Proposal for a disciplinary regime and modifications to ATS Staff Regulations

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**Working Paper submitted by Argentina**

***Summary***

The purpose of this working document is to present a summary of the discussions between the Consultative Parties on the ATS Human Resources Policy and to propose further amendments. As a result of informal discussions prior to the 42nd ATCM, Argentina drafted, in consultation with the Secretariat, a Proposal for Amendments to Staff Regulations, which were adopted by Decision 4 (2019). However, from paragraphs 153 and 154 of the Final Report of said ATCM, it appears that the Consultative Parties decided that a more detailed evaluation was necessary on the disciplinary procedures and legal actions in the case of disputes, and that there was also a need to implement mechanisms for evaluating performance within the ATS. Consequently, Argentina, in consultation with the ATS and its legal advisers, proposes a new article containing a disciplinary regime to be incorporated into the Staff Regulations should the Consultative Meeting so decide. Likewise, in order to adapt the Staff Regulations to the Argentine regulations on sickness or accident leave, maternity leave, social security contributions, death, and separation from service, proposed modifications to the relevant articles are incorporated, according to ATS operational needs.

Attached to this document are i) a proposal for an article on Staff Regulations, referring to the disciplinary regime, ii) a proposal for an internal regulation on the disciplinary regime, to be applied by the Executive Secretary by virtue of the new article on the matter, and iii) a proposal of changes to articles 7.13, 7.14, 8.1, 8.2 and 10.5 of the Staff Regulations.

***Background***

In 2017, the 40th ATCM requested the Executive Secretary to submit a report briefly listing the human resources policy issues that, in his opinion, required the attention of the ATCM (ATCM XL Final Report, para. 120). In response to that request, at the 41st ATCM the Secretariat presented SP 7, including the analysis of these issues. This in turn led to the creation of an ATCM discussion forum (41st ATCM Final Report, para. 44), where the concerned Consultative Parties agreed on the issues to be proposed for modification by the next ATCM.

***42nd ATCM***

As emerged from Decision 3 (2019) regarding the involuntary separation from service of staff, the Parties decided to create a new Involuntary Separation from Service Fund, which would be adequately covered by the General Fund. Regarding license rights, the Regulation clarified that those arising from Argentine legislation would be considered. Finally, amendments were made to adapt the gender standards of the Regulation to best international practices.

The meeting adopted the new Staff Regulations through Decision 4 (2019) and the Secretariat implemented the Involuntary Separation from Service Fund as reported in the 2019/20 Secretariat Report (Appendix 2 Provisional Financial Report) approved through the intersessional consultation procedure of Rule 46 of the ACTM Rules of Procedure.

In accordance with paragraph 153 of the 42nd ATCM Final Report in relation to disciplinary procedures and legal action in the case of disputes, the Parties decided that such matters required further evaluation since they had not been analysed between sessions. Similarly, paragraph 156 of the Report contained the decision of the Parties to continue with the consideration of other pending matters regarding Staff Regulations at the 43rd ATCM, such as licenses and separation from service. Argentina thus presents this new document to the 43rd ATCM.

***Proposals***

As the country in charge of coordinating past informal discussions and preparing proposals to amend the Regulations, Argentina presents a proposal for an article on the disciplinary regime to be incorporated into the Staff Regulations. Additionally, a draft of internal regulations on the disciplinary regime of the Secretariat is incorporated in our proposal according to Annex 1 detailed below, which is not part of the Staff Regulations and which contains a list of offences for informational purposes. Said texts were drafted in consultation with the Secretariat, with the advice of their local legal advisers on labour issues.

The wording of the proposed article is as follows:

" *ARTICLE XX - DISCIPLINARY REGIME*

*XX.1 The Executive Secretary may apply disciplinary sanctions to staff members for any non-compliance that is registered and depending on its severity. Said sanctions will be duly notified to the staff member that has committed the disciplinary offence.*

*XX.2 Three types of disciplinary offences are established, which may be sanctioned according to their severity. These are:*

1. *Minor offences. These may be sanctioned with a warning.*
2. *Serious offences. These may be sanctioned with a warning or 1 to 4 days suspension without pay.*
3. *Very Serious Offences. These may be sanctioned with 5 to 10 days suspension without pay or dismissal with just cause.*

*XX.3 Sanctionable offences will be listed in the Internal Regulation on the Disciplinary Regime of the Secretariat, highlighting that said list will not be comprehensive and shall leave non-listed actions that deserve to be sanctioned at the discretion and analysis of the Executive Secretary*".

