

Translation

EUROFIMA®

European Company for the Financing of Railroad Rolling Stock

CONVENTION

for the establishment of the Company

Additional Protocol

Edition 2006 / 1

Convention

for the establishment of "Eurofima", European Company for the Financing of Railroad Rolling Stock

The Governments of the Federal Republic of Germany, the Republic of Austria, the Kingdom of Belgium, the Kingdom of Denmark, Spain, the Republic of France, the Republic of Italy, The Grand Duchy of Luxembourg, the Kingdom of Norway, the Kingdom of the Netherlands, the Republic of Portugal, Sweden, the Swiss Confederation and the People's Federal Republic of Yugoslavia. This convention was also joined by the Government of the Republic of Turkey on March 18th, 1957; by the Government of Kingdom of Greece on August 14th, 1957; by the Government of the Hungarian Republic on February 6th, 1991; by the Government of the Republic of Croatia on March 10th, 1993; by the Government of the Republic of Slovenia on May 6th, 1993; by the Government of the Republic of Bosnia and Herzegovina on September 19th, 1996; by the Government of the former Yugoslav Republic of Macedonia on November 27th, 1996; by the Government of the Republic of Bulgaria on April 2, 1998; by the Government of the Slovak Republic on November 21st, 2000; by the Government of the Czech Republic on July 26th, 2002 and by the Government of the Republic of Montenegro on October 17, 2006,

considering that the railway can play its role in the general economy only if it is in a position to effect investments corresponding to a normal renewal and to an indispensable modernization of rolling stock, that progress achieved in the standardization of stock and in its joint use finds its logical complement in the adoption of an international system of financing purchases;

considering that such financing is likely to be of real assistance in consolidating the technical efforts undertaken to ensure a progressive integration of the railways within Europe; that this financing adapts itself particularly well to rolling stock made up of standardized units, the ownership of which can be transferred easily from one country to another;

considering that the German Federal Railway, the French National Railways, the Italian State Railways, the Belgian National Railways, the Swiss Federal Railways, the Netherlands Railways, the Swedish State Railways, the Spanish National Railways, the Luxembourg National Railways, the Yugoslav Railways, the Portuguese Railways, the Austrian Federal Railways, the Danish State Railways and the Norwegian State Railways

have agreed to establish "Eurofima", European Company for the Financing of Railroad Rolling Stock (hereinafter called the "Company");

considering that, not only due to its structure but also to its objective, the Company is of public interest and of an international nature;

noting that the Company's objective is to promote the equipment and operation, at the best conditions possible, of the public railway transportation of the contracting parties;

desiring under these circumstances to give the Company all the support possible; recognizing that the activity of the Company in the economic and financial fields must be facilitated by exceptional measures and that the establishment and operation of the Company must not result in the payment of taxes and charges for the railways concerned which they would not have had to bear had each financed its equipment in rolling stock by its own means;

considering that the credit of the Company which must have recourse to loans in order to finance a considerable portion of its transactions can be established

and maintained only on the condition that the obligations assumed in its favor by the railway administrations are respected in all circumstances;
have designated the undersigned representatives who, being duly authorized, have agreed as follows:

Article 1

a) The Governments parties to the present Convention approve the establishment of the Company which shall be governed by the Statutes annexed to the present Convention (hereinafter called the "Statutes") and in a subsidiary manner by the law of the State in which the Head Office is situated, insofar as this is not contrary to the Convention.

b) The Government of the State in which the Head Office is situated shall take the measures necessary for the establishment of the Company immediately after the present Convention has come into force.

Article 2

a) The Statutes, including any amendments made thereto in accordance with their provisions and taking into account the subsequent provisions of this Convention, shall be legally valid and binding regardless of any provision to the contrary that the law of the State in which the Head Office is situated might contain.

b) The approval of all Governments parties to this Convention and having a railway administration being a shareholder in the Company shall be required for amendments to the provisions of the Statutes relating to:

- the Head Office of the Company,
- its objective,
- its duration,
- the conditions for the admission of a railway administration as share holder in the Company,
- the qualified majority required in certain cases for voting at the General Assembly,
- the equal right of vote of directors,
- the shareholders' liability in respect to the fulfillment of financing contracts concluded by the Company; (provisions included, respectively, in Articles 2, 3, 4, 9, 15, 18 and 27 of the Statutes annexed hereto).

c) The approval of the Government of the State in which the Head Office is situated shall be required for amendments to the provisions of the Statutes relating to an increase or to a reduction of the registered capital, the shareholders' right of vote, the composition of the Board of Directors and the distribution of profits (provisions included, respectively, in Articles 5, 15, 18 and 30 of the Statutes annexed hereto).

d) The Government of the State in which the Head Office is situated shall notify all Governments without delay of any amendment to the Statutes decided upon by the Company. In the cases provided for under paragraphs (b) and (c) of this Article, these amendments shall become effective after a period of three months from the date of this notification if no objection has been formulated by any Government, the approval of which is required by virtue of those paragraphs. The Government of the State in which the Head Office is situated shall be notified of any objections formulated by virtue of the present paragraph and shall inform the other Governments.

e) In the case of objections formulated by a Government, the latter shall consult with the other Governments upon the request of one of them for the purpose of examining the advisability of the amendment in question.

