

The Luxembourg Protocol

Stakeholders Breakfast Seminar
Prague, 13th May 2019

Howard Rosen
Rail Working Group



RAIL WORKING GROUP

- Formed in 1996 at the request of UNIDROIT
- Not for profit global industry group based in Switzerland; all officers and members work for free
- Close to 90 direct members and hundreds via industry associations
- Linking up the various stakeholders in the industry
- Dedicated to the adoption of the Luxembourg Protocol

Programme

- I. What is the Luxembourg Rail Protocol: An Overview
- II. What are the benefits of the Protocol for Czechia?
- III. Ratification process
- IV. Some Practical Issues:
 - a) How the International Registry will work
 - b) URVIS
 - c) Applying the Protocol to financial models
- V. Conclusion and discussion

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I. What is the Luxembourg Rail Protocol: An Overview

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Buying rolling stock – who pays?

- Rolling stock procurement costs account for about one third of a rail project
- Investment in rolling stock is urgently needed in Czechia
- Historically operators own rolling stock.
- As at the end of 2017, still 77% of European rolling stock is purchased or underwritten by the state.
- Why?

Buying rolling stock – who pays?

- Rolling stock is usually a significant component of an operator's balance sheet
- the private sector has the funds available in the banks, institutions, pension funds, private equity funds and other investors to finance rolling stock – it is an excellent long term asset
- But without (sound) state guarantees the private sector is reluctant to finance rolling stock – or the cost of credit is too high.

Problems of bringing in private capital

- No national title or security registry
- Identifiers unstable (from a creditor's perspective) and inconsistent across the sector
- Limited legal infrastructure domestically and internationally
- Repossession issues for creditors on debtor default or insolvency
- Public Policy and Public Interest
- Bank's capital requirements and Basel II and III
- Limited commercial tracking of assets
- Conflict of laws and cross border risks (e.g. Belt and Road Initiative)

Cape Town Convention on International Interests in Mobile Equipment 2001

- New global system of international legal rights and priorities for secured creditors
- Common system for enforcing creditor rights on debtor default or insolvency
- Public registry of security interests, accessible 24/7 through the internet
- Already adopted by 79 States



The Convention creates

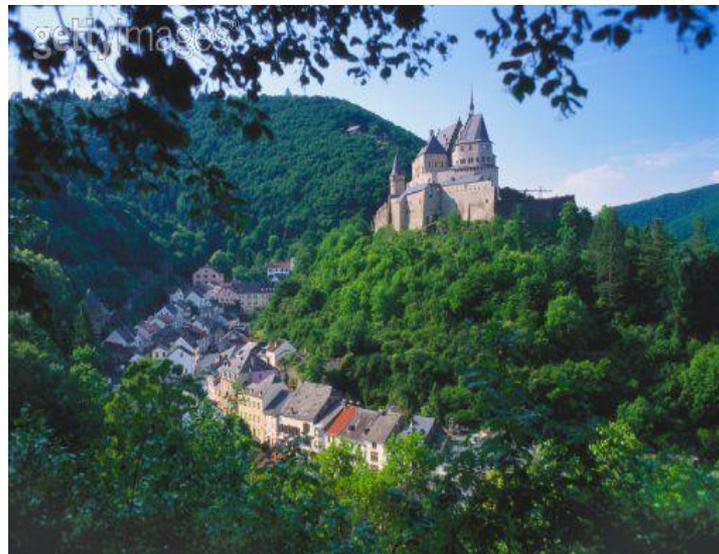
- A new type of global security interest (the “International Interest”) for designated movable equipment, internationally recognised with established priorities
- Secures
 - ❖ Lessor under a lease
 - ❖ Creditor under a secured loan
 - ❖ Vendor’s rights under a conditional sale (where title is retained)

