



GOVERNING COUNCIL
94TH session
Rome, 6 - 8 May 2015

EN

UNIDROIT 2015
C.D. (94) 5 (a)
Original: French/English
April 2015

Item No. 6 on the agenda: International Interests in Mobile Equipment

**(a) Implementation and status of the Luxembourg (Rail) Protocol
and of the Space Protocol**

(prepared by the Secretariat)

<i>Summary</i>	<i>Update on the implementation and status of the Rail and Space Protocols to the Cape Town Convention</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the progress</i>
<i>Mandate</i>	<i>Work Programme 2014-2016</i>
<i>Priority</i>	<i>High</i>
<i>Related documents</i>	<i>UNIDROIT 2014 – C.D. (93) 2</i>

1. The *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock* (the Rail Protocol) was opened to signature in Luxembourg on 23 February 2007 and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets* (the Space Protocol) was opened to signature in Berlin on 9 March 2012. Neither of them is yet in force.

2. UNIDROIT is designated as the Depositary to both instruments. Under the Work Programme 2014-2016, the implementation of both Protocols was given the highest degree of priority (cf. UNIDROIT 2013 – A.G.(72) 9, para. 28 and Appendix III). The present memorandum provides an update on the Institute's Depositary functions under them and additional details on UNIDROIT's activities regarding their promotion and implementation.

STATUS

3. UNIDROIT has been designated as the Depository to the **Luxembourg (Rail) Protocol** (pursuant to Article XXXIV(1)). The Rail Protocol will enter into force following the procedure provided for in Article XXIII.

4. As of April, 1st, 2015, it has five Signatory States and one Signatory Regional Economic Integration Organisation (Gabon, Germany, Italy, Luxembourg, Switzerland, European Commission). On 31 January 2012, Luxembourg deposited its instrument of ratification. On 18 December 2014, the European Union's instrument of approval to the Rail Protocol was deposited with UNIDROIT by H.E. Mrs Laurence Argimon-Pistre, Ambassador, Head of the Delegation of the European Union, to the Holy See, to the Order of Malta and to the United Nations Organisations in Rome. The European Union made a declaration under Article XXII(2) of the Luxembourg Protocol (see Annex I).

5. UNIDROIT has been designated as the Depository to the **Space Protocol** (pursuant to Article XLVIII(1)). The Space Protocol will enter into force following the procedure provided for in Article XXXVIII. As of April, 1st, 2015, it has four Signatory States (Burkina Faso, Germany, Saudi Arabia and Zimbabwe - see Annex II).

ACTIVITIES

GENERAL

6. UNIDROIT's responsibilities as **Depository** under the Luxembourg (Rail) Protocol and the Space Protocol are specified in each instrument, and include the operation of a system for the receipt and notification of all instruments of ratification, declarations and other documents lodged with the Depository.

RAIL PREPARATORY COMMISSION

7. A **Preparatory Commission** was established by Resolution of the Luxembourg diplomatic Conference in order to prepare the International Registry under the Rail Protocol.

8. As detailed in the Annual Report, C.D. (94) 2, p. 13, several key activities of the Preparatory Commission took place in 2014: (a) Negotiations between a team appointed by the Preparatory Commission (and co-chaired by the United States of America and Finland) and SITA SA for the conclusion of the contract with the prospective Registrar were successfully concluded on 31 July 2014; (b) The Sixth Session of the Preparatory Commission, convened jointly by UNIDROIT and the Intergovernmental Organisation for International Carriage by Rail (OTIF) through an email confirmation procedure, approved the Registry Contract, the Master Services Agreement and their appendixes and annexes and Regulis SA, a SITA company, as Registrar; (c) Regulis SA, represented by its executive manager Elisabeth Hirst, and the Secretary-General of UNIDROIT, on behalf of the Preparatory Commission, signed in Rome on 12 November 2014 the contract for the establishment and operation of the Rail International Registry; (d) The Seventh Session of the Rail Preparatory Commission was held in Rome at the seat of UNIDROIT on 11 December 2014, approved the draft baseline Regulations for the International Registry for railway rolling stock. For more information see the Annual Report, C.D. (94) 2, p. 13

9. The Seventh Session was immediately followed by an informal meeting of the **Ratification Task Force**, where further issues connected with the early entry into force of the Registry were discussed. The Ratification Task Force (composed, for the time being, of the Co-Chairs of the

Preparatory Commission, representatives of the Rail Working Group, Regulis SA as designated Registrar and SITA as well as OTIF and UNIDROIT) met again in Brussels on 25 March 2015, after two preliminary meetings (a teleconference on 10 February 2015 and a meeting in Bern on 27 February 2015 to which UNIDROIT participated through teleconference). Luxembourg attended the meeting as well and agreed to become a member of the Task Force. A number of issues relating to ratification strategy, its economic underpinnings and the involvement of relevant stakeholders were discussed and a timeline for further action was agreed upon. In this connection, the opportunity to raise awareness on the Rail Protocol among Ministry representatives of EU Member States during the Luxembourg EU Presidency in the second half of 2015 was suggested, as a follow up to the approval of the Rail Protocol by the European Commission.

