

No. 5425

**AUSTRIA, BELGIUM, DENMARK,
FEDERAL REPUBLIC OF GERMANY, SPAIN, etc.**

Convention on the establishment of "Eurofima", European Company for the financing of railway equipment (with Statute and Protocol of signature). Signed at Berne, on 20 October 1955

Additional Protocol to the above-mentioned Convention. Signed at Berne, on 20 October 1955

Official texts: French, German and Italian.

Registered by Switzerland on 1 November 1960.

**AUTRICHE, BELGIQUE, DANEMARK,
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE, ESPAGNE,
etc.**

Convention relative à la constitution d'« Eurofima », Société européenne pour le financement de matériel ferroviaire (avec Statuts et Protocole de signature). Signée à Berne, le 20 octobre 1955

Protocole additionnel à la Convention susmentionnée. Signé à Berne, le 20 octobre 1955

Textes officiels français, allemand et italien.

Enregistrés par la Suisse le 1^{er} novembre 1960.

[TRANSLATION — TRADUCTION]

No. 5425. CONVENTION¹ ON THE ESTABLISHMENT OF
 “EUROFIMA”, EUROPEAN COMPANY FOR THE
 FINANCING OF RAILWAY EQUIPMENT. DONE AT
 BERNE, ON 20 OCTOBER 1955

The Governments of the Federal Republic of Germany, the Republic of Austria, the Kingdom of Belgium, the Kingdom of Denmark, Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of Norway, the Kingdom of the Netherlands, the Portuguese Republic, Sweden, the Swiss Confederation and the Federal People's Republic of Yugoslavia,

Considering that railways can play their part in the economy at large only if they are in a position to make adequate investments for normal replacement and essential modernization of rolling-stock; that the progress achieved in the standardization and joint use of equipment should logically be followed by the adoption of a system of international financing of purchases;

Considering that such a financing system can help to consolidate the technical efforts which have been made to bring about progressive integration of railways throughout Europe; that this financing system is also particularly well adapted to rolling-stock consisting of standardized units, the ownership of which can be easily transferred from one country to another;

Considering that the German Federal Railways, 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, the Norwegian State Railways,

Have agreed to establish “Eurofima”, European Company for the Financing of Railway Equipment (hereinafter called “the Company”);

Considering that, both in its composition and in its purpose, the Company is of public importance and is international in character;

¹ Came into force on 22 July 1959, one month after the conditions laid down in article 15 (a) were fulfilled.

The following States deposited their instruments of ratification or accession (a) with the Swiss Government on the dates indicated:

Sweden	21 February	1956	Federal Republic of	
Switzerland	30 March	1956	Germany	16 November 1956
Norway	7 May	1956	Luxembourg	29 January 1957
Netherlands	28 May	1956	Spain	18 March 1957
Denmark	29 June	1956	Turkey	18 March 1957 (a)
Portugal	25 July	1956	Greece	16 August 1957 (a)
Yugoslavia	18 September	1956	France	6 April 1959
			Italy	22 June 1959

The Convention subsequently entered into force for Belgium on 22 February 1960, the date of deposit of the instrument of ratification.

Noting that the purpose of the Company is to promote the equipping and operation, in the best possible conditions, of the public rail transport services of the Contracting Parties;

Desirous, therefore, of giving the Company all possible support;

Recognizing that the Company's activities in the economic and financial fields must be encouraged by special measures and that its establishment and operations must not result in the railway authorities concerned being subject to taxes and duties which they would not have incurred if each of them had financed its purchases of equipment from its own resources;

Considering that the Company, which will require loans in order to finance a large proportion of its contracts, will be able to obtain and maintain a line of credit only if the obligations of the railway authorities to the Company are honoured in all circumstances;

Have designated the undersigned representatives who, being duly authorized, have agreed as follows :

Article 1

(a) The Governments Parties to this Convention approve the establishment of the Company which shall be governed by the Statute¹ annexed to this Convention (hereinafter called " the Statute ") and, secondarily, by the laws of the State in which its Headquarters are situated, in so far as this Convention does not derogate therefrom.

(b) The Government of the Headquarters State shall take the necessary measures to enable the Company to be established immediately after the entry into force of this Convention.

Article 2

(a) The Statute, and any amendment thereto which may be made as provided for therein and subject to the conditions hereinafter stated, shall be valid and have effect notwithstanding any contrary provision of the laws of the Headquarters State.

(b) The approval of all Governments Parties to this Convention whose railway authorities are shareholders of the Company shall be required for amendments to the provisions of the Statute relating to :

—The Headquarters of the Company;

—Its purpose;

—Its duration;

—The conditions on which a railway authority may be admitted as a shareholder of the Company;

—The qualified majority required in certain cases for votes in the General Assembly;

—The granting of equal voting rights to all members of the Board of Directors;

¹ See p. 233 of this volume.

