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**TRANS 133**

**PROPOSAL**

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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 9 March 2026

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject: Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union at the third 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

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Delegations will find attached document COM(2026) 122 final.

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Encl.: COM(2026) 122 final



Brussels, 9.3.2026  
COM(2026) 122 final

2026/0071 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union at the third 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**

## EXPLANATORY MEMORANDUM

### 1. SUBJECT-MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf at the third 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:

- (1) Proposal to note a new version of the Model Rules on the Permanent Identification of Railway Rolling Stock (hereinafter also 'the Model Rules'); and
- (2) Revision of the Supervisory Authority's Statutes and Rules of Procedure.

The third session of the Supervisory Authority of the Luxembourg Protocol is scheduled to take place on 14 April 2026 in Bern, Switzerland.

### 2. CONTEXT OF THE PROPOSAL

#### 2.1. The Luxembourg Protocol to the Cape Town Convention

##### 2.1.1. 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). It entered into force on 8 March 2024.

The Luxembourg Protocol establishes a worldwide legal framework for the recognition, priorities and enforcement of creditor and lessor rights, to 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<sup>1</sup> 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

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<sup>1</sup> As per Chapter III of the Cape Town Convention and Chapter II of the Luxembourg Protocol.

3 June 2021<sup>2</sup>, 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]'

### 2.1.2. *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 2007<sup>3</sup>, with the status of Regional Economic Integration Organisation (pursuant to Article XXII of the Luxembourg Protocol).

The Annex to Council Decision 2014/888/EU 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 to 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 (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 Union<sup>4</sup>;
- Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways<sup>5</sup>;
- Commission Implementing Regulation (EU) 2019/773 of 16 May 2019 on the technical specification for interoperability relating to the operation and traffic management subsystem of the rail system within the European Union<sup>6</sup>;
- Commission Implementing Decision (EU) 2018/1614 of 25 October 2018 laying down specifications for the vehicle registers referred to in

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<sup>2</sup> Transport, Telecommunications and Energy Council (Transport), 3 June 2021: “Putting Rail at the Forefront of Smart and Sustainable Mobility” (ST 8790/21)

<sup>3</sup> OJ L 353, 10.12.2014, p. 9, ELI: <http://data.europa.eu/eli/dec/2014/888/oj>.

<sup>4</sup> 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 Union (recast) (OJ L 138, 26.5.2016, p. 44, ELI: <http://data.europa.eu/eli/dir/2016/797/oj>).

<sup>5</sup> Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 (OJ L 138, 26.5.2016, p. 1, ELI: <http://data.europa.eu/eli/reg/2016/796/oj>).

<sup>6</sup> Commission Implementing Regulation (EU) 2019/773 of 16 May 2019 on the technical specification for interoperability relating to the operation and traffic management subsystem of the rail system within the European Union and repealing Decision (OJ L 139I, 27.5.2019, p. 5, ELI: [http://data.europa.eu/eli/reg\\_impl/2019/773/oj](http://data.europa.eu/eli/reg_impl/2019/773/oj)).

Article 47 of Directive (EU) 2016/797 of the European Parliament and of the Council<sup>7</sup>.

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

## 2.2. The Supervisory Authority

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 its Statutes<sup>8</sup>, and consist essentially of administrative and operational tasks.

In its 7<sup>th</sup> (Berne, 23/24 November 2005) and 12<sup>th</sup> (Berne, 29/30 September 2015) General Assemblies<sup>9</sup>, OTIF decided to take over the tasks of the Secretariat of the Supervisory Authority, in accordance with Article XII(6) of the Luxembourg Protocol.

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.

### 2.2.1. Commission of Experts inaugural session

At its first session, the Supervisory Authority has established a Commission of Experts to assist it in the discharge of its functions, as per Article XII(5)(b) of the Luxembourg Protocol and Article 6 of the Statutes of the Supervisory Authority. The Commission of Experts consists of individuals whom the Supervisory Authority considers have the necessary qualifications, expertise and experience for such position. They are selected from persons nominated by State Parties, Signatory States and those nominated by the Chair.

The inaugural session of the Commission of Experts took place in November 2025. During this session, the Chair and the two Vice-chairs were elected. The Commission of Experts also discussed its operational framework, including its mandate and working arrangements, reviewed the Regulations and Procedures for the International Registry of Interests in Rolling Stock, and considered raising awareness of the Luxembourg Protocol.

