

# **The Luxembourg Rail Protocol to the Cape Town Convention on International Interests in Mobile Equipment**

**UN Economic Commission for Europe  
Group of Experts on the Permanent Identification of  
Railway Rolling Stock (PIRRS), 1st meeting  
Geneva, 2nd – 4th September 2020**

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**[www.railworkinggroup.org](http://www.railworkinggroup.org)**



**RailWorkingGrp**



# RAIL WORKING GROUP

- Formed in 1996 at the request of UNIDROIT, the International Institute for the Unification of Private Law (intergovernmental organisation based in Rome)
- Not-for-profit global industry group based in Switzerland
- Dedicated to the adoption of the Luxembourg Rail Protocol to the Cape Town Convention
- All officers and members work for free
- Over 70 direct members and hundreds via industry associations, including UNIFE, linking up various industry stakeholders



# RAIL WORKING GROUP

- Working with multinational development banks
  - ❑ EBRD, EIB, AIIB, AfDB
- And multinational agencies such as UN ECA, UN ECE and the AU as well as regional organisations such as SADC, ECOWAS and COMESA
- At the EU Commission, we collaborate with
  - ❑ DG Move, DG Justice, DG Trade and EEAS



# The world needs more railways

- Railways are essential for sustainable development
- Roads cannot take the strain from increased trucking
- Cities are being strangled by congestion and pollution
- Moving passengers and freight onto rail is vital for environmental, social and economic reasons (1 train can transport the freight carried by 60 trucks)
- Development of the railways is an essential part of any climate change strategy.
- Post COVID-19, railways will be an important part of the economic revival
- But there is a massive funding gap



# Identifying the trends in the rail sector

- More passenger and freight traffic must be moved to the rails for good environmental and economic reasons
- Separation of operations and infrastructure
- Increasing cross border operations e.g. Belt & Road Initiative
- Urban rail transport is a strategic necessity
- New technology, such as hydrogen and predictive maintenance, as well as further electrification are opening up new opportunities





# Identifying the trends in the rail sector

## New Technology

**Regenerative  
braking**

**Supercapacitor  
trams**

**Low-noise  
rolling stock**

**Automated  
train operation**

**High-speed  
trains**

**Automatic  
coupling  
systems**

**Artificial  
intelligence and  
platooning**

**Real-time rolling  
stock location  
and diagnostic  
systems**

**Variable-gauge  
rolling stock**

**Positive train  
control/ERTMS  
& other in cab  
signal systems**

**Hybrid, clean  
diesel &  
hydrogen/fuel cell  
locomotives**



# Identifying the trends in the rail sector

- Governments can no longer alone shoulder the burden of the massive investment needed in the railways
- Privatisation of state actors
- Rail sector gradually liberalised
  - ☐ Public *and* Private operators
  - ☐ Open access
  - ☐ More competition – and a more competitive industry
  - ☐ More private finance
- Rolling stock finance from the private sector should be easy.....



# Identifying the trends in the rail sector

- Rolling stock finance from the private sector is growing
  - ☐ Now over 25% in Europe
  - ☐ Possible component of BOT projects
  - ☐ Secured finance
  - ☐ ECA supported credit
  - ☐ Operating and finance leasing
- Attractive investment opportunities
  - ☐ Banks
  - ☐ Leasing companies
  - ☐ Institutional finance (pension funds)
- It should be easy but .....



# The problems for rolling stock funders

- No common rules on debtor insolvency
- No national title or security registries
- 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/insolvency
- Complex regulations of public services
- Banks' capital requirements and Basel II and III
- Limited geo-locating and status monitoring of assets
- Additional security issues and conflict of laws when financed assets cross borders

