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TRANS 82

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	20 March 2025
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2025) 129 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union at the second 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

Delegations will find attached document COM(2025) 129 final.

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2025/0067 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the second 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. CONTEXT OF THE PROPOSAL

This proposal concerns the position to be taken on the Union's behalf at the second 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. approval of the Model Rules as amended on 13 November 2024 for the purposes of the Regulations for the International Registry of Interests in Rolling Stock (herein after also 'the Model Rules');
2. revision of the Supervisory Authority's Statutes and Rules of Procedure.

The second session of the Supervisory Authority of the Luxembourg Protocol is scheduled to take place on 23 April 2025 in Bern, Switzerland.

• The Luxembourg Protocol to the Cape Town Convention

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).

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[1] 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 3 June 2021[2], 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

[1] As per Chapter III of the Cape Town Convention and Chapter II of the Luxembourg Protocol.

[2] Transport, Telecommunications and Energy Council (Transport), 3 June 2021: "Putting Rail at the Forefront of Smart and Sustainable Mobility" (ST 8790/21)

agreements and treaties which facilitate private investment, such as the Luxembourg Rail Protocol to the Cape Town Convention [on International Interests in Mobile Equipment]'.

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[3], 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[4];
- Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways[5];
- 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[6];
- 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[7].

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.

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3 OJ L 353, 10.12.2014, p. 9.

4 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).

5 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).

6 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).

7 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).

- **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[8], and consist essentially of administrative and operational tasks.

In its 7th (Berne, 23/24 November 2005) and 12th (Berne, 29/30 September 2015) General Assemblies[9], 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.

- **The envisaged acts of the Supervisory Authority**

On 23 April 2025, during its second session, and among other agenda items, the Supervisory Authority is expected to approve, in accordance with the Article 5(8) of its Statutes, the Model Rules as amended on 13 November 2024 for the purposes of the Regulations for the International Registry of Interests in Rolling Stock, and to revise its own Statutes and Rules of Procedure, in accordance with Article 12 of the former and Article 18 of the latter.

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. 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[10], and notify the Registrar thereof.

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*. Therefore, the approval of these Model Rules is capable of decisively influencing the content of EU legislation.

The Statutes and 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

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

9 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)

10 "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".

2014/888/EU, and the amendments thereto will directly affect the participation of the Union in that body[11].

As referred to in Council Decision (EU) 2024/851[12], the European Union has exclusive competence in respect of the Statutes and Rules of Procedure of the Supervisory Authority and of the Model Rules, pursuant to Article 3(2) TFEU.

- **Position to be taken on the Union's behalf**

Approval of the Model Rules as amended on 13 November 2024 for the purposes of the Regulations for the International Registry of Interests in Rolling Stock.

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 EVR and EVN regulated by Commission Implementing Decision (EU) 2018/1614.

Minor updates to those rules are proposed and are in the interest of the Luxembourg Protocol operation. The envisaged updates provide for a reasonable approach that does not conflict with the relevant legal framework of the European Union. It is therefore proposed to support the approval of the Model Rules as amended on 13 November 2024 (Revision 2).

Revision of the Supervisory Authority's Statutes and Rules of Procedure

The Statutes of the Supervisory Authority define aspects such as its legal personality, tasks and administrative framework, as required by the Cape Town Convention and by the Luxembourg Protocol. The envisaged amendment to the Statutes is minor in nature, and is in the interest of the European Union, as it clarifies its role as a State Party by making any reference to a State Party in the Statutes also a reference to a *Regional organisation*. Indeed, it is now made clear in this instrument that both states and Regional Organisations which have ratified or acceded to both the Convention and the Protocol are considered to be State Parties. Therefore, it is proposed to support these amendments.

The Rules of Procedure of the Supervisory Authority define aspects such as meeting rules, representation rules, proposals and decisions, and voting procedures.

The Union position on the approval of the Statutes of the Supervisory Authority and on the establishment of the Rules of Procedure of the Supervisory Authority in the context of the first session of the Supervisory Authority were laid out in Council Decision (EU) 2024/851.