10. The UNIDROIT Secretariat, through its participation in the work of the Preparatory Commission and the Ratification Task Force, will continue to carry out all activities connected to the promotion of the Rail Protocol to ensure that the highest priority provided by the Work Programme to its early entry into force is implemented.

SPACE PREPARATORY COMMISSION

Space Registry Regulations

11. Pursuant to Resolution 1 of the diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets, a Preparatory Commission was set up to act as Provisional Supervisory Authority for the establishment of the International Registry for Space Assets. The following States agreed to serve as members of the Preparatory Commission: Brazil, the People's Republic of China, the Czech Republic, France, Germany, India, Italy, the Russian Federation, Saudi Arabia, South Africa and the United States of America. The International Telecommunication Union (ITU) as well as representatives of the financial and commercial were invited as observers.

12. Three sessions of the Preparatory Commission were held between 2013 and 2014 at the seat of UNIDROIT in Rome, under the Chairmanship of the former Chairman of the Commission of the Whole at the Berlin Conference Sergio Marchisio and with the participation of Sir Roy Goode and Martin Stanford as consultants: on 6 and 7 May 2013, on 27 and 28 February 2014 and on 11 and 12 September 2014. For more details see Annual Report C.D. (94) 2, p. 12-13.

13. At the outcome of the third session, a consultation procedure on an agreed draft text was suggested in order to receive further insights from the practical operators in the market. Following consultations with the members and observers of the Preparatory Commission, Sir Roy Goode prepared a Questionnaire that was sent on 3 December 2014, together with the draft Regulations, to relevant industry stakeholders (manufacturers, operators, financial institutions, international organisations and associations). The members of the Preparatory Commission were also asked to disseminate the questionnaire to their own industry contacts. The initial deadline to provide input was extended to the end of February 2015. UNIDROIT received responses from the China Great Wall Industry Corporation (CGWIC), the European Organisation for the Safety of Air Navigation (EUROCONTROL), the German industry, the Japanese industry, the Satellite Industry Association (SIA) (whose responses were endorsed by the European Satellite Operator's Association (ESOA) and the International Telecommunications Satellite Organization (ITSO)), the South African Council for Space Affairs (SACSA), Thales Alenia Space Italia and the French National Centre for Space Studies (Centre national d'études spatiales (CNES)). Taking the comments that were provided into account, a paper on the space industry responses to the questionnaire and their implications for the registry system will be prepared by Sir Roy Goode and circulated to the Preparatory Commission, with the aim of reaching an agreement in principle on the text of the regulations to serve as a basis to continue the dialogue with industry experts.

Establishment of a Supervisory Authority

14. As detailed in the Annual Report , C.D. (94) 2, p. 13 the issue of the appointment of a Supervisory Authority was discussed at two institutional meetings within ITU in 2014: the Council in May-June 2014 and the Plenipotentiary Conference in October-November 2014. During the latter meeting, a number of ITU Member States supported the idea that ITU be entrusted with this role; the Plenipotentiary Conference, however, following an in-depth discussion in which different opinions were voiced, decided that the ITU Secretariat should continue to express its interest in becoming Supervisory Authority and answer all questions raised by Member States and that the ITU Council should continue to monitor all developments in this area for future deliberations.

INSTITUTIONAL MEETINGS AND OTHER ACTIVITIES RELATING TO THE RAIL AND SPACE PROTOCOLS

15. *UN-COPUOS and UN-OOSA*: The UNIDROIT Secretary-General attended the 53rd session of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space (UN/COPUOS) in Vienna as an observer for UNIDROIT and presented a statement on the Space Protocol. On 3 December 2014, the UNIDROIT Secretariat issued a memorandum on the latest developments concerning the Space Protocol, in response to the invitation received as observer to the United Nations Office for Outer Space Affairs (UN-OOSA) to report to the 54th session of the UN/COPUOS. See also Annual Report 2014 (C.D.(94) 2), p. 20.

16. A number of events relating to the Rail and Space Protocols were held in the course of 2014. In particular: (a) A specific session of the XIX quadrennial Congress of the International Academy of Comparative Law (IACL), held in Vienna on 20-27 July 2014, was devoted to "Security interests burdening transport vehicles – The Cape Town Convention and its implementation in national law" (General Reporter Prof. Souichirou Kozuka – the UNIDROIT Deputy Secretary General contributed the Italian Report); (b) A European Seminar on the Rail Protocol, organised jointly by the German Federal Ministry of Justice and the Rail Working Group, was held on 22 September 2014 in Berlin with participation of the UNIDROIT Secretary-General. For more details see Annual Report 2014 (C.D.(94) 2), p. 19.

