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**Economic Commission for Europe****Working Party on Rail Transport****Group of Experts on Permanent Identification of Railway Rolling Stock****Fifth session**

Geneva, 4–6 May 2022

Item 2 of the provisional agenda

**Development of the permanent marking on  
the Unique Rail Vehicle Identification System:  
Development of the framework****Notes on amendments in the latest draft of the Model Rules****Submitted by the Rail Working Group****I. Introduction**

1. A number of changes have been made in the latest draft of the Model Rules and these notes are designed to assist the reader in understanding the logic for some of the key changes.

**II. Language**

2. Our working assumption is that the Rules will be produced in three languages, English, French and Russian. So we have taken out any references to the English language in the draft, other than to indicate that it is the English edition the, except that we have made English the default language where the Rules are adopted under an agreement and we assume that when a party makes a unilateral declaration this will specify the applicable language that is binding on the party making the declaration. So in the English version, it refers to the English edition but we expect that in the Russian version it will refer to the Russian edition, unless the parties declare otherwise. This is because we do not want to dictate which language should have priority over another, and on the other hand, there can always be disparities between the documents notwithstanding excellent translations.

**III. Application of the Rules**

3. In the initial drafts it has been envisaged that parties would incorporate Rules into specific bilateral or multilateral contracts. We have simplified the wording for this, looking at other examples such as the ICC Uniform Customs and Practice for Documentary Credits.

4. At our last meeting however, it was pointed out that there would be circumstances where either voluntarily or, following local law designed to create a degree of uniformity in the way that rolling stock is marked, manufacturers, operators and other parties may wish, or be required, to unilaterally commit to compliance with the Rules similar to the way that companies and other organisations commit to the adoption of ISO standards. We have now

made provision for this unilateral declaration but it will need to be publicly verifiable, and we have provided for the unilateral declaration to be registered with the international registry. We have spoken to the representatives of the registrar to ensure that parties making a unilateral declaration adopting the Rules will be able to register this declaration with the international registry and will have their names publicly available on the international registry's website as having made such declaration. We do not expect there to be a cost for this.

#### **IV. Which Rules apply?**

5. Bearing in mind that there is provision in the Rules for revision of their terms. Our assumption is that, unless the parties provide otherwise, the Rules incorporated into a bilateral or multilateral agreement will be the edition of the rules at the time the agreement is executed.

6. A corollary of providing for unilateral adoption of the Rules is that the decision has to be made as to whether the declaration applies to the Rules in force at the time the declaration is made or at the time it is relied upon by other parties. Because it would be an administrative burden every time the rules change for parties making a unilateral declaration to have to notify the registrar that they will be bound by the updated set of Rules, we have provided for a presumption that this is the case but have given the right for the party making the unilateral declaration to dislodge that presumption.

#### **V. Unilateral registrant under the Protocol**

7. Registration of an international interest at the international registry is usually a consensual act between the debtor and the creditor. If the rolling stock being financed does not have URVIS numbers then one of the parties, probably the debtor, will apply for the number and, if the Rules apply, will mark the rolling stock in accordance with the Rules. This is because the international interest being registered will only be effective if registered against a specific URVIS number and the number is affixed to the rolling stock against which the lien is being asserted (Art. XIV of the Protocol). If the asset is not marked, any registered interest against a specific URVIS number, is ineffective since Article XIV of the Protocol is not complied with and, in practical terms, there is no association with the physical asset. [This is the reason why these Model Rules are so important.]

8. Separately in the next draft of the regulations applying to the international registry, it will be proposed that a party making the registration must certify that the URVIS number "has been affixed to the item of railway rolling stock".

9. But there are exceptions to this system in the Protocol where the creditor does not need debtor consent to register an interest at the international registry. This presents a problem if the rolling stock is not already marked with an URVIS number since the creditor will not be in possession of the asset and will have no ability to mark the rolling stock. If the creditor cannot certify that the URVIS number has been affixed to the rolling stock concerned, it will not be able to complete the registration.

10. Articles 39/40, 50, and 60 of the Cape Town Convention itself (which has already been ratified by over 80 states and to which the Luxembourg Rail Protocol is a protocol), provides for respectively non-consensual rights or interests, notices of national interests and notices of pre-existing interests. Here, when contracting states make declarations to this effect, third parties may register liens against assets without the consent of the debtor. For example, the claimant could be a judgement creditor seeking to enforce a judgement made by a court or it could be a government agency enforcing a tax or other claim against the owner of an asset. When making their declarations, contracting states can decide whether those rights override all security interests registered at the international registry (Art. 39), or if these rights need to be registered at the international registry with the usual priority rights in relation to competing international interests (Art. 40). The second system is by far the more preferable because there is transparency. Similar issues arise with the notices of national interests and notices of pre-existing interests.

11. To deal with this issue, we have created the definition of "unilateral registrant" who will have rights under the Rules directly (rather than pursuant to any bilateral contract importing in the Rules by reference) to require the keeper to mark the rolling stock in accordance with the Rules.

12. The unilateral registrant can only make this request of the keeper if, of course, the keeper is bound by the Rules. This is another good example of why a system of unilateral declarations is preferable to the incorporation of the Rules under the terms of a contractual agreement. If the Rules do not apply, then unilateral registrant will have to apply for a local court order against the debtor or keeper in order to enforce its rights.

13. Where the international interest is registered at the international registry by the creditor with the consent of the debtor, the costs of obtaining the URVIS number and marking the rolling stock (if this has not already been done) and making the registration can be agreed between the parties. Where the debtor is not required to give its consent, we have provided (in Article 5) that the costs have to be borne by the creditor.

## **VI. Technical changes**

14. Where practical, at the request of some members of the Group, we have replicated definitions contained in the Convention and the Protocol (for example the definition of railway rolling stock) rather than incorporate them by reference so that it is easier to read the Rules as a stand-alone document. There remain some key definitions (such as debtor or creditor), which are still imported by reference since the definitions are quite detailed in the Convention and interact with other definitions in those instruments. This can be changed if the Group prefers.

15. We have refined Article 3.1 to reflect the fact that the Rules apply when there is a registration of the international interest, a prospective international interest, a pre-existing right or interest or a notice of sale on an item of rolling stock and added the necessary definitions. The ability to register a prospective international interest, so the creditor may preserve its priority claim before the security interest is actually created (for example debtor and creditor enter into a contract which provides for the creation of an international interest as rolling stock comes off the production line and the manufacturer is paid) is an important feature of the Protocol. Similarly, the right to register a pre-existing right or interest which came into effect before the Protocol applied is also a key part of the Protocol, so as to preserve the priority of existing creditors.

16. In Article 4.8 we have added in an obligation on the debtor to maintain the URVIS marker in a good and readable condition with the assumption that, if the debtor is not the keeper, it will ask the keeper to do this.

17. In Article 6 we have added an obligation on the debtor or the keeper to confirm to the creditor or the unilateral registrant, on their request, that the rolling stock is marked correctly with the URVIS number and provide photographic evidence. This comes on top of the right for the creditor to inspect the equipment which was already provided for in Article 6.1.

18. At the request of the ECE Secretariat, we have made only limited changes to Article 7 since we will in due course receive guidance and suggestions from the ECE Secretariat as to the best way the system can work.

19. In the original draft there was no explanation as to which law would apply to the interpretation or application of the Rules, nor was there any clear guidance as to which entity would or could have jurisdiction to deal with any issues concerning application or interpretation of the of the Rules. The amendments in Article 8 are intended to deal with this issue, but this remains subject to guidance from the ECE Secretariat on the constitution of the revisions committee itself and what role it can play in providing guidance, mediation or arbitration facilities.