



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

OTIF



ORGANISATION INTERGOUVERNEMENTALE POUR LES
TRANSPORTS INTERNATIONAUX FERROVIAIRES

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

UNIDROIT/OTIF 2007
DCME-RP – Doc. 28
Original: English
20 February 2007

**REVISED PROPOSAL CONCERNING
ARTICLE XXV OF THE DRAFT PROTOCOL**

(presented by Austria, Finland, Germany, Greece, Luxembourg, Switzerland, the United States of America and the Rail Working Group)

Following the meeting of the informal Article XXV working group the presenting States and the Rail Working Group would like to propose the following revisions:

*Article I
Defined Terms*

In Article I paragraph 2, delete the definition “public service rolling stock”

*Article XXV
Public service railway rolling stock*

1. A Contracting State may, at any time, declare that it will continue to apply, to the extent specified in its declaration, rules of its law¹ in force at that time which preclude, suspend or govern the exercise within its territory of any of the remedies specified in Chapter III of the Convention and Articles VII to IX of this Protocol in relation to railway rolling stock habitually used for the purpose of providing a service of public importance (“public service railway rolling stock”) as specified in that declaration notified to the Depository.²

¹ Clarification should be given in the Official Commentary that “rules of law” will be the rules of law of the declaring state.

² It is requested that the Official Commentary sets out, following the plenary discussion, the considerations behind this Article and notes that a state making a declaration is not, by this Article, in any way limited in the application of its existing or future practices.

2. Any person who, under rules of law of a Contracting State making a declaration under paragraph 1, exercises a power to take or procure possession, use or control of any public service railway rolling stock, shall preserve and maintain such rolling stock from the time of exercise of such power until possession, use or control is restored to the creditor.

3. During the period of time specified in the preceding paragraph that person shall also make or procure payment to the creditor of an amount equal to the greater of: (a) such amount as that person shall be required to pay under its rules of law or (b) the market lease rental in respect of such rolling stock. The first such payment shall be made within 10 calendar days of the date such power is exercised and subsequent payments shall be made on the first day of each successive month thereafter. In the event that in any month the amount payable exceeds the amount due to the creditor from the debtor, the surplus shall be paid to any additional creditors to the extent of their claims in order of their priority and thereafter to the debtor. For these purposes, references to creditor shall be deemed to include references also to its successors or assignees.

4. A Contracting State whose rules of law do not provide for the obligations specified in paragraphs 2 and 3, may, to the extent specified in a separate declaration notified to the Depository, declare that it will not apply those paragraphs with regard to railway rolling stock specified in that declaration. Nothing in the preceding sentence precludes a person from agreeing with the creditor to perform the obligations set out in paragraphs 2 or 3 or affects the enforceability of any agreement so concluded.

5. Any initial or subsequent declaration made under this Article by a Contracting State shall not adversely affect rights and interests of creditors arising under an agreement entered into prior to the date that declaration is received by the Depository.

6. A Contracting State making a declaration under this Article shall take into consideration the protection of the interests of the creditor and the effect of the declaration on the availability of credit.

– END –