



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONALE POUR L'UNIFICATION DU DROIT PRIVE

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ORGANISATION INTERGOUVERNEMENTALE POUR LES
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ZWISCHENSTAATLICHE ORGANISATION FÜR DEN
INTERNATIONALEN EISENBAHNVERKEHR

INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL
CARRIAGE BY RAIL

**DIPLOMATIC CONFERENCE TO ADOPT A
RAIL PROTOCOL TO THE CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE
EQUIPMENT**

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**PROPOSALS CONCERNING THE SUPERVISORY AUTHORITY AND THE REGISTRY TO
ARTICLES XIII, XVI, XVII AND XVIII**

(Presented by the Government of the United States of America)

Overview: The methods previously employed to establish the international finance Registry under the Aircraft Protocol are translatable to, and can lower the cost substantially of, a Registry for rail rolling stock. To do that, a Preparatory Commission should again be established by a Resolution of the diplomatic Conference, as was done for the Aircraft Protocol. Industry should be represented through the Rail Working Group and others. The Commission would resolve technical and design issues necessary which cannot be dealt with at the Conference, many of which will present themselves only as the design moves forward.

As was the case for the Aircraft Protocol, Commission participants should be funded by States, work can be conducted to the extent possible by teleconference or electronic means, keeping administrative services to the minimum and drawing where possible on assistance from the sponsoring Organizations through their regular budget, recognizing that, unlike the aircraft sector, there is unlikely to be sufficient rail industry or State contributions to fund any substantial costs.

The Preparatory Commission would, based on guidelines from the previous Registry Task Force, recommendations of a Registry Committee of the Conference, and, within the constraints of the Convention and the Protocol, prepare draft Regulations for the Registry and recommendations for the selection of the Registry operator. The Supervisory Authority, whose members would also be funded by States as a means of restricting the cost of the Registry, would approve or disapprove the regulations and the selection of the Registrar and host State.

Once selected, the Registry operator, subject to approval of the Supervisory Authority, would refine the technical aspects of the Registry and the methodology for assigning identifying numbers or information for rolling stock. The amendments below would assure that the interface between the International Registry with regional or national systems participating by declaration under Article V(3) would be mutually worked out and subject to agreement between the Registry and such regional or national systems. This is a core feature that can make this Protocol work with different systems now operating and achieve wide participation.

The structure of the Supervisory Authority should take into account that the Authority will not be within a universal membership body (the Authority for the Aircraft Protocol is ICAO which permits ICAO Council member States to participate). In order to fill that gap for the rail Registry it is proposed that, in addition to States party to the Protocol, which could number both very few States and not include registry experienced States at any point, that the two sponsoring Organizations, UNIDROIT and OTIF, each have the capacity to appoint three additional States to serve on the Authority until such time as the Authority shall have ten member States by way of ratification. After that time, each Organization would have capacity to appoint one State to the Authority.

The following amendments in concept are proposed to accomplish these objectives. It would be for the Drafting Committee to elaborate the drafting of the actual amendatory language.

Article XIII:

Paragraph 1: Provide at the end that not to exceed three States may be appointed by UNIDROIT and OTIF respectively until such time as the Authority is composed of ten States parties by ratification, in which case not to exceed one State may be appointed by each of the aforementioned Organizations.

Paragraph 4: Add a provision that the interface between the Registry and a national or regional registry system declared pursuant to Article V(3) shall be by mutual agreement between the Authority and such system. The terms "group of States" might be clarified as to what is intended to be covered beyond States of a national or regional system.

Article XVI:

Delete the words in the last sentence "but shall not compel". This is very important, as there will be States who need to provide a single entry point for information to the Registry from that State. This parallels Aircraft Protocol Article XIX(1).

Article XVII(4):

It is highly important to limit mandatory insurance in view of the very limited area of risk and the need to keep Registry fees as low as possible. One option is to end the provision at the word "appropriate", and delete reference to any particular factors. The Preparatory Commission would recommend appropriate levels, taking into account present market factors, risks, levels of obtainable insurance and costs. These factors may change (and have already changed in the last several years). Another option may be the liability limitation formulae presented by the Rail Working Group.

Article XVIII(2):

The Protocol should not exclude the possibility that a host State or other participant may wish to absorb some portion of the expense of establishing or operating such a registry; recovery of costs therefor should be qualified by “to the extent necessary” to provide for that possibility.

As with the Aircraft Protocol’s Supervisory Authority, Government participants should be funded by the States involved and industry members of the advisory committees to the Registry should be funded by the industry. Otherwise the costs of the Registry would be raised and the treaty benefits significantly diluted.

With these changes, we believe that a sound basis can be laid for establishment of an effective, low-cost worldwide Registry that can serve both States operating solely under the Registry and those operating in a national or regional system through an interface with the Registry.