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GOVERNING COUNCIL
100th session (B)
Rome, 22-24 September 2021

UNIDROIT 2021
C.D. (100) B.10
Original: English
August 2021

Item No. 9 on the agenda: International Interests in Mobile Equipment

**(b) Implementation and status of the Luxembourg Rail Protocol
and of the Space Protocol**

(prepared by the Secretariat)

<i>Summary</i>	<i>Update on the implementation and status of the Rail and Space Protocols to the Cape Town Convention</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the progress</i>
<i>Mandate</i>	<i>Work Programmes 2014-2016, 2017-2019, and 2020-2022</i>
<i>Priority level</i>	<i>High</i>
<i>Related documents</i>	UNIDROIT 2019 – C.D. (98) 2 ; UNIDROIT 2019– C.D. (98) 3 and UNIDROIT 2020 – C.D. (99) B.2

1. The Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (the Luxembourg Rail Protocol) was opened to signature in Luxembourg on 23 February 2007 and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets (the Space Protocol) was opened to signature in Berlin on 9 March 2012. Neither of them is yet in force.

2. UNIDROIT is designated as the Depositary to both instruments. Under the Work Programme 2020-2022, the implementation of both Protocols was given a high degree of priority ([UNIDROIT 2019 – C.D. \(98\) 17](#), para. 317; [UNIDROIT 2019 – A.G. \(78\) 12](#), para. 51). This memorandum provides an update on the Institute's Depositary functions and provides additional details on UNIDROIT's activities regarding their promotion and implementation since the second meeting of the 99th session of the Governing Council in September 2020.

I. STATUS

3. UNIDROIT has been designated as the Depositary of the Luxembourg Rail Protocol (pursuant to its Article XXXIV (1)), which will enter into force following the procedure provided for in Article XXIII (1).

4. As of 28 June 2021, the Luxembourg Rail Protocol was signed by six States (France, Germany, Italy, Mozambique, Switzerland and the United Kingdom) and ratified by three States (Luxembourg, Gabon and Sweden) and one contracting Regional Economic Integration Organisation (the European Union). See Annexe I for further details.

5. UNIDROIT has been designated as the Depositary of the Space Protocol (pursuant to its Article XLVIII (1)), which will enter into force following the procedure provided for in Article XXXVIII. As of 28 June 2021, it has four Signatory States (Burkina Faso, Germany, Saudi Arabia and Zimbabwe). See Annexe II for further details.

II. ACTIVITIES

GENERAL

6. UNIDROIT's responsibilities as Depositary under the Luxembourg Rail Protocol and the Space Protocol are specified in each instrument and include the operation of a system for the receipt and notification of all instruments of ratification, declarations and other documents lodged with the Depositary.

A. Luxembourg rail protocol

1. 9th Preparatory Commission session (8 April 2021)

7. On 8 April 2021, the Intergovernmental Organisation for International Carriage by Rail (OTIF) and UNIDROIT held the 9th session of the Rail Preparatory Commission for the establishment of an International Registry under the Luxembourg Rail Protocol. Though it was conducted remotely, the session was hosted by the OTIF Secretariat in Berne. The session, opened by the Secretaries General of UNIDROIT and OTIF, respectively Mr Ignacio Tirado and Mr Wolfgang Küpper, was attended by 28 State delegations, as well as by representatives of the European Commission, the UN Economic Commission for Africa (UNECA), the United Nations Economic Commission for Europe (UNECE), and the African Union. The Preparatory Commission, co-chaired by Peter Bloch (USA) and Antti Leinonen (Finland), received a briefing of the Report on developments since the 8th Preparatory Commission session (6-7 December 2018) and the activities of the Ratification Task Force, as well as on the functioning of the International Registry. In addition, the Preparatory Commission was also informed on the activity of the Group of Experts established by UNECE for the Permanent Identification of Railway Rolling Stock (PIRRS) by the Chair of the Group Konstantin Grigoriev (Ministry of Transport of the Russian Federation) and by the representative of the UNECE Secretariat.

8. The Commission approved a revised version of the Draft [Regulations for the International Registry](#), which would be issued in due course by the Supervisory Authority in accordance with the Protocol.