Aircraft Protocol

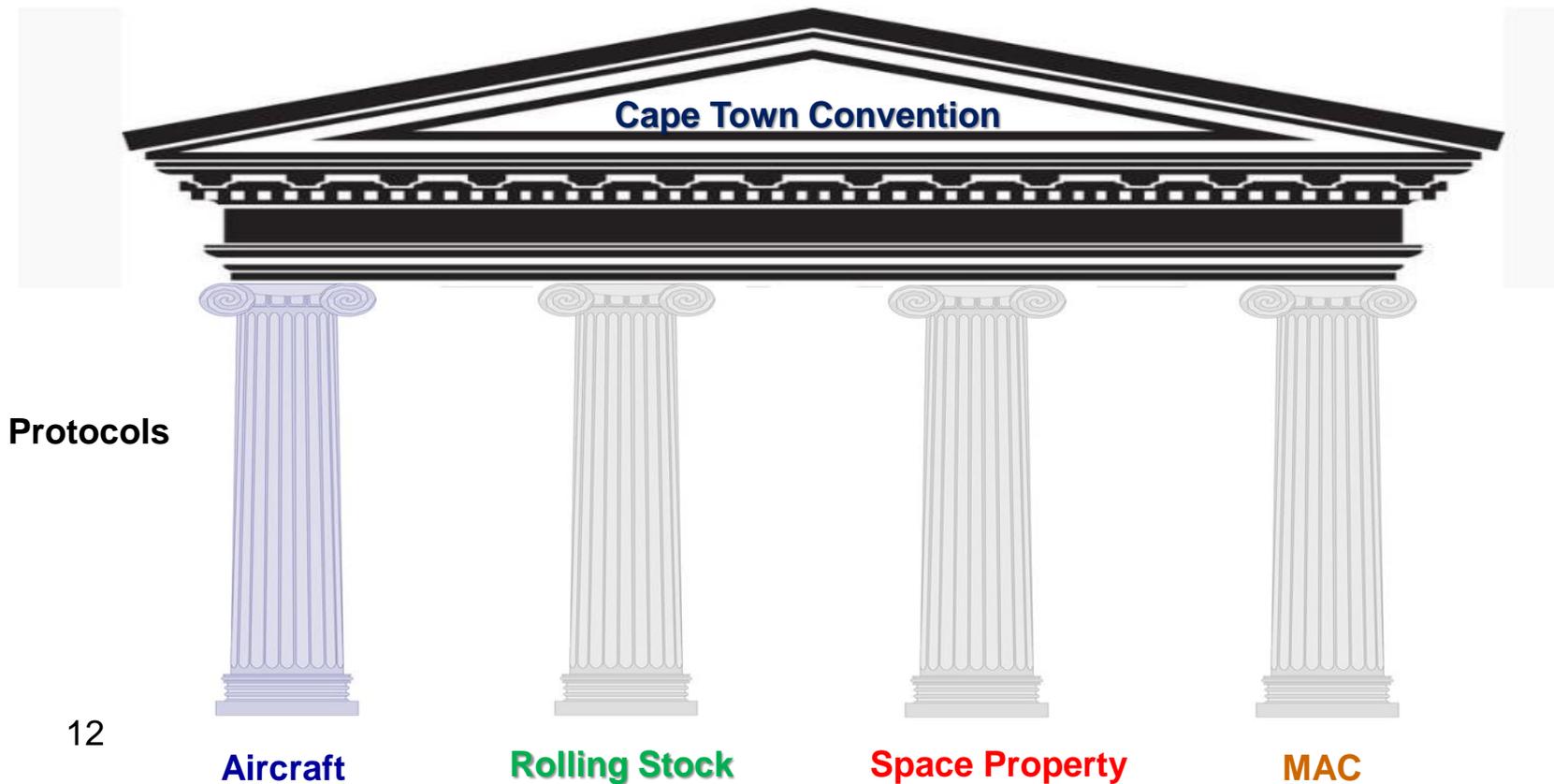
- Applies the Convention to Aircraft
- A proven system - operating since 2006 – now in force in 75 states
- International registry running in Dublin
- Over 1 million registrations to date – on aircraft with an estimated value of over \$ 500 Billion
- Registrar – Special purpose company established by SITA
- Aviation Working Group: the Aircraft Protocol will save the air transport industry **\$161 bn** 2009 - 2030

