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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**

Luxembourg, 12 to 23 February 2007

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PROPOSAL TO MODIFY ARTICLE XXVI OF THE DRAFT RAIL PROTOCOL

(presented by the Rail Working Group (RWG))

The Working Draft of the Rail Protocol stipulates that a Contracting State may determine that the Protocol shall apply to interests in rolling stock created prior to the Protocol coming into force in such state, subject to a transition period of not less than three years. It is recognised that a medium term objective should be to make the application of the Protocol inclusive. Bearing in mind that some rolling stock can be in service for more than 40 years, the Rail Working Group (RWG) agrees that it is essential to look back to include into the scope of the Protocol rolling stock in respect of which interests were created prior to the Protocol's coming into force and we agree that there should be a transition period before the non registered pre-existing interests lose priority as against subsequently registered interests.

However we would respectfully suggest that the transition period should not be open ended. Significantly differing transition periods selected by Contracting States could cause uncertainty in the market and would oblige parties to register interests even where the Protocol only applied to those interests in some jurisdictions but not in other, possibly contiguous, jurisdictions. Secondly the delay in the Protocol applying to "legacy transactions" deprives existing creditors (and lessees) and, if a separate proposal from the RWG is accepted, owners of the benefits of the Protocol and that exclusion should be limited to a sensible period. Accordingly we set out a proposal for revision of Article XXVII below. We suggest ten years as the maximum transition period although we recognise that finding the balance between the objectives set out above and the need to give existing creditors [and owners] time to react and make the appropriate registrations in order to preserve their priority, is necessarily subjective and the RWG wishes to indicate its flexibility in this regard from the outset.

Proposed change to the Draft Protocol

Article XXVI
Transitional Provisions

In relation to railway rolling stock Article 60 of the Convention shall be modified as follows:

- (a) in paragraph 2(a), after “situated” insert “at the time the right or interest is created or arises”;
- (b) replace paragraph 3 with the following:

“3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years, and not later than ten years, after the date on which the declaration becomes effective, when Articles 29, 35 and 36 of this Convention as modified or supplemented by the Protocol will become applicable, to the extent and in the manner specified in the declaration, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in that State. Any priority of the right or interest under the law of that State, so far as applicable, shall continue if the right or interest is registered in the International Registry before the expiration of the period specified in the declaration, whether or not any other right or interest has previously been registered.”

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