# Cape Town Convention on International Interests in Mobile Equipment (2001)

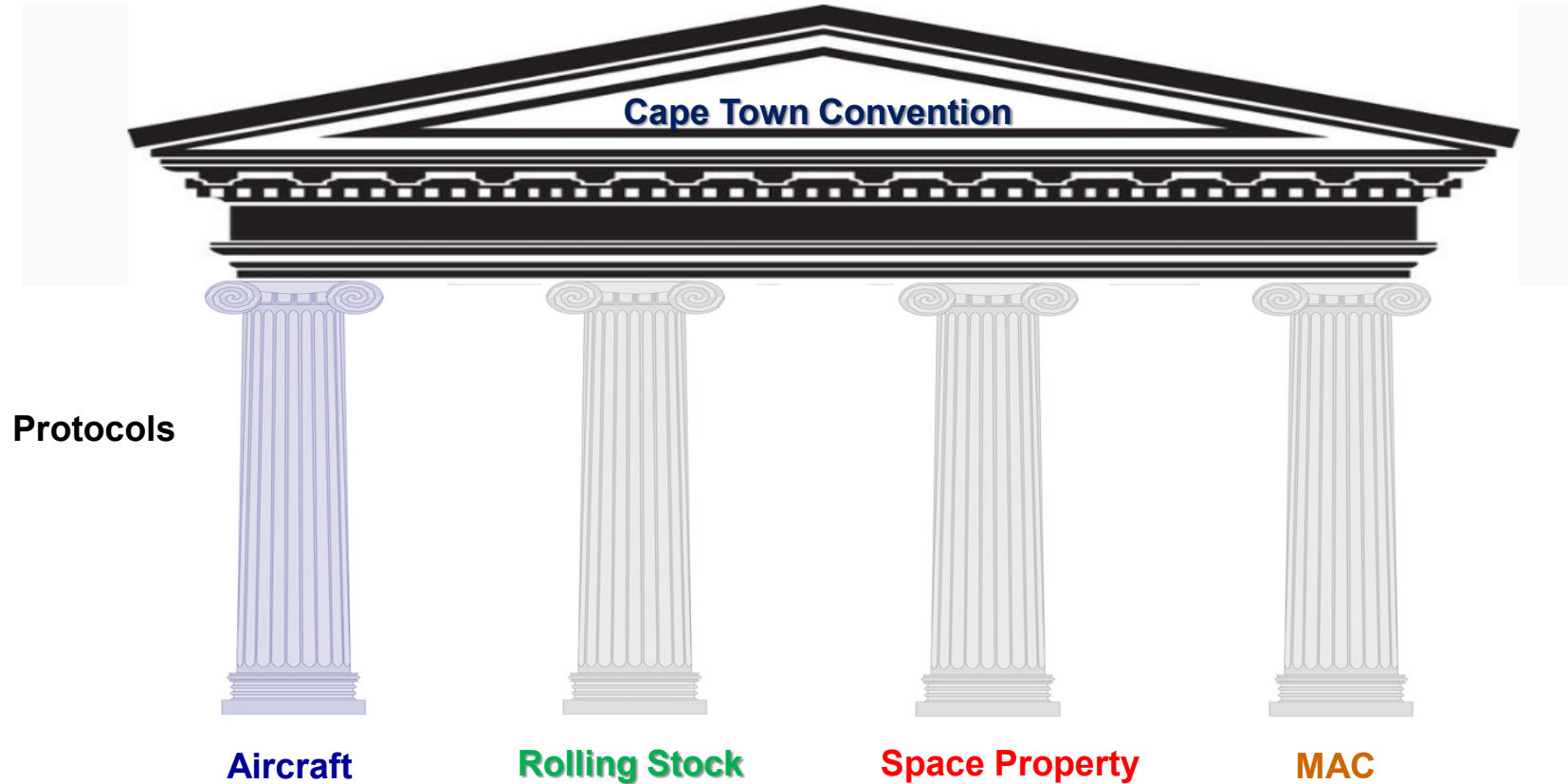
- New global system of international legal rights and priorities for secured creditors
- Common system for enforcing creditor rights upon debtor default or insolvency
- Public registry of security interests, accessible 24/7 online
- Already adopted by 79 States



# The Convention Creates

- A new type of global security interest (the “International Interest”) for designated movable equipment
- Internationally recognised with established priorities
- Secures the:
  - ☐ Lessor under a lease
  - ☐ Creditor under a secured loan
  - ☐ Vendor’s rights under a conditional sale (where title is retained)
- Applies based on seat or domicile of debtor/lessee

