



European Treaty Series - No. 28

**THIRD PROTOCOL
TO THE GENERAL AGREEMENT
ON PRIVILEGES AND IMMUNITIES
OF THE COUNCIL OF EUROPE**

Strasbourg, 6.III.1959

The governments signatory hereto, being members of the Council of Europe, signatories of the General Agreement on Privileges and Immunities of the Council of Europe or Parties to the said Agreement and, at the same time, members of the Council of Europe Resettlement Fund for National Refugees and Over-population,

Having regard to the provisions of Articles 1 and 9.g of the articles of Agreement of the aforesaid Fund;

Having regard to Article 40 of the Statute of the Council of Europe;

Desirous of defining the legal regime of the property, assets and operations of the Resettlement Fund, and the legal status of its organs and officials;

Considering that it is necessary to facilitate the realisation of the statutory purposes of the Fund by the most generous possible reduction in direct or indirect taxation affecting the operations of the Fund and borne ultimately by the beneficiaries of loans granted by the Fund;

Desirous of supplementing, in respect of the Resettlement Fund, the provisions of the General Agreement on Privileges and Immunities of the Council of Europe,

Have agreed as follows :

Part I – Articles of Agreement, personality, capacity

Article 1

The articles of Agreement of the Council of Europe Resettlement Fund, as approved by the Committee of Ministers in Resolution (56) 9, or as amended by the aforesaid Committee, or by the Governing Body acting within the limits laid down in Article 9.h of the said articles of Agreement, shall be an integral part of the present Protocol.

The Council of Europe Resettlement Fund shall possess juridical personality and, in particular, the capacity:

- i to contract;
- ii to acquire and dispose of immovable and movable property;
- iii to institute legal proceedings;
- iv to carry out any transaction related to its statutory purposes.

The operations, acts and contracts of the Resettlement Fund shall be governed by this Protocol, by the articles of Agreement of the Fund and by regulations issued in pursuance of the said articles of Agreement. In addition, a national law may be applied in a particular case, provided that the Fund expressly agrees thereto and that such law does not derogate from this Protocol nor from the said articles of Agreement.

Part II – Courts, property, assets, operations**Article 2**

Any competent court of a member of the Fund or of a State in whose territory the Fund has contracted or guaranteed a loan may hear suits in which the Fund is a defendant.

Nevertheless:

- i No action shall be brought in such courts, either against the Fund by a member or persons acting for or deriving claims from a member, or by the Fund against a member or the persons aforesaid;
- ii Differences arising out of any loan or guarantee contract concluded by the Fund with a member or with any other borrower approved by that member shall be settled by arbitration in accordance with procedure laid down in the said contract. Differences arising out of any loan or guarantee contract signed by the Fund shall be settled by arbitration procedure under arrangements specified in the Loan Regulations drawn up in pursuance of Article 10, Section 1.d, of the articles of Agreement of the Fund.

Article 3

The property and assets of the Fund, wheresoever located and by whomsoever held, shall be immune from all forms of seizure, attachment or execution before the delivery against the Fund of an enforceable judgment which can no longer be disputed by common remedies at law.

Enforcement of awards by execution, where such awards result from arbitration in accordance with the third paragraph of Article 2 shall, in the territory of members of the Fund, take place through the legal channels prescribed in each such member State and after endorsement with the executory formula customary in the State in whose territory the award is to be executed; for the purpose of such endorsement, no check shall be required other than verification that the award is authentic, that it conforms to the rules concerning competence and procedure set forth in the Loan Regulations of the Fund and that it does not conflict with a final judgment passed in the country concerned. Each signatory shall, on deposit of its instrument of ratification, notify the other signatories through the Secretary General of the Council of Europe what authority is competent under its laws to discharge this formality.

Article 4

The property and assets of the Fund, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of distraint by executive or legislative action.

The buildings and premises used for the operations of the Fund, and also its archives, shall be inviolable.

Article 5

To the extent necessary to the achievement of its statutory purposes the Fund may :

- a hold currency of any kind and operate accounts in any currency;

- b freely transfer its funds through banking channels from one country to another or within any country and convert any currency held by it into any other currency.