—Guarantees by shareholders of the fulfilment of financing contracts concluded by the Company (provisions contained in articles 2, 3, 4, 9, 15, 18 and 27, respectively, of the Statute annexed hereto).

(c) The approval of the Government of the Headquarters State shall be required for amendments to the provisions of the Statute relating to increases in or reductions of the authorized capital, the voting rights of shareholders, the composition of the Board of Directors and the distribution of profits (provisions contained in articles 5, 15, 18 and 30, respectively, of the Statute annexed hereto).

(d) The Government of the Headquarters State shall notify the other Governments without delay of any amendments to the Statute decided by the Company. In the cases provided for in paragraphs (b) and (c) of this article, such amendments shall take effect within a period of three months after the date of such notification, provided that no objection has been made by a Government whose approval is required under those paragraphs. Objections under the terms of this paragraph shall be notified to the Government of the Headquarters State, which shall inform the other Governments thereof.

(e) In case of objection by any Government, it shall enter into consultation with the other Governments, on the request of any one of them, with a view to discussing the desirability of the amendments concerned.

Article 3

(a) Where contracts concluded between the Company and a railway authority concerning the supply of equipment purchased by the Company are subject to the law of the Headquarters State, the Company shall, in the absence of express agreement to the contrary, retain ownership of the equipment concerned until such time as it has received the total purchase price, without need of official registration. In such a case the Company shall be entitled, where a contract is cancelled as the result of delay on the part of an authority, to require, not only compensation for non-fulfilment of the contract, but also the return of the equipment concerned, without obligation to refund the payments already received.

(b) Where application is made to them, the courts of the Headquarters State shall adjudicate disputes concerning contracts concluded between the Company and railway authorities, if such contracts are subject to the laws of that State.

Article 4

(a) Governments shall grant to their railway authorities the necessary permits to carry out all acts relating to the establishment of the Company.

(b) Governments shall assist their railway authorities in carrying out all acts relating to the operations of the Company.

Article 5

(a) Where under existing domestic legislation a State is not bound by obligations entered into by a railway authority in its country which is a shareholder in

the Company, whether for the whole or a part of its total capital, the Government shall guarantee the obligations to the Company assumed by that railway authority.

(b) Nevertheless, such a guarantee shall not be obligatory where the said railway authority itself gives its primary guarantee to a railway authority which is not a shareholder of the Company or to any other railway undertaking. In such cases, where no guarantee is given by the Government of the authority which is a shareholder, the other Governments shall assume no obligation to provide guarantees.

Article 6

(a) The approval of all Governments Parties to this Convention whose railway authorities are shareholders of the Company shall be required for decisions of the Company concerning the establishment of agencies or branch offices. The procedure provided for in article 2, paragraphs (d) and (e), above shall apply to decisions of the Company referred to in this paragraph.

(b) The Company shall report each year to the Governments Parties to this Convention whose railway authorities are shareholders of the Company on its progress and financial situation. Those Governments shall consult together concerning all problems of common interest arising from the operations of the Company and such measures as may prove necessary in that connexion.

Article 7

(a) The Governments Parties to this Convention shall take appropriate measures, where necessary, to ensure that the operations of the Company in supplying railway equipment to railway authorities, with immediate or deferred transfer of ownership, shall not entail additional taxation which would not be incurred if the same equipment were acquired directly by the railway authorities.

(b) Similarly, Governments shall take appropriate measures, where necessary to ensure that imports and exports of railway equipment in connexion with the operations referred to in the preceding paragraph shall not entail additional taxation or duties which would not be incurred if the same equipment were imported or exported directly by the railway authorities.

(c) The special tax concessions granted by the Headquarters State in connexion with the establishment and operations of the Company are the subject of an Additional Protocol¹ to this Convention, which has been concluded between the Government of the Headquarters State and the other Governments Parties to this Convention.

Article 8

The Governments Parties to this Convention shall take appropriate measures, where necessary, to facilitate imports and exports of equipment in connexion with the operations of the Company.

¹ See p. 245 of this volume.

Article 9

The Governments Parties to this Convention shall take appropriate measures, under their exchange control systems, to ensure transfers of funds required for the establishment and operations of the Company.

Article 10

If it becomes apparent at a later stage that the application of domestic legislation in the country in which the Headquarters of the Company are situated or in the country of another Government Party to this Convention might create difficulties in the attainment of the Company's objectives, the Government concerned shall enter into consultation with the other Governments, at the request of any one of them, with a view to resolving those difficulties in the spirit of the provisions of this Convention and of the Additional Protocol referred to in article 7, paragraph (c), above.

Article 11

(a) After the entry into force of this Convention, any Government of a non-signatory European country may accede to it by notification addressed to the Government of Switzerland.

(b) Nevertheless, the accession of a Government which is not a member of the European Conference of Ministers of Transport shall take effect only after all the Governments Parties to the Convention have notified their assent to the Government of Switzerland.

