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What Equipment is covered by the Luxembourg Protocol?

More than you might think

The Luxembourg Protocol applies the Cape Town Convention to railway rolling stock. The definition of railway rolling stock is deceptively simple. Essentially it encompasses all vehicles *“movable on a fixed railway track or directly on, above or below a guideway”* together with various components and data.¹

The first question to address is what constitutes a vehicle? There is no guidance on this in the official commentary. The Merriam-Webster definition is “a machine that is used to carry people or goods from one place to another”. The Oxford Concise Dictionary describes a vehicle a “carriage or conveyance of any kind used on land or in space”. It is essentially a means of physical transportation and although the derivation, from the Latin *vehiculum*, meaning carriage, implies a more narrow definition, in common understanding this clearly has a wider application. Otherwise, for example, technically a locomotive could be outside the scope of the Protocol where it only hauls wagons, and locomotives of all types were clearly in the minds of the drafters of the Protocol).

The definition applies to two categories of vehicles, namely those which run on a fixed railway track and those running directly on, above or below a guideway.

The first part of the definition covers not just inter-urban rail locomotives and passenger and freight wagons but also light rail and suburban rail units and wagons and trams, and then maintenance machines that run on tracks grinding rails and boring machines boring tunnels, all of which are vehicles running on a fixed railway track. Gantries or cranes operating in ports should also qualify if they run on tracks. On the other hand, a film camera running on a track would not qualify as it is not a

¹ The complete definition of railway rolling stock is *“vehicles moveable on a fixed railway track or directly on, above or below a guideway, together with traction systems, engines, brakes, axels, bogies, pantographs, accessories and other components, equipment and parts, in each case installed on or incorporated in the vehicles, and together with all data, manuals and records relating thereto”* (Art. I (e) of the Protocol)



vehicle. Even if there is a seat behind the camera which carries a cameraman with the camera along the track, we would argue that the equipment's principal purpose is not the conveyance of a person.

Concerning the second limb of the definition, the Official Commentary on the Cape Town Treaty describes a guideway as “a track or channel governing the exact line of motion of a vehicle and though in principle, the term includes the conventional railway track it is usually applied to alternative guidance structures where the wheels are not flanged”.² So this means that monorail and maglev vehicles, people mover systems at airports, whether individual pods or units transporting a large number of passengers between, say, different parts of an airport as well as underground trains in locations such as in Paris and Lausanne which run on guideways and not tracks with pneumatic tyres, are all items of railway rolling stock. It will also include mountain railways running on a cable system on permanent guideways, whether they are actually railway lines or just concrete channels. But a car on a race track would not be included as the car is not *guided* by the track.

Cable cars are quite interesting. Is a fixed cable between two stations, on which the cable car runs, a guideway? Arguably it is, although the prevalent view at the moment is that it is not. This may need to be revisited and the safe option for any practitioner must be to consider that all cable cars are covered, and register any security interest accordingly as an international interest.

But a guideway does need to be physical. A guidance system (for example a GPS) which sets a route for a vehicle would not qualify.

Lastly there may be equipment which can run on tracks or guideways but will not necessarily continuously do so. There is some quite sophisticated rail engineering equipment which can either run on a road or on tracks. In our view this would certainly be covered by the Luxembourg Protocol because it is a vehicle movable on such a guideway even if it is not doing it all the time. Logically this must be so. Otherwise conventional rolling stock which is not physically sitting on a track (for example, being transported or undergoing maintenance or even derailed) would not be covered by the Rail Protocol if it was not on tracks at the time the financing was concluded. It would not be advisable to create a system where the financing company or lessor would have to check whether the equipment was physically on a rail or other guideway at that time. The financier should only be able to ascertain whether technically the equipment type is able to run on such tracks or a guideway even if it is not physically doing so at the time of determination.

² Goode, Official Commentary, 2nd edition (2014), Comment 5.6.