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11 The Union has a right to participate in the works of the Supervisory authority pursuant to the combined reading of Articles XII and XXII of the Luxembourg Protocol and Council Decision 2014/888/EU.

12 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).

The envisaged amendments to the Rules of Procedure refer to a clarification on the exercise of qualified majority voting, and to the organisation of interim meetings, including those of an urgent nature. While these additional rules are welcome, the possibility to circulate documents for urgent meetings only three weeks before the meeting opens may bring significant difficulties to the procedure for coordinating Union positions on the matters to be discussed at those meetings. Moreover, setting up a list of urgent matters with a non-exhaustive nature could automatically provide an urgent character to matters that are not, in practice, urgent, depending on the situation at hand.

It is therefore proposed to support the approval of the amendments to the Rules of Procedure of the Supervisory Authority, rejecting the change on the deadlines for delivering the documents for the meeting and without specifying the matters that may be qualified as urgent, in order to ensure that the possibilities for the Union to coordinate positions on matters of EU relevance are effectively ensured.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Procedural legal basis

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'[13] .

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., The approval of the Model Rules is capable of decisively influencing the content of EU legislation, namely Directive (EU) 2016/797, Commission Implementing Regulation (EU) 2019/773, Commission Implementing Decision (EU) 2018/1614.

The approval of the revised Statutes and Rules of Procedure of the Supervisory Authority will have legal effects in so far as it will significantly influence the participation of the Union to 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.

Substantive legal basis

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

[13] 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.

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.

The main objective and content of the envisaged act relate to *rail transport*. Therefore, the substantive legal basis of the proposed decision is Article 91 TFEU.

The legal basis of the proposed decision should be Article 91 TFEU, in conjunction with Article 218(9) TFEU.

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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[(1)], and acquired the status of a Regional Economic Integration Organisation under that Protocol.

(2) During its second session on 23 April 2025, among other agenda items, the Supervisory Authority of the Luxembourg Protocol is expected to revise its Statutes and Rules of Procedure and to approve the updated Model Rules (Revision 2) on Permanent Identification of Railway Rolling Stock, developed in the framework of the Inland Transport Committee of the United Nation Economic Commission for Europe.

(3) It is appropriate to establish the position to be taken on the Union's behalf in the Supervisory Authority, as the revision of the Model Rules to be adopted by the Supervisory Authority is capable of decisively influencing the content of EU legislation, namely 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[(2)], 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[(3)] and

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(1) 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).

(2) 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).

(3) 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).

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[4]. 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.

(4) The Supervisory Authority is expected to amend its Statutes, which define aspects such as its legal personality, tasks and administrative framework, as required by the Cape Town Convention and by the Luxembourg Protocol. The envisaged amendments to the Statutes clarify an important element regarding the definition of State Party – by clarifying that any reference to a State Party in the Statutes is also a reference to a *Regional organisation*, which affects the Union's participation in that body, and should therefore be supported.

(5) The Supervisory Authority is expected to amend its Rules of Procedure, in order to clarify the rules on the exercise of qualified majority voting and to introduce new rules on the organisation of interim urgent meetings. The possibility to circulate documents for urgent meetings only three weeks before the meeting opens may however bring significant difficulties to the procedure for coordinating Union positions, and setting up a list of urgent matters could automatically provide an urgent character to matters that are not, in practice, urgent. The amendments to the Rules of Procedure of the Supervisory Authority should therefore be supported, rejecting the change on the deadlines for delivering the documents for the meeting and without specifying the matters that may be qualified as urgent, in order to ensure that the possibilities for the Union to coordinate positions on matters of EU relevance are effectively ensured.

(6) The Luxembourg Protocol needs to rely on a clear identification and marking system of railway rolling stock based on international standards. 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. Minor updates to those rules are proposed and are in the interest of the Luxembourg Protocol operation. The approval of the Model Rules as amended on 13 November 2024 (Revision 2) for the purposes of the Regulations for the International Registry of Interests in Rolling Stock should therefore be supported.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf at the second 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.

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[4] 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).

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President