(c) Accession to the Convention shall imply accession to the Additional Protocol referred to in article 7, paragraph (c), above.

Article 12

This Convention is concluded for the period of existence of the Company.

Article 13

(a) A Government Party to this Convention having no railway authority which is a shareholder, or all of whose railway authorities have ceased to be shareholders, of the Company may terminate the application of this Convention, so far as that Government is concerned, by giving three months' notice to the Government of Switzerland. Nevertheless, if such notice is given by the Government of the Headquarters State, this Convention shall not terminate, so far as that Government is concerned, until the Headquarters of the Company shall have been transferred to another State.

(b) The withdrawal of a Government in accordance with this article shall not affect the obligations assumed by that Government under article 5 above so far as obligations contracted by its railway authority or authorities while shareholders of the Company are concerned.

Article 14

Any dispute between Governments Parties to this Convention concerning the interpretation or application of this Convention shall be submitted, unless another procedure shall have been agreed, to the International Court of Justice for decision.

Article 15

(a) This Convention shall enter into force one month after it has been ratified, together with the Additional Protocol referred to in article 7, paragraph (c), above, by the Government of Switzerland, provided that the shares owned by railway authorities whose Governments have signed this Convention without reservation as to ratification or, having signed it subject to ratification, have deposited their instruments of ratification, amount to 80 per cent of the registered capital of the Company.

(b) For each signatory ratifying thereafter, the Convention shall enter into force upon deposit of its instrument of ratification.

(c) Instruments of ratification shall be deposited with the Government of Switzerland.

Article 16

(a) Notwithstanding the provisions of the preceding article, the signatories agree to apply this Convention provisionally so far as is compatible with their constitutional laws. At the time of signature, each Government shall declare under what conditions and to what extent it will provisionally apply this Convention.

(b) This article shall enter into force for all Governments which have signed this Convention, whether subject to ratification or not, when the Government of Switzerland has ratified this Convention and the Additional Protocol referred to in article 7, paragraph (c), above.

Article 17

On receipt of instruments of ratification or accession or of notices of withdrawal, the Government of Switzerland shall inform all the Governments Parties to this Convention and the Company. It shall also notify them of the date on which this Convention enters into force.

IN WITNESS WHEREOF, the undersigned representatives, having communicated their full powers, found in good and due form, have signed this Convention.

DONE at Berne, on 20 October 1955, in French, German and Italian, in a single copy to be deposited in the archives of the Government of Switzerland, which shall transmit certified copies to all Governments members of the European Conference of Ministers of Transport.

For the Federal Republic of Germany :

SEEBOHM
Subject to ratification

For Austria :

WALDBRUNNER
Subject to ratification

For Belgium :

E. ANSEELE
Subject to ratification

For Denmark :

Palle CHRISTENSEN
Subject to ratification

For Spain :

José DE AGUINAGA
Subject to ratification

For France :

L. CORNIGLION-MOLINIER
Subject to ratification

For Italy :

Armando ANGELINI
Subject to ratification

For Luxembourg :

V. BODSON
Subject to ratification

For Norway :

Kolbjörn VARMANN
Subject to ratification

For the Netherlands

J. ALGERA
Subject to ratification

For Portugal :

M. GOMES D'ARAUJO
Subject to ratification

For Sweden :

Sven ANDERSSON
Subject to ratification

For Switzerland :

Giuseppe LEPORI
Subject to ratification

For Yugoslavia :

Peko DAPCEVIĆ
Subject to ratification

S T A T U T E

NAME, HEADQUARTERS, PURPOSE AND PERIOD OF EXISTENCE OF THE COMPANY

Article 1

A joint-stock company styled "*Eurofima*" *European Company for the Financing of Railway Equipment* ("Eurofima" Société européenne pour le financement de matériel ferroviaire, "Eurofima" Europäische Gesellschaft für die Finanzierung von Eisenbahnmaterial, "Eurofima" Società europea per il finanziamento di materiale ferroviario) is hereby established, to be governed by the international Convention concerning the establishment of the Company,¹ by this Statute and, secondarily, by the laws of the State in which the headquarters of the Company are situated.

Article 2

The headquarters of the Company shall be at Basle (Switzerland).

Article 3

The purpose of the Company shall be to supply, on the best possible terms, to the railway authorities which are its shareholders and to other railway authorities or undertakings (but, in that case, with the primary guarantee of one or more shareholders) equipment of a standardized type or of standardized performance needed for their operations.

To that end, it shall arrange for the manufacture of such equipment, either for its own account, or for account of the railway authorities or undertakings concerned; in the former case, it shall rent or sell the equipment to the parties concerned.

The Company shall seek the financial resources it needs, over and above its own capital, in the form of loans, and shall engage in any commercial and financial operations calculated to promote the achievement of its purpose.