In exercising its rights under this article, the Fund shall pay due regard to any representations made to it by the government of any member.

Article 6

The property and assets of the Fund shall be free from restrictions, regulations, controls and moratoria of any nature.

Article 7

The Resettlement Fund and its assets, income and other property shall be exempt from all direct taxes.

The Resettlement Fund shall be exempt from all taxes in the territory of members of the Fund in respect of transactions and operations relating to loans contracted by the Fund with a view to applying their proceeds, in accordance with its purpose, to the needs of refugees and surplus population or relating to loans granted or guaranteed by the Fund in accordance with its statutory provisions.

The Fund shall not be granted exemption from any rates, taxes or dues which are merely charges for public utility services.

Member governments shall, whenever possible, make appropriate arrangements for:

- a exemption from taxes on income derived from interest on bonds issued or loans contracted by the Fund;
- b the remission or return of excise duties and taxes which form part of the price to be paid for movable or immovable property or of the payment for services rendered, when the Fund, for official purposes, is making substantial purchases or procuring services the total cost of which includes such excise duties and taxes.

No tax of any kind shall be levied on any security or bond issued or guaranteed by the Fund (or any dividend or interest thereon) by whomsoever held:

- a which discriminates against such security or bond solely because it is issued or guaranteed by the Fund; or
- b if the sole legal basis for such tax is the place or currency in which the security or bond is issued, guaranteed, made payable or paid, or the location of the headquarters or of any office or place of business maintained by the Fund.

Article 8

The Fund shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles required for its official use, unless such prohibition or restrictions have been imposed for reasons of *ordre public*, safety or health. Articles imported under exemption will not be disposed of in any way in the country into which they are imported, except under conditions approved by the government of that country.

Part III – Organs**Article 9**

The organs referred to in Article 8 of the articles of Agreement of the Fund shall enjoy in the territory of each member State, for their official communications, treatment at least as favourable as that accorded by that member to diplomatic missions of any other government. No censorship shall be applied to the official correspondence and other official communications of the organs of the Fund.

Article 10

Members of the Governing Body, the Administrative Council and the Auditing Board shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity and within the limit of their authority. They shall continue to enjoy such immunity after their terms of office have expired. In addition, they shall be accorded the same immunities from immigration restrictions and alien registration requirements and the same exchange and travel facilities as are accorded by members to representatives of other governments of the Fund having comparable rank. Sums paid to them in respect of expenses necessarily incurred in the discharge of their duties shall be exempt from taxation.

Article 11

The privileges and immunities are accorded to the individuals mentioned in Article 10 not for their own personal benefit, but in order to safeguard the independent exercise of their functions. Consequently, a member not only has the right, but is in duty bound, to waive the immunity of its representatives in any case where, in the opinion of the member, immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which it is accorded.

Article 12

- a The provisions of Articles 10 and 11 may not be invoked by a representative against the authorities of the State of which he is or has been the representative.
- b Articles 10, 11 and 12.a shall apply equally to deputy representatives, advisers, technical experts and secretaries of delegations.

Part IV – Officials**Article 13**

The Governor and officials of the Fund shall be accorded the privileges and immunities specified in Article 18 of the General Agreement on Privileges and Immunities of the Council of Europe.

The Governor will specify the categories of officials to which the provisions of the aforesaid article shall apply.

The communications specified in Article 17 of the General Agreement on Privileges and Immunities of the Council of Europe shall be made by the Secretary General of the Council in respect of the Governor and also of the officials referred to in the preceding paragraph.

The Secretary General, after consulting the Governor, shall have the right and the duty to waive the immunity of any official in any case where he considers that immunity would impede the course of justice and can be waived without prejudice to the satisfactory operation of the Fund. In the case of the Governor, the Governing Body of the Fund shall have the right to waive immunity.

Part V – Application of the Agreement

Article 14

The governments of member States of the Fund undertake to seek such constitutional authority as may be necessary to fulfil the statutory obligations assumed by those States *vis-à-vis* the Resettlement Fund. They undertake likewise to seek such authority in good time in order to be able to fulfil any undertakings into which they may have entered as borrower or guarantor, in accordance with Article 6, Section 3, of the articles of Agreement of the Resettlement Fund.