17. On 9 March 2015, an International Conference on the Promotion of the Cape Town Convention in China organised by the University of Macau, UNIDROIT and the Macau Foundation was held in Macau Further details on the conference programme are reported in Document C.D.(94) 9 [*Promotion*]. With particular regard to the Rail and Space Protocols, the UNIDROIT Secretary-General José Angelo Estrella-Faria presented a paper entitled "A Modern Regime For Financing High Value Mobile Equipment: The Cape Town Convention And Its Aircraft And Rail Protocols", whilst the Space Protocol was addressed by former Deputy Secretary General Martin Stanford and Zhao Yun, professor at the University of Hong Kong.

18. The UNIDROIT Secretariat will continue to promote the Rail and Space Protocols in the course of 2015 through participation in and organisation of events involving academics, practicing lawyers and governmental experts.

CAPE TOWN ACADEMIC PROJECT

19. For the 3rd annual Conference held in Oxford on 9 and 10 September 2014 see Annual Report 2014 (C.D.(94) 2), p. 20. The 4th annual Conference will be held in Oxford on 8 and 9 September 2015. Among others, experts in the field of the Rail and the Space Protocol are expected to attend.

ACTION TO BE TAKEN

20. *The UNIDROIT Secretariat would invite the Governing Council to take note of the progress in the implementation of the Rail and the Space Protocols.*

ANNEX I

**LUXEMBOURG PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE
EQUIPMENT ON MATTERS SPECIFIC TO RAILWAY ROLLING STOCK**
**PROTOCOLE DE LUXEMBOURG PORTANT SUR LES QUESTIONS SPÉCIFIQUES AU MATÉRIEL ROULANT
FERROVIAIRE A LA CONVENTION RELATIVE AUX GARANTIES INTERNATIONALES
PORTANT SUR DES MATÉRIELS D'ÉQUIPEMENT MOBILES**

Adoption: Place / *Lieu*: Luxembourg
Date: 23.02.2007

Entry into force / *Entrée en vigueur*: Not in force / Pas encore en vigueur (ex [Art. XXIII](#))

Depositary / *Dépositaire*: UNIDROIT

STATE / <i>ETAT</i>	SIGNATURE	RATIFICATION (RT) ACCEPTANCE / <i>ACCEPTATION</i> (AC) APPROVAL / <i>APPROBATION</i> (AP) ACCESSION / <i>ADHESION</i> (AS)	DECLARATIONS	ENTRY INTO FORCE / <i>ENTREE EN VIGUEUR</i>
European Union / <i>Union européenne</i> ¹	10.12.2009	18.12.2014	XXII(2)	
Gabon	23.02.2007			
Germany / <i>Allemagne</i> (with declaration at signature / <i>avec déclaration à la signature</i>)	21.11.2012			
Italy / <i>Italie</i>	23.02.2007			
Luxembourg	23.02.2007	31.01.2012 (RT)		
Switzerland / <i>Suisse</i>	23.02.2007			

¹ Regional Economic Integration Organisation / *Organisation régionale d'intégration économique*: Protocol(e) Article XXII

ANNEX II

**PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON
MATTERS SPECIFIC TO SPACE ASSETS**

**PROTOCOLE PORTANT SUR LES QUESTIONS SPECIFICIQUES AUX BIENS SPATIAUX A LA
CONVENTION RELATIVE AUX GARANTIES INTERNATIONALES
PORTANT SUR DES MATÉRIELS D'ÉQUIPEMENT MOBILES**

Adoption: Place: Berlin / *Lieu*: Berlin
Date: 09.03.2012

Entry into force / *Entrée en vigueur*: Not in force / Pas encore en vigueur (ex Article XXXVIII)

Depositary / *Dépositaire*: UNIDROIT

STATE / <i>ETAT</i>	SIGNATURE	RATIFICATION (RT) ACCEPTANCE / <i>ACCEPTATION</i> (AC) APPROVAL / <i>APPROBATION</i> (AP) ACCESSION / <i>ADHESION</i> (AS)	DECLARATIONS	ENTRY INTO FORCE / <i>ENTREE EN VIGUEUR</i>
Burkina Faso	09.03.2012			
Germany / <i>Allemagne</i> (with declaration at signature / <i>avec déclaration à la signature</i>)	21.11.2012			
Saudi Arabia / <i>Arabie saoudite</i>	09.03.2012			
Zimbabwe	09.03.2012			