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Subject: Recommendation for a Council Decision to authorise the Commission to open negotiations for the adoption of a Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock, under the joint auspices of UNIDROIT and the Intergovernmental Organisation for International Carriage by Rail (OTIF)

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

RESTREINT UE



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 4 February 2003

5256/03

RESTREINT UE

**JUSTCIV 4
TRANS 6
OC 16**

"I/A" ITEM NOTE

from :	General Secretariat of the Council
to :	Coreper/Council
No. prev. doc.:	5025/03 JUSTCIV 1 TRANS 1 (RESTREINT UE)
No. Cion prop. :	9363/02 JUSTCIV 81 TRANS 156 (RESTREINT UE)
Subject :	Recommendation for a Council Decision to authorise the Commission to open negotiations for the adoption of a Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock, under the joint auspices of UNIDROIT and the Intergovernmental Organisation for International Carriage by Rail (OTIF)

1. On 31 May 2002, the Commission submitted to the Council a draft mandate for negotiations for the adoption of a Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock, under the joint auspices of UNIDROIT and the Intergovernmental Organisation for International Carriage by Rail (OTIF).
2. At its meeting on 30 September 2002, the Committee on Civil Law Matters (General Questions) had an exchange of views on this draft mandate and postponed examining it since the text of the draft Protocol was going to be modified ¹.

¹ After its meeting on 24 and 25 October 2002, the drafting Committee revised the text of the Protocol and made a number of changes to the previous version.

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3. At its meeting on 24 January 2003, the Committee on Civil Law Matters reached an agreement in principle on the draft Recommendation on the basis of a text submitted by the Presidency (5025/03 JUSTCIV 1 TRANS 1 RESTREINT UE). The Swedish and the Finnish delegations entered a scrutiny reservation on paragraph 3 (c) and (e) of the draft negotiating Directives. Since then, these delegations were able to lift their scrutiny reservations.
4. The United Kingdom and Ireland will take part in the adoption and application of the Decision.
5. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark will not take part in the adoption of the Decision, and will not be bound by it or subject to its application.
6. In this context, Coreper/Council is invited to
 - (a) authorise the Commission, on matters falling within the exclusive competence of the Community, to open negotiations for the adoption of a Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock, under the joint auspices of UNIDROIT and the Intergovernmental Organisation for International Carriage by Rail (OTIF);
 - (b) appoint a Special Committee to assist the Commission during the negotiations;
 - (c) adopt the negotiating directives set out in the Annex.
7. The Commission shall report to the Council on the outcome of the negotiations.

NEGOTIATING DIRECTIVES

on a future Protocol to the Convention on International Interest in Mobile Equipment on Matters specific to Railway Rolling Stock, under the joint auspices of UNIDROIT and the Intergovernmental Organisation for International Carriage by Rail (OTF).

1. The Commission shall work for an agreement to be reached in order to establish a future Protocol to the Convention on International Interest in Mobile Equipment on Matters specific to Railway Rolling Stock, under the joint auspices of UNIDROIT and the Intergovernmental Organisation for International Carriage by Rail (OTF), hereinafter referred as the "Railway Protocol".
2. The Commission shall ensure that the Community interests are safeguarded in the Railway Protocol.
3. In particular, the Commission
 - (a) shall ensure that the regime of the Railway Protocol is compatible with the principles of Community legislation on insolvency proceedings, as laid down in Regulation (EC) No 1346/2000 of 29 May 2000.
 - (b) shall ensure that Article VIII (6) of the Railway Protocol is applicable to Community instruments, and in particular Regulation (EC) No 1346/2000.
 - (c) shall ensure that the Railway Protocol is compatible with Regulation (EC) No 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters.

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- (d) shall ensure that Article XXXI of the Aircraft Protocol¹, or a provision with the same or similar content, relating to declarations to be made by contracting parties, is included in the Railway Protocol.
- (e) shall ensure that the last paragraph of Article XVIII of the Railway Protocol is deleted.
- (f) shall ensure that the Railway Protocol contains an accession clause allowing regional economic integration organisations, and in particular the European Community, to accede, which would allow the Community to become a party to the Railway Protocol for matters falling within its exclusive competence, and the Member States concerned to sign, ratify or accede as regards those parts falling within their competence.

4. The Commission shall report to the Council on any problem that may rise during the negotiations.

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¹ Aircraft Protocol to the Mobile Equipment Convention drawn up at Cape Town on 16 November 2001.