Article 4

The Company is established for a period of fifty years.

REGISTERED CAPITAL

Article 5

The authorized capital of the Company shall be 50 million Swiss francs, divided into 5,000 shares of a nominal value of 10,000 Swiss francs.

These shares shall be initially allotted as follows :

1,300 shares	to the German Federal Railways
of which :	130 A shares
	1,170 B shares
1,300 shares	to the French National Railways
of which :	130 A shares
	1,170 B shares

¹ See p. 225 of this volume.

700 shares	to the Italian State Railways
of which: 70 A shares	
630 B shares	
550 shares	to the Belgian National Railways
of which: 60 A shares	
490 B shares	
400 A shares	to the Swiss Federal Railways
300 shares	to the Netherlands Railways
of which: 30 A shares	
270 B shares	
100 A shares	to the Swedish State Railways
100 A shares	to the Spanish National Railways
100 A shares	to the Luxembourg National Railways
100 A shares	to the Yugoslav Railways
20 A shares	to the Portuguese Railways
10 A shares	to the Austrian Federal Railways
10 A shares	to the Danish State Railways
10 A shares	to the Norwegian State Railways

Article 6

The shares of the Company shall be fully paid-up, the A shares in cash, and the B shares by contributions of rolling-stock.

The German Federal Railways shall contribute to the Company wagons to a total value of 11,700,000 Swiss francs and receive in payment for this contribution 1,170 B shares representing a total nominal capital of 11,700,000 Swiss francs.

The French National Railways shall contribute to the Company wagons to a total value of 11,700,000 Swiss francs and receive in payment for this contribution 1,170 B shares representing a total nominal capital of 11,700,000 Swiss francs.

The Italian State Railways shall contribute to the Company wagons to a total value of 6,300,000 Swiss francs and receive in payment for this contribution 630 B shares representing a total nominal capital of 6,300,000 Swiss francs.

The Belgian National Railways shall contribute to the Company wagons to a total value of 4,900,000 Swiss francs and receive in payment for this contribution 490 B shares representing a total nominal capital of 4,900,000 Swiss francs.

The Netherlands Railways shall contribute to the Company wagons to a total value of 2,700,000 Swiss francs and receive in payment for this contribution 270 B shares representing a total nominal capital of 2,700,000 Swiss francs.

The numerical lists of the wagons contributed and the protocols of their valuation shall be annexed to this Statute.

The B shares shall be converted into A shares in ten years at the rate of one-tenth at the end of each of the first ten financial years.

Article 7

The shares shall be registered in the name of the holder.

They shall be transferable only between shareholders, subject to the provisions of article 9 below, and with the agreement of the General Assembly.

The Company shall maintain a share register in which the names and addresses of the shareholders shall be entered. The Company shall recognize as shareholders only those whose names are entered in this register.

Article 8

The capital of the Company may be increased by a vote of the General Assembly, each shareholder being entitled to subscribe for a number of the new shares in proportion to the total number of shares registered in his name at the time of the increase, subject to the provisions of article 9. Should any shareholder not exercise his right to subscribe, such right may, with the approval of the General Assembly, be transferred to another shareholder.

The General Assembly shall lay down the conditions under which new shares may be issued.

Article 9

Any railway authority of a State signatory to the International Convention concerning the establishment of the Company or of a State which has acceded to that Convention may be admitted as a shareholder in the Company by a decision of the General Assembly, either by a transfer of shares or by subscription to an increase in the capital of the Company, provided that the Government concerned has previously signified its willingness to give that authority its guarantee.

The number of shares or subscription rights to be transferred in order that a new shareholder may be admitted, and the transfer price of such shares or rights, shall be fixed by the General Assembly. The number of shares or rights to be transferred by each shareholder shall be determined, unless otherwise agreed by the shareholders, by the application of the proportional rule and the use of the largest remainders.

THE GENERAL ASSEMBLY

Article 10

The General Assembly shall be the supreme authority of the Company. It shall have the following powers :

- (1) To appoint the members of the Board of Directors.
- (2) To designate the Chairman and the Vice-Chairmen of the Board of Directors.
- (3) To appoint the auditors.
- (4) To amend the Statute.
- (5) To decide upon any increase or reduction in the authorized capital.
- (6) To take all decisions concerning the transfer of shares or subscription rights.
- (7) To declare the dissolution of the Company and appoint the liquidators.
- (8) To declare the extension of the period of existence of the Company.
- (9) To approve the rules of management referred to in article 22.
- (10) To consider the auditors' report, to examine and approve the management report, the balance-sheet and the profit and loss account, to decide on the allocation of the net profit and to receive the Directors' report on their conduct of the Company's business.
- (11) To fix the maximum amount which may be borrowed during a given period.

- (12) To decide all other questions reserved to it or submitted to it by the Board of Directors.

