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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the 12th session of the Preparatory Commission for the establishment of the International Registry for Railway Rolling Stock and at the 1st session of the Supervisory Authority established pursuant to Article XII of the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the position to be taken on the Union's behalf at the first session of the Supervisory Authority established pursuant to Article 17 of the Convention on International Interests in Mobile Equipment ('the Cape Town Convention') and Article XII of the Protocol to the Cape Town Convention on Matters specific to Railway Rolling Stock, adopted in Luxembourg on 23 February 2007 ('the Luxembourg Protocol'), in connection with the envisaged adoption of:

- The Statutes and Rules of Procedures of the Supervisory Authority;
- The Agreement between the Supervisory Authority of the Luxembourg Protocol and the Intergovernmental Organisation for International Carriage by Rail (OTIF) regarding the functions of the Secretariat;
- The Regulations and Procedures of the International Registry for Railway Rolling Stock (Article 17(2)(d-e) of the Cape Town Convention);
- The Model Rules on Permanent Identification of Railway Rolling Stock developed in the framework of the Inland Transport Committee of the United Nation Economic Commission for Europe (UNECE).

The 1st session of the Supervisory Authority of the Luxembourg Protocol is scheduled to take place on 8 March 2024 in Bern, Switzerland.

This proposal is also relevant to the position to be taken on the Union's behalf at the 12th session of the Preparatory Commission for the Establishment of the International Registry for Railway Rolling Stock (Provisional Supervisory Authority), which will meet for its last session on 7 March 2024, back-to-back with the 1st session of the Supervisory Authority.

2. CONTEXT OF THE PROPOSAL

2.1. The Luxembourg Protocol to the Cape Town Convention

Background

The Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Rail Rolling Stock ('the Luxembourg Protocol') was adopted by a diplomatic Conference, held in Luxembourg on 23 February 2007, under the auspices of the International Institute for the Unification of Private Law (UNIDROIT) and of the Intergovernmental Organisation for International Carriage by Rail (OTIF).

The Luxembourg Protocol establishes a worldwide legal framework for the recognition, priorities and enforcement of creditor and lessor rights, which will be registered in an international registry, pursuant to Article 16 of the Cape Town Convention.

Importantly, Article XIV of the Luxembourg Protocol provides for the establishment of a system for the allocation of identification numbers by the Registrar which enable the unique identification of items of railway rolling stock.

The Protocol also creates a common system for repossession of the asset on default or insolvency of the debtor, subject to public interest safeguards. This is helpful in respect of mobile equipment which crosses borders, avoiding present legal uncertainties when one law under which the asset was financed is challenged in the courts of another jurisdiction, where the asset is located. By reducing risks for rail equipment financiers, the Luxembourg Protocol

should attract more private lenders, resulting in cheaper finance, and creating choices for operators in relation to costs and types of financing.

It should also encourage capital investment, which in turn fosters rolling stock production and facilitates leasing of new, modern rolling stock. In its conclusions of 3 June 2021¹, the Council of the European Union recognised “that major investment by the sector in international long-distance rolling stock is required” and that “investment is urgently needed from the private sector”, reminding “Member States of the existence of international agreements and treaties which facilitate private investment, such as the Luxembourg Rail Protocol to the Cape Town Convention [on International Interests in Mobile Equipment]”.

Accession of the European Union

The European Union, in respect of its competences, approved the Luxembourg Protocol pursuant to Council Decision 2014/888/EU of 4 December 2014 on the approval, on behalf of the European Union, of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock, adopted in Luxembourg on 23 February 2007², with the status of Regional Economic Integration Organisation (pursuant to Article XXII of the Luxembourg Protocol).

The Annex to this Council Decision contains a Declaration concerning the competence of the European Union over matters governed by the Luxembourg Protocol, in respect of which the Member States have transferred their competence to the Union.

This refers to some areas relating to jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, insolvency proceedings and law applicable to contractual obligations, and to some areas of the rail transport acquis, in particular the interoperability of the rail system, the operation of the European Union Agency for Railways, the numbering system of railway rolling stock and vehicle registering within the EU, covered by the following Union legislation:

- Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community³, repealed and recast by Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union⁴;
- Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (Agency Regulation)⁵, repealed by Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways⁶;
- Commission Decision 2006/920/EC of 11 August 2006 concerning the technical specification of interoperability relating to the subsystem Traffic Operation and Management of the trans-European conventional rail system⁷, repealed by Commission Decision 2012/757/EU of 14 November 2012 concerning the technical specification for interoperability relating to the operation and traffic management subsystem of the rail system in the European Union and amending Decision

¹ Transport, Telecommunications and Energy Council (Transport), 3 June 2021: “Putting Rail at the Forefront of Smart and Sustainable Mobility” (ST 8790/21)

² OJ L 353, 10.12.2014, p. 9.