Article 3

a) Where contracts concluded between the Company and railway administrations under which the rolling stock purchased by the Company is made available are subject to the law of the State in which the Head Office is situated, the Company shall remain owner of the stock in question - unless there is express agreement to the contrary - until it has received the purchase price in full, without official registration being necessary. The Company shall have the right in this case to demand, should a contract be cancelled as a result of default on the part of a railway administration, the restitution of the stock in question, in addition to damages for non-fulfillment of the contract, without having to refund payments already made.

b) The Courts of the State in which the Head Office is situated shall adjudicate any dispute arising from contracts concluded between the Company and the railway administrations and construed in accordance with the law of the State in which the Head Office is situated should such a dispute be brought into them.

Article 4

a) The Governments shall grant their railway administrations the authorization required to accomplish all proceedings relative to the establishment of the Company.

b) The Governments shall aid their railway administrations in accomplishing all proceedings relating to the activities of the Company.

Article 5

a) Where by virtue of existing provisions of national law a State is not fully liable or liable only within the limits of a part of its assets for obligations entered into by its railway administration being a shareholder in the Company, the Government shall guarantee the above-mentioned obligations towards the Company.

b) However, this guarantee will not be given as a matter of course if that railway administration itself acts as the principal guarantor for a railway administration which is not a shareholder in the Company or for some other railway organization. In the latter case, the other Governments shall not assume any obligation of a guarantee should there be no guarantee by the Government of the shareholder administration.

Article 6

a) Decisions by the Company relating to the establishment of agencies or branches shall be subject to the approval of all Governments parties to the present Convention of which a railway administration is a shareholder in the Company. The procedure laid down in paragraphs (d) and (e) of Article 2 shall apply to the decisions of the Company referred to in the present paragraph.

b) The Company shall report annually on its development and on its financial

position to the Governments parties to this Convention of which a railway administration is shareholder in the Company. These Governments shall consult each other on all problems of common interest which the operation of the Company may raise as well as on the measures to be taken in such a case.

Article 7

a) The Governments parties to the present Convention shall, if need be, take the measures necessary to ensure that the Company's transactions in connection with its allotment of rolling stock to railway administrations, with immediate or deferred ownership, are effected without incurring any additional fiscal charges compared to the direct purchase of the same stock by the railway administrations themselves.

b) In the same manner, the Governments shall, if need be, adopt the measures necessary to ensure that the import and export of railway rolling stock is accomplished within the framework of the transactions referred to in the preceding paragraph and without incurring any additional fiscal or customs charges, compared with direct import or export of the same stock by the railway administrations.

c) Special tax advantages given by the State in which the Head Office is situated in consideration of the establishment and the activity of the Company are the subject of an Additional Protocol to the present Convention concluded between the Government of the State where the Head Office is located and the other Governments parties to the present Convention.

Article 8

The Governments parties to the present Convention shall take the steps needed to facilitate imports and exports of rolling stock required for the activity of the Company.

Article 9

The Governments which are parties to the Convention shall take the necessary measures, within the framework of their exchange regulations, to assure transfers of funds arising from the establishment and the activity of the Company.

Article 10

Should it become apparent at a later date that the application of legal provisions in the country where the Head Office is located or in the country of another Government party to the present Convention be likely to give rise to difficulties in pursuing the objective of the Company, the Government concerned shall consult with the other Governments at the request of one of them, with the aim of settling these difficulties in the spirit of the provisions of the present Convention and Additional Protocol set forth in paragraph (c) of Article 7 above.

Article 11

a) After having made application, any Government of a European country which has not signed this Convention may accede thereto by notifying the Swiss

Government.

b) However, the accession of a Government which is not a member of the European Conference of Ministers of Transport shall only become effective after the unanimous approval of all Governments parties to the present Convention has been conveyed to the Swiss Government.

c) Accession to the present Convention shall involve accession to the Additional Protocol cited in paragraph (c) of Article 7.

Article 12

This Convention is concluded for the duration of the Company.