Article 11

An ordinary meeting of the General Assembly shall be held each year within six months of the date to which the accounts are made up.

Article 12

Extraordinary meetings shall be convened :

- (1) By a decision of the General Assembly or the Board of Directors;
- (2) At the request of the Board of Auditors;
- (3) At the request of one or more shareholders whose shares together amount to at least one-tenth of the authorized capital. Such request shall be made in writing and shall specify the purpose for which the meeting is to be held.

The method of summoning an extraordinary meeting and the procedure thereat shall be in the same form as those of an ordinary meeting.

Article 13

The shareholders shall be summoned to a meeting of the General Assembly by registered letter at least two weeks before the date of the meeting.

The summons shall specify the business to be transacted at the meeting and, if such business includes any amendment to this Statute, (sub-clauses (4), (5) and (8) of article 10), the purpose of such amendment shall be fully set out.

No decision shall be made on any matter not specified in the notice summoning the meeting, except in the case of a proposal made at the meeting to summon an extraordinary meeting of the General Assembly.

The General Assembly shall meet at the headquarters of the Company, unless the Board of Directors otherwise decides.

Article 14

The number of votes held by the shareholders at a meeting of the General Assembly shall be proportional to the nominal value of all the shares registered in their respective names.

Article 15

On a meeting of the General Assembly being summoned, it shall be entitled to proceed to business as soon as a majority of the shares are represented. Should this quorum not be present at the first session, a further session shall be convened upon at least two weeks' notice, and such a session shall be entitled to proceed to business whatever may be the number of shares represented.

The General Assembly shall take its decisions by the majority vote of the shares represented. By way of exception, in the case of the powers set out in sub-clauses (4), (5), (6), (7) and (8) of article 10 above, the majority required is 70 per cent of the authorized capital.

Voting shall take place by show of hands, unless a shareholder asks for a secret ballot.

Article 16

The Chairman of the Board of Directors or, should he be unable to attend, one of the Vice-Chairmen, or, in default thereof, one of the Directors appointed by the Board shall be Chairman of the meetings of the General Assembly.

The General Assembly shall, by show of hands, appoint two tellers. It shall also appoint a Secretary, who need not necessarily be a shareholder.

Article 17

The discussions and decisions of the General Assembly shall be recorded in minutes.

The minutes shall be signed by the Chairman of the meeting, the tellers and the Secretary.

Copies or extracts shall be signed by the Chairman of the Board or one of the Vice-Chairmen.

THE BOARD OF DIRECTORS

Article 18

The Board of Directors shall be responsible for managing the business of the Company.

The directors shall be appointed, regardless of nationality, by the General Assembly on the proposal of each of the shareholders concerned; two directors may be proposed by each shareholder owning at least 2 per cent of the authorized capital.

The directors shall be appointed for a period of three years and shall be eligible for re-election. After the first period of three years, one-third of the Board will be replaced each year. To that end, at the meeting of the General Assembly following the expiry of the Company's third financial year, lots will be drawn to determine which directors shall retire at the end of the Company's fourth and fifth financial years.

All directors shall have an equal vote.

Article 19

The directors shall be elected at an ordinary meeting of the General Assembly. The same procedure shall be followed upon a casual vacancy, unless a shareholder requests that the vacancy should be filled forthwith. In that event, the Board of Directors shall immediately summon an extraordinary meeting of the General Assembly to elect a new director.

Where a director ceases to be a member of the Board during his term of office, his successor shall be elected for the unexpired portion of that term.

Article 20

Each shareholder shall be required to deposit with the Company's cashier one share in the Company for the term of office of each director representing him.

Article 21

The General Assembly shall appoint, for their terms of office as directors, the Chairman and Vice-Chairmen of the Board of Directors, who are eligible for re-appointment. The Board may appoint a Secretary who is not one of its members.

Should the Chairman be unable to attend, the Chair shall be taken by one of the Vice-Chairmen, or, in default thereof, by the eldest director present at the meeting.

Article 22

The Board of Directors shall decide any matter which is not within the competence of another organ of the Company.

The Board of Directors shall have power to delegate all or any part of the management of the Company, to one or more of its members (delegates) or to third persons who need not necessarily be directors (managers). It shall draw up rules of management which shall define the rights and duties of the Board of Directors, its delegates and the management.

In these rules, which must be approved by the General Assembly, the Board of Directors must, however, reserve to itself the right of determining the following matters :

- (1) The composition of the management, the terms of employment, the appointment and the dismissal of its members, including the acceptance of their resignations;
- (2) The designation of the directors authorized to sign on behalf of the Company and the granting of authority to sign to persons not members of the Board of Directors (managers and authorized signatories);
- (3) The negotiation of loans, in whatever form, within the limits established by the General Assembly;
- (4) The conclusion of contracts to finance the renting and sale of equipment and the placing of orders for the equipment concerned;
- (5) The preparation of the management report, the annual balance-sheet and the substance of any proposals to be submitted to the General Assembly. It shall arrange for the accounts to be audited by accountants who have no part in the management of the Company.