Luxembourg Rail Protocol

- Applies Cape Town Convention to railway rolling stock
- International registry in Luxembourg
- Will introduce global unique identification system for railway equipment



How the Convention works



The Luxembourg Protocol applies to all railway rolling stock

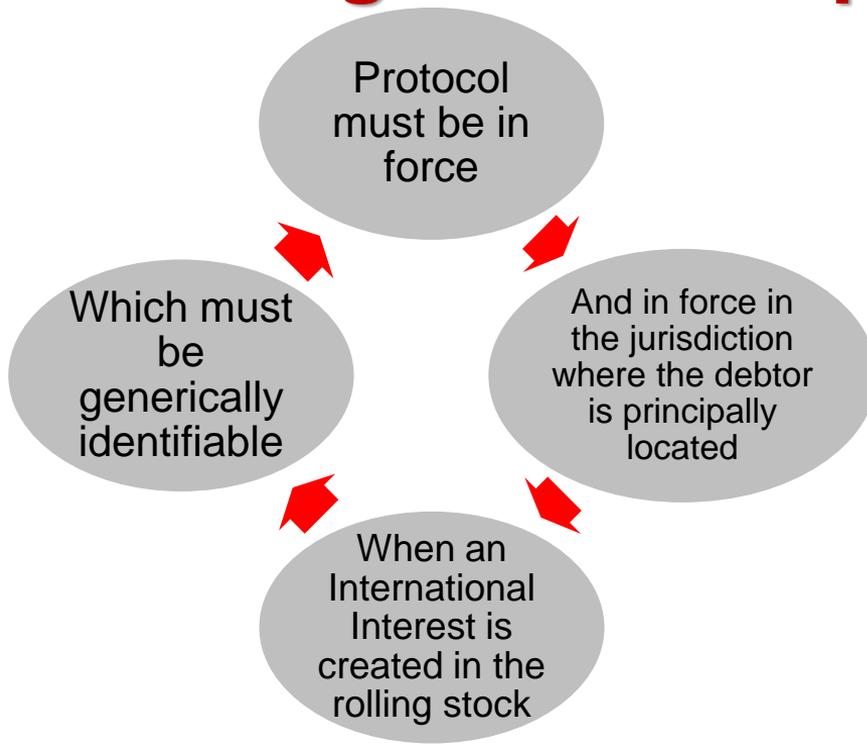
Broadly defined: “..vehicles movable on a fixed railway track or directly on, above or below a guideway” so covers

- Inter-urban and urban rolling stock
- Specialist boring and other rail mounted equipment
- Metro trains and trams
- People movers/shuttles at airports
- Cranes and gantries at ports
- Cable cars
- Hyperloop pods

Unique Vehicle Identification

- Rolling stock must be uniquely identifiable to register interest
- Unique Vehicle Rail Identification System (URVIS) will be established by registry regulations
- First global unique and permanent identification system for rolling stock
- 16 digit number allocated by registrar in Luxembourg, never re-used
- Affixed permanently to rolling stock by manufacturer, maintainer or keeper

When does the Luxembourg Protocol apply?



The Status of the Luxembourg Rail Protocol

- Adopted 2007 (not yet in force)
- Appointment of Regulis SA (SITA subsidiary) as Registrar
December 2014
- Ratified by EU, Gabon and Luxembourg and Sweden
- Signed by Italy, Germany, France, Mozambique, Switzerland
and UK - all moving towards ratification
- Other EU and non-European countries now actively working
on ratifications
- Expected to be in force in 2020

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II. What are the benefits of the Protocol for
Czechia?

