.

- [Chris Dugdale](#)
- [Talking Luxembourg in India](#)
- [Malta moving Forward](#)
- [Swedish consultation progresses to the next stage](#)
- [Swiss Government urged to ratify](#)
- [Topic of the month: The RWG Declarations Matrix and Economically – Based Recommendations](#)
- [Special deal for RWG members](#)

## **Chris Dugdale**

With great sadness we must announce that our esteemed member and colleague, Chris Dugdale, passed away on 25<sup>th</sup> October.

Chris worked for decades in the rail industry, working for British Rail for many years and then for consultancies in the European rail sector. Most recently he was working for his own company European Rail Consultancy Limited.

We worked with him first when he was running an expert group for the EU as it was considering how to reform the European railway network.

Chris had tremendous knowledge on the technical operations of the railways, he was a marvellous resource for the RWG as we stepped up our work on various technical issues concerning the Protocol, guiding us carefully through detailed practical problems. He was always a kind, courteous man, ever with a wonderful rail anecdote and a good friend. He will be greatly missed.

We send our deepest condolences to his wife Vivien and his daughters Sasha, Polly and Victoria.

H.R.

## **Talking Luxembourg in India**

The Luxembourg Protocol had a high profile at a joint Indian/US government workshop on railways which took place in October in New Delhi. Each of Professor Anna Veneziano, Deputy Secretary General of Unidroit, Elizabeth Hirst, Registrar Designate of the Luxembourg Registry and RWG chairman, Howard Rosen gave detailed presentations on various aspects of the Protocol to senior officials from the Indian Railways and the Indian Railway Ministry. RWG members Summeet Banga, from GE Transportation India, and Pawan Kumar Nyayapati, from PriceWaterhouseCoopers India, also participated as speakers. Delegates heard that, with the opening up of two key Dedicated Freight Corridors in the near future and the constant challenge for the Indian Rail Finance Corporation to finance all of the needed future investment in rolling stock, the private sector offered an essential alternative to state finance. As Saurabh Sood, President of GATX India explained to the workshop, operating leasing also creates ways to share funding, expertise and risk between the private and the public sector. Rosen also looked at the way that private finance, and the Luxembourg Protocol, could assist the Indian approach to Smart Cities and urban transportation.

## **Malta moving forward**

Detailed discussions have been taking place between the RWG's Maltese Contact group and senior government transport officials on adoption of the Protocol by Malta. The response has been positive and there is to be an ongoing dialogue with government to work on moving forward with signature and then ratification.

### **Swedish consultation progresses to the next stage**

Following the detailed positive report on the Luxembourg Protocol issued by the Swedish Justice Ministry in the summer, the parliamentary evaluation process has commenced with a request for comments from stakeholders. The deadline for responses is February 3rd, 2017.

### **Swiss Government urged to ratify**

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 various advisers and consultants 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 Bern.

[Full text of letter](#)

### **Topic of the month: The RWG Declarations Matrix and Economically-Based Recommendations**

The Cape Town Convention and the Luxembourg Rail Protocol are based on a system of declarations whereby the application of certain provisions of both legal texts is dependent on policy decision by Contracting States. For these provisions, the Convention and the Rail Protocol allow Contracting States to make choices. More precisely, opt-out provisions under the Convention and the Rail Protocol are provisions that apply unless they are disapplied by a declaration to that effect by a Contracting State. Conversely, opt-in provisions are those provisions that only apply if a corresponding declaration is made by a Contracting State.

The RWG has prepared a declarations matrix (hereinafter the “Declarations Matrix”) to illustrate the optimal declarations or non-declarations by Contracting States to enhance the economic benefits to be derived from both the Convention and Rail Protocol. In determining their positions on declarations, Contracting States may wish to use the Declarations Matrix in connection with the weighing of economic versus other policy considerations. The Declarations Matrix can be found on the RWG website at <http://railworkinggroup.org.nova.ch->

[meta.net/wp-content/uploads/2015/05/r0182.pdf](http://meta.net/wp-content/uploads/2015/05/r0182.pdf). In addition, the Rail Working Group has now also prepared a short form of the Declarations Matrix for Contracting States that have already ratified, accepted, approved, or acceded to, the Convention (possibly together with the Aircraft Protocol) and now are considering extension of the application of the Convention to railway rolling stock. The short form of the Declarations Matrix will be made available on the RWG website very shortly. Both the long form and the short form of the Declarations Matrix are based upon the Declarations Memorandum prepared by the Secretariat of UNIDROIT, as the Depository (available at <http://www.unidroit.org/english/documents/2009/depositary/dc10-dep-01-e.pdf> ). The Declarations Memorandum is intended to ensure that Contracting States make their declarations in full compliance with the terms of the Convention and the Rail Protocol but does not indicate any preferences from an economic standpoint.

As described in an earlier issue of “Inside Track”, one of the most important recommendations of the RWG’s Declarations Matrix pertains to the insolvency-related remedies under the Rail Protocol. In this context, the RWG urges Contracting States to adopt Alternative A of Article IX of the Rail Protocol. This alternative best reflects the realities of modern structured finance by ensuring that, no later than at the time of expiry of a pre-set and binding waiting period, the creditor either secures recovery of the respective item of railway rolling stock or obtains the curing of all past defaults and a commitment with respect to performance of the debtor’s future obligations. However, the recommendations issued by the RWG in this context are qualified in a number of ways. First, the recommendations need not be followed by Contracting States where such remedies are already provided for under existing local insolvency law. Next, if adopting Alternative A is not feasible for a Contracting State due to legal or public policy reasons, the adoption of the more balanced Alternative C is recommended by the RWG as a second preference. Finally, if a Contracting State currently faces legal, political or other difficulties in amending its national insolvency laws to reflect the realities of modern finance embedded in Article IX of the Rail Protocol, this should not, in the RWG’s view, impede its adoption of the Rail Protocol as a whole. Quite to the contrary, the Rail Protocol provides significant benefits for creditors even without application of its insolvency regime. By way of an example, the Convention and the Rail Protocol set the framework for a worldwide registry of security interests in all types of railway rolling stock. This is a major step forward for the rail sector which traditionally has not benefitted from the opportunity of publicizing creditor’s security interests in national railway rolling stock registries.

The RWG is looking forward to working together with Contracting States as they analyse the complex system of declarations under the Cape Town Convention and the Rail Protocol (or only the latter if they have already implemented the base Convention). Member States of the European Union must also bear in mind that they are not permitted by EU law to make

declarations on matters within the competence of the EU. Instead, the EU made several declarations on behalf of itself and its Member States when it acceded to the Cape Town Convention in 2009 and declared its approbation of the Rail Protocol in 2014.

**[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](#)