Article 15

The Fund may conclude with any member State special agreements on the detailed application of the provisions of the present Protocol, supplementing the said provisions or derogating from those of Article 13 above. It may likewise conclude agreements with any State which is not a member of the Fund, modifying the application of the provisions of the present Protocol so far as that State is concerned.

Part VI – Final clauses

Article 16

The present Protocol shall be ratified and the instruments of ratification deposited with the Secretary General of the Council of Europe. It shall enter into force as soon as three signatories representing at least one-third of the Fund's holdings have deposited their instruments of ratification. For the other members of the Fund it shall enter into force on the date when their respective instruments of ratification are deposited.

Nevertheless, pending the entry into force of this Protocol in accordance with the foregoing paragraph, the signatories agree, in order not to delay the satisfactory operation of the Fund, to apply the Protocol provisionally from 1 September 1958, or, at latest, from the date of signature, to the extent compatible with their constitutional rules.

Article 17

Any government which becomes a member of the Resettlement Fund after the signature of the present Protocol may accede thereto by depositing an instrument of accession with the Secretary General of the Council of Europe. Such accession shall become effective on the date of deposit if this takes place after the Protocol has entered into force, and upon the date of such entry into force if the accession takes place prior to that date.

Any government which has deposited an instrument of accession before the entry into force of the Protocol shall immediately apply the latter provisionally, to the extent compatible with its constitutional rules.

In witness whereof the undersigned plenipotentiaries have signed the present Protocol.

Done at Strasbourg, this 6th day of March 1959, in English and in French, both texts being equally authentic, in a single copy which shall remain in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories or States acceding.

Articles of Agreement of the Council of Europe Resettlement Fund

Article 1 – Establishment of the Fund

A Council of Europe Resettlement Fund (hereinafter called “the Fund”) shall be established.

The Fund shall be attached to the Council of Europe and administered under its supreme authority.

Article 2 – Purpose

The purpose of the Fund is to help in solving the problems with which European countries are or may be faced as a result of the presence of surplus elements of population, including national refugees, by providing or guaranteeing loans to finance:

- a absorption programmes approved by a member of the Fund in accordance with Article 6 of the present articles of Agreement, designed to create new opportunities of employment for such persons;
- b resettlement programmes approved by a member of the Fund providing for loans to or expenditure for the benefit of persons residing in Europe who seek resettlement in a European or extra-European country and who shall undertake to repay the amount of such loans or expenditure insofar as they are financed by the Fund.

Article 3 – Membership

Member governments of the Council of Europe may become members of the Fund in accordance with the provisions of Article 4, Section 2.a.i. Other governments admitted to membership by the Fund may become members of the Fund upon such special conditions as the Fund may prescribe in each case, in accordance with the provisions of Article 4, Section 2.a.ii.

Article 4 – Obligations of members

Section 1 – Participating certificates

The Fund shall issue for subscription by its members participating certificates, expressed in terms of a single currency by way of common denominator. Members shall pay their subscriptions in their national currency, at the official rate of exchange in effect at the time of subscription.

Section 2 – Subscriptions

- a Each member shall subscribe a certain number of participating certificates:
 - i The number of participating certificates placed at the disposal of each member State of the Council of Europe is fixed in accordance with the table appended to the present articles of Agreement. Each member of the Fund shall subscribe as many participating certificates as it wishes, but shall not initially take up less than one-quarter of such certificates placed at its disposal.

- ii The number of participating certificates to be allocated to other members shall be fixed by agreement with the Governing Body of the Fund in accordance with Article 9, paragraph e, of the present articles of Agreement.
- b Each member shall pay in at least twenty-five per cent (25%) of the subscription price of the participating certificates subscribed by it promptly upon becoming a member; and the balance shall be paid in accordance with Article 9, paragraph c.

Section 3 – Maintenance of value of subscriptions

Whenever the par value of a member State's currency is reduced or the foreign exchange value of such currency has depreciated to a significant extent, the member shall pay to the Fund within a reasonable time an additional amount of its own currency sufficient to maintain the value, as of the time of subscription, of the subscription by the member of participating certificates of the Fund.

