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INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL
CARRIAGE BY RAIL

**PREPARATORY COMMISSION FOR THE ESTABLISHMENT
OF THE INTERNATIONAL REGISTRY FOR RAILWAY
ROLLING STOCK PURSUANT TO THE LUXEMBOURG
(RAIL) PROTOCOL**

UNIDROIT 2014
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**SUMMARY REPORT
OF THE SEVENTH SESSION
(Rome, 11 December 2014)**

1. The Seventh Session of the Preparatory Commission regarding the establishment of the International Registry for railway rolling stock according to the Luxembourg (Rail) Protocol took place at the headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome on 11 December 2014 (for the List of Participants, see Annex II to this report).

Point n° 1 on the agenda – Opening of the session and welcome by the UNIDROIT Secretary-General

2. The Secretary-General of UNIDROIT welcomed participants to the session and expressed hope that it would be the last in-person session, which would complete the necessary work prior to the operational phase of the International Registry. Before giving the floor to the co-chairs, he acknowledged the presence of the representative of Regulis SA, the entity that would perform the Registry function and together with whom the final Registry contract had been signed in November 2014. He also acknowledged the presence of the representative of the EU Commission and looked forward to working with the European Union, the Intergovernmental Organisation for International Carriage by Rail (OTIF), the Preparatory Commission, and the Ratification Task Force in promoting accession to and implementation of the Rail Protocol now that the European Council had given its authorisation to accede to the Rail Protocol.

3. The Co-Chairs of the Preparatory Commission also welcomed participants to the session and thanked the Secretary-General of OTIF for his attendance. The Co-Chairs then recalled that, during the maternity leave of Ms Mervi Kaikkonen, the session would be co-chaired by Ms Tuire Simonen, as representative of Finland. The Co-Chairs recognised that, due to the sufficient number of Preparatory Commission members present, there was a quorum for the session.

Point n° 2 on the agenda – Adoption of the agenda and organisation of the session

4. The Co-Chairs introduced the agenda (Prep. Comm. Rail/7/Doc.1, see Annex I to this report) and it was adopted without amendment.

Point n° 3 on the agenda – Presentation of the outcome of the email confirmation procedure pursuant to the Sixth Session of the Preparatory Commission (Prep. Comm. Rail/6/Doc. 7)

5. The Co-Chairs presented the outcome of the email confirmation procedure that was used, as permitted by Rule 16 of the Rules of Procedure, to approve the contracts, their annexed schedules and related documents for the establishment and operation of the International Registry, and the appointment of the Registrar.

6. It was explained that conclusion and approval of the contracts and appointment of the Registrar took longer than expected, but were ultimately successful. The documents had been sent out by the UNIDROIT Secretariat on 9 July 2014 and, due to requests for extension, the deadline for approval, rejection, or any other comments was extended to 31 October 2014. By that deadline, twelve member States and three organisation members of the Preparatory Commission had participated, which was sufficient to constitute a quorum, with twelve expressions of approval, one rejection, and two abstentions. The contracts and the appointment of the Registrar were thus approved in accordance with the Rules of Procedure.

Point n° 4 on the agenda – Approval of the draft baseline Regulations for the International Registry for railway rolling stock (Prep. Comm. Rail/7/Doc. 2)

7. The Co-Chairs introduced the draft Regulations and noted that they had been primarily prepared by the Rail Working Group. At this stage, a nearly final version of the draft Regulations was ready and, though they could still be amended following a review of the Aircraft Registry's revised Regulations (Aircraft Regulations), approval was requested, pursuant to the procedure set out in Article 17 of the Cape Town Convention. The Co-Chairs then invited the representatives of the Rail Working Group to present the draft Regulations in detail.

8. The representatives of the Rail Working Group stated that the draft Regulations were designed to create a system for the operation of the International Registry. It was noted that their development was very much an evolutionary process and that much had been drawn from the Aircraft Regulations, as they had been very successful. It was further noted, though, that there were some differences between the two, because ultimately the Regulations related to different types of assets. By and large, however, the Aircraft Regulations were used as much as possible.

9. It was cautioned that the draft Regulations before the group were not final as they were being concluded at a time when there were also a number of revisions being made to the Aircraft Regulations, due in particular to an updated software system at that Registry. The Rail Regulations were based on the fifth edition of the Aircraft Regulations, but newer editions of the Aircraft Regulations, which took into account technological advancements, were available and would be used to update the Rail Regulations before the Registry for railway rolling stock began to operate.