Benefits for Czechia

- Removes a significant financial burden from central and local government
- Opens up non recourse private financing of existing fleets
- An important part of any PPP strategy
- Liberates private operators to obtain private sector finance for rolling stock when needed – no government budgetary constraints
- Encourages foreign investment in the railways
- Creates a key driver for a modal shift from road to rail with various environmental, social and economic advantages

Benefits for Czechia

- Lowers the barriers to entry for new industry participants
- Underwrites operating leasing
- Makes railways more commercial and competitive
- Protects operators and financiers where rolling stock operates across jurisdictional borders
- Supports local business and jobs for companies in the rail manufacturing sector
- In Europe helps make the 4th EU railway package a reality and supports BRI and other cross border initiatives
- URVIS numbering has various spin-offs (maintenance, tracking, insurance)

Benefits for Czechia

- Cheaper finance - reduces bank capital costs and debt financing costs as risks decrease
- Basel III, Basel IV and the EBA 2019 consultation
- Eliminates complex documentation and structures
- Recent Oxera studies on direct micro-economic savings :
 - **€ 13.9 bn** for 9 “1520” states
 - **€ 1.3 bn** for South Africa
 - **€ 19.4 bn** for 20 European states
 - **€ 429 m** for the Czechia

Europe

oxera
compelling economics

FINANCIAL BENEFITS

20 countries
**€19.4bn total
benefits**

Refinancing
16%

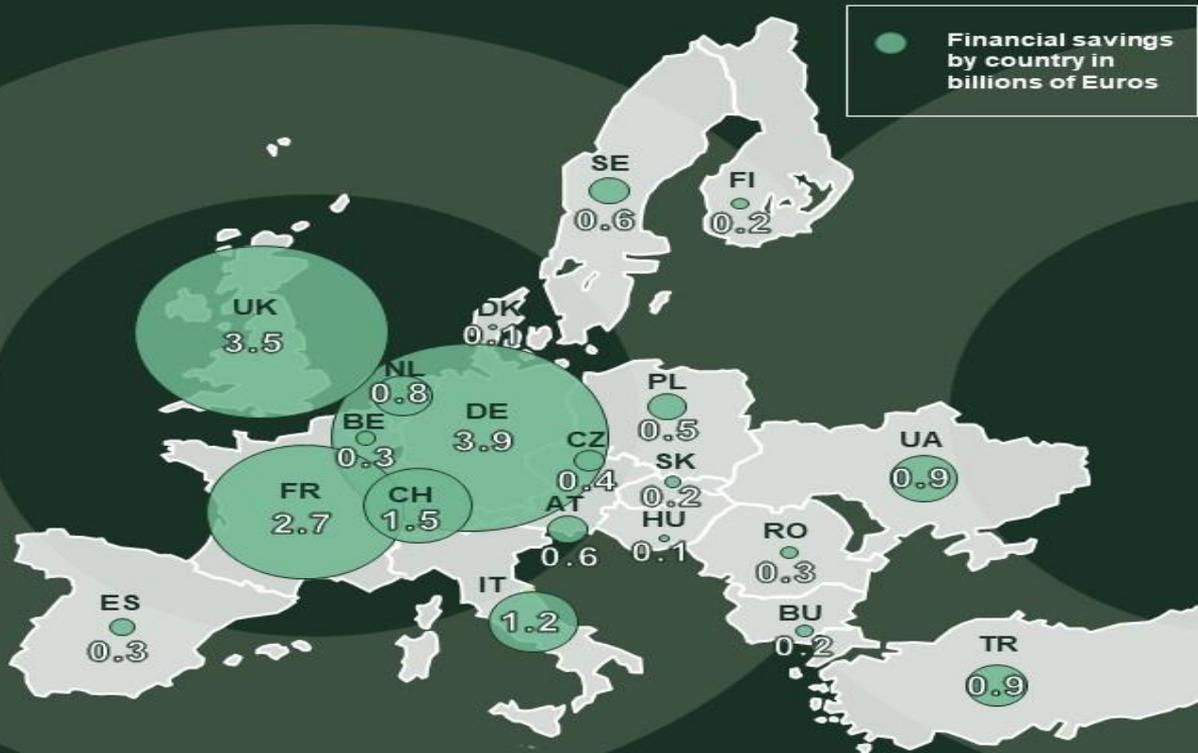


New deliveries
84%

Freight
12%



Passengers
88%



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III. Ratification process

Ratification Process

- EU Ratification (done)
- Signature and consultation process
- Ratification and making the (right) declarations
- Domestic legislation:
 - ❖ Updating existing legislation where there is a potential conflict
 - ❖ Authorising ratification
 - ❖ Insolvency provisions