³ OJ L 191, 18.7.2008, p. 1.

⁴ OJ L 138, 26.5.2016, p. 44.

⁵ OJ L 164, 30.4.2004, p. 1.

⁶ OJ L 138, 26.5.2016, p. 1.

⁷ OJ L 359, 18.12.2006, p. 1.

2007/756/EC⁸, amended by Commission Implementing Regulation (EU) 2023/1693 of 10 August 2023 on the technical specification for interoperability relating to the operation and traffic management subsystem of the rail system within the European Union⁹;

- Commission Decision 2007/756/EC of 9 November 2007 adopting a common specification of the national vehicle register provided for under Articles 14(4) and (5) of Directives 96/48/EC and 2001/16/EC¹⁰, repealed by Commission Implementing Decision (EU) 2018/1614 of 25 October 2018 laying down specifications for the vehicle registers referred to in Article 47 of Directive (EU) 2016/797 of the European Parliament and of the Council and amending and repealing Commission Decision 2007/756/EC¹¹.

Status of ratification in the EU and conditions for entry into force

To date, in addition to the European Union, Luxembourg, Sweden and Spain are the only EU Member States which are currently also parties to this agreement¹².

Following the ratification by Spain in January 2023, the first precondition for the entry into force of the Luxembourg Protocol, laid down in Article XXIII(1), was fulfilled. The second precondition is the deposit by the Secretariat of the Supervisory Authority with the Depositary of a certificate confirming that the International Registry is fully operational, which should occur in the 12th session of the Preparatory Commission, to be held on 7 March 2024. The first session of the Supervisory Authority is scheduled to take place on 8 March 2024.

2.2. The Supervisory Authority

Tasks and functions

The Supervisory Authority is established pursuant to Article 17 of the Cape Town Convention and to Article XII of the Luxembourg Protocol. Its tasks and functions, as derived from the provisions of the Luxembourg Protocol and of Article 17(2) of the Cape Town Convention, are listed in Article 5 of the draft Statutes, and should consist essentially of two groups:

Administrative tasks: appoint the Registrar, negotiate and amend from time to time agreements with the Registrar, and ensure continued operation of the International Registry in the event of a change of Registrar; sign with the Secretariat any agreement setting out the detailed conditions for performing the tasks of the Secretariat, and negotiate and amend from time to time such agreement; report periodically to the Contracting States concerning the discharge of its obligations under the Cape Town Convention and the Luxembourg Protocol; and report periodically to and assist UNIDROIT in preparing reports as to the manner in which the international regime established in the Convention has operated in practice.

Operational tasks: establish, review and from time to time amend the Regulations for the International Registry; supervise the Registrar and the operation of the International Registry; at the request of the Registrar, provide guidance to the Registrar; do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of the Cape Town Convention and the Luxembourg Protocol.

Secretariat

⁸ OJ L 345, 15.12.2012, p. 1.

⁹ OJ L 222, 8.9.2023, p. 1–87

¹⁰ OJ L 305, 23.11.2007, p. 30.

¹¹ OJ L 268, 26.10.2018, p. 53.

¹² Status of ratifications on 5 December 2023.

In OTIF's 7th (Berne, 23/24 November 2005) and 12th (Berne, 29/30 September 2015) General Assemblies, this organisation decided to take over the tasks of the Secretariat of the Supervisory Authority, in accordance with Article XII(6) of the Luxembourg Protocol.

Composition

The membership of the Supervisory Authority is determined in accordance with Article XII(1) of the Luxembourg Protocol. Subparagraph (a) provides that each State Party shall be a member, with the possibility for each to appoint one representative. Subparagraphs (b) and (c) provide that a maximum of three other States shall be designated by UNIDROIT and by OTIF respectively, the terms of appointment of which expire no later than two years after the date when the Luxembourg Protocol enters into force.

To date, in addition to the four ratifying states (Gabon, Luxembourg, Spain and Sweden), OTIF has designated Algeria, Türkiye and the United Kingdom, and UNIDROIT has designated France and South Africa as members of the Supervisory Authority. A third state to be designated by UNIDROIT is yet to be confirmed.