During its inaugural session, the Commission of Experts also noted that adoption of Revision 3 of the Model Rules is voluntary and agreed that Revision 3 of the Model

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<sup>7</sup> 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/EC (OJ L 268, 26.10.2018, p. 53, ELI: [http://data.europa.eu/eli/dec\\_impl/2018/1614/oj](http://data.europa.eu/eli/dec_impl/2018/1614/oj)).

<sup>8</sup> Statutes of the Supervisory Authority (Luxembourg Protocol) adopted by the Supervisory Authority at its 1st session on 8 March 2024.

<sup>9</sup> Assemblée générale AG 12/21 30.09.2015 FINAL DOCUMENT – Point 7.5 ([https://otif.org/fileadmin/user\\_upload/otif\\_verlinkte\\_files/04\\_recht/02\\_Generalversammlung/AG\\_12\\_21\\_document\\_final\\_e\\_add\\_1-4\\_.pdf](https://otif.org/fileadmin/user_upload/otif_verlinkte_files/04_recht/02_Generalversammlung/AG_12_21_document_final_e_add_1-4_.pdf))

Rules should be presented to the Supervisory Authority for it to note, as it considered that no formal steps by the Supervisory Authority were needed in relation to this revision.

### 2.3. The envisaged acts of the Supervisory Authority

During this third session, and among other agenda items, the Supervisory Authority is expected to *note* a new version of the Model Rules on the Permanent Identification of Railway Rolling Stock (Revision 3), and to revise its own Statutes and Rules of Procedure in accordance with Article 12 of the former and Article 18 of the latter.

#### 2.3.1. Model rules

The Model Rules on Permanent Identification of Railway Rolling Stock 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. The Union position with respect to their approval in their initial version is laid down in Council Decision (EU) 2024/851<sup>10</sup>, and with respect to their approval in their second version, in Council Decision (EU) 2025/853<sup>11</sup>.

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. Pursuant to point 4.2 of the Model Rules, a party wishing to be bound by these Rules is required to make a declaration<sup>12</sup> and notify the Registrar thereof.

The Model Rules are issued under the auspices of the United Nations Economic Commission for Europe (UNECE) – SC.2 Working Party on Rail Transport. At its third session (September 2025), the Revision Committee to the Model Rules discussed and agreed the addition of a new Appendix 3 on the *Application of Digital Solutions to the provision of information to a creditor on railway rolling stock by reference to the URVIS Identifier*. Later, at its seventy-ninth session (12-14 November 2025), the SC.2 Working Party on Rail Transport adopted the amendments referred to above and agreed that the amendments should enter into force at the time of publication of the report of the seventy-ninth session of SC.2, and asked the secretariat to prepare a *not-yet official* consolidated Revision 3 of the Model Rules.

The proposal by the Secretariat is that the Supervisory Authority take note of such changes and instruct the Registrar to publish Revision 3 of the Model Rules on the Registrar website including then both Revision 2 and 3.

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<sup>10</sup> Council Decision (EU) 2024/851 of 4 March 2024 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 first session of the Supervisory Authority established pursuant to the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (OJ L, 2024/851, 11.3.2024, ELI: <http://data.europa.eu/eli/dec/2024/851/oj>).

<sup>11</sup> Council Decision (EU) 2025/853 of 14 April 2025 on the position to be taken on behalf of the European Union at the second session of the Supervisory Authority established pursuant to the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (OJ L, 2025/853, 5.5.2025, ELI: <http://data.europa.eu/eli/dec/2025/853/oj>).

<sup>12</sup> “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”.

This subject-matter – the marking of railway rolling stocks – is regulated at Union level by Commission Implementing Regulation (EU) 2019/773, in particular in Appendix H, *European Vehicle Number and linked alphabetical marking on the bodywork*. The approval of these Model Rules is capable of decisively influencing the content of EU legislation. Therefore, and as referred to in Council Decision (EU) 2024/851 and Council Decision (EU) 2025/853, the European Union has exclusive competence in respect of the Model Rules, pursuant to Article 3(2) TFEU.