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IV. Some Practical Issues

The Luxembourg Protocol

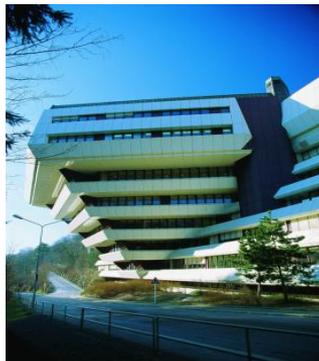
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IV. Some Practical Issues The International Registry

The International Registry

- The contract to establish the International Rail Registry was signed in December 2014 with SITA
- SITA established an SPV, Regulis SA, to operate the registry
- It can only provide the registry services
- It will operate under published regulations
- Oversight from the Supervisory Authority: a new intergovernmental entity based in Bern, supported by OTIF

The International Registry



- The Registry is based in Luxembourg, in the Hémicycle building where the diplomatic conference for the Luxembourg Rail Protocol was held

The International Registry

- Key Features:
 - ❖ A single global registry
 - ❖ Operating entirely online 24/7
 - ❖ Registrations by both Transaction Users (parties to transactions) and Professional Users (legal advisors)
 - ❖ Closing room facility
 - ❖ Open to search by the public
 - Informational Search
 - Priority Search
 - Notices of Sale
 - ❖ Will issue URVIS numbers

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IV. Some Practical Issues URVIS

URVIS

- Why running numbers do not work for the Luxembourg Protocol
 - ❖ No global system
 - ❖ Not intended for creditors but a quite separate regulatory regime
 - ❖ Do not apply to all rolling stock covered by the Protocol
 - ❖ Numbers can change or be recycled

URVIS

- Why manufacturer numbers do not work for the Luxembourg Protocol
 - ❖ No consistency in size, style or make-up (e.g. alpha-numeric systems or identifiers containing Cyrillic script)
 - ❖ No guarantee that number not recycled or used twice
 - ❖ Manufacturers can change names, go bankrupt, be taken over or be rebranded
 - ❖ No manufacturer code system
 - ❖ No certainty that different manufacturers will not use same number

URVIS

- Global consistent system for all rolling stock
- Check digit to avoid entry errors
- Allocated from one source, never repeated or recycled
- Anyone may apply for a number at any time (minimal cost)
- Facilitates asset management and real-time tracking
- Can be used before rolling stock enters into service
- No mandatory application to existing rolling stock but it may be useful if existing rolling stock is to be financed; or as protection for owners against other creditors
- Signage protocols to be agreed with industry (and they will evolve)

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IV. Some Practical Issues
Applying the Protocol to financial models

Financing railway rolling stock today

- Different types of public and private financing
- Public finance
 - ❖ Equity
 - ❖ Debt
 - ❖ Subsidies and traffic underwriting
 - ❖ Guarantees
 - ❖ Grants and soft loans