# How the Convention works



# How the Convention works

- Convention is applied to an asset class by a protocol
- Declarations may be made in relation to both the Convention itself and adopted protocols
- All declarations are voluntary (except for a mandatory declaration under Article 54 (2) of the Convention)

# Aircraft Protocol

- Adopted at the 2001 Cape Town diplomatic conference
- Applies the Convention to airframes, engines and helicopters subject to some *de minimis* rules
- Applies the Convention also when the Airframe is registered in a contracting state at the time the security interest is created
- Extends the Convention to aircraft sales
- Operating since 2006 – now in force in 78 states plus 1 REIO (European Union)

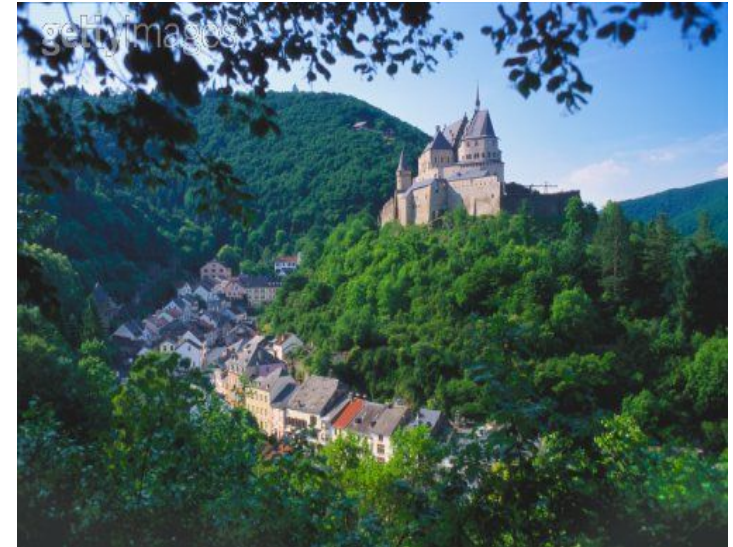


# Aircraft Protocol

- International registry based in Dublin, Ireland: registrar Aviareto, a special purpose company established by SITA,
- Supervisory Authority: ICAO in Montreal
- Under the Aircraft Sector understanding ECAs reduce their risk premiums by 10% as long as the Protocol is adopted with the recommended declarations
- Over 1 million registrations to date – on aircraft with an estimated value of over \$ 650 Billion
- Aviation Working Group: the Aircraft Protocol will save the air transport industry **\$161 bn** 2009 - 2030

# Luxembourg Rail Protocol

- Diplomatic Conference in Luxembourg in 2007:
- Attended by 42 states and 11 international organisations
- Sponsoring intergovernmental organisations UNIDROIT and OTIF





# Luxembourg Rail Protocol

- Applies the Cape Town Convention to rolling stock **when debtor is located in a contracting state**
- International registry in Luxembourg
- Registrar responsible to contracting states
- Will introduce global unique identification system for railway equipment



# The Luxembourg Rail Protocol Applies to ALL Rolling Stock

- Wherever manufactured, whatever gauge and operability standards
- Broadly defined: “..vehicles movable on a fixed railway track or directly on, above or below a guideway.” This covers:
  - ☐ Inter-urban and urban rolling stock
  - ☐ Specialist boring and other rail mounted equipment
  - ☐ Metro trains and trams
  - ☐ Monorail trains and cable cars
  - ☐ People movers/shuttles at airports
  - ☐ Cranes and gantries at ports
  - ☐ 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 the Registrar in Luxembourg that will never be re-used
- Affixed permanently to each piece of rolling stock by the manufacturer, maintainer or keeper

# The Protocol's Status

- Adopted in 2007 (4 ratifications and active registry required to enter into force – expected during 2021)
- Appointment of Regulis SA (SITA subsidiary) as Registrar in December 2014
- Ratified by Gabon, Luxembourg and Sweden (and the EU)
- Signed by Italy, Germany, France, Mozambique, Switzerland and UK - all moving towards ratification
- Also under review in Malta, Spain, Mauritius, Kenya, Nigeria, Ethiopia, Senegal and many other states