### 2.3.2. *Revision of the Statutes of the Supervisory Authority*

During its first session, the Commission of Experts reached agreements concerning its mandate, and directed the Secretariat to present this proposal to the Supervisory Authority for approval. Also, the Commission has recommended that the Supervisory Authority entrusts it with the authority to establish its own rules of procedure, contingent upon the Supervisory Authority approving specific aspects such as the quorum, membership, voting processes, and notice of meetings.

To facilitate the implementation of these recommendations, the Secretariat has put forward amendments to the Statutes of the Supervisory Authority. These amendments introduce a comprehensive mandate for the Commission of Experts under Article 6, which also necessitates the definition and inclusion of the term *Procedures for the Registry* in Article 1, to ensure clarity, and changing the term *Regulations* with *Regulations for the Registry* throughout the Statutes.

Article 6 of the proposal delineates the mandate of the Commission of Experts, which *shall assist [the Supervisory Authority] in the discharge of its functions by providing advice and recommendations, including on its own initiative*. This covers advice and recommendations in matters such as complaints concerning the operation of the Registry, contracting state agreements, revisions to the Model Rules, on ‘*any other matters where the Supervisory Authority requires advice*’, or on ‘*any other matters referred to the Commission by the Chair [,] or [at least one quarter of the members acting together]*’.

Regarding the composition and operations of the Commission, the proposal suggests setting a minimum membership, consisting of not fewer than three or five members, to prevent it from comprising only one individual. Furthermore, the Commission is tasked with establishing its own Rules of Procedure, subject to essential statutory requirements concerning quorum, voting, meeting notifications and reporting. Provisions are also added to ensure Secretariat representation in sessions and to afford observer status to the Registrar and Depositary, thereby promoting inclusive and comprehensive governance within the Commission's framework.

The proposal includes also some other minor changes, including changes to the terminology, to ensure coherence in the text, and the rewording of certain provisions for clarification purposes.

### 2.3.3. *Revision of the Rules of Procedure of the Supervisory Authority*

Similar to the Statutes, the Rules of Procedure of the Supervisory Authority concern the whole scope of the activities of the Supervisory Authority, thus including matters for which the Union is exclusively competent, pursuant to the declaration made in the Annex to Council Decision 2014/888/EU, and the amendments thereto will directly affect the participation of the Union in that body.

With the agreement of the Chair, the Secretariat has put forward certain amendments to the Rules of Procedure, to ensure compliance with existing contractual obligations

and applicable procedures, and to improve these rules in light of the experience gathered by the Supervisory Authority. The proposal introduces a written procedure, optimising the process for the preparation and approval of minutes and decisions, and enhancing the overall efficiency and clarity of the Supervisory Authority's working methods.

Among the major changes, the proposed Rules of Procedure delete the definition of *Qualified Majority*, which amounts to two thirds majority of the votes of Members present and voting, and reduces the decisions that are subject to this method of voting, by defining simple majority as the default option. It is claimed that the requirement for a qualified majority for every decision seems disproportionate, and that the decision-making framework should be simplified.

Article 3 (previously *Meetings* and now proposed as *Sessions and convening*) has been thoroughly redrafted to make it clearer.

On extraordinary sessions, the revised text clarifies that such sessions will be, in principle, convened with the same notice periods as ordinary sessions. If such a session is of an urgent nature, then shorter deadlines may apply. It is left up to the Chair to decide whether a matter is of an urgent nature or not.

Especially relevant for the Union is Article 4, *Representation of Members*, where the paragraph on the voting rights of a regional organisation (i.e., the EU) has been moved, to Article 14, and revised.

Regarding Article 5 (*Observers*) the Secretariat proposes a privileged category of observers comprising entities with a specific role under the Luxembourg Protocol, such as the Registrar, the Depositary and the Commission of Experts. These would be *standing observers*, which would have the capacity to attend all meetings of the Supervisory Authority, always under the control of the Chair.

As for the *officers* of the Supervisory Authority (Chair and two Vice-chairs) (Article 9), the proposal clarifies the duration of their mandate and eliminates the requirement that *nominations for positions as Officers shall be seconded by another Member*, in order to simplify the nomination procedure.