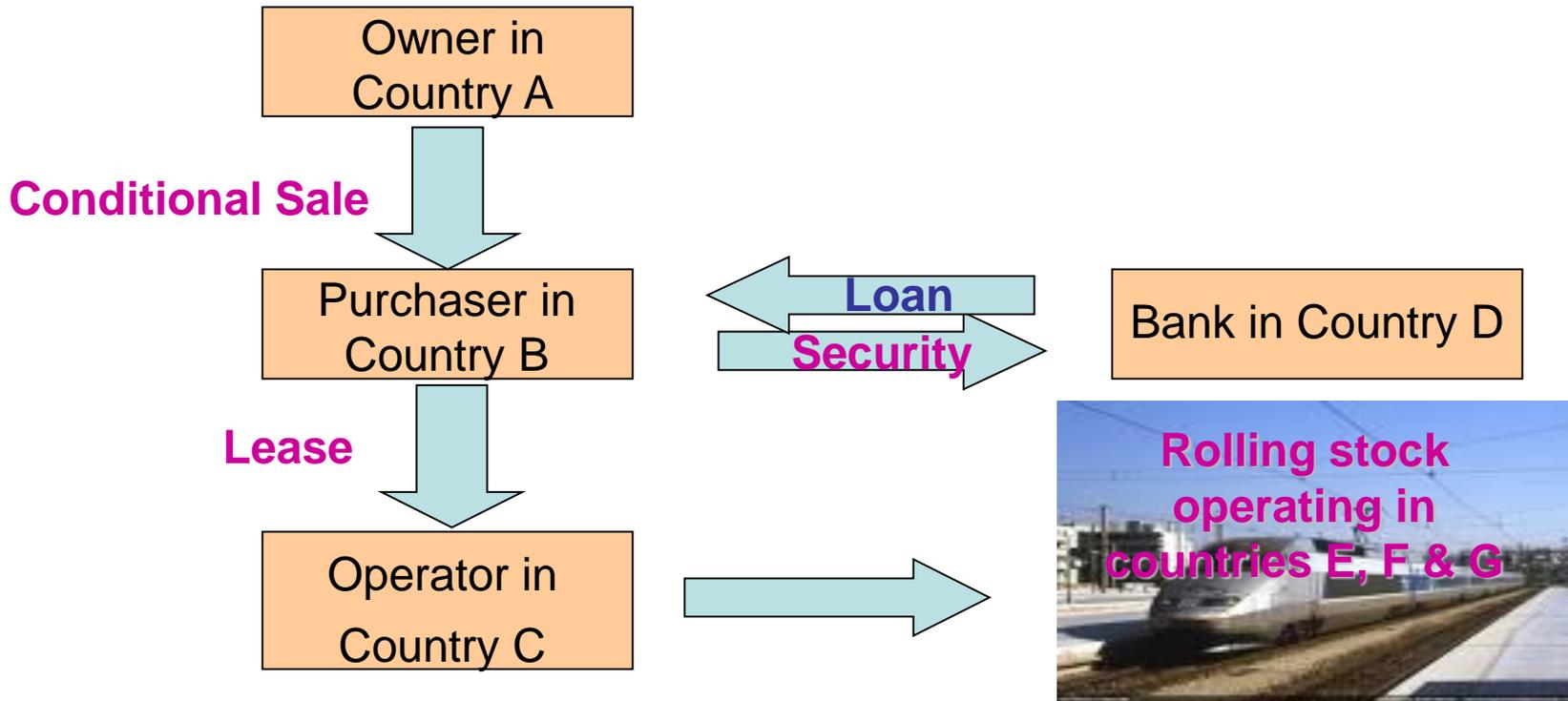
Financing railway rolling stock today

- Different types of public and private financing
- Conventional sources of private funding:
 - ❖ Manufacturer credit
 - ❖ Banks
 - ❖ Lessors
- Not so conventional sources:
 - ❖ Capital markets
 - ❖ Private equity
 - ❖ Pension funds and institutions

Financing railway rolling stock today

- Future procurements or refinancings
- PPP Structures
- Build Operate Transfer
- Secured limited recourse debt
- Operating leases

Financing railway rolling stock today



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V. Conclusion and Discussion

Conclusion

- The Luxembourg Protocol will change the way rolling stock is financed in the future, opening the door to new and cheaper private credit
- For public and private operators, the Protocol opens up new capital sources and new ways of doing business – operating leasing leading to a larger, more dynamic, efficient, transparent and competitive industry - and new ways of securing cross border operations
- It is a valuable tool for government for no cost
- As such it will be a game changer for Czechia

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