2.3. The Preparatory Commission

Resolution No 1 of the Final Act of the Diplomatic Conference to adopt the Luxembourg Protocol (February 2007) relating to the establishment of the Supervisory Authority and International Registry for railway rolling stock resolved to set up, pending the entry into force of the Luxembourg Protocol, a Preparatory Commission to act with full authority as Provisional Supervisory Authority for the establishment of the International Registry, in consultation with UNIDROIT and OTIF. The main goal of the Preparatory Commission is to prepare the regulations and procedures for the International Registry and to prepare the establishment of the Supervisory Authority. The Preparatory Commission met eleventh times since it was constituted. At its 12th session planned on 7 March 2024, the Preparatory Commission will be expected to consider and approve the final draft of the acts to be adopted by the 1st session of the Supervisory Authority planned on 08 March 2024. Therefore, the present proposal for a Council decision is intended to establish the position to be taken on behalf of the EU at both meetings, concerning the same decisions regarding the adoption of the envisaged acts of the Supervisory Authority.

2.4. The envisaged acts of the Supervisory Authority

On 8 March 2024, during its first session, and among other agenda items, the Supervisory Authority is expected to adopt its Statutes and Rules of Procedure and the Agreement between the Supervisory Authority and OTIF regarding the functions of the Secretariat. These instruments, which will be binding under international law, concern the whole scope of the activities of the Supervisory Authority, including the areas for which the European Union is exclusively competent, and will directly affect the participation of the Union in that body¹³. Therefore, their approval will be capable of decisively influencing the content of Union legislation.

Further, the Supervisory Authority is also expected to adopt other acts pertaining to the setting up and functioning of the International Registry which are capable of decisively influencing the content of EU legislation, namely:

The Regulations and Procedures of the International Registry for Railway Rolling Stock

¹³ The Union has a right to participate in the works of the Supervisory authority pursuant to the combined reading of Articles XII and XXII of the Luxembourg Protocol and Council Decision 2014/888/EU. See also below under section 3.2.

The purpose of the envisaged acts is to organise and regulate the operations of the International Registry. They state how the International Registry is established as the facility for managing registrations of railway rolling stock under the Convention and the Protocol, and contain appropriate provisions to regulate the operation of such registry, mainly relating to the request and allocation of the Unique Rail Vehicle Identification System (URVIS) identifier, access control, information requirements, searches, and other requirements linked to the registrar, like complaints or liability and insurance. These Regulations and Procedures are to be issued by the Supervisory Authority pursuant to Article 17(2)(d-e) of the Cape Town Convention, and in accordance with Articles XIV, XV, XVI and XVII of the Luxembourg Protocol. This subject-matter – the registration of railway rolling stock and data exchange between EU Member States and the International Registry – is regulated at Union level by: (1) Commission Implementing Decision (EU) 2018/1614 laying down specifications for the vehicle registers referred to in Article 47 of Directive (EU) 2016/797 (on the interoperability of the rail system) and amending and repealing Commission Decision 2007/756/EC¹⁴, and (2) Commission Decision 2012/757/EU concerning the technical specification for interoperability relating to the ‘operation and traffic management’ subsystem of the rail system in the European Union and amending Decision 2007/756/EC¹⁵. Commission Implementing Decision (EU) 2018/1614 lays down common specifications for the national vehicle registers of the Member States, as well as specifications for the European Vehicle Register (EVR) managed at central level by the European Union Agency for Railways ‘ERA’. This decision also provides for the creation of a European Vehicle Number (EVN), which is mandatory. The format of the EVN is prescribed in Appendix 6 of Annex II of Commission Implementing Decision (EU) 2018/1614: “This Appendix describes the European vehicle number and linked marking applied in a visible manner on the vehicle to identify it uniquely and in a permanent manner during operation.” Further, Commission Decision 2012/757/EU also refers to the EVN as one of the operational requirements of the ‘operation and traffic management’ subsystem of the European railway system (section 4.2.2.3 of its Annex I: “Each vehicle must have a European Vehicle number to uniquely identify it from any other rail vehicle.”) Therefore, the approval of the Regulations and Procedures of the International Registry set up under the Luxembourg Protocol will be binding under international law and will be capable of decisively influencing the content of EU legislation.

