

TERRUM

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The Importance of the Luxemburg Protocol for the Federal Government of Mexico's Rail Sector 2012-2018 Development Plan.

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"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM." "Ye who judge the earth, give diligent love to justice"

The newly elected federal government of Mexico that will be in power from December 2012 through December 2018, announced a development plan for the transportation sector that includes the construction of railways that will allow the development of passenger train systems to connect Mexico City with Toluca and Queretaro, as well as the states of Yucatán and Quintana Roo, among others. This announcement is extremely relevant for the rail sector, as there are no large passenger transportation systems currently in operation in Mexico that connect two or more states¹. Also announced was the amount of investment required to complete these projects² and the context in which such projects were announced.³

This announcement is very timely, given the current worldwide context in terms of necessary massive transportation systems that are environmentally sustainable and the exponential population growth in the last few years of the metropolitan area surrounding Mexico City.⁴ Also, although at first sight it may seem irrelevant for Mexico, the fact that Germany recently signed the Luxembourg Protocol⁵ is also a sign of the good timing by which the government of Mexico has decided to accelerate investment in the development of the rail sector. Once a member of the European Union as relevant as Germany, becomes a signatory to the Rail Protocol, it should be only a matter of time for the rest of the members to become signatories as well of such a relevant international agreement, causing the Rail Protocol to enter into effect.⁶

“One of the main purposes of the Cape Town Convention is to secure the rights and interests of owners and financing parties of movable assets.”

Provided the amount of investment required for completing the projects that the new federal government of Mexico has entrusted to the Ministry of Communications and Transportation (*Secretaría de Comunicaciones y Transportes*), it would make sense to provide for the necessary conditions for a public-private investment scheme to be viable. In order for an investment scheme of this nature to be viable for the private sector, in addition for the return on investment to be attractive, it is of the

1.- Except for a couple of local train systems that are operated exclusively for tourism purposes within the limits of a small region within the states of Guadalajara (Tequila Express) and Chihuahua (El Chepe).

2.- The investment is expected to be around 150 million USD (See: CNN Expansión, December 7, 2012; <http://www.cnnexpansion.com/especiales/2012/12/07/nuevos-trenes-costaran-2016-mdp>).

3.- As part of the thirteen decisions made and publicly announced by the Peña Nieto administration.

4.- In accordance with the census made by the INEGI (National Institute of Statistics and Geography) in 2010, around 8.5 million people live in Mexico City and 11.5 million in the metropolitan areas surrounding Mexico City, of which around 3.5 million commute daily to Mexico City.

5.- On November 21, 2012 Germany signed the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (the Rail Protocol) and the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (the Space Protocol). (See: <http://www.unidroit.org/dynasite.cfm>).

6.- In order for the Rail Protocol to enter into effect it is required for at least four countries to ratify the text of the protocol.

essence to provide a legal framework that covers for as much as possible the rights of the investors. In the particular case of private funding for these projects, the rights of any financing parties with respect rolling stock would be best covered if Mexico becomes a signatory of the Rail Protocol (ratifies and implements). As we have explained in previous editions of TERRUM and COELUM, one of the main purposes of the Cape Town Convention is to secure the rights and interests of owners and financing parties of movable assets, which by their nature, may cross jurisdictional borders, which is the case for rolling stock.

The implementation of the Rail Protocol by the contracting states of the Cape Town Convention that also signed and ratified the Aircraft Protocol can take benefits from the lessons learned from the implementation of the Aircraft Protocol in those jurisdictions. There are a significant number of issues that have been raised since the Aircraft Protocol first came into effect that the contracting states to the Rail Protocol should take into account when ratifying the Rail Protocol and implementing it domestically. The scope of this article does not permit an analysis and discussion in depth of such issues, but it is worth pointing out at least two areas in particular that should be considered by the Mexican government as a premise of its plan to stimulate the development of the rail industry.

The first lesson is that not signing an international treaty that provides for the minimal cover for the rights of foreign financing parties of movable assets is costly and the cost of not having in place this kind of provisions can be measured by the lack of access that borrowers could otherwise have to preferential loan rates when such borrowers are nationals of countries classified as “high-risk countries”. The second lesson is that even though a country may sign and ratify an international treaty with such characteristics, if the domestic implementation of such international treaty is not properly made, the qualification of the country as “credit worthy” may be negatively impacted.