Article 13

a) A Government party to the present Convention having no railway administration being a shareholder in the Company, or whose railway administrations have ceased to be shareholders in the Company, may resign its membership in the present Convention by giving prior notice of at least three months to the Swiss Government. Nevertheless, in the case in which prior notice is given by the Government of the State where the Head Office is situated, it will not be released from its membership until the Head Office of the Company has been transferred to another State.

b) The withdrawal of a Government, effected according to the present Article, shall not affect the obligations assumed by that Government by virtue of Article 5 in connection with obligations entered into by its railway administration or administrations while being a shareholder or shareholders in the Company.

Article 14

Every dispute between the Governments parties to the present Convention concerning the interpretation or application of this Convention shall be decided by the International Court of Justice in the absence of an agreement on another procedure.

Article 15

a) This Convention, as well as the Additional Protocol cited in paragraph (c) of Article 7, shall come into force one month after being ratified by the Swiss Government, and after the railway administrations of the Governments having signed the shares held by them without reservation of ratification or having deposited their instruments of ratification representing 80% of the Company's registered capital.

b) For every signatory which ratifies it at a later date, the Convention shall come into force when the instrument of ratification is deposited.

c) The instruments of ratification shall be deposited with the Swiss Government.

Article 16

a) Notwithstanding the conditions of the preceding article, the signatories shall agree to apply this Convention provisionally insofar as this is compatible with

the precepts of their constitutions. At the signing, each Government shall make known under which conditions and to which extent it will apply this Convention provisionally.

b) This Article shall come into force for all Governments having signed with or without reservation of ratification, as soon as the Swiss Government has ratified this Convention and the Additional Protocol cited in paragraph (c) of Article 7.

Article 17

Upon receipt of the instruments of ratification, accession or notice of withdrawal, the Swiss Government shall give notice to all Governments which are parties to the present Convention and to the Company. It shall also notify them of the date this Convention comes into force.

In witness whereof, the undersigned representatives, after having communicated their full powers, recognized in good and due form, have signed this Convention.

Done in Berne on October 20, 1955, in French, German and Italian, a single copy to remain on file in the archives of the Swiss Government, which will send a conformed copy to all Governments, members of the European Conference of Ministers of Transport.

Additional Protocol

to the Convention for the establishment of "Eurofima" European Company for the Financing of Railroad Rolling Stock

The Governments of the Federal Republic of Germany, the Republic of Austria, the Kingdom of Belgium, the Kingdom of Denmark, Spain, the Republic of France, the Republic of Italy, the Grand Duchy of Luxembourg, the Kingdom of Norway, the Kingdom of the Netherlands, the Republic of Portugal, Sweden and the People's Federal Republic of Yugoslavia,
on the one hand,
and the Government of the Swiss Confederation on the other,

signatories of the Convention for the establishment of the European Company for the Financing of Railroad Rolling Stock (hereinafter called the "Convention"),
in consideration of paragraph (c) of Article 7 of said Convention,

whereas the Statutes of the European Company for the Financing of Railroad Rolling Stock (hereinafter called the "Company") annexed to the Convention, foresee that the Head Office of the Company shall be in Basle (Switzerland),

whereas the Government of Switzerland is prepared to agree to certain advantages in fiscal matters, in view of the establishment and the activity of the Company,

have agreed as follows:

Article 1

The Company will benefit, as long as its Head Office shall be in Switzerland, from the following fiscal exemptions, without detriment to the application of the provisions of Article 7 (a) and (b) of the Convention:

1. Exemption from the stamp duty on the issue of Company shares.
2. Exemption from the national defence tax on income, capital and reserves, as well as from any future direct federal tax which shall replace it.
3. a) Exemption from the stamp duty on issuance in respect of all debt instruments issued by the Company after March 31, 1993;
b) Exemption from the stamp duty on the turnover of securities in respect of all securities transactions of the Company after March 31, 1993;
c) Exemption from the anticipatory tax on interest under debt issues of the Company, which shall be offered for subscription solely outside Switzerland, shall not be listed on Swiss Stock Exchanges and the paying services for interest and reimbursement of which shall be carried out exclusively by non Swiss offices.
4. Exemption from the anticipatory tax on dividends paid by the Company to the railway administrations.
5. Exemption from the supplement to the registration tax for entry in the register of commerce.
6. Exemption from cantonal and communal taxes on income and assets of the Company in the Canton of the City of Basle.
7. Exemption, with effect as of January 1, 1995 from the Federal value added tax, i.e. personal exemption as tax payor but coupled with the entitlement to claim relief for any advance value added tax.

Article 2

This Protocol shall come into force as soon as it is ratified by the Swiss Government, which shall notify the other signatory Governments of said ratification.

In witness whereof, the undersigned representatives, after having manifested their full powers, recognized to be in good and due form, have signed the present Protocol.

Done in Berne on October 20, 1955, in French, German and Italian, a single copy to remain on file in the archives of the Swiss Government, which will send a conformed copy to each Government, member of the European Conference of Ministers of Transport.