Model Rules on Permanent Identification of Railway Rolling Stock

These rules lay down the methods and responsibilities for affixing the Unique Rail Vehicle Identification System (URVIS) identifier to railway rolling stock as envisaged by the Luxembourg Protocol. These rules are voluntary except where specific laws require so; in any case, a party must confirm compliance with these rules if it wishes to register, or be the beneficiary of, any registrable interest introduced in the International Registry of the Luxembourg Protocol. A party wishing to be bound by these Rules will be required to make a declaration¹⁶, and notify the Registrar thereof. In the meaning of the Model Rules, a “party” means any individual, firm, company, corporation, government, State or agency of a State or an agency of a collection of States, or any association, trust, joint venture, consortium or partnership or proprietorship or other entity (whether or not having separate legal personality). This subject-matter – the marking of railway rolling stocks – is regulated at Union level by the abovementioned Commission Decision 2012/757/EU, in particular in Appendix P of its

¹⁴ OJ L 268, 26.10.2018, p. 53–91

¹⁵ OJ L 345, 15.12.2012, p. 1–76, as last amended in June 2020 (OJ L 188, 15.6.2020, p. 16–17)

¹⁶ “We hereby undertake to be bound by the Model Rules on the Permanent Identification of Railway Rolling Stock (English edition) as amended from time to time, issued under the auspices of the Working Party on Rail Transport, as at the date of this declaration”.

Annex I (European Vehicle Number and linked alphabetical marking on the bodywork; section 2 ‘General Arrangements for External Markings’). Therefore, the approval of these Model Rules will be binding under international law and will be capable of decisively influencing the content of EU legislation.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

3.1. Adoption of the Statutes of the Supervisory Authority

The draft Statutes of the Supervisory Authority defines aspects such as its legal personality, tasks and administrative framework, as required by the Cape Town Convention and by the Luxembourg Protocol. The adoption of the Statutes is a prerequisite for the setting up and operation of the Supervisory Authority. Therefore, it is proposed to support their adoption, subject to a minor amendment to Article 2 (Composition) to clarify the cross reference to the relevant provisions of the Luxembourg Protocol (Article XII (1) (a), (b) and (c)).

3.2. Adoption of the Rules of Procedure of the Supervisory Authority

The draft Rules of Procedure of the Supervisory Authority define aspects such as meeting rules, representation rules, proposals and decisions and voting procedures. Their adoption is required under Article XII(4) of the Luxembourg Protocol.

Article XXII of the Luxembourg Protocol stipulates in paragraph 1 that: “A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol (...)”. Paragraph 3 of the same article provides that: “Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires”.

The EU has acceded to the Luxembourg Protocol. It follows pursuant to Article XXII(3) of the Luxembourg Protocol that the EU, as a Regional Economic Integration Organisation (‘REIO’), is to be considered as a State Party under Article XII(1) of the Luxembourg Protocol, and therefore is to be considered a fully-fledged member of the Supervisory Authority with the same status, rights and obligations as any other State Party to the Luxembourg Protocol.

Having this in mind, the current provisions of the draft Rules of Procedure do not seem fully in line with the abovementioned provisions of the Luxembourg Protocol:

In Article 1 (Definitions), the draft Rules of Procedure provide that “Members” means “representatives of the State Parties and Designated States who collectively constitute the membership of the Supervisory Authority;” it also provides for a separate definition of “Regional Organization”, which means a “Regional Economic Integration Organization as defined in Article XXII of the Protocol and which has ratified or acceded both to the Convention and the Protocol in respect of its competences”. Taking into account the current wording of Articles 4 and 16, this distinction could suggest that the EU (as a REIO) would not be a fully-fledged member of the Supervisory Authority, contrary to the provisions of the Luxembourg Protocol (Article XII and Article XXII);

In Article 4 (Representation of Members), the draft Rules of Procedure indicate in paragraph 1 that each State Party and Designated State shall be represented and shall vote at

meetings of the Supervisory Authority; paragraph 2 states that: “A Member may arrange to be represented at a meeting of the Supervisory Authority by another Member. However, no Member may represent more than one other Member at a meeting of the Supervisory Authority”; paragraph 3 lays down that a REIO shall (just) have the right to be represented; this could again suggest that the EU would not be considered a member on its own right, as its right to vote is not expressly provided for like other State parties.

In Article 16 (Voting procedures), the draft Rules of Procedure only refer to “Members”, which, according to Article 1, do not expressly include the EU as a REIO. Also, it does not contain any rules on the exercise of voting rights by REIO.

Apart from the clarifications that need to be introduced in the draft Rules of Procedures to ensure the representation of the EU as a fully-fledged member of the Supervisory Authority, the question of the exercise of the EU’s voting rights should be considered in the light of the rules applicable under OTIF, which is a co-sponsor with UNDROIT of the Luxembourg Protocol, and which provides the secretariat function of the Supervisory Authority.

