Rolling stock: how does regulation influence asset renewal and investment in rolling stock?

Giulia Mauri
Partner, Verhaegen Walravens, Brussels, Belgium
Brussels Representative, Rail Working Group
Introduction
The Regulatory Framework

• Post WWII most railways in Europe publicly owned

• Regulation historically national and between the state railways (UIC and the RIV and RIC rules for operation of freight and passenger rolling stock

• Rail seen by EU as a key European strategic area resulting in the landmark Directive 440/91, four “railway packages” and detailed EU wide rules on interoperability
Introduction
The Regulatory Framework

• Little focus in the past on finance

• Eurofima established in 1956 as multinational funding agency for state railways, by private contract, which otherwise were funded by cash flow, state loans or grants

• Pre 1996 little private finance for rolling stock in Europe (mainly for freight wagons)
Introduction
The Regulatory Framework

• UK rail privatisation in 1996 leading to establishment of leasing models for passenger rolling stock

• Gradually as other franchise and private operator models emerge, attention needs to be paid to international legal and regulatory framework for finance of rolling stock – but essentially there is none... until now
The Luxembourg Protocol
What is it?

- Protocol to the 2001 Cape Town Convention on international interests in mobile equipment
- Specific to railway rolling stock
- Signed in Luxembourg in 2007
- Not yet in force but EU and some EU member state ratifications pending
The Luxembourg Protocol
What does it do?

- Provides a global system for recognition and registration of security interests in rolling stock, thereby:
  - Reducing risks and costs of financing rolling stock
  - Resolving cross border security and conflict of laws issues
  - Facilitating operating and finance leasing and other private sector finance
The Luxembourg Protocol

How it works

• Protecting creditor (and debtor/lessee) rights

• Application of the Protocol
  – All rolling stock
  – Applies to security under leases, loans and conditional sales
  – By reference to debtor/lessee location
The Luxembourg Protocol
Special considerations

• Unique identification of rolling stock – for the first time
• Insolvency – balancing the interests of the creditors and debtors
• Public Service Issues
The Luxembourg Protocol
Conclusions

• The Protocol provides a new pragmatic global regulatory framework which will facilitate more and cheaper private sector investment in the railways

• It will lower barriers to entry to private operators

• In turn stimulating a more competitive and dynamic industry
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