



Baarerstrasse 96, PO Box 7262, 6302 Zug, Switzerland
Tel: +41 (0)41 760 28 88; email: info@railworkinggroup.org

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What equipment is covered by the Luxembourg Rail Protocol?

More than you might think

[The Luxembourg Rail Protocol](#) to [the Cape Town Convention](#) is a new international treaty that introduces a global legal framework to make it more secure, and therefore cheaper and easier, for the private sector to finance all types of railway rolling stock without the need for state guarantees or support.

The Luxembourg Rail 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 It applies to all railway rolling stock, regardless of whether it is new or used, the gauge or the place of manufacture or assembly.

The first question to address is what constitutes a vehicle? There is no guidance on this in the Protocol but the Official Commentary states this to be “a means of conveyance of one or more persons or goods”². 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 locomotives could be outside the scope of the Protocol where it

¹ See Art. I (e) of the Rail Protocol for the full definition.

² *Goode*, Official Commentary, 3rd edition (2024), paragraph 3.8.

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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.

On the first part of the definition, it would include not just inter-urban rail locomotives and wagons (passenger or freight) but also light rail, suburban and metro rail units and wagons and trams, and then boring machines that run on tracks boring tunnels, tamping and track laying machines, gantries or cranes operating in ports, all of which are vehicles running on a fixed railway track. On the other hand, a film camera running on a track would not qualify as it is not a 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".³ 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 tracks or just concrete channels.

The UN Economic Commission for Europe (UNECE) Model Rules on Permanent Identification of Railway Rolling Stock, prepared by the Working Party on Rail Transport,⁴ contains in appendix 2 a non-exhaustive list, but nonetheless very helpful, of items of railway rolling stock.

Cable cars are quite interesting. Is a fixed cable between two stations, on which the cable car runs, a guideway? If the cabin runs on a separate fixed non-moving guideway, it clear is covered. If the cable also pulls the cabin this is more arguable but 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.

A guideway does need to be physical. A guidance system (for example a GPS) which sets a route for a vehicle would not qualify but a guidance system under, or painted on, the tarmac with no tracks would be sufficient.

Lastly there may be equipment which can run on tracks or guideways but will not necessarily always 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

³ Goode, Official Commentary, 3rd edition (2024), paragraph 5.6.

⁴ Accessible at <https://unece.org/model-rules-permanent-identification-of-railway-rolling-stock>. See also the guidance notes at https://unece.org/sites/default/files/2024-07/2310743_E_PDF_WEB.pdf



be covered by the Luxembourg Rail Protocol because it is a vehicle movable on such a guideway even if it is not doing it all the time.⁵ It would not be advisable to create a system where the financing company would have to check whether the equipment was physically on a rail or other guideway at the time the financing closed. The financier should only be able to ascertain whether technically the equipment type is able to run on such a guideway.

For more on the Luxembourg Rail Protocol, visit www.railworkinggroup.org, as well as the UNIDROIT website www.unidroit.org or write to us at info@railworkinggroup.org. Keep up to date with all the latest developments via the Rail Working Group's [LinkedIn group page](#).

⁵ 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 Luxembourg Rail Protocol.