Article 38 of the Convention concerning International Carriage by Rail (COTIF) states that:

“§2 The regional organisation may exercise the rights enjoyed by its members by virtue of the Convention to the extent that they cover matters for which it is competent. This applies also to the obligations imposed on the Member States pursuant to the Convention (...).”; and

“§3 For the purposes of the exercise of the right to vote (...), the regional organisation shall enjoy the number of votes equal to those of its members which are also Member States of the Organisation. The latter may only exercise their rights, in particular their right to vote, to the extent allowed by § 2”,

In application of the above-mentioned COTIF provisions, Article 6 of the Agreement between the European Union and OTIF on the Accession of the European Union to COTIF of 9 May 1980¹⁷ states:

“1. For decisions in matters where the Union has exclusive competence, the Union shall exercise the voting rights of its Member States under the Convention.

2. For decisions in matters where the Union shares competence with its Member States, either the Union or its Member States shall vote.

3. Subject to Article 26, paragraph 7, of the Convention, the Union shall have a number of votes equal to that of its Member States who are also Parties to the Convention. When the Union votes, its Member States shall not vote”.

Council Decision 2014/888/EU of 4 December 2014 on the approval, on behalf of the EU, of the Luxembourg Protocol contains in its Annex a declaration concerning the competence of the EU over matters governed by the Luxembourg Protocol, in respect of which the Member States have *transferred* their competence to the Union. Recitals 2, 3 and 7 of the said Council Decision clarify that the Union has exclusive competence in those areas.

It is therefore relevant and appropriate that, for decisions of the Supervisory Authority falling under the scope of the Union’s exclusive competence, the exercise of voting rights follows the same procedure as the one applicable in COTIF as far as REIO are concerned, i.e. that the EU exercises the rights to vote of its Member States on matters of competence of the Union

¹⁷ OJ L 51, 23.2.2013, p. 8.

(substitution), by casting as many votes as the Member States are entitled to, where necessary in accordance with a pre-established Union position.

Another example of such an approach may be found in Article 3(8) of the Statute of the Hague Conference on Private International Law¹⁸.

It is therefore proposed to approve the draft Rules of Procedures of the Supervisory Authority subject to the introduction of amendments reflecting the status of the European Union as a fully-fledged member of the Supervisory Authority, in line with the relevant provisions of the Luxembourg Protocol, in order to ensure that its rights to be represented and its rights to vote are effectively ensured.

3.3. Agreement between the Supervisory Authority of the Luxembourg Protocol and the Intergovernmental Organisation for International Carriage by Rail (OTIF) regarding the functions of the Secretariat

In accordance with Article XII (6) of the Luxembourg Protocol, it is for OTIF to take on the role of the Secretariat of the Supervisory Authority once the Protocol enters into force and host the meetings of the Supervisory Authority in Bern, Switzerland.

The envisaged agreement between the Supervisory Authority and OTIF sets out the detailed conditions for performing the tasks of the Secretariat of the Supervisory Authority. This includes, *inter alia*, carrying out any customary work associated with such meetings, including the issuance of notices of meetings, agendas, the preparation and dissemination of documents for, and resulting from, such meetings, and to serve as the point of contact, vis-à-vis third parties, for the Supervisory Authority. According to the Agreement, OTIF should have the right to be represented at meetings of the Supervisory Authority, with no right to vote, and be financially compensated for performing the tasks of the Secretariat of the Supervisory Authority.

The adoption of this agreement is necessary for ensuring the good organisation and administration of the works of the Supervisory Authority. It is therefore proposed to support its adoption by the Supervisory Authority.

3.4. Adoption of the Regulations and Procedures of the International Registry for Railway Rolling Stock

The Regulations and Procedures of the International Registry for railway rolling stock are to be issued by the Supervisory Authority, pursuant to Article 17(2)(d-e) of the Cape Town Convention, and in accordance with Articles XIV, XV, XVI and XVII of the Luxembourg Protocol. They provide the legal framework for the management of the International Registry.

On the relationship between the URVIS identifier and the European Vehicle Number regulated at EU level by Commission Implementing Decision (EU) 2018/1614, point 5.3.1 of these Regulations provides for the possibility of using a *national or regional identification number* with similar characteristics to the URVIS identifier and marking rules which correspond to, at least, the minimum standards set out in the Model Rules. Although the registration systems under EU law and under the Luxembourg Protocol deal with the same topical issue of railway rolling stock identification and registration, they have different aims and purposes, namely operational (technical) for the former and financial for the latter. As a result, the two systems may co-exist, and, depending on the evolution of this International Registry and its use, and on the evolution of the European Vehicle Register currently regulated by Commission Implementing Decision (EU) 2018/1614, the European Union should be able to pursue an enduring between both registers and identification systems.

