Cape Town Convention (2001) on International Interests in Mobile Equipment: matters specific to railway rolling stock. Luxembourg Protocol, Rail Protocol 2007

2013/0184(NLE) - 11/06/2013

PURPOSE: to approve, on behalf of the EU, the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock, adopted in Luxembourg on 23 February 2007.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: the European Union is working towards the establishment of a common judicial area based on the principle of mutual recognition of judicial decisions**.** The Protocol to the Convention on International Interests in Mobile Equipment (the "Cape Town Convention") on matters specific to railway rolling stock, adopted in Luxembourg on 23 February 2007, makes a useful contribution to the regulation at international level.

It is therefore desirable that the provisions of this instrument which concern matters falling within the exclusive competence of the European Union should be applied as soon as possible.

That is the object of this proposal.

IMPACT ASSESSMENT: the Commission proposes the approval of the Rail Protocol, after the EU signature in 2009, was preceded by consultations with the Rail Working Group, a crossindustry association dedicated to the implementation of the Rail Protocol, whose Members are, *inter alia*, Bombardier Transportation, Deutsche Bahn, English Welsh and Scottish Railways, European Investment Bank, Intergovernmental Organisation for International Carriage by Rail (OTIF), UIC-International Union of Railways, Union of European Railway Industries. During the consultations, it was particularly highlighted the close link between the conclusion of the Rail Protocol and the adoption of the Fourth Railway Package on 30 January 2013.

LEGAL BASIS: Article 81(2), in conjunction with Article 218(6)(a) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: with this proposal for a Decision, it is proposed that the European Union approves 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.

Objective of the Cape Town Convention and its Protocol:

- The EU approved the accession to the Cape Town Convention and the Aircraft Protocol by Council Decision of 6 April 2009 and deposited the instrument of accession on 28 April 2009. The Convention lays down **uniform rules for the constitution and effects of an international interest** (security

agreement, title reservation agreement or leasing agreement) in certain categories of **mobile equipment designated in the Protocols relating to the following categories**: aircraft, railway rolling stock and space assets.

The instrument consists of the basic Convention laying down legal rules applicable to all categories of mobile equipment mobiles and a number of specific Protocols containing special rules relating to particular types of equipment.

Given that these protocols may amend the Convention where the specific features of the relevant sector so require. It is accordingly the Protocol and not the Convention that prevails as regards each category of mobile equipment. The Member States' obligations under the Convention vary with the Protocol to which they accede.

- More specifically, the Protocol is intended to facilitate the financing of high-value railway rolling stock by creating a particularly **strong international guarantee for creditors** (sellers on credit and institutions supplying credit for such sales) which gives them "absolute" priority over these assets in an international register.

The Rail Protocol fixes certain rules concerning the priority and enforceability of registered international interests for certain types of creditors financing rolling stock - i.e. the chargor, conditional seller or lessor. Furthermore the Protocol provides to creditors specific default remedies (Article VII) and t**hree alternatives for remedies on insolvency of the debtor** (Article IX).

The Rail Protocol creates an **international system of unique and unchangeable registration of international interests**. The Protocol is complementary to, and supportive of, the European Vehicle Identification Numbering system (adopted under the Railway Interoperability Directive). It guarantees that the parties can register and search against their interests from wherever they are within the EU, using internet thereby making the register accessible 24 hours/day.

Such an instrument is likely to be of great benefit to the European rail industry, banks and Governments by encouraging capital investment in the rail sector and boosting the creation of a genuine lease market.

EU competences: the Commission negotiated the Rail Protocol on behalf of the European Community, for the parts falling within the **exclusive competence** of the European Community.

Article XXII(1) of the Rail Protocol provides that Regional Economic Integration Organisations, which have competence over certain matters governed by the Rail Protocol, may sign, accept, approve or accede to the said Protocol.

The Rail Protocol also covers certain questions governed by several European Regulations or Directives in force in regard to recognition and enforcement of judgments in civil and commercial matters, **insolvency procedures** and in the rail field.

The European Union has **exclusive competence over some of the matters governed by the Rail Protocol**, while the Member States have competence over other matters governed by this instrument.

It is thus appropriate that the European Union approves the Rail Protocol.

Declarations of the Contracting States: Article XXII(2) of the Rail Protocol requires that, at the time of signature, acceptance, approval or accession, the Regional Economic Integration Organisation make a general declaration indicating the matters covered by the Rail Protocol which fall in respect of which competences have been transferred to that Organisation by its Member States.

The declaration on Community competence was made at the time of the signature of the instrument. A new declaration should be made at the time of the approval, to take into account changes in legislation.

As regards declarations regarding issues relating to insolvency, the Commission considers that, where the primary insolvency jurisdiction is in an EU Member State, it is Regulation No 1346/2000 of 29 May 2000 on insolvency proceedings that should, i**n any case, be applicable instead of the Rail Protocol**.

It is therefore proposed that the European Union should not make the declaration on insolvency assistance. The Member States keep their competence concerning the rules of substantive law as regards insolvency.

Lastly, an article in the Protocol authorises, under certain conditions; Contracting States to make declarations on public service exemptions.

BUDGETARY IMPLICATION: the proposal has no implications for the European Union’s budget.