Article 23

The Board of Directors shall meet on the summons of the Chairman or one of the Vice-Chairmen as often as business requires and at least once every three months. Members of the Board shall be summoned by registered letter, which shall specify the business to be transacted and shall be dispatched at least eight days before the date of the meeting.

The Chairman must summon the Board at the written request of a director, specifying the matter to be considered at the meeting. In this event, the meeting shall be held not later than two weeks after the receipt of the letter of request.

The summons shall indicate the place of meeting.

A director who is unable to attend a meeting may vote in writing or may appoint another director expressly empowered to vote on his behalf, as his proxy. No director can act as proxy for more than one of his colleagues.

In urgent cases, decisions may be taken by letter or telegram, unless any of the directors requests that a meeting should be summoned for the purpose.

Article 24

The Board of Directors has power to hold discussions and take decisions only if it has been regularly summoned and if the majority of the directors is present or represented.

Decisions of the Board shall be taken by a majority of the directors present or represented. Should the vote be equally divided, the Chairman of the meeting has a casting

vote. By way of exception, for decisions on the matters enumerated in sub-clause (3) of article 22, a three-quarters majority is required.

Article 25

The discussions and decisions of the Board of Directors shall be recorded in minutes. The minutes shall be signed by the Chairman of the meeting and by the Secretary. Copies or extracts shall be signed by the Chairman or one of the Vice-Chairmen.

Article 26

Directors shall receive no remuneration; they may, however, receive attendance allowances.

GUARANTEES BY SHAREHOLDERS

Article 27

The shareholders shall guarantee to the Company, each in proportion to his share in the authorized capital and each for a maximum amount equivalent to that share, the fulfilment of contracts for the financing of equipment concluded by the Company.

Such guarantees, however, shall be treated as secondary in cases where fulfilment of the contract concerned is covered by other guarantees, in particular under article 3 or under the international convention referred to in article 1.

Such guarantees shall be invoked only for the amount by which obligations not honoured by a defaulting authority exceed the amount of the special guarantee reserve provided for in article 30.

Payments made by shareholders under such guarantees shall be refunded *pro rata* from any amounts which the Company may subsequently recover against its claim in respect of the lapsed contract or against the equipment covered by the contract.

AUDITING OF ACCOUNTS

Article 28

The accounts of the Company shall be audited by a board of three auditors elected by the General Assembly for a period of one year in the first instance and for periods of three years thereafter. The auditors shall be eligible for re-election.

The auditors shall, in particular, be responsible for ascertaining whether the profit and loss account and the balance-sheet tally with the books, whether the latter are carefully kept and whether the Company's assets and the financial management are in conformity with the rules governing the Company under article 1.

In the execution of their work, the auditors shall be entitled to consult the Company's books of account and all relevant papers. The balance-sheet and the profit and loss account must be submitted to them at least thirty days before the date of the General Assembly.

They shall make a report in writing and submit their proposals to the meeting of the General Assembly at which a decision on the accounts is to be taken.

CLOSING OF ACCOUNTS AND DISTRIBUTION OF PROFITS

Article 29

The Company's accounts shall be closed and the balance-sheet prepared at the end of each calendar year.

The balance-sheet must be drawn up in conformity with the recognized principles of sound business management.

Article 30

Out of the balance remaining after the deduction of depreciation, a sum amounting to 5 per cent shall first be allocated to the ordinary reserve fund, until the latter amounts to one-fifth of the authorized capital already paid up. The ordinary reserve fund may be drawn on only to cover deficits.

Out of the balance remaining, a dividend not exceeding 4 per cent shall be paid on the A shares; the B shares shall receive no dividend.

The remaining surplus shall be placed to a special guarantee reserve, unless otherwise decided by the General Assembly.

WINDING-UP

Article 31

At the time laid down in article 4 for the end of the Company's existence or in case of earlier dissolution, the Company shall go into liquidation. From that time on, it shall be deemed to exist for the purpose of liquidation.

It shall be wound up by liquidators appointed by the General Assembly. The liquidators shall have full power to realize the assets of the Company.

However, the Company may not be wound up until all its obligations have been honoured, including its commitments to bond holders, renters and, if applicable, manufacturers of equipment.

After the liabilities of the Company have been satisfied and the shares repaid, the balance remaining shall be distributed among the shareholders in proportion to the nominal value of the shares of which they are registered holders.

MISCELLANEOUS PROVISIONS

Article 32

Correspondence addressed to shareholders shall be forwarded by registered letter. Official notices shall be published in the *Feuille officielle suisse du commerce*.

In the case of any other matter to be published, the Board of Directors shall decide the means of publication and, if necessary, shall designate newspapers for this purpose.