Article 14 in the proposal covers *the right to vote*. Each Member has one vote. For regional organisations, such as the Union, it is proposed that '*In matters within its competence, a regional organisation shall exercise the number of votes equal to the number of its Member States which are also Members. When a regional organisation votes, its Member States shall not vote, and vice versa.*'

Linked to the elimination of the definition of *Qualified majority* are the changes proposed for the *quorum* (Article 15). According to the proposal, quorum is now reached with a simple majority of the Members, instead of qualified majority. The proposal further states, specifically as regards regional organisations, that '*For the purpose of determining a quorum for matters within the competence of a regional organisation, that organisation shall be counted to the extent of the number of votes it is entitled to cast in accordance with Article 14(2)*'.

Article 16, *Voting and tacit approval*, further implements the change from qualified majority of the Members present and voting to simple majority of the Members

present and voting<sup>13</sup>. In addition, and of particular significance, the article introduces a detailed procedure for voting under *written procedure* and *tacit approval*. These mechanisms are claimed to enhance the flexibility and efficiency of the Supervisory Authority. The tacit approval procedure is linked to the approval of the Registrar's draft budget and the approval of the invoice submitted by the Secretariat for providing secretariat functions. For both procedures, the deadline to provide an answer is *at least two weeks*. Regarding the written procedure, failing to meet the quorum regarding the number of responses would result in the rejection of the proposal. As for the tacit approval, as it names states, if by the end of the deadline there is not enough opposition, the proposal would be deemed adopted.

The last substantive change included in the proposal is the one pertaining to the amendment of the Statutes and of the Rules of Procedure of the Supervisory Authority (Article 21, *Amending the Statutes and the Rules*). For these basic legal instruments, it is proposed to maintain a qualified majority (*two thirds*) requirement for their amendment.

As referred to in Council Decision (EU) 2024/851 and Council Decision (EU) 2025/853, the European Union has exclusive competence in respect of the Statutes and Rules of Procedure of the Supervisory Authority, pursuant to Article 3(2) TFEU.

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

#### **3.1. On the latest version of the Model Rules**

As stated in previous occasions, the Luxembourg Protocol needs to rely on a clear identification and marking system of railway rolling stock based on international standards. It is so recognised in Article XIV — *Identification of railway rolling stock for registration purposes* of the Luxembourg Protocol, which itself refers to Article 18(1)(a) of the Cape Town Convention. The 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. 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 European Vehicle Register ('EVR') and the European vehicle number ('EVN') regulated by Commission Implementing Decision (EU) 2018/1614.

The amendments introduced in *Revision 3* of the Model Rules introduce the concept of *Digital Solution* as an optional system that allows creditors and debtors to incorporate the rolling stock information into a digital solution, enabling access to the said information. The intention of the amendments is to optimise the tracking of rail assets using digital means. These amendments do not have any impact on the legal framework in place in the European Union: they establish a voluntary framework that may bind private parties in their agreements concluded under the Luxembourg Protocol, if they decide so.

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<sup>13</sup> There is an exception to this rule when adopting new Statutes or Rules of Procedure as set out in Article 21.

However, the proposed decision by the Secretariat on this point (*to note and to publish*<sup>14</sup>), is not supported by the applicable legal framework, as Article 5(8) of its Statutes instructs the Supervisory Authority to ‘*Approve the Model Rules and its amendments.*’ Considering that the available Revision 3 of the Model Rules is still *unofficial*, the European Union should oppose the proposal to *publish* the Model Rules and instead it should support just *taking note of the new Revision 3*, and propose to postpone any action until such time that the Revision 3 has entered into force. If, however, the Revision 3 of the Model Rules enters into force until the third session of the Supervisory Authority takes place, and corresponds to the unofficial version published in [https://unece.org/sites/default/files/2026-02/ECE-TRANS-SC.2-337-Rev.3EFR\\_Unofficial.pdf](https://unece.org/sites/default/files/2026-02/ECE-TRANS-SC.2-337-Rev.3EFR_Unofficial.pdf), the European Union should propose the adoption by the Supervisory Authority of these Model Rules, in accordance with Article 5(8) of its Statutes.

### 3.2. Revision of the Supervisory Authority’s Statutes and Rules of Procedure

The envisaged amendments to the Statutes are mostly circumscribed to the clarification of the work of the Commission of Experts, as an advisory body to the Supervisory Authority. Such amendments are in the interest of the European Union, as they clarify the role of this body and facilitates the work of the Supervisory Authority. It is therefore proposed to support these amendments.