Section 4 – Limitation of liability

No member shall be liable to third parties for any obligation of the Fund.

Article 5 – Contributions and borrowing operations

For uses not inconsistent with its purpose, the Fund may accept contributions. It may also borrow funds.

The Fund is empowered to receive contributions offered for specific purposes which come within its stated aims.

Article 6 – General provisions relating to loans and guarantees

Section 1 – Forms of loans

Loans made by the Fund shall be in one of the following forms:

- i loans to member governments of the Fund;
 - ii loans guaranteed by a member government of the Fund granted to any legal person approved by that member;
 - iii loans guaranteed by a member government of the Fund and granted to migrants through the intermediary of the member or of any legal person approved by that member.
 - iv Loans granted to any legal person approved by a member government of the Fund, when the Administrative Council is satisfied that the loan requested is covered by adequate guarantees and fulfils the requirements laid down in Section 3 below with regard to the loans mentioned in paragraphs i, ii and iii of the present section¹.
-

¹ Resolution 11 (1957) of the Governing Body.

Section 2 – Guarantees

The Fund may grant its guarantee for transactions arising from the realisation of the aims set out in Article 2, conditions to be determined for each particular case.

Section 3 – Obligations of borrower or guarantor

- a The obligations of member governments of the Fund under loans granted pursuant to Section 1.i of this article and the guarantees of member governments of the Fund under Section 1.ii and 1.iii of this article must in each case be an unconditional promise:
 - i to repay, within a specified period, a specified sum expressed in a specified currency, and
 - ii to pay interest and, where necessary, a commission in respect of the specified sum, at a specified rate, at specified intervals and beginning on a specified date.
- b In determining the currencies in which obligations of member governments of the Fund, whether borrowers or guarantors, shall be expressed, the Fund shall seek to maintain a balance in amounts and currencies between its assets, including such obligations, and the subscription prices paid by its members, including any payments pursuant to Article 4, Section 3.

Section 4 – Subrogation

In the loan contracts guaranteed in accordance with Section 1.ii and 1.iii of this article, it shall be laid down that the guarantor, upon satisfying its obligation to the Fund under the guarantee, shall be subrogated to the corresponding claims of the Fund against the principal borrower or borrowers.

Section 5 – Supporting statements by members

In support of applications for loans to be granted in connection with resettlement or absorption programmes, the Fund shall receive a statement by a member that:

- i it approves the programme;
- ii it believes that the programme will result in the successful resettlement or absorption of persons resident in the European territory of the member;
- iii it believes that the funds to be supplied by the Fund are not available upon reasonable terms from any other source.

Section 6 – Supporting information

The Administrative Council referred to in Article 10 of these Regulations shall determine what information and pledges a borrower shall be required to furnish in support of its application.

Article 7 – Investments

Section 1 – Temporary investments

Pending its first use of the funds subscribed by a State, the Fund may invest in Treasury Bills or other securities issued and guaranteed by that State.

In making investments the Administrative Council shall take expert advice.

Section 2 – Accumulation and investment of surplus

The Fund's surplus resulting from an excess of receipts on account of interest and commissions, or any part thereof, may be accumulated and invested in a manner to be determined by the Administrative Council.

Article 8 – Organisation, administration and supervision of the Fund

The organisation, administration and supervision of the Fund shall be divided between the following:

- the Governing Body,
- the Administrative Council,
- the Governor,
- the Auditing Board,

as provided in the succeeding articles.

Article 9 – Governing body

Section 1 – Decisions reserved to members

The Governing Body, representing the members of the Fund, shall have sole authority:

- a to determine the single currency (by way of common denominator) and the nominal value of the participating certificates;
- b to determine the terms upon which the Fund will accept contributions or borrow funds and the rights to be granted, including their rights in respect of the Fund's assets, to contributors or lenders to the Fund;
- c to fix the dates on which calls are to be made upon the unpaid balance of participating certificates subscribed, according to the requirements of the Fund for carrying out its stated aims;
- d to determine the operating policies of the Fund;
- e to authorise governments other than member governments of the Council of Europe to join the Fund, to lay down conditions for their admission and to determine the number of participating certificates to be subscribed by such governments;

- f to appoint the Governor, revoke his appointment and accept his resignation;
- g to recommend the international or other legislative measures to be adopted by members, in order to define such matters as the special arrangements governing assets or property held by the Fund in their territory or in the territory of third States and the obligations of members arising from special operations of the Fund;
- h to amend these articles, without, however, making any change in their stated aims;
- i to interpret these articles of Agreement;
- j to suspend permanently the operations of the Fund and to distribute its assets;
- k to draw up Rules of Procedure and to designate its Chairman;
- l to nominate the three auditors who shall constitute the Auditing Board.

