THE 2001 CAPE TOWN CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

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Response of the Rail Working Group to the UK House of Commons Transport Select Committee Consultation on the Draft Rail Reform Bill

27th March 2024

Submission by the Rail Working Group

The Rail Working Group (RWG) is a non-political industry association, established at the request of UNIDROIT (the International Institute for the Unification of Private Law) an intergovernmental organisation based in Rome. The United Kingdom is an active member of UNIDROIT and a number of the members of the RWG are based in the United Kingdom.

The RWG represents stakeholders in the rail and rail finance sector or those with a particular focus on the adoption and implementation of the Luxembourg Rail Protocol to the Cape Town Convention on International Interests in Mobile Equipment (the "Luxembourg Protocol"). The United Kingdom has already adopted the Cape Town Convention and the aircraft protocol thereto. As a specific special interest body, our response in respect of this Call for Evidence has been limited to our views on the inclusion of references to the Luxembourg Rail Protocol in the draft Rail Reform Bill.

Our response is based on extensive knowledge and expertise relating to the Luxembourg Protocol, our detailed work on the drafting of the Luxembourg Protocol and our involvement over the 17 years since the Luxembourg Protocol was signed at the Diplomatic Conference in Luxembourg in February 2007. The RWG had official observer status at the Diplomatic Conference and its members have also been actively involved in the drafting of the regulations and procedures applying to the international registry created under the Luxembourg Protocol as well as the UN Model Rules on permanent identification of railway rolling stock (the "UN Model Rules").

We are at your disposal if there are any points in our answers to the below questions that you may wish to develop.

Questions related to the Luxembourg Rail Protocol

Question 11

What will be the effect of the implementation in UK law of the Luxembourg Rail Protocol? Is the range of powers granted to the Secretary of State in clause 15 necessary to achieve the aims of the Protocol?

We welcome the inclusion of the Luxembourg Protocol, which entered into force in contracting states on 8 March 2024, into the draft Bill. By establishing a clear global framework for recognising and protecting the rights and interests of secured lenders and lessors financing railway rolling stock, establishing a public international registry at which those rights are registered and a new global unique vehicle identification system (URVIS) for all railway rolling stock, this will reduce creditors' risks, costs of funds and transaction costs, leading to the realisation of cost savings for new and used rolling stock financing in the UK rail market, noting that the Luxembourg Protocol applies to all vehicles which travel on rails or above, on or below a guideway.

Specifically, the rail industry expects that, with the introduction next year of the more stringent "Basel IV" rules on banking capital requirements issued by the Basel Committee on Banking Supervision, the Luxembourg Protocol will reduce the amount of capital banks will be required to allocate to railway rolling stock financings, and therefore reduce banks' equity costs of extending credit for such railway rolling stock.

In its study published in 2020, independent economists Oxera estimated that the Luxembourg Protocol would lead to an average saving of 0.34% in the financing rate for railway rolling stock for UK operators, translating to a potential micro-economic benefit of £5.166 billion in the UK over a 30 year period. Further, there will be macro-economic benefits arising from making the transportation by rail of people and goods more competitive as compared to other, less environmentally friendly, forms of transport, in turn supporting United Kingdom's objective of achieving "net zero" in the coming decades.

In addition to savings for operators, it will promote a common approach in the various UK legal systems with respect to granting security over railway rolling stock. This has the potential to encourage new investors to enter the UK rolling stock market as there will be a clear understanding of the creditor's rights, the reduced risks associated with secured financing of railway rolling stock and the enforcement of relevant security in the UK.

The voluntary nature of the Luxembourg Protocol means that parties can chose whether to take the benefits of the Protocol on a cost-benefit analysis basis. This should allow the market to drive down the cost of finance for all parties without creating a real cost increase for any party where the creditor chooses to obtain its rights under the Luxembourg Protocol.

The introduction of the URVIS global unique numbering system pursuant to the Luxembourg Protocol together with the application of the UN Model Rules will also offer a new mechanism for the UK rail community to create a common unique identification system applicable to all types of rolling stock, from conventional locomotives and freight and passenger wagons to trams, light rail train sets, metro trains and beyond.

A further benefit of the Luxembourg Protocol are the advantages it will provide in relation to overseas rolling stock projects receiving credit from UK-based manufacturers, lessors, lenders and investors, particularly as more countries accede to the terms of the Luxembourg Protocol. Noting that the applicability of the Luxembourg Protocol is dependent on the domicile of the *debtor*, not the location of the railway rolling stock, lenders, lessors and manufacturers based in the United Kingdom financing rolling stock operating *outside* the UK will then be able to source cheaper secured credit from creditors in the UK capital markets since these creditors will have the benefit of the creditor rights under the Luxembourg Protocol. In particular, this will be an important way to support the UK exports of railway rolling stock, particularly where the manufacturer, to be competitive against other suppliers outside of the UK, such as those based in China, need to offer finance package to customers. It will also bolster the UK's position as a leading global provider of rail finance.

We consider that the range of powers proposed are necessary to enable the implementation of the Luxembourg Protocol in the UK. However, it will be important that any statutory instrument fulfilling the requirements of clause 15 should ensure that it contains the ability for the Secretary of State to make all relevant declarations which are permitted to be made under both the Cape Town Convention and Luxembourg Rail Protocol and which the Secretary of State considers to be beneficial in terms of reducing creditor risk and costs and then to implement such declarations into national law. In particular, since the UK, post-Brexit, has recovered full autonomy on insolvency matters, adoption of the Luxembourg Protocol may include the election of alternative A under article IX of the Luxembourg Protocol and its implementation into domestic law.

Question 12

Are the delegated powers envisaged by the draft Bill necessary and sufficient to meet its aims?

Please see our response to question 11. We consider that with respect to the Luxembourg Protocol the delegated powers are sufficient to allow the Secretary of State to make such provisions in domestic law as may be needed to implement the Luxembourg Protocol and the accompanying declarations in the most cost-effective way whilst reflecting any operational concerns of the rail sector.

Question 14

Are there further provisions within the draft Bill that the Committee should focus its scrutiny on?

We only make comments by reference to the implementation of the Luxembourg Protocol.

Rail Working Group
27 March 2024

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