9. A number of participating delegations made supportive statements relating to the benefits connected with the future operation of the Protocol as well as to the status of the ratification process or other implementation activities. In particular, the delegate from South Africa announced the release, on 23 March 2021, of the Presidential statement authorising the Minister of Transport to sign the Rail Protocol (see the [Full Statement](#)).

10. For more information on the Preparatory Commission session, please access the [Documents of the 9th session of the Preparatory Commission](#).

2. Ratification Task Force actions and other promotional activities

11. Since the second meeting of the 99th session of the Governing Council in September 2020, the UNIDROIT Secretariat has undertaken numerous activities to promote the implementation and entry into force of the Luxembourg Rail Protocol, also in cooperation with OTIF, the Rail Working Group (RWG) and the Ratification Task Force of the Preparatory Commission, as well as other organisations (on the cooperation with other organisations see below, paras 13 et seq.). The Protocol needs one additional ratification/accession alongside the issuance by the Supervisory Authority of a certificate confirming that the International Registry is fully operational to enter into force (taking into account that such certificate is needed for the Registry to start its operation). The Secretariat has continued to monitor developments in several jurisdictions and actively liaise with potential signatories/contracting States (among others South Africa, Spain, UK), as well as assist the RWG in drafting support documentation for interested governments (among others Democratic Republic of the Congo, Ethiopia, Mauritius, Mozambique, Senegal). Despite the impacts of the COVID-19 pandemic on governmental agendas and priorities, the Secretariat was informed that work towards ratification is continuing to progress in various jurisdictions. In particular, the Inter-ministerial Commission set up in Spain to work towards the implementation of the Protocol has finished its review with full endorsement and legislative acts towards accession are underway; moreover, during the 9th Preparatory Commission the release of a Presidential Statement authorising the signature of the Protocol by South Africa was announced (see above, para. 9). For the details on the conferences and seminars regarding the Luxembourg Rail Protocol that took place in 2020, see the Annual Report (C.D. (100) B.2).

12. Following the 9th Rail Preparatory Commission session, in 2021 the UNIDROIT Secretariat participated in a panel organised by the RWG entitled “Building Back Greener: The role of the Luxembourg Rail Protocol in the Post-Covid Economy”, which focused on the potential benefits of the Protocol to foster global sustainable growth. The event, hosted by OTIF, was opened by the Secretaries General of OTIF and UNIDROIT followed by an introductory statement from Claire Depré the Deputy Director of the Land Directorate at DG Move (European Commission). Howard Rosen (RWG Chairman) moderated a panel with participation of Alberto Mazzola (Executive Director, Community of European Railway and Infrastructure Companies), Anne Mazière (Head of Business Support / Executive Director, Crédit Agricole Corporate and Investment Bank), and Jamie Holley (CEO of Traxtion and Chairman of the African Rail Industry Association).

3. Cooperation with other organisations and further support for the Rail Protocol

(a) UN Economic Commission for Africa (UNECA)

13. Under the lead of the Private Sector Development and Finance Division for the implementation of the UNECA Resolution 965(LII) on the Luxembourg Protocol, mandating the Commission to raise the awareness of, and advocate the adoption of, the Luxembourg Rail Protocol across Africa, the UNECA continued to participate in activities for the promotion of the implementation of the Protocol in Africa, particularly in cooperation with the RWG. In 2021, the

Deputy Secretary-General Professor Anna Veneziano represented UNIDROIT as an Observer in the Committee of Expert of the 53rd session (17-23 March 2021), dedicated to Africa’s Sustainable Industrialization and Diversification in the Digital Era in the Context of COVID-19. The Protocol was discussed as part of the [Report](#) on the follow-up by the Economic Commission for Africa to the resolutions of the fifty-second annual meeting of the Conference of African Ministers of Finance, Planning and Economic Development, and the 2020 extraordinary meeting of the Bureau of the Conference (p. 5).