¹⁸ <https://assets.hcch.net/docs/d7d051ae-6dd1-4881-a3b5-f7dbcaad02ea.pdf>

As the adoption of the Regulations and Procedures of the International Registry for Railway Rolling Stock are necessary for ensuring the operation of the International Registry, and as those provisions are compatible with the relevant EU's legal framework, it is proposed to support their adoption by the Supervisory Authority.

3.5. Adoption of the Model Rules on Permanent Identification of Railway Rolling Stock

As stated in point 4.5 of the Model Rules, the URVIS identifier and its marking on railway rolling stock are additional to, and do not affect, the existing numbering systems applied in accordance with applicable legislation on admission or operation of railway rolling stock and do not replace the existing registry or information systems used in States or groups of States for the operation of railway rolling stock, such as, for the European Union, the EVR and EVN regulated by Commission Implementing Decision (EU) 2018/1614.

For the EU, the consequence of the Model Rules will be the coexistence of both identifiers and markings affixed on rolling stock. It is to be noted that these are not the only markings on a vehicle, which includes other operational markings, e.g., from the manufacturer.

In order to achieve its goal, the Luxembourg Protocol needs to rely on a clear identification and marking system based on international standards. These Model Rules provide for a reasonable approach that do not conflict with the relevant legal framework of the European Union. It is therefore proposed to support their adoption by the Supervisory Authority.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’*

The concept of *‘acts having legal effects’* includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are *‘capable of decisively influencing the content of the legislation adopted by the EU legislature’*¹⁹.

4.1.2. Application to the present case

The Supervisory Authority is a body set up by an agreement, namely the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (the Luxembourg Protocol), in accordance with its Article XII.

The acts which the Supervisory Authority is called upon to adopt constitutes an act having legal effects. As explicated in the preceding section, the envisaged acts will be binding under the rules of international law governing the body in question and will be capable of influencing the content of EU legislation, namely: Directive (EU) 2016/797, Commission Decision 2012/757/EU, and Commission Implementing Decision (EU) 2018/1614; and the very participation of the Union to the functioning of the Luxembourg Protocol, which is granted by Council Decision 2014/888/EU.

¹⁹ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

The envisaged acts do not supplement or amend the institutional framework of the agreement. Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

The main objective and content of the envisaged act relate to 'rail transport'. Therefore, the substantive legal basis of the proposed decision is Article 91 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 91 TFEU, in conjunction with Article 218(9) TFEU.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the 12th session of the Preparatory Commission for the establishment of the International Registry for Railway Rolling Stock and at the 1st session of the Supervisory Authority established pursuant to Article XII of the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Union, in respect of its competences, approved the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock ('the Cape Town Convention'), adopted in Luxembourg on 23 February 2007 ('the Luxembourg Protocol'), pursuant to Council Decision 2014/888/EU of 4 December 2014²⁰, and acquired the status of a Regional Economic Integration Organisation under that Protocol.
- (2) The Supervisory Authority of the Luxembourg Protocol, during its first session on 8 March 2024, and among other agenda items, is expected to adopt its Statutes and Rules of Procedure, the Agreement between the Supervisory Authority and the Intergovernmental Organisation for International Carriage by Rail (OTIF) regarding the functions of the Supervisory Authority's secretariat, and other acts pertaining to the setting up and functioning of the International Registry for Railway Rolling Stock (Article 17(2)(d) of the Cape Town Convention), in particular the Regulations of the International Registry for railway rolling stock and the Model Rules on Permanent Identification of Railway Rolling Stock developed in the framework of the Inland Transport Committee of the United Nation Economic Commission for Europe.
- (3) It is appropriate to establish the position to be taken on the Union's behalf in the first session of the Supervisory Authority, as the Union is a Contracting Party to the Luxembourg Protocol and the decisions to be taken by the Supervisory Authority may lead to the adoption of acts which are binding under international law and capable of decisively influencing the participation of the Union in that body and the content of EU legislation, namely: Directive (EU) 2016/797 of the European Parliament and of

²⁰ Council Decision 2014/888/EU of 4 December 2014 on the approval, on behalf of the European Union, of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock, adopted in Luxembourg on 23 February 2007 (OJ L 353, 10.12.2014, p. 9).

the Council of 11 May 2016 on the interoperability of the rail system within the European Union (recast)²¹, Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways²², Commission Decision 2012/757/EU of 14 November 2012 concerning the technical specification for interoperability relating to the operation and traffic management subsystem of the rail system in the European Union and amending Decision 2007/756/EC²³, and Commission Implementing Decision (EU) 2018/1614 of 25 October 2018 laying down specifications for the vehicle registers referred to in Article 47 of Directive (EU) 2016/797 of the European Parliament and of the Council and amending and repealing Commission Decision 2007/756/EC²⁴.