Section 2 – Voting

- a The decisions reserved to members of the Fund shall be taken by votes cast either orally at meetings or in writing between meetings.
- b Each member of the Fund shall have one vote for each participating certificate held by it.

Article 10 – Administrative Council

Section 1 – Decisions reserved to the Administrative Council

The Administrative Council shall have all the necessary powers to administer the Fund. It shall take decisions for such purposes as the following:

- a to determine from time to time what portion of the Fund's surplus, if any, shall be accumulated and invested under the provisions of Article 7, Section 2;
- b to approve the operating budget of the Fund on the principle that operating expenses may not exceed receipts on account of interest and commissions;
- c to give to the Governor specific or general directives;
- d to establish Rules of Procedure for the Fund and, in particular, the terms on which loans shall be granted or guaranteed;
- e to transmit each year to the Special Representative, for submission to the Committee of Ministers, the report of the Governor of the Fund.

Section 2 – Composition of the Administrative Council

- a The Administrative Council shall consist of a Chairman appointed by the Governing Body, together with one representative of each member of the Fund. Each representative on the Administrative Council shall have a number of votes equal to the number of participating certificates held by the member he represents.
- b The Administrative Council may invite representatives of the international and inter-go-

vernmental organisations concerned to participate without vote in its proceedings.

Section 3 – Term of members of the Administrative Council

Appointments of members of the Administrative Council shall continue until revoked by the member of the Fund which has appointed him. Retiring members of the Council are always eligible for re-appointment or re-election.

Section 4 – Method of decision by the Administrative Council

- a The Administrative Council shall be convened by its Chairman. It shall meet whenever the necessity arises and at least once each quarter.
- b The decisions of the Administrative Council shall be taken by a majority of the votes cast by members present. Two-thirds of its members shall constitute a quorum, failing which the deliberations of the Council shall be invalid.

Section 5 – Committees of the Administrative Council

The Administrative Council may from time to time appoint committees from among its members and delegate to such committees powers to be specified in each particular case.

Section 6 – Compensation of members of the Administrative Council

Members of the Administrative Council shall serve without compensation from the Fund, but their reasonable expenses incurred in performing their functions as members of the Administrative Council shall be reimbursed by the Fund.

Article 11

Section 1 – Functions of the Governor

The Governor shall conduct the current administration of the Fund under the instructions and supervision of the Administrative Council.

He shall represent the Fund in all its transactions. He shall not contract any financial obligations, in accordance with the terms of Articles 5 and 6 of the articles of Agreement, without the express authorisation of the Administrative Council.

He shall incur administrative expenses within the limits of the budgetary credits allocated to him.

He shall take all necessary steps to keep these expenses at a strict minimum. In particular, he shall avail himself of such services as may be offered by the Council of Europe; in dealing with financial matters he shall enlist the co-operation of the central banks of the members and the Bank for International Settlements, and, in dealing with problems incidental to resettlement and absorption of surplus population, that of agencies and individuals experienced in the field.

He shall hold the property and assets of the Fund and shall keep adequate accounts.

Section 2 – Reports to the Administrative Council

The Governor shall submit to the Administrative Council regular reports on the position of the Fund and on proposed operations and shall supply it with any information it may request.

The Governor shall draw up a full annual report on all operations effected throughout the year.

This report shall be accompanied by the balance-sheet of the Fund and the operational accounts, together with the auditors' report on these documents.

Section 3 – Appointment and salary of the Governor

The Governor shall be appointed for a period of 3 years and may be re-elected on the expiry of his term of office. The amount of his salary shall be fixed by the Administrative Council.

