

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

2013/0184(NLE) - 04/12/2014 - Final act

PURPOSE: to approve, 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.

NON-LEGISLATIVE ACT: Council Decision 2014/888/EU 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.

BACKGROUND: the 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 on Matters Specific to Railway Rolling Stock (Rail Protocol), adopted in Luxembourg on 23 February 2007, makes a useful contribution to the regulation at international level in its area.

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

The 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 that instrument.

Therefore, the Union approves the Rail Protocol.

CONTENT: under this Decision, 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 hereby approved on behalf of the European Union.

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.

- 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 **three 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.

Declaration between parties: the Annex to this decision contains a declaration to be made pursuant to Article XXII(2) concerning the competence of the European Union over matters governed by the Rail Protocol, in respect of which the Member States have transferred their competence to the Union.

ENTRY INTO FORCE: the decision shall enter into force on 4.12.2014.