# Benefits of the Protocol

- The Protocol
  - ❑ Creates a **common** system, operating in various different countries, protecting the interest of secured creditors, owners and operators
  - ❑ Creates a new legal framework protecting creditors and operators for financings of railway equipment operating in one state
  - ❑ Encourages cross border operation within the same gauge system or beyond where variable gauge rolling stock is used

# Benefits of the Protocol

- The Protocol
  - ☐ Removes a significant financial burden from the government
  - ☐ Liberates public and private operators to obtain private sector finance for rolling stock when needed: no government budgetary constraints nor tied funding
  - ☐ Opens up non-recourse private financing of existing fleets
  - ☐ Is an important part of a PPP strategy
  - ☐ And a key driver for a modal shift from road to rail

# Benefits of the Protocol

- URVIS
  - ☐ One system applicable worldwide on all rail assets
  - ☐ Real-time tracking of condition and location of assets domestically and in other jurisdictions (and tracks)
  - ☐ Facilitates more efficient asset management
  - ☐ Underwrites customised predictive maintenance
  - ☐ Makes lifetime asset management and costs much easier for operators, manufacturers and financiers

# Benefits of the Protocol

- URVIS
  - ☐ Important for immatriculation – admission to rail system
  - ☐ Will support regional regulatory co-operation and interoperability systems
  - ☐ Defence against fraud on purchasers and creditors of rolling stock
  - ☐ Supports new technology

# Benefits of the Protocol

- Macro economic benefits
- Cheaper finance - reduces bank capital costs/margin and debt financing costs as risks decrease
- Eliminates complex documentation and structures
- Recent Oxera studies on direct micro-economic savings of the Rail Protocol:
  - ❑ **€ 19.4 bn** for 20 European states
  - ❑ **€ 13.9 bn** for 9 “1520” states
  - ❑ Present value benefit of **1.6% - 13.5%** across Africa (**€ 1.3 bn** for South Africa)
- Plus potential Export Credit Agency premium reductions