Furthermore, in consultation with the Secretariat and its team of legal advisers, proposals have been made to modify the wording of articles 7.13, 7.14, 8.1, 8.2 and 10.5 of the Staff Regulations. The proposed changes tend to adapt the provisions of the Regulation to local Argentine regulations to avoid situations of disadvantage or excessive divergence between ATS Staff and the rest of the local labour market. The drafting proposals are as follows:

"***ARTICLE 7. SICKNESS LEAVE 7.13.*** *Staff members will receive leave for an accident or non-occupational illness in accordance with the provisions of the current legal regime in the Argentine Republic. In cases where the accident or illness prevents the staff member from continuing to carry out their duties in the Secretariat, the staff member and their dependants will have the right to return travel and moving expenses to their country of origin or that of their previous residence on behalf of the Secretariat.*"

"***ARTICLE 7. MATERNITY LEAVE. 7.14.*** *Staff members will have the right to maternity leave as provided by the current legal regime in the Argentine Republic. Likewise, the father will receive 10 days of paid leave which can be used in the same period as previously stated.*"

"***ARTICLE 8. SOCIAL SECURITY. 8.1.*** *Staff members will be responsible for payment of the total of their personal Social Security contributions. The Secretariat will make all employer contributions to Social Security, and will pay any mandatory insurance corresponding to the employer, as provided by the regulations of the Argentine Republic.*"

"***ARTICLE 8. SOCIAL SECURITY. 8.2.*** *In the event of the death of a staff member, their dependants will be entitled to a death allowance and payment of the return trip and moving expenses to their country of origin or previous residence by the Secretariat, regardless of any compensations to which they may be entitled by the regulations of the Argentine Republic and those mentioned in Article 10.*"

“***ARTICLE 10 SEPARATION FROM SERVICE. 10.5.*** *In the event of involuntary separation from the service of a member of the general services staff, compensation will be paid in accordance with the regulations of the Argentine Republic. If the cause of termination was a serious breach of the duties mentioned in Article 2, or having incurred in offences established as very serious in Article XX, such compensation will not be granted.*"

***Recommendations***

Argentina recommends that the ATCM:

1. discuss the proposed changes to the Staff Regulations;
2. request that the legal drafting group prepare the text of a new decision, adding the new article and the modifications to the articles of the Staff Regulations if all the Consultative Parties duly accept the suggested amendments.

***Annex 1 - Internal Regulation on the Disciplinary Regime***

This annex is not part of the Staff Regulations, but must be read in conjunction with Article XX thereof.

**Minor Offences.**

The following actions are considered minor offences:

1. Committing actions or omissions that, although they may not cause damage, may affect the conservation of the materials, work items and other property of the SECRETARIAT.
2. Occasionally and without justification abandoning tasks, as long as this does not cause harm to the SECRETARIAT.
3. Failure to pay due attention in the performance of tasks, compliance with working hours and application of policies, regulations, procedures or instructions, as long as this does not cause harm to the SECRETARIAT.
4. Keeping the workplace and work elements in disorder or wearing inappropriate clothing for their functions in the SECRETARIAT.
5. Failure to complete or to carry out the procedures and tasks they are responsible for in a timely manner, as long as this does not cause harm to the SECRETARIAT.
6. Providing or sharing with another person their personal user passwords for operating different systems, including email and telephone access, as long as this does not cause harm to the SECRETARIAT.

**Serious Offences.**

The following actions are considered serious offences:

1. Repeated minor offences.
2. Committing the offences mentioned as minor when they cause harm to the SECRETARIAT.
3. Repeatedly abandoning tasks or being absent without authorization during work hours.
4. Improper use, for private or other purposes, of work elements and systems provided by the SECRETARIAT for the performance of assigned tasks.
5. Failure to observe due reserve and care in the treatment of SECRETARIAT information, disclosing it or commenting on it with people not related to said information, both inside and outside the SECRETARIAT.

**Very Serious Offences.**

The following actions are considered very serious offences:

1. Repeated serious offences.
2. Promoting acts of indiscipline in the workplace or other areas within the SECRETARIAT.
3. Incurring in any of the acts or voluntary conduct considered to constitute a conflict of interest or failing to report events that generate said conflicts.
4. Participating in illegal actions related to the security of communications, computer security, inviolability of secrets, or that affect the assets of the SECRETARIAT.
5. Falsifying, modifying or altering in any way a document related to the SECRETARIAT.
6. Failure to comply with the obligations and duties established in Article 2 of the Staff Regulations.
7. Committing acts that are contrary to ethics, morality and due conduct corresponding to an official of the SECRETARIAT.