THE 2001 CAPE TOWN CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

RAIL WORKING GROUP

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PRESS RELEASE

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The Rail Working Group (RWG) and the International Institute for the Unification of Private Law (UNIDROIT) have today filed a detailed submission to the annual consultation between OECD Civil Society Organisations Export Credit Agencies (ECAs), in which they present strong arguments in favour of ECAs reducing financing costs when the Luxembourg Rail Protocol applies to the debtor. Implementing this change will help developing countries to build back greener by investing in railways, and at the same time open up new markets for rolling stock manufacturers in OECD states. With Spain due to sign the Protocol on 3rd November, the Protocol is expected to enter into force in contracting states in the near future.

The submission highlights the current problem with the application of country risk classifications under the current Rail Sector Understanding that applies to export credit agencies in OECD states. The classification determines the lowest financing rate that can be supported by ECAs, but this system does not recognise the additional security given to creditors that provide secured finance when they are protected by an international treaty. UNIDROIT and the RWG argue that this conflates state credit risk with the "rule of law" risk: the risk that creditor claims will be enforced through local courts. The adoption of the Luxembourg Rail Protocol to the Cape Town Convention in the state where the debtor is located introduces at least nine different factors that will significantly reduce creditor risk. This is already recognised by ECAs in relation to aircraft under the OECD Aircraft Sector Understanding when the parallel Aircraft Protocol to the Cape Town Convention applies.

The effect of this is that at a time when many developing states wish to rebuild their economies post-pandemic in a more environmentally sustainable way by investing in the railways, they are constrained from doing so because the cost of credit is too high due to their poor credit rating. The Luxembourg Rail Protocol should be taken into account in future by ECAs, as it will allow them to offer more competitive rates despite low credit ratings. This will in turn open up new business opportunities for manufacturers and suppliers of railway rolling stock.

"At a time when states urgently need more external public and private investment in the railways for good economic, social and environmental reasons, export credit agencies must be sensitive when setting financing rates to the additional benefits that accrue to creditors when the Luxembourg Rail Protocol is in force," said RWG Chairman, Howard Rosen.

"Just like when the Aircraft Protocol to the Cape Town Convention applies, a creditor financing railway equipment through leasing or other types of secured financing clearly has a significantly enhanced credit position regardless of the credit rating of the state in which the debtor is located," commented Anne Mazière, RWG Management Committee member and COO of the Aviation and Rail Structured finance team at Crédit Agricole CIB, one of the largest private rolling stock funders in Europe. "We therefore ask ECAs to take into account the new protections offered by the Luxembourg Rail Protocol when setting their finance rates," she added.

NOTES FOR EDITORS

The detailed submission by the RWG and UNIDROIT may be found here

The Luxembourg Rail Protocol to the Cape Town Convention on International Interests in Mobile Equipment is a new global treaty under the auspices of UNIDROIT, the International Institute for the Unification of Private Law. The Protocol will make it much easier and cheaper for the private sector to finance railway rolling stock. It sets up a new system for recognition, priorities and enforcement of creditor and lessor rights, which will be registered in an international registry based in Luxembourg, accessible to everyone over the internet 24/7. The Protocol is expected to enter into force in contracting states in 2022. The European Union (in respect of its competences). Luxembourg, Sweden and Gabon have ratified the Protocol. France, Germany, Switzerland, Mozambique, Italy and the UK have already signed the Protocol; Spain will be signing on 3 November 2021, and all are proceeding to ratification. Kenya, Malta, Ethiopia, Finland, Ukraine, Mauritius and South Africa are working actively on adoption of the Protocol.

The International Institute for the Unification of Private Law (UNIDROIT) is an independent intergovernmental organisation with its seat in Rome, Italy. Its purpose is to study needs and methods for modernising, harmonising and co-ordinating private and in particular commercial law between states and groups of states, and to formulate uniform law instruments, principles and rules to achieve these objectives. Set up in 1926 as an auxiliary organ of the League of Nations, the Institute has 63 member states that cover over 73% of the world's population and over 90% of global nominal GDP, representing a variety of different legal, economic and political systems as well as diverse cultural backgrounds.

The Rail Working Group www.railworkinggroup.org is a Swiss-based not-for-profit association focused on the adoption and implementation of the Luxembourg Rail Protocol. It has about 80 direct members and hundreds of additional rail stakeholders represented indirectly by various industry organisations that belong to, and support, the objectives of the RWG..

For more on the Luxembourg Rail Protocol and the Rail Working Group see www.railworkinggroup.org. For more on UNIDROIT see www.unidroit.org.

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