10. Regarding identification of rolling stock, it was explained that the Regulations currently provided a unique 20-digit numbering system for identifying rolling stock and this was different from the system used by the Aircraft Registry. It was further explained that the use of 20 digits was not fixed and could change, but it would likely not be less than 20 digits. The presentation was concluded with the statement that the Rail Regulations certainly needed additional revisions, but that they represented a good starting point for approval and updating.

11. The Co-Chairs thanked the representative of the Rail Working Group for the presentation and for the Group's work and opened the floor for discussion and questions.

12. Appreciation was expressed for the excellent draft of the Regulations, as well as support for the use of the Aircraft Regulations as a model and broad framework for the Rail Regulations. Clarification was then sought on the following points:

- (1) in the paragraphs following paragraph 2.3(d), dealing with articulated sections, what was meant by replacing or substituting such sections in the normal course of maintenance operations and why was only maintenance operations mentioned;
- (2) in paragraph 3.4, what was meant by the reference to such other functions of the Registrar;
- (3) in paragraph 5.1, where information was not provided at the time the registration data was submitted to the International Registry, how long after and to whom could it be submitted;
- (4) in paragraph 5.17, would a name change notification be published and available to everyone or only those with access to the Registry system;

- (5) in paragraph 9.1, understanding that this provision demonstrated good governance, would allowing any person to submit a complaint to the Registrar concerning operation of the Registry open the door to frivolous complaints; and
- (6) lastly, regarding the reference to SDRs in paragraph 16.4, was that term defined in the draft Regulations and, if not, should it be.

13. The representatives of the Rail Working Group explained in response that some of the points could be immediately clarified at that time, while others would be taken under advisement for further consideration. Regarding point (1) above, it was explained that after thorough consideration of this matter, the Regulations were developed so that one could, at any time, take a particular carriage out and replace it as a matter of general maintenance, distinct from the situation of damage.

14. Regarding point (2), it was said that the contract with the Registrar included certain basic services that must be performed, but also permitted ancillary services to be performed with the consent of the Supervisory Authority. This was designed to make sure that the Registrar would be able to pay for itself and raise revenue, but not incur liability from ancillary services or allow those services to impact adversely how the Registry was operated. It was also seen as important to allow for other revenue to be raised so that core costs of the Registry could be as low as possible, thereby promoting use by industry.

15. Regarding point (3), it was said that the Aircraft Regulations were followed in this regard, but that did not mean that was the only possible procedure. The point was taken and it would be considered whether some type of cut-off date would be required.

16. Regarding point (4), it was noted that this too was modelled on the Aircraft Regulations, but that again did not mean that was the only possible procedure. Caution was expressed, however, about having the Aircraft and Rail Regulations diverge too much because it could increase costs as, for example, the software developed for the Aircraft Registry might not be able to be used for the Rail Registry.

17. Regarding point (5), it was said that frivolous complaints could be a problem, but it was seen as important to establish a complaint mechanism. As there would be operating procedures established in addition to the Protocol and the Regulations, it was suggested that means for controlling frivolous complaints could be included in those procedures.

18. Regarding point (6), it was stated that the Regulations could refer to the Protocol's use of the term Special Drawing Rights, or the term could be defined in the Regulations.

19. Clarification was then sought on the use of the term "received" in Section 19 regarding notifications. It was said, in response, that there would be a deeming of notification via email to the relevant parties 24 hours after transmission. It was acknowledged that notification by email could be a problem because of spam folders and other filters. It was noted that this appeared to be the most practical way of dealing with notification and that the 24 hour period could be extended. It was later clarified that this presumption of receipt of a message was adopted in the Aircraft Regulations. It was further clarified that, in most States, an email communication was considered to be sent once it left the sphere of control of the sender. For example, if a user clicked "send" on an email message, but it never left the server, then in most systems it would not be considered as sent.

20. The numbering system was then further discussed. It was said that there was no system globally for identifying rolling stock and, as a result, it was very difficult to track the location of particular rolling stock. In some parts of the world, running numbers were attached to rolling stock,

but such numbers were seen as insufficient for purposes of registering a secured transaction. It was further said that it was not possible to rely on a manufacturers' serial number. For these reasons, a number of a minimum of 20 digits, which would allow for maximum redundancy and would always be unique, was to be allocated by the Registry. It was then described how, if such a unique registration number was provided, physical rolling stock could easily be tracked in real-time by identification at different points along a route. It was noted that a task force would continue to meet about how to assign and apply the numbers to rolling stock, including how to do so as rolling stock came off the assembly line.