# Europe

**oxera**  
compelling economics

## FINANCIAL BENEFITS

**20 countries**  
**€19.4bn total  
benefits**

Refinancing  
16%

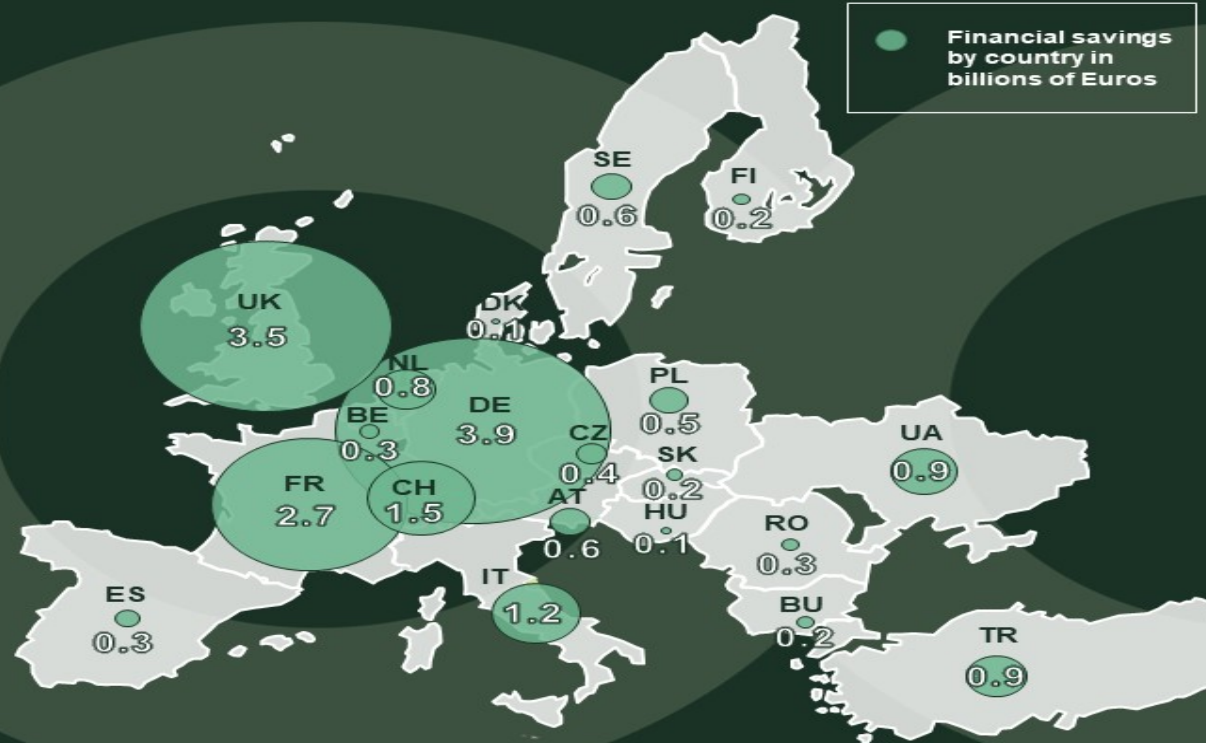


New deliveries  
84%

Freight  
12%



Passengers  
88%





# “1520 states”



## FINANCIAL BENEFITS

**9 countries**

**€13.9bn total  
benefits**

Refinancing  
24%



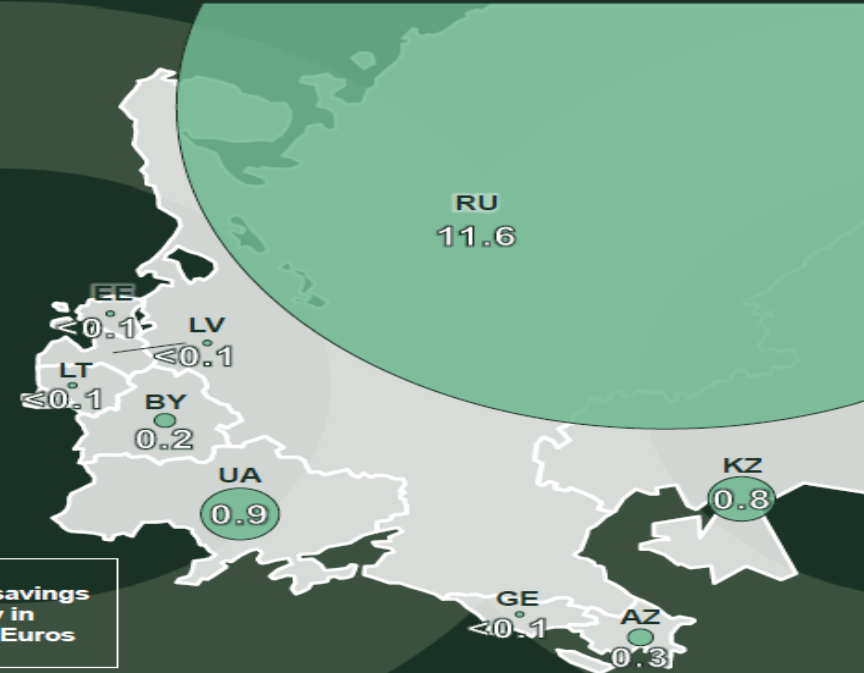
New deliveries  
76%

Freight  
51%



Passengers  
49%

● Financial savings  
by country in  
billions of Euros



# Benefits of the Protocol

- Supports
  - ☐ more manufacturing of rolling stock locally as demand increases
  - ☐ the local financial services and maintenance industry and therefore more jobs and skills' development
- Encourages foreign investment in the railways
- Lowers the barriers to entry for new industry participants
- Makes railways more commercial and competitive
- Underwrites operating leases – a key win for the rail sector

# Conclusion

- Railways are now the sunrise industry for good economic, social, environmental and political reasons
- More cross border traffic, new technology and market liberalisation will mean significant additional need for passenger and freight rolling stock as demand increases
- Governments urgently need to invest in new rail infrastructure and rolling stock but have limited resources
- More private finance needed for both public and private operators through loans and leases, where security of the collateral will be critical

# Conclusion

- The Luxembourg Protocol creates a new **common** global legal regime for securing private creditors and an international registry
- Facilitating more and cheaper finance asset based financing of railway equipment operating domestically or cross border without state support
- Underwriting operating leasing and leading to a larger, more dynamic, transparent and competitive rail sector across the world
- Introduces a new unique identification system for rolling stock

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