For instance, with respect the aviation sector, the Organization for Economic Cooperation and Development (OECD) has clearly identified the countries that can have access to certain reduced rates on aircraft financing based not only on a high/low risk-country classification, but also on the specifics on the domestic implementation of the Aircraft Protocol (e.g. if certain declarations were made by the contracting states when the Aircraft Protocol was signed and ratified).⁷ Although with respect the general country risk classification made by the OCDE based on payment experience, financial, economic and political situation, Mexico is rated as a medium-risk country,⁸ in accordance with the ASU 2011 rules; it does not qualify to have access to discounted premium rates because it did not make the qualifying declarations when ratifying the Cape Town Convention and the Aircraft Protocol.

7.- See the Aircraft Sector Understanding on Export Credit for Civil Aircraft 2011 (ASU 2011) and the qualifying declarations listed on Annex 1 of the ASU, which is an agreement among certain countries members of the OECD that provides for the rules and criteria to be followed in order to have access to certain reduced rates on export credits and loans for acquisition of aircraft of certain characteristics.

8.- See the classification made by the OCDE through the Country Risk Assessment Model (CRAM), is a scale from 0 to 7, and Mexico is classified as 3.

■ **“The Rail Protocol and the manner in which such protocol would be domestically implemented would play a very important role in the plan to stimulate the development of the rail industry.”**

In conclusion, although there are yet no sector understandings with respect export credits and discounted premium rates concerning rail equipment, if within the rail industry an equivalent agreement is ever executed and discounted premium rates with respect export credits and/or loans for acquisition of rolling stock are available, then the Rail Protocol and the manner in which such protocol would be domestically implemented would play a very important role in the plan to stimulate the development of the rail industry, as proposed by the new federal government. Therefore Mexico and in any case the rest of the OECD countries should, not only adopt the Rail Protocol, but when doing so, to be careful in making any applicable qualifying declarations properly, particularly if it would mean an improvement in their risk-country rating for purposes of having access to preferential loan rates.

Light Rail in Queretaro will Benefit 22 Million People.

The Secretary of Sustainable Development of Queretaro estimated that a 1.2 billion dollar investment will be necessary for the construction of the Light Rail project between Mexico City and Queretaro. It is estimated that the Light Train will travel 200 kilometers in around 1 hour and 20 minutes, serving an area which currently has over 22 million inhabitants. The Queretaro Governor, Jose Calzada Rivorosa, stated that the Light Rail project will begin in 2013. This was recently confirmed by President Peña Nieto. *El Economista*. 02/December/12.

Expected Increase of Regional Economy with the Trans-Peninsular Train.

The Trans-Peninsular Train Project, Mérida-Punta Venado will contribute to detonate the regional economy, according to the College of Civil Engineers. When asked about the project, President Enrique Peña Nieto estimated that the rail route will have a double purpose: As a passenger carrier in the morning and cargo (mainly Pemex) in the afternoon. The run will begin in Mérida, through the Kaula airport and arrive to Cancun in 2 hours and 35 minutes as a passenger train and around 4 hours for cargo, covering 278 kilometers. Construction will begin in January 2014 and will require an investment of over 11 billion pesos. *Reforma*. 22/December/12.

Positive Return of the Passenger Train.

Since the disincorporation of the train system in 1997, trains have become of great importance in cargo transportation. Today trains are the back-bone of the cargo transportation system and this increase in size of this industry makes it possibility for the twenty-seven companies that today make up the railway industry to analyze the possibility of passenger service. *El Economista*. 30/December/12.

Most Relevant Events in Mexico 2012 – Amendment to the Federal Labor Law.

On November 13, after 73 days of analysis and discussion in Congress, the Senate finally approved the amendment to the Federal Labor Law and sent it to President Calderon for publication. This reform regulates new contract modalities, seasonal employment, hourly payment, as well as subcontracting and probation periods for new employees. *W Radio Noticias*. 31/December/12.

UNAM participates in the ecologic train project in Chapultepec.

With the participation of the engineer faculty of the UNAM, the train that goes around the Chapultepec forest has become the first ecological transportation inside the forest. The trains inside the forest used to work with diesel, but now, with the new regulations, the company in charge of the trains GECSA, had to convert these trains to an ecological system, with a top speed of 15km/h. *Milenio*. 31/December/12.

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