- (4) The Supervisory Authority is expected to adopt its draft Statutes, which define aspects such as its legal personality, tasks and administrative framework, as required by the Cape Town Convention and by the Luxembourg Protocol. The adoption of the Statutes is a prerequisite for the setting up and operation of the Supervisory Authority and should therefore be supported. A minor amendment should be proposed to the provision defining the composition of the Supervisory Authority to clarify the cross reference to the relevant provisions of the Luxembourg Protocol (Article XII (1)).
- (5) The Supervisory Authority is also expected to adopt its draft Rules of Procedure, which define aspects such as meeting rules, representation rules, proposals and decisions and voting procedures. The current draft Rules of Procedure are not however in line the provisions of the Luxembourg Protocol which recognise the status of Regional Economic Integration Organisations as equivalent to that of a State Party, as they introduce unjustified distinctions between, on the one hand, State Parties *per se*, entitled to be represented and to vote on decisions to be taken by the Supervisory Authority, and, on the other hand, Regional Economic Integration Organisations, which are not expressly referred to as members of the Supervisory Authority. It is therefore necessary to propose amendments to the Rules of Procedures to ensure that the European Union's membership and rights to vote in the Supervisory Authority are effectively provided for in accordance with the provisions of the Luxembourg Protocol, including rules on voting concerning matters falling under the scope of the Union's exclusive competence. The remaining provisions of the draft Rules of Procedure should however be supported.
- (6) In accordance with Article XII (6) of the Luxembourg Protocol, it is for OTIF to take on the role of the Secretariat of the Supervisory Authority once the Protocol enters into force. The envisaged agreement between the Supervisory Authority and OTIF sets out the detailed conditions for performing the tasks of the Secretariat of the Supervisory Authority. The adoption of this agreement is necessary for ensuring the good administration of the works of the Supervisory Authority and should therefore be supported.
- (7) Pursuant to Article 17 of the Cape Town Convention and Article XII of the Luxembourg Protocol, the Supervisory Authority shall provide for the establishment of the International Registry of Railway Rolling Stock. It shall also ensure that an efficient notice-based electronic system exists to implement the objectives of the Luxembourg Protocol, through the establishment, review and amendments, where

²¹ OJ L 138, 26.5.2016, p. 44.

²² OJ L 138, 26.5.2016, p. 1.

²³ OJ L 345, 15.12.2012, p. 1.

²⁴ OJ L 268, 26.10.2018, p. 53.

necessary, of regulations and procedures for the International Registry. These regulations and procedures are to be issued by the Supervisory Authority pursuant to Article 17(2)(d-e) of the Cape Town Convention and in accordance with Articles XIV, XV, XVI and XVII of the Luxembourg Protocol. They are needed to provide the legal framework for the operation of the International Registry, in particular with regard to the request and allocation of the Unique Rail Vehicle Identification System (URVIS) identifier. Within the EU, the registration and identification of railway rolling stock is also regulated through Directive (EU) 2016/797 and Commission Implementing Decision (EU) 2018/1614, which provide inter alia specifications for a European Vehicle Number (EVN) and for a European Vehicle Register (EVR). Although the systems under EU law and under the Luxembourg Protocol deal with the same topical issue of railway rolling stock identification and registration, they have different aims and purposes, namely operational (technical) for the former and financial for the latter. As a result, currently the legal provisions do not conflict with each other, and the two systems may co-exist. The Union should therefore be able to pursue an enduring complementarity between those registers and identification systems. As the adoption of these rules is necessary for ensuring the operation of the International Registry, and as those rules are compatible and consistent with the EU's legal framework, their adoption by the Supervisory Authority should be supported.