As for the Rules of Procedure of the Supervisory Authority, the changes proposed are numerous and have different impacts. Important changes include the elimination of qualified majority voting in the Supervisory Authority as the default voting option – including its consequence on the quorum –, the deletion of the requirement for an officer of the Supervisory Office to be seconded by at least one other Member, and the systematic relocation and clarification of the voting rights of the Union. The majority of the envisaged amendments appear to bring about important clarifications and improve the working procedures of the Supervisory Authority and can therefore be supported.

However, as regards voting by written procedure and tacit approval, the deadlines for providing an answer (*‘at least two weeks’*) are insufficient for the Union to follow the necessary internal procedures for the adoption of a decision.

Insofar as the tacit procedure is limited to the *approval of the Registrar’s draft budget and of the invoice relating to remuneration for providing secretariat functions*, it should be noted that the Union is not concerned by budgetary matters of the Supervisory Authority; therefore, this is considered as a matter for the Members States to decide upon. On the other hand, if the proposal for the approval of decisions under tacit approval maintains the expression *‘where so decided by the Supervisory Authority’*, the Union may find itself confronted by decisions falling under its

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<sup>14</sup> *The Supervisory Authority: (1) notes the modifications to the Model Rules on the Permanent Identification of Railway Rolling Stock contained in revision 3 of those Model Rules and that these modifications do not have any impact on the operation of the International Registry of Interests in Rolling Stock; (2) instructs the Registrar to publish on its website references to the second and third versions of the Model Rules on the Permanent Identification of Railway Rolling Stock, together with an explanation indicating that the second version was approved by the Supervisory Authority at its second session and that the third version was noted at its third session, on the basis that the modifications adopted in the third version do not have any impact on the operation of the International Registry of Interests in Rolling Stock.*

competence that it had no possibility to reject; moreover, the adoption of decisions under tacit approval should be limited to exceptional cases.

For these reasons, the deadlines for the written procedure should be changed to ‘*at least 10 weeks*’, and the possibilities for having decisions adopted under tacit approval be limited to the *approval of the Registrar’s draft budget and of the invoice relating to remuneration for providing secretariat functions*.

It is therefore proposed to support the approval of the amendments to the Statutes and Rules of Procedure of the Supervisory Authority, subject to the modifications described above.

## **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*’<sup>15</sup>.

#### *4.1.2. Application to the present case*

The Supervisory Authority is a body set up by an agreement, namely the Cape Town Convention (Article 17) and Luxembourg Protocol, in accordance with its Article XII.

The acts which the Supervisory Authority is called upon to adopt constitute acts having legal effects. First, any action on the Model Rules is capable of decisively influencing the content of EU legislation, namely Directive (EU) 2016/797, Commission Implementing Regulation (EU) 2019/773 and Commission Implementing Decision (EU) 2018/1614. Second, the approval of the revised Statutes and Rules of Procedure of the Supervisory Authority will have legal effects because they will significantly influence the participation of the Union in the functioning of the Luxembourg Protocol, which is granted by Council Decision 2014/888/EU.

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.

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<sup>15</sup> 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.

## **4.2. Substantive legal basis**

### *4.2.1. Principles*

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.

### *4.2.2. Application to the present case*

The main objectives and contents of the envisaged acts 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 third 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**

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 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 2014<sup>(1)</sup>, and acquired the status of a Regional Economic Integration Organisation under that Protocol.
- (2) The Supervisory Authority of the Luxembourg Protocol may revise its own Statutes and Rules of Procedure, in accordance with Article 12 of the former and Article 18 of the latter. The Supervisory Authority is also required to adopt the Model Rules on the Permanent Identification of Railway Rolling Stock, in accordance with Article 5(8) of its Statutes.
- (3) During its third session on 14 April 2026, among other agenda items, the Supervisory Authority of the Luxembourg Protocol is expected to revise its Statutes and Rules of Procedure, and to take note of the updated Model Rules (Revision 3) on Permanent Identification of Railway Rolling Stock, developed under the auspices of the United Nation Economic Commission for Europe (UNECE) – SC.2 Working Party on Rail Transport.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Supervisory Authority, as any action regarding the Model Rules on Permanent Identification of Railway Rolling Stock by the Supervisory Authority is capable of decisively influencing the content of Union law, namely Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of

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<sup>(1)</sup> 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, ELI: <http://data.europa.eu/eli/dec/2014/888/oj>).

the rail system within the European Union<sup>(2)</sup>, Commission Implementing Regulation (EU) 2019/773 of 16 May 2019 on the technical specification for interoperability relating to the operation and traffic management subsystem of the rail system within the European Union<sup>(3)</sup> 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<sup>(4)</sup>. Further, the amendments to the Statutes and Rules of Procedures to be adopted by the Supervisory Authority are capable of decisively influencing the participation of the Union in that body.