21. The Co-Chairs then sought approval of the draft Regulations, recognising that they might be subject to revisions. The draft Regulations were approved by a majority of the present members of the Preparatory Commission. Four members abstained, including the European Union, whose representative explained that it was not in a position to take part in the approval before the end of its ratification process.

Point n° 5 on the agenda – Review of the Rules of Procedure of the Preparatory Commission

22. The Co-Chairs noted that the contract concluded between the Supervisory Authority and Regulis SA included a number of mostly technical obligations of the Preparatory Commission that would need to be carried out prior to entry into force. Those obligations included, for example, approving a user manual that Regulis would prepare and participating in a number of consultations. It was explained that it had taken four months for the contracts to be approved by the Preparatory Commission under the email procedure discussed in connection with the third point on the agenda. It was then said that this procedure took too long and, as a result, would not be appropriate to use in instances where the Preparatory Commission had to fulfil its obligations under the contract with Regulis in a timely manner.

23. The Co-Chairs proposed that the Preparatory Commission establish a subcommittee with delegated authority to handle issues arising under the contract with Regulis. It was further proposed that this subcommittee could review and decide an issue, thereby saving time, and then report back to the Preparatory Commission.

24. It was queried whether it would be necessary to change the Preparatory Commission's Rules of Procedure or whether they could be interpreted to permit creation of the subcommittee. It was said in response that the proposed subcommittee would be created in accordance with the Rules of Procedure but would not operate under those Rules because the Rules required a quorum of twelve which would defeat the purpose of creating the subcommittee. It was expressed that five members would be the ideal size of the subcommittee.

25. The composition of the subcommittee was then discussed and the proposal was summarised. Specifically, it was proposed that a subcommittee be created with delegated authority to deal with issues arising under the contract with Regulis with the exception of those issues regarding ratification and be composed of the Co-Chairs, UNIDROIT, OTIF, the Rail Working Group, and representatives of any other States that wished to participate. It was further proposed that States interested in participating could notify the Co-Chairs within the following thirty days.

26. After consideration, the creation of the subcommittee was approved. One member rejected the proposal.

Point n° 6 on the agenda – Ratification strategy and planning of future work

27. The Co-Chairs noted how it was important, at this point, for the Registrar to develop the International Registry so that it would be ready for operation upon entry into force. In order for entry into force to be achieved, it was said that it was also important for there to be ratifications of the Protocol. The Ratification Task Force was then described and participation by States was encouraged. The Task Force was going to develop a strategy for promoting and obtaining ratifications, including for example advocating at a number of rail conferences around the world and reaching out to countries with important rail sectors. It was noted that the European Union's decision to approve the Protocol opened the way for EU member States to ratify the Protocol and might incentivise ratification by other States. It was then noted that the Ratification Task Force would have an informal discussion later in the day to exchange ideas.

28. Regarding strategy, the need for territorial contiguity was then emphasised. It was said that, in addition to seeking the ratification of large countries, it was important to achieve ratifications from geographically contiguous countries. It was said that, in this way, rolling stock would remain within the treaty environment, thereby avoiding possible difficulties.

Point n° 7 on the agenda – Any other business

29. No other business was raised.

Point n° 8 on the agenda – Closing of the session

30. The Secretary-General of OTIF provided remarks to close the session, stating that concrete steps were being taken and that there was an abundance of good news, including the signature of the Registry contract and the impending approval by the European Union. He then thanked the Swiss Government for resolving outstanding privileges and immunities issues for the Preparatory Commission and Supervisory Authority and the UNIDROIT Secretariat for its contribution to that process.

31. The Co-Chairs then closed the session.

ANNEX I**AGENDA**

1. Opening of the session and welcome by the UNIDROIT Secretary-General
2. Adoption of the agenda and organisation of the session
3. Presentation of the outcome of the email confirmation procedure pursuant to the Sixth Session of the Preparatory Commission (Prep. Comm. Rail/6/Doc. 7)
4. Approval of the draft baseline Regulations for the International Registry for railway rolling stock (Prep. Comm. Rail/7/Doc. 2)
5. Review of the Rules of Procedure of the Preparatory Commission
6. Ratification strategy and planning of future work
7. Any other business
8. Closing of the session

ANNEX II

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