Article 12 – Auditing Board

The Auditing Board shall annually inspect the Fund's accounts and verify that the operational accounts and balance-sheet are in order.

The auditors' report shall state whether the balance-sheet and operational accounts are in agreement with the books and whether they give a true and fair picture of the state of the Fund's affairs as at the end of each financial period.

Article 13 – Headquarters

The principal office of the Fund shall be at Strasbourg, France. The headquarters of the operational services shall be decided by the Administrative Council.

Article 14 – Suspension of operations and liquidation of the Fund

Section 1 – Suspension of operations

Should the Governing Body decide upon the suspension of operations the Fund shall forthwith cease all activities except those incidental to the settlement of its obligations and the orderly realisation, conservation and preservation of its assets.

Section 2 – Withdrawal of members

Any member may withdraw from the Fund on giving notice of six months prior to the end of the current financial year. The conditions for this shall be laid down by the Governing Body.

Section 3 – Liquidation of the Fund

After all liabilities of the Fund, including satisfaction of rights upon distribution which may previously have been granted by the Fund upon accepting contributions under Article 5, have been discharged or provided for, the members of the Fund may adopt a plan for the distribution of assets which shall be based on the following principles.

- a No member of the Fund against which the Fund has an unsatisfied claim shall be eligible to participate in the distribution under the plan until it has regularised its position.
- b If the Fund's net assets permit, each member of the Fund shall receive as a distributive share the amount it paid under Article 4 in the same currency or, if that should not be

possible, the equivalent as of the time of distribution in other currencies. Should the extent of the Fund's net assets not permit the full return of such distributed shares, any possible deficit shall be shared by all members of the Fund in the same proportion.

-
- c Any excess of the Fund's net assets over the aggregate total of such distributed shares shall be allotted to all members of the Fund in proportion to the number of participating certificates held by each.
 - d To the extent that these distributed shares are paid to any members of the Fund in the currencies of other members of the Fund, the latter shall take the necessary steps to ensure, in accordance with the procedure provided for under their exchange regulations, transactions involving the amounts thus distributed.

Article 15 – Final clauses

Section 1 – Organisational meeting

As soon as the present articles of Agreement have been adopted by virtue of a resolution of the Committee of Ministers on the basis of a Partial Agreement, the Secretary General of the Council of Europe shall, in agreement with the Special Representative, call the first meeting of the Governing Body, which shall take all necessary or desirable steps to organise the Fund in conformity with the present articles of Agreement.

Section 2 – Notification of the beginning of operation

The Governor shall notify members of the Fund of the date on which the Fund will be ready to begin its operations.

Section 3 – Membership

- a Any member of the Council of Europe who is not a member of the Fund may join the Fund by addressing a declaration to this effect to the Committee of Ministers. In this declaration the new member government shall signify its acceptance of the present articles of Agreement and subscribe the number of participating certificates determined in agreement with the Governing Body, in accordance with Article 4 of the present articles of Agreement.
- b Any government which is not a member of the Council of Europe and which, pursuant to Section 1, paragraph e, of Article 9, has been allowed to join the Fund, may do so by depositing with the Secretary General of the Council an instrument to the effect that it accepts the present articles of Agreement, that it subscribes the number of participating certificates determined in agreement with the Governing Body, that in accordance with Article 4 of the present articles of Agreement it has taken all necessary steps to ensure that it can fulfil all the obligations arising from the present articles of Agreement and that it has fulfilled all the conditions for admission laid down by the Governing Body.
- c The Secretary General of the Council of Europe shall notify the Governor and all the members of the Fund of the reception of any declaration of accession by a new member or of the depositing of any instrument of accession made in application of the preceding paragraphs.

Section 4 – Interpretation of the present articles of Agreement

Any decision of the Administrative Council involving the interpretation of the present articles of Agreement may be referred to the Governing Body at the request of any member; the decision of the Governing Body shall be final. Until such time as the Governing Body has made a ruling, the Fund may, to the extent it deems it necessary, act on the basis of the

decision of the Administrative Council.

Section 5 – Certified copy

The Secretary General of the Council of Europe shall communicate a certified copy of the present articles of Agreement to every member of the Council and to every non-member government which has joined the Fund.