- (5) Regarding the proposed decision by the Secretariat to note and to publish<sup>16</sup> a new version of the Model Rules on Permanent Identification of Railway Rolling Stock, it is to be noted that this proposal is not supported by the Supervisory Authority legal framework, as Article 5(8) of its Statutes requires the Supervisory Authority to ‘*Approve the Model Rules and its amendments.*’ Considering that the Revision 3 of the Model Rules did not yet enter into force, the proposal to *publish* these Model Rules should not be supported. The European Union should rather only support taking note of the new Revision 3 and propose to postpone any action until such time that the Revision 3 has entered into force. If the Revision 3 of the Model Rules enters into force until the third session of the Supervisory Authority takes place and corresponds to the unofficial version published on the website of UNECE<sup>17</sup>, the European Union should propose the adoption by the Supervisory Authority of these Model Rules.
- (6) The proposed amendments to the Statutes of the Supervisory Authority are mostly circumscribed to the clarification of the work of the Commission of Experts, as an advisory body to the Supervisory Authority. Such amendments are in the interest of the European Union, as they clarify the role of this body and facilitate the work of the Supervisory Authority, and should therefore be supported.
- (7) The proposed modifications to the Rules of Procedure of the Supervisory Authority are numerous and have different impacts. Important changes include the elimination of qualified majority voting in the Supervisory Authority as the default voting option, including its consequence on the quorum, the deletion of the requirement for an officer

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<sup>(2)</sup> 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 Union (recast) (OJ L 138, 26.5.2016, p. 44, ELI: <http://data.europa.eu/eli/dir/2016/797/oj>).

<sup>(3)</sup> Commission Implementing Regulation (EU) 2019/773 of 16 May 2019 on the technical specification for interoperability relating to the operation and traffic management subsystem of the rail system within the European Union and repealing Decision (OJ L 139I, 27.5.2019, p. 5, ELI: [http://data.europa.eu/eli/reg\\_impl/2019/773/oj](http://data.europa.eu/eli/reg_impl/2019/773/oj)).

<sup>(4)</sup> 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/EC (OJ L 268, 26.10.2018, p. 53, ELI: [http://data.europa.eu/eli/dec\\_impl/2018/1614/oj](http://data.europa.eu/eli/dec_impl/2018/1614/oj)).

<sup>16</sup> *The Supervisory Authority: (1) notes the modifications to the Model Rules on the Permanent Identification of Railway Rolling Stock contained in revision 3 of those Model Rules and that these modifications do not have any impact on the operation of the International Registry of Interests in Rolling Stock; (2) instructs the Registrar to publish on its website references to the second and third versions of the Model Rules on the Permanent Identification of Railway Rolling Stock, together with an explanation indicating that the second version was approved by the Supervisory Authority at its second session and that the third version was noted at its third session, on the basis that the modifications adopted in the third version do not have any impact on the operation of the International Registry of Interests in Rolling Stock.*

<sup>17</sup> [https://unece.org/sites/default/files/2026-02/ECE-TRANS-SC.2-337-Rev.3EFR\\_Unofficial.pdf](https://unece.org/sites/default/files/2026-02/ECE-TRANS-SC.2-337-Rev.3EFR_Unofficial.pdf)

of the Supervisory Office to be seconded by at least one other Member, and the systematic relocation and clarification of the voting rights of the Union. The majority of the envisaged amendments bring about important clarifications and improve the working procedures of the Supervisory Authority. However, the rules on voting by written procedure and tacit approval establish very short deadlines, clearly insufficient for allowing the necessary internal procedures for the adoption of a decision, and the subject-matters on which a decision may be adopted under tacit approval should be clearly and expressly defined. The amendments to the Rules of Procedure of the Supervisory Authority should therefore be supported, subject to certain modifications as regards the rules on voting under written procedure and tacit approval,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf at the third 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 meeting of the Supervisory Authority without further decision of the Council.

*Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*