United Nations ECE/TRANS/SC.2/2023/3

Economic and Social Council

Distr.: General
1 September 2023

Original: English

Economic Commission for Europe

Inland Transport Committee

Working Party on Rail Transport

Seventy-seventh session
Geneva, 15-17 November 2023
Item 5 of the provisional agenda
The Revision Committee of the Model Rules
for the Permanent Identification of Railway Rolling Stock

Implementing the Model Rules: Transition issues, Proposal to the Model Rules Revisions Committee

Submitted by the Chair of the Revisions Committee

I. Introduction

1. It is a condition of the Luxembourg Protocol to the Cape Town Convention on Mobile Equipment (the Luxembourg Rail Protocol or Protocol) that, in order to be registered at the international registry in Luxembourg, established under the Protocol, any security interest in rolling stock[1] created when the Protocol is in force in a contracting state (an international interest) must be uniquely identified and the unique identifier must be affixed to the rolling stock financed or associated with a manufacturer's serial number or national or regional number so affixed.[2] Since manufacturer's serial numbers or national or regional numbers can have many variations and may be duplicated, recycled or change, the practical solution, set out in the regulations to apply to the international registry (the regulations), is that a unique or URVIS[3] identifier is issued for each item of rolling stock, which will need to be permanently affixed to the item.

4. The Model Rules apply to both new and rolling stock already in operation.

5. For rolling stock being financed which is new, i.e. rolling stock which has not yet entered into service for the first time, or rolling stock about to be admitted into service in a region (area of use) it is anticipated that the URVIS marker will be attached at the time the rolling stock first enters into service in a region.[4] It may also be integrated in the production process of certain manufacturers.

6. For rolling stock that is already in service in a region, it could be very difficult for a keeper to mark every item of a fleet of rolling stock immediately in accordance with the Model Rules. There will, however, most likely be a requirement to do this under the terms of

[1] Created under a lease, a secured credit agreement or a conditional sale agreement (Article 2 (2) of the Cape Town Convention (hereinafter referred to herein as a credit agreement).
[2] Article XIV (1).
[3] Unique Rail Vehicle Identification System.
[4] "Admission" in the terminology of the Model Rules.

a credit agreement, both in relation to any financing or refinancing of existing rolling stock.[5] In addition, creditors that have entered into secured financing agreements with a debtor prior to the entry into force of the Protocol in the relevant Contracting States will hold a "pre-existing right or interest" in the rolling stock concerned. A Contracting State may make a declaration under Article 60 (3) of the Cape Town Convention, as amended by the Protocol, whereby the priority of the pre-existing right or interest against subsequently registered international interests, created after the entry into force of the Protocol in the relevant Contracting State, is preserved if registered within a given interim period.[6] In such a case, a creditor may wish to register its pre-existing right or interest in order to retain its priority against subsequently registered international interests.[7] Under the regulations, it will have the right to do so unilaterally, without the consent of the debtor.[8]

7. It will usually be a condition[9] for registration of an international interest or a non-consensual right or interest, a pre-existing right or interest or a notice of sale that the Model Rules have been complied with. If the rolling stock therefore is not immediately marked, the respective interest or notice of sale may exist but cannot be registered.[10]

8. It is clear therefore that there need to be transitional provisions over a limited period to give operators and keepers time to permanently mark the rolling stock the subject matter of the financing with the URVIS marker.

9. Document ECE/TRANS/SC.2/RC.1/2023/1 sets out this issue in more detail identifying possible transitional solutions, the applicability of any transitional solutions, what the transitional measures could be, how long the transition period should be, and whether there should be any derogations.

10. Based on this document, the first session of the Revisions Committee discussed at length the various alternatives and proposed that the Model Rules should be amended to reflect the text that is included in the annex to this document. The Working Party, as parent body to the Revisions Committee is asked to consider the proposed text included in this annex.

---

5 And we assume that failure to comply with the Model Rules will constitute an event of default under the relevant credit agreement.

6 Not less than 3 years and not more than 10 years. Spain has chosen 3 years in its declaration.

7 The intention of Article 60 (3) is to assure parties searching the international registry that after the interim period, the search shows conclusively all interests which could affect any new international interest then being created.

8 Section 5.12 of the regulations.

9 Set out in section 5.3 (c) (i) of the regulations.

10 Article XIV of the Protocol.

Annex

Proposed Amendments to the Model Rules (2023)

Article 3

Insert in Article 3 the following additional definitions:

"Admitted" means the date an item of railway rolling stock is first authorised for entry into operational circulation in accordance with applicable law;

"Credit agreement" shall be an agreement, as defined in the Convention, entered into following the entry into force of the Protocol in a Contracting State in which the debtor is situated;

"Qualifying rolling stock" means railway rolling stock that has been admitted on the date of signature of the credit agreement relating thereto or, where there is no such credit agreement, in the case of an item which is subject to a unilateral interest, admitted on the date the debtor is notified thereof;

"Running number" means the identification number allocated to an item of railway rolling stock by a national or regional agency authorising railway rolling stock on admission and visible on the item or, in the absence of such number, the identification number allocated by the keeper for, and visible on, the item;

"Transition period" means the later of the period of (a) 12 months from the date of signature of a credit agreement or (b) 18 months from the date the Protocol enters into force in accordance with Article XXIII (1) of the Protocol;

"Unilateral interest" means a non-consensual right or interest or a pre-existing right or interest.

Insert a new Article 7A as follows:

7A. Transition Rules

7A.1 Notwithstanding the provisions of Articles 5 and 6 if, on the signature of a credit agreement no URVIS marker is attached to an item of railway rolling stock, the keeper shall (a) use all reasonable efforts to affix the URVIS marker in accordance with Article 5 at the earliest possible opportunity, but in any event no later than the end of the transition period; and (b) immediately affix the URVIS marker in accordance with Article 5 if the running number on the item changes.

7A.2 Where there is no credit agreement entered into with respect to an item, Article 7A.1 applies in the case of a unilateral interest save that the transition period shall commence on the day the keeper is notified in writing by the holder of such interest.

7A.3 In exceptional cases where an item of railway rolling stock is physically inaccessible for the keeper and the debtor, a holder of a registrable interest may agree to extend the transition period to up to 3 years from the date of signature of the credit agreement or the date the debtor is notified of the unilateral interest, as appropriate, and if both apply, whichever is the earlier, provided that this derogation may only apply as between the holder and the debtor and shall not affect the rights of any other holder of a registrable interest.

7A.4 These transition rules only apply to qualifying rolling stock.