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**INTERNATIONAL INSTITUTE FOR THE UNIFICATION  
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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**

**PRELIMINARY DRAFT PROTOCOL ON MATTERS SPECIFIC  
TO RAILWAY ROLLING STOCK**

OBSERVATIONS

(presented by the Austrian Federal Ministry of Justice)

## **OBSERVATIONS TO THE PRELIMINARY DRAFT PROTOCOL ON MATTERS SPECIFIC TO RAILWAY ROLLING STOCK**

(presented by the Austrian Federal Ministry of Justice)

With reference to the upcoming meeting of governmental experts on the “Rolling Stock Protocol” in Berne, the Austrian Federal Ministry of Justice would like to transmit a couple of comments made with reference to paragraph 8 of the introductory remarks of document UNIDROIT 2002 Study LXXIIIH-Doc.8.

A working translation of these comments, originally made in German, has been made by the Austrian Embassy in Italy. Only the German version, however, is authentic.

### ***“(a) Definition of “railway rolling stock”, and do modular components (i.e. engines for locomotives) (Art. I(2)(i)) need to be provided for?”***

In Austria’s view, the definition of “railway rolling stock” does not need to be supplemented. The necessary broadness of this definition is guaranteed by the integration of the term “railway vehicle”.

### ***“(b) Which provisions should be mandatory (Art. III)?”***

The following provisions should be binding: Article VI and Article VII paragraphs 2 and 3.

### ***“(c) Remedies on insolvency: Is the solution of the Aircraft Protocol (voluntary opt-in with two alternatives A and B) or a single compromise solution (e.g. Alternative C) to be preferred (Art. IX)?”***

From the perspective of Austrian national legislation, the obligations of the insolvency administrator contained in alternatives A and B are problematic. Austrian law provides for an exclusive right of the insolvency administrator (“Masseverwalter”) to realise all objects of the debtor which are under his control, therefore also comprising objects to which claims to separation from the bankrupt’s estate exist.

Austria therefore welcomes the inclusion in the draft of Alternative C, as especially through the “suspension period” foreseen in paragraph 3 a broader sphere of action is conceded to the insolvency administrator.

**(d) Is the problem of “short term leases” satisfactorily solved by Art. Xter (2) and (3) as drafted by the Drafting Committee?**

The provisions of Article Xter paragraphs 2 and 3 sufficiently regulate “short term leases”.

**(e) Registry: structure and entities, including the issues of autonomous regional authorities and review mechanism for a local registry to become a portal to the International Registry (Art. XI et seq.)**

The reply to this question has already been given by the Federal Ministry of Transport, Innovation and Technology in its written communication dated 17 January 2003 and transmitted to UNIDROIT/OTIF Rail Registry Task Force. The Federal Ministry of Justice has no further information at its disposal. (See the embassy’s Note Verbale No. 6.7.11/3/03 dated 28 January 2003 respectively its attachment which appears as APPENDIX A to this document.)

**(f) Definition of “public service rolling stock” and of the remedies which may be excluded by a declaration (Art. XXIIbis)**

The definition of “public service rolling stock” (Article I paragraph 2 let. (g)) is well formulated. The opting-out possibility contained in Article XXIIbis is, in principle, acceptable (see also remarks on let. (g)).

**(g) Which provisions should be subject to opting-in or opting-out declarations (see especially Articles VI (1), VIII, IX (1), XXIIbis)? The relevant article of the Final provisions has not yet been drafted.**

The draft should only to a limited extent provide for opting-in or opting-out declarations, as those run contrary to the objective of the unification of law.

Inasmuch as the “Aircraft Equipment Protocol” foresees opting-in or opting-out declarations, it seems sensible to allow for such declarations also in the comparable provisions of the draft in question.

**(h) How should the transitional provisions apply (Art. XXIII)?**

The transitional provisions in Article XXIII are acceptable.

**(i) Should “internal transactions” be the subject of the Protocol and if so, what are the criteria (Art. XXV (3))?**

Internal transactions in the sense of Article XXV paragraph 3 should not be regulated by this Protocol.”

Attachment to note no. 6.7.11/3/03

**INFORMATION BY THE  
FEDERAL MINISTRY OF TRANSPORT; INNOVATION AND TECHNOLOGY  
OF THE REPUBLIC OF AUSTRIA**

concerning points 1 and 2 of attachment F to the **"Report on the second session of the Joint Committee of governmental experts for the preparation of a draft Protocol to the UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock"**

Until 1993 railway services in Austria were mainly operated by the government--owned and government-run railway undertaking Österreichische Bundesbahnen (ÖBB).

A liberalization of railway services in Austria took place in connection with the implementation of first European Community Directives on the development of the Community's railways. Austria recognized the necessity of creating a clear separation of responsibilities between government and the railway undertaking in order to strengthen the railway's competitiveness.

By the Austrian Federal Railways Act of 1992, the Österreichische Bundesbahnen were reorganised and separated from the federal budget. They now are organised like a limited liability company. The federal government is the 100 percent shareholder. The ÖBB must organise and draw up separate accounts for its Transport Operations and infrastructure divisions.

The Transport Operations division is managed exclusively according to commercial principles. Public-benefit services for the state or the federal provinces are provided on the basis of service contracts.

The state shall bear the costs of providing and developing the railway infrastructure necessary for the attainment of operational objectives to the extent such costs cannot be collected from third parties.

In Austria in 2000 the proportion of traffic was 26.363.336 gross-tons-kilometres of passenger trains vs. 44.067.972 gross-tons-kilometres of freight trains. All investments in rolling stock are paid by the ÖBB without state contributions or subsidies.

Besides ÖBB there exist some private railways with rather regional importance.

Up to now, these railway companies, ÖBB as well as the private companies, perform the operation of infrastructure as well as transport services. Recently a few examples of competition on the infrastructure of ÖBB have arisen and are expected to gain more importance in the near future.

At the moment, legislation is about to be adapted to implement new European Community - Directives.