(b) UNECE Group of Experts (GE_PIRRS)

14. At its eighty-second session, held on 25-28 February 2020, the UN ECE Inland Transport Committee, upon recommendation of its Working Party on Rail Transport (SC.2) had approved the establishment of a Group of Experts on the Unique Rail Vehicle Identification System created by the Luxembourg Rail Protocol (URVIS), called the “Group of Experts on Permanent Identification of Railway Rolling Stock” (GE_PIRRS) and its terms of reference. As the Luxembourg Rail Protocol does not determine the way the URVIS number can be permanently fixed on the rolling stock, the Group of Experts was tasked with providing recommendations to solve this challenge, in conformity with current industry practice and anticipating technological and other advances in the future. UNIDROIT was invited to join OTIF and the RWG in participating in the Group of Experts.

15. The Group of Experts met twice in 2020: on 2-4 September, with participation of the Secretary-General and the Deputy Secretary-General (<https://unece.org/1st-session-45>), and 14-15 December, with the participation of the Deputy Secretary-General ([second meeting](#)). A third meeting of the Expert Group, attended by the Deputy Secretary-General, was held on 6-7 May 2021. The meeting featured, among others, discussions on best practices in, and national requirements for rolling stock marking; use cases and the placing of the URVIS number on rolling stock; technological aspects; identification evaluation and selection of possible solutions; and the development of recommendations and standards (<https://unece.org/transport/events/sc2pirrs-group-experts-permanent-identification-railway-rolling-stock-3rd-session>).

(c) EU Transport Council

16. On 3 June 2021, the European Transport Council issued its [Conclusions](#) on “Putting Rail at the Forefront of Smart and Sustainable Mobility”, as the outcome of a dedicated meeting linked to the European Year of Rail. In this context, the role of the Luxembourg Rail Protocol in providing an enabling legal environment for investment in railway rolling stock, as part of a more general strategy on sustainable mobility, was expressly recognised in the Declaration issued by the Council (para. 38).

B. Space Protocol

17. Pursuant to Resolution 1 of the diplomatic Conference for the adoption of a Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets adopted on 9 March 2012, a Preparatory Commission was set up to act as Provisional Supervisory Authority for the establishment of the International Registry for Space Assets. In 2017, the Commission’s members agreed to constitute a Sub-Group to reassess industry participation for the promotion and development of the Space Protocol. Since the last Governing Council session in September 2020, this Sub-Group has organised a survey to examine the benefits of asset-based space financing in the post-COVID-19 economy. The results of this survey were presented in an online panel discussion on 31 March 2021, which was organised in partnership with BHO Legal.

18. The Space Protocol was featured at several events in which UNIDROIT was invited to participate. In particular: in October 2020, the Space Protocol was jointly presented by the Deputy Secretary-General Prof. Anna Veneziano and Legal Consultant Hamza Hameed, together with Oliver Heinrich and Erik Pellander from BHO Legal, at the Cyberspace International Astronautical Congress organised by the International Astronautical Federation; on 6 February 2021, Mr Hameed delivered an honorary address entitled “Importance of a Uniform System of Secured Transactions Law in Order to promote Asset-based Financing in the Space Sector” at the One-Day International Seminar on Privatization of Space Sector in India - Issues and Challenges, organised by Symbiosis Law School, Hyderabad, India. The Space Protocol was also presented at the Global Space Exploration Conference (GLEXP2021) in St Petersburg, Russia between 14-18 June 2021, where Mr Hameed delivered a presentation on a “Harmonised system of secured transactions for space assets - the Space Protocol of the Cape Town Convention” as part of the session on “International Cooperation for Space Exploration”.

19. On 4 May 2021, Mr Hameed delivered a lecture via videoconference to the students of the Advanced Master’s LLM in Air and Space Law Programme at the International Institute of Air and Space Law at Leiden University.

20. In May 2021, UNIDROIT was appointed as an Observer to the Courts of Space Working Group established by the Dubai International Financial Centre Courts to share expertise in applying private international law rules in space disputes.

21. UNIDROIT increased its collaboration with the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS) to further the promotion and implementation of the Space Protocol. UNIDROIT has applied for the status of a Permanent Observer at COPUOS and the Space Protocol was presented twice as part of the 60th Session of the Legal Subcommittee of COPUOS in June 2021. This included a statement delivered by the Secretary-General to the Subcommittee during its session, as well as a joint presentation with Professor Bernhard Schmidt-Tedd (DLR) at the International Institute of Space Law (IISL) and European Centre for Space Law (ECSL) Space Law Symposium 2021 entitled “Space Law for the Global Space Economy”.