- (8) To achieve its goal, the Luxembourg Protocol needs to rely on a clear identification and marking system of railway rolling stock based on international standards. The envisaged Model Rules on Permanent Identification of Railway Rolling Stock provide a framework for the assignment of the URVIS identifier and its marking on railway rolling stock. According to those Model Rules, the URVIS identifier marking is additional to any other existing marking system such as the EU system set out in Commission Decision 2012/757/EU. These Model Rules do not conflict with the current relevant legal framework of the European Union. It is therefore proposed to support their adoption by the Supervisory Authority.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf at the twelve session of the Preparatory Commission and at the first session of the Supervisory Authority of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock adopted in Luxembourg on 23 February 2007 is set out in the Annex.

Minor changes to the positions expressed in the Annex of this Decision may be agreed by the representatives of the Union at the Committee without further decision of the Council.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*



EUROPEAN
COMMISSION

Brussels, 5.2.2024
COM(2024) 58 final

ANNEX

ANNEX

to the

Proposal for a COUNCIL DECISION

on the position to be taken on behalf of the European Union at the 12th session of the Preparatory Commission for the establishment of the International Registry for Railway Rolling Stock and at the 1st session of the Supervisory Authority established pursuant to Article XII of the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock

ANNEX

1. INTRODUCTION

The first session of the Supervisory Authority of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock adopted in Luxembourg on 23 February 2007 ('Luxembourg Protocol') will take place on 8 March 2024, back-to-back with the 12th and last session of the Preparatory Commission that will take place on 7 March 2024.

2. EU COMPETENCE

The European Union is a contracting party to the Luxembourg Protocol. In respect of this meeting's agenda items where the Supervisory Authority will be called upon to adopt acts having legal effects within the meaning of Article 218(9) TFEU – namely Agenda Items 3 (to the extent that it concerns the approval of the Statutes and Rules of Procedure of the Supervisory Authority), 4, 8 and 9, the European Union has exclusive competence.

3. COMMENTS ON AGENDA ITEMS OF THE 1ST SESSION OF THE SUPERVISORY AUTHORITY

Agenda Item 3 – Establishment of the Supervisory Authority (to be considered under Agenda Item 5 of the 12th session of the Preparatory Commission):

Approval of the Statutes of the Supervisory Authority

<i>Document(s):</i>	
<i>Exercise of voting rights:</i>	European Union
<i>Position:</i>	In favour of the approval and adoption of the draft Statutes, subject to the following amendment: <ul style="list-style-type: none">• In Article 2 (Composition): amend paragraph 2 to read: "Its membership is determined in accordance with Article XII (1) (a), (b) and (c) of the Protocol".

Establishment of the Rules of Procedure of the Supervisory Authority

<i>Document(s):</i>	
<i>Exercise of voting rights:</i>	European Union
<i>Position:</i>	In favour of the approval and adoption of the draft Rules of Procedures, subject to the following amendments: <ul style="list-style-type: none">• In Article 1 (Definitions): amend the definition of 'Qualified Majority' to read "for the first two years after entry into force of the Protocol, a simple majority of the votes of both (a) representatives of State Parties and (b) Members, and thereafter a two thirds majority of the votes of Members"; and amend the definition of 'State Party' to read "a State or a Regional Organization which has ratified or acceded both to the Convention and the Protocol";• In Article 4 (Representation of Members): amend paragraph 3 to read "By way of derogation to paragraph 1, the person nominated to represent a Regional Organization may

	exercise, in any meetings of the Supervisory Authority, a number of votes equal to the number of its Member States which are entitled to participate and vote in such meetings. Whenever a Regional Organization exercises its right to vote, its Member States shall not exercise theirs, and conversely.”
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Agenda Item 4 – Approval of the Agreement between the Supervisory Authority and OTIF concerning the functions of the Secretariat (to be considered under Agenda Item 5 of the 12th session of the Preparatory Commission)

<i>Document(s):</i>	
<i>Exercise of voting rights:</i>	European Union
<i>Position:</i>	In favour of the approval of the Agreement

Agenda Item 8 – Approval of the Regulations and Procedures for the International Registry for Railway Rolling Stock and their publication (to be considered under Agenda Item 6 of the 12th session of the Preparatory Commission)

<i>Document(s):</i>	
<i>Exercise of voting rights:</i>	European Union
<i>Position:</i>	In favour of the approval of the Regulations and Procedures, and their publication

Agenda Item 9 – Approval of the Model Rules as amended on 15 November 2023 for the purposes of the Regulations for the International Registry for Railway Rolling Stock

<i>Document(s):</i>	
<i>Exercise of voting rights:</i>	European Union
<i>Position:</i>	In favour of the adoption of the Model Rules on Permanent Identification of Railway Rolling Stock