Article 33

Any amendment made to the Statute shall be notified to the Government of the Headquarters State.

PROTOCOL OF SIGNATURE TO THE CONVENTION ON THE ESTABLISHMENT OF "EUROFIMA", EUROPEAN COMPANY FOR THE FINANCING OF RAILWAY EQUIPMENT

The representatives of the Governments signatories to the Convention on the establishment of "Eurofima" European Company for the financing of railway equipment (hereinafter called "the Convention"), signed this day,¹

I. Have agreed as follows :

(a) The expression "where necessary" in article 7 of the Convention means in particular that, where the laws of a country are such that the Company can carry out its operations in accordance with the Statute² and the basic Agreement without incurring any additional tax liability, the Government concerned shall not be required to introduce provisions for tax exemption.

(b) The term "equipment" in article 8 of the Convention refers to railway equipment within the meaning of article 3 of the Statute of the Company.

(c) The expression "domestic legislation", as employed in article 10 of the Convention, refers in particular to legislation concerning taxation.

II. Have taken note of the following declarations concerning articles 5, 7 and 9 of the Convention :

(a) The Governments of the Federal Republic of Germany, the Republic of Austria, the Kingdom of Denmark, the Italian Republic, Sweden and the Swiss Confederation declare, in connexion with article 5 of the Convention, that under existing domestic legislation in their countries the State is bound by obligations entered into by their railway authorities participating in the establishment of "Eurofima", within the meaning of article 5.

(b) The Government of the Federal Republic of Germany declares, in connexion with the interpretation which this Protocol places on article 7 of the Convention, that under existing legislation it complies with the provisions of article 7 without any need to take measures for tax exemption.

(c) The Government of the Swiss Confederation interprets the text of article 9 in the following manner :

1. Transfers of funds in respect of subscriptions in cash and of amounts which represent the rental of rolling-stock constituting contributions in kind will be effected independently of any bilateral or multilateral agreement.
2. The proceeds of a loan obtained on the market of a country other than that in which the headquarters of "Eurofima" are situated will be transferred to the latter country only up to the amount required to enable "Eurofima" to meet its obligations.

¹ See p. 225 of this volume.

² See p. 233 of this volume.

(d) The Government of the Kingdom of the Netherlands declares that it does not consider itself bound by the above interpretation placed on article 9 of the Convention by the Government of the Swiss Confederation.

III. Have taken note of the following declarations made in accordance with article 16 of the Convention :

(a) The Governments of the Kingdom of Belgium, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Portuguese Republic and the Swiss Confederation have declared their readiness, on the entry into force of article 16 of the Convention, to take the measures which will be required to implement the Convention when it enters into force, with the following exceptions :

—In the case of the Government of the Kingdom of Belgium, articles 5, 7 (a) and (b), 8 and 14;

—In the case of the Government of the French Republic, article 7 (a) and (b);

—In the case of the Government of the Italian Republic, articles 3 (b), 5, 7 (a) and (b), 8, 9, 11 (c) and 14;

—In the case of the Government of the Grand Duchy of Luxembourg, articles 7 (a) and (b) and 8.

So far as those articles are concerned, the Governments in question have declared that such measures will be taken when they have ratified the Convention.

(b) The Governments of the Republic of Austria, the Kingdom of Denmark, Spain, the Kingdom of Norway, the Kingdom of the Netherlands, Sweden and the Federal People's Republic of Yugoslavia have declared their readiness, when they have ratified the Convention and provided that article 16 of the Convention has entered into force, to take the measures which will be required to implement the Convention when it enters into force, with the following exception:

—In the case of the Government of the Kingdom of the Netherlands, article 5.

So far as that article is concerned, the Government of the Kingdom of the Netherlands declares that the measures required under article 5 will be taken as soon as the shares owned by the railway authorities of the Governments which have applied the Convention, in accordance with article 16, amount to 80 per cent of the authorized capital of "Eurofima".

(c) The Government of the Federal Republic of Germany has declared that it will take the measures which will be required to apply the Convention when it has been ratified in the Federal Republic.

IV. The Governments of Spain, the French Republic, the Italian Republic, the Kingdom of Norway, Sweden and the Federal People's Republic of Yugoslavia refer to the Decision taken on 8 July 1955 by the Ministers of Restricted Group No. 1 of the European Conference of Ministers of Transport and declare that, between themselves and in their relations with the other signatories, the

French text of the Convention, of the Additional Protocol¹ to the Convention and of this Protocol, signed this day, shall be deemed to prevail in case of divergence between the texts.

DONE at Berne, on 20 October 1955, in French, German and Italian, in a single copy to be deposited in the archives of the Government of Switzerland, which shall transmit certified copies to all Governments members of the European Conference of Ministers of Transport.