22. The Secretariat will continue to monitor the developments in relation to the Space sector and to promote the Space Protocol pursuant to its mandate.

23. Among other planned activities in the future, Prof. Anna Veneziano and Hamza Hameed will be contributing a chapter on the Space Protocol in the 2nd Edition of Contracting for Space, a book co-authored by Lesley Jane Smith and Ingo Baumann published by Taylor and Francis.

III. ACTION TO BE TAKEN

24. *The UNIDROIT Secretariat would invite the Governing Council to take note of the developments in relation to the implementation of the Rail and the Space Protocols.*

ANNEXE I

LUXEMBOURG PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON
MATTERS SPECIFIC TO RAILWAY ROLLING STOCK

PROTOCOLE DE LUXEMBOURG PORTANT SUR LES QUESTIONS SPÉCIFIQUES AU MATÉRIEL ROULANT FERROVIAIRE
À LA CONVENTION RELATIVE AUX GARANTIES INTERNATIONALES
PORTANT SUR DES MATÉRIELS D'ÉQUIPEMENT MOBILES

as of 23 July 2021 / au 23 juillet 2021

Adoption: Place / *Lieu*: Luxembourg
Date: 23-02-2007

Entry into force: No / *Non*
Entrée en vigueur: Conditions: 4 ratifications (Art. XXIII(1))

Contracting States /
États contractants /

Depositary / Dépositaire: UNIDROIT

STATE / ÉTAT	SIGNATURE	RATIFICATION / ACCESS. / ADHÉS.	ENTRY INTO FORCE / ENTRÉE EN VIGUEUR	DECL. OF RESERV. / DÉCL. OU RÉSERVES
France	03-03-17	-	-	-
Gabon	23-02-07	04-04-17	-	-
Germany / <i>Allemagne</i>	21-11-12	-	-	-
Italy / <i>Italie</i>	23-02-07	-	-	-
Luxembourg	23-02-07	31-01-12	-	-
Mozambique	15-11-16	-	-	-
Sweden / <i>Suède</i>	27-06-17	02-07-18	-	XXVII(1)
Switzerland / <i>Suisse</i>	23-02-07	-	-	-
United Kingdom / <i>Royaume-Uni</i>	26-02-16	-	-	-
European Union / ¹ <i>Union européenne</i>	10-12-09	18-12-14	-	D

¹ Regional Economic Integration Organisation / *Organisation régionale d'intégration économique*: Protocol(e) Article XXII.

ANNEXE II

**PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC
TO SPACE ASSETS**

**PROTOCOLE PORTANT SUR LES QUESTIONS SPÉCIFIQUES AUX BIENS SPATIAUX À LA CONVENTION RELATIVE AUX
GARANTIES INTERNATIONALES
PORTANT SUR DES MATÉRIELS D'ÉQUIPEMENT MOBILES**

as of 23 July 2021 / *au 23 juillet 2021*

Adoption: Place: Berlin / *Lieu: Berlin*
Date: 09.03.2012

Entry into force / *Entrée en vigueur:* Not in force / *Pas encore en vigueur* (ex Article XXXVIII)

Depositary / *Dépositaire:* UNIDROIT

STATE / <i>ÉTAT</i>	SIGNATURE	RATIFICATION (RT) ACCEPTANCE / <i>ACCEPTATION</i> (AC) APPROVAL / <i>APPROBATION</i> (AP) ACCESSION / <i>ADHÉSION</i> (AS)	DECLARATIONS	ENTRY INTO FORCE / <i>ENTRÉE EN VIGUEUR</i>
Burkina Faso	09.03.2012	-	-	-
Germany / <i>Allemagne</i> (with declaration at signature / <i>avec déclaration à la signature</i>)	21.11.2012	-	-	-
Saudi Arabia / <i>Arabie saoudite</i>	09.03.2012	-	-	-
Zimbabwe	09.03.2012	-	-	-