

OTIF



**ORGANISATION INTERGOUVERNEMENTALE POUR
LES TRANSPORTS INTERNATIONAUX FERROVIAIRES**

**ZWISCHENSTAATLICHE ORGANISATION FÜR DEN
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**INTERGOVERNMENTAL ORGANISATION FOR
INTERNATIONAL CARRIAGE BY RAIL**



**INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF
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**COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF
A DRAFT PROTOCOL TO THE CONVENTION ON
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS
SPECIFIC TO RAILWAY ROLLING STOCK**

**PROPOSED CHANGES TO THE PRELIMINARY DRAFT PROTOCOL ON
MATTERS SPECIFIC TO RAILWAY ROLLING STOCK**

(as reviewed by the Drafting Group at its second session,
held in Rome, 23rd to 25th October 2002)

(Presented by the Rail Working Group (RWG))

**Comments on definition of “railway vehicle” contained in the preliminary draft Protocol
on Matters specific to Railway Rolling Stock (Article I)
presented by the Rail Working Group (RWG)**

INTRODUCTORY REMARKS

The RWG has been asked to consider the definition of “railway vehicle” contained in Article I.2 (h).¹ A concern has been recognised for some while that there needs to be some limitation of the effect of the definition. It is not intended for example that the Protocol should apply to model railway trains and members of the joint UNIDROIT/OTIF Committee of Governmental Experts (the *Committee of governmental experts*) will have noticed a footnote to the previous drafts of the Rail Protocol indicating that either a value or a weight criterion needs to be added. We set out below some detailed comments and suggestions on this subject for consideration by the Committee of governmental experts.

LOOKING AT THE DEFINITION IN DETAIL

1. The definition as accepted by the Committee of governmental experts has been deliberately kept broad in order to cover possible technological developments in the railway sector as well as the current status today. It is intended to confer the benefits of the Protocol on all types of movable rail assets in commercial use. But some assets should probably be excluded either because the assets are outside of what governments will generally understand as being covered by the Protocol, for example roller coaster equipment (which does travel on rails) and clearly model trains also should be excluded. On the other hand to give licence to each Contracting State to exclude certain types of assets risks a non-alignment of the various exclusions with considerable uncertainty as to whether specific assets are covered, especially when they move across a jurisdictional border either under their own locomotion or through being transported on road or rail vehicles themselves. If possible, we believe that it is better to create internal criteria in the Protocol itself to ensure uniformity of application but this is not so easy in practice.

2. A value criterion is initially attractive. But closer examination raises number of questions. Which currency is the value criterion set in? How do we deal with the fact that assets may have different values in different jurisdictions? Is the value taken at the time the asset is first placed into service or at the time it becomes subject to the international interest? Aircraft are high cost items but rolling stock need not be so costly. A typical wagon may cost Euros 70,000 although locomotives clearly are considerably more expensive. On the other hand high tech amusement equipment running on rails may have a considerable value.

3. Weight probably is generally a better criterion and this can clearly exclude model railways but it cannot be set too high and, for consistency, must be set in relation unladen

¹ The definition reads as follows: “railway vehicle” means a vehicle moveable on or confined to movement on or directly above a fixed railway track or guideway, or fixed superstructures or racks installed or designed to be installed on such vehicles, including all traction systems, engines, brakes, axles, bogies, and pantographs, and in each case including accessories and other components, equipment and parts installed or incorporated therein or attached thereto;

weight. But there is legitimate discussion over whether “hobby” rail equipment should be covered by the Protocol – for example steam railway engines operated on a private line for enthusiasts.

4. We consider that a value criterion is unreliable. Debtors and creditors need to know where they stand and accordingly asset values may be different and, if the asset is rather old, may be quite low; market values could vary wildly or would be very difficult to estimate. The weight criterion will exclude some of the obvious assets not to be covered by the Protocol and it should be clear to all parties whether or not an asset is excluded thereby. We would therefore suggest that this is used as a starting point but this should not be the exclusive criterion. In our view, the only sensible and flexible way to deal with this problem would be to have the supervisory authority make determinations from time to time as to which assets otherwise covered by the definition should be excluded from operation of the Protocol. Accordingly we propose the following amendments to the Protocol:

- a) in the definition in Article I (2). An amendment should be made as follows: (changes highlighted)

“railway vehicle” means a vehicle moveable on or confined to movement on or directly above a fixed railway track or guideway, or fixed superstructures or racks installed or designed to be installed on such vehicles, including all traction systems, engines, brakes, axles, bogies, and pantographs, and in each case including accessories and other components, equipment and parts installed or incorporated therein or attached thereto; provided that such vehicle has minimum weight of [500] kilos and is not excluded by the supervisory authority under regulations issued pursuant to Article V (5)

- b) Add in a new Article V (5) as follows:

“The supervisory authority may, by regulations, exclude certain classes of railway vehicle from rolling stock for the operation of this Protocol where such vehicle is habitually not utilised commercially for transportation of passengers or freight”.²

5. In the report of the second session of the joint Committee of governmental experts prepared by the Secretaries of UNIDROIT and OTIF, a comment from one delegation is noted (on page 5) in relation to trucks which can, but will not be necessarily, travel on or above railway tracks or other guide ways. We note that the definition above commences with the words “a vehicle movable on or *confined* to movement on or directly above ...” (our italics). In our view it is not a condition for an object to be considered to be a railway vehicle that it exclusively moves on or above a track or a guide way since the definition presents two alternatives, only of one of which suggests that the object must be confined exclusively to such movement on or above track or guide way. We suggest therefore that, to allay any doubts, the Official Commentary would make this point quite clear.

² It is expected that the supervisory authority will specifically exclude any model railway equipment, miniature trains and wagons and railway vehicle used exclusively for amusement or leisure (e.g. roller coasters)