For the Federal Republic of Germany :

SEEBOHM

For Austria :

WALDBRUNNER

For Belgium :

E. ANSEELE

For Denmark :

Palle CHRISTENSEN

For Spain :

José DE AGUINAGA

For France :

L. CORNIGLION-MOLINIER

For Italy :

Armando ANGELINI

For Luxembourg :

V. BODSON

¹ See p. 245 of this volume.

For Norway :

Kolbjörn VARMANN

For the Netherlands :

J. ALGERA

For Portugal :

M. GOMES D'ARAUJO

For Sweden :

Sven ANDERSSON

For Switzerland :

Giuseppe LEPORI

For Yugoslavia :

Peko DAPCEVIĆ

ADDITIONAL PROTOCOL¹ TO THE CONVENTION ON THE ESTABLISHMENT OF "EUROFIMA", EUROPEAN COMPANY FOR THE FINANCING OF RAILWAY EQUIPMENT.² SIGNED AT BERNE, ON 20 OCTOBER 1955

The Governments of the Federal Republic of Germany, the Republic of Austria, the Kingdom of Belgium, the Kingdom of Denmark, Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of Norway, the Kingdom of the Netherlands, the Portuguese Republic, Sweden and the Federal People's Republic of Yugoslavia, on the one hand,

and the Government of the Swiss Confederation on the other hand,

Being signatories to the Convention on the establishment of the European Company for the financing of railway equipment (hereinafter called "the Convention");³

Considering article 7, paragraph (c), of the Convention;

Noting that the Statute³ of the European Company for the financing of railway equipment (hereinafter called "the Company") annexed to the Convention provides that the headquarters of the Company shall be at Basle (Switzerland);

Noting that the Government of Switzerland is prepared to grant special tax concessions in connexion with the establishment and operation of the Company;

Have agreed as follows :

Article 1

The Company shall enjoy in Switzerland, for so long as it shall maintain its headquarters there, the following tax exemptions, without prejudice to the application of the provisions of article 7 (a) and (b) of the Convention :

1. Exemption from stamp duty on the issue of shares in the Company.

¹ Came into force on 22 July 1959, one month after the conditions laid down in article 15 (a) of the Convention were fulfilled.

The following States deposited their instruments of ratification or accession (a) with the Swiss Government on the dates indicated :

Sweden	21 February	1956	Federal Republic of	
Switzerland	30 March	1956	Germany	16 November 1956
Norway	7 May	1956	Luxembourg	29 January 1957
Netherlands	28 May	1956	Spain	18 March 1957
Denmark	29 June	1956	Turkey	18 March 1957 (a)
Portugal	25 July	1956	Greece	16 August 1957 (a)
Yugoslavia	18 September	1956	France	6 April 1959
			Italy	22 June 1959

The Additional Protocol subsequently entered into force for Belgium on 22 February 1960, the date of deposit of the instrument of ratification.

² See p. 225 of this volume.

³ See p. 233 of this volume.

2. Exemption from national defence tax on income, capital and reserves and from any future direct federal tax which may replace it.
3. Exemption from stamp duty on issue, from stamp duty on coupons and from anticipated tax on the certificates (and interest) of the Company's loans, which are to be placed exclusively abroad, which will not be quoted on Swiss stock exchanges and in respect of which the payment of interest and repayment of principal will be serviced exclusively through foreign agencies.
4. Waiver of the anticipated tax on any dividends paid by the Company to the railway authorities.
5. Waiver of the additional tax for registration in the register of commerce.
6. Exemption from cantonal and communal tax on the income and capital of the Company in the Canton of Basle-City.

Article 2

This Protocol shall enter into force upon ratification by the Government of Switzerland, which shall notify the other signatory Governments of such ratification.

IN WITNESS WHEREOF the undersigned representatives, having communicated their full powers, found in good and due form, have signed this Protocol.

DONE at Berne, on 20 October 1955, in French, German and Italian, in a single copy to be deposited in the archives of the Government of Switzerland, which shall transmit certified copies to all Governments members of the European Conference of Ministers of Transport.

For Switzerland :

Giuseppe LEPORI
Subject to ratification

For the Federal Republic of Germany :

SEEBOHM
Subject to ratification

For Austria :

WALDBRUNNER
Subject to ratification

For Belgium :

E. ANSEELE
Subject to ratification

For Denmark :

Palle Christensen
Subject to ratification

For Spain :

José DE AGUINAGA
Subject to ratification

For France :

L. CORNIGLION-MOLINIER
Subject to ratification

For Italy :

Armando ANGELINI
Subject to ratification

For Luxembourg :

V. BODSON
Subject to ratification

For Norway :

Kolbjörn VARMANN
Subject to ratification

For the Netherlands :

J. ALGERA
Subject to ratification

For Portugal :

M. GOMES D'ARAÚJO
Subject to ratification

For Sweden :

Sven ANDERSSON
Subject to ratification

For Yugoslavia :

Peko DAPČEVIĆ
Subject to ratification