

ELEMENTS FOR A PROCEDURE REGARDING RULE 8 (1) D¹

Context

The Fifth Conference of States Parties (CSP5) expressed deep concern about the unpaid contributions of States² and called on States that have not done so, to address their financial obligations in a prompt and timely manner to avoid risks to the ATT process and its activities³.

The Conference requested the Management Committee to prepare guidelines on the issue of “arrangements with the Secretariat in relation to the discharge of its financial obligations” (reference Financial Rule 8 (1) d) for consideration at CSP6⁴.

Furthermore, the Conference decided that no State shall be prejudiced by Financial Rule 8 (1) d in applying for support from the ATT Voluntary Trust Fund or the ATT Sponsorship Programme until CSP6, when this matter will be considered⁵.

Amidst the pandemic of COVID-19 CSP6 took place in a written format, and could not agree on the proposed process. Thus State Parties to the ATT subsequently decided by silence procedure to extend the aforementioned task to the MC until CSP7 as follows: “Requested the Management Committee to continue to prepare guidelines on the issue of “arrangements with the Secretariat in relation to the discharge of its financial obligations” (reference Financial Rule 8.1.d) for consideration at CSP7, based on the document proposed by the Management Committee in Annex A to the Draft Elements for a Secretariat’s Procedure Regarding Rule 8 (1) d (contained in document ATT/CSP6.MC/2020/MC/609/Conf.PropFinArr8(1)d).”⁶

The ATT Financial Rule 8 (1) d states:

Any State Party whose contributions are in arrears for two or more years that has not entered into arrangements with the Secretariat in relation to the discharge of its financial obligations shall have its voting rights suspended, not be eligible to nominate a representative as an office-holder, nor become a member of any committee or subsidiary body of the CSP. The CSP may, nevertheless, permit such a member to vote or nominate a representative as an office-holder if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.

¹ Adopted by the Seventh Conference of States Parties (CSP7) in September 2021 as document ATT/CSP7.MC/2021/MC/674/Conf.PropFinArr8(1)d (see Final Report, paragraph 32 (ATT/CSP7/2021/SEC/681/Conf.FinRep.Rev1)).

² States referred to in this document include States Parties, Signatory States and Observer States that are also assessed for contributions.

³ ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1/34

⁴ ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1/35

⁵ ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1/36

⁶ Announcement by the CSP7 President dated March 2, 2021

To date, no rule or procedure exists within the ATT framework to guide how a State in arrears for two or more years can make a financial arrangement or how the ATT Secretariat should process a request for a financial arrangement as contemplated in Rule 8 (1) d of the ATT Financial Rules.

This paper seeks to present a proposal on how to provide a comprehensive, commonly agreed and easily applicable procedure to the ATT Secretariat and the Management Committee for preparing a CSP decision on a financial arrangement.

Background

Rule 3 of the ATT Financial Rules provides that the financial period for the ATT is the calendar year (i.e. 01 January – 31 December of each year). Accordingly, the ATT budget is adopted during the relevant CSP of the previous year.

Financial contributions for each calendar year are due and payable in full within 90 days of the receipt of an invoice from the ATT Secretariat. In accordance with the stipulation of the ATT Financial Rules, States should be notified of the amount of their contributions for a given year by 15 October of the previous year. As not all fiscal years are alike between States, each State should, as far in advance as possible of the date due for the contribution, inform the ATT Secretariat of the projected timing of that contribution to allow for better financial oversight and planning.

As in comparable Conventions or the United Nations itself, financial and liquidity problems arise when States either pay late or not at all. During previous years, various measures have been introduced to address problems arising from delayed payment or non-payment. With regard to the ATT, the flexibility embedded in the ATT Financial Rules has been invoked in a bid to overcome financially critical periods until payments are received.

Despite the measures referenced above, there are situations in which financial contributions are not paid by States for two or more years. In the case of the United Nations, the General Assembly has introduced the restriction of rights to vote⁷. In the context of the ATT, Rule 8 (1) d of the Financial Rules introduces measures applicable to States in arrears for two or more years, which will be applied unless the State has entered into arrangements with the Secretariat in relation to the discharge of its financial obligations. Notwithstanding this indication, the Rule in itself does not prescribe a procedure to be followed in making such an arrangement.

Potential Process

In developing a possible ATT process for making financial arrangements contemplated under Rule 8 (1) d, the existing rules and procedures of the General Assembly of the United Nations and other Conventions were considered.

Some regulations of the United Nations allow for the definition and application of multi-year payment plans as an instrument for Member States to pay contributions in arrears⁸. These plans should not extend to more than six years, if possible, and a yearly report on the status of the relevant plan is compulsory. Although payment plans may constitute a useful tool to reduce arrears and underscore the willingness of States to meet their financial obligations, it should be noted that they are regarded as voluntary in nature in the context of the UN process referenced above.

⁷ Charter of the United Nations, Chapter 4; Article 19: A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

⁸ For reference UNGA A/74/68 or A/74/11 may be used.

In view of the applicability of some of the elements contained in the process above, consideration should be given to the introduction of a payment plan in the ATT process. This approach will provide flexibility to States in arrears to settle their financial arrears within a reasonable timeframe and in a transparent manner. It should be noted, however, that future obligations will remain outside of this process.

The mechanism proposed below does under no circumstances preclude a decision by the CSP to acknowledge conditions beyond control, as per rule 8.1.d.

Proposed process for the ATT framework:

1. The process starts with an invoice for assessed financial contribution issued by the ATT Secretariat in accordance with Rule 8 (1) a and payable within 90 days of receipt.
2. Pursuant to Rule 8 (1) b, each State shall, as far in advance as possible of the date due for the contribution, inform the ATT Secretariat of the projected timing of that contribution⁹.
3. By 01 March of the relevant year, the ATT Secretariat shall advise the President, who shall write to those States, who have not yet paid by that date, to impress upon them the importance of paying their respective arrears. The President's consultations with such States shall be reported to the CSP at its next meeting (Rule 8 (1) c).
4. The President may also remind States in arrears for two or more years to consider entering into a financial arrangement with the ATT Secretariat as early as possible.
5. The next reminder for payment comes in the form of an invoice for the following year, issued in October of every year reflecting all outstanding contributions. Detailed and continuously updated information on the status of ATT contributions, including financial arrears, is posted and made available on the ATT website.
6. A State in arrears for two or more years may at any time submit to the ATT Secretariat a proposal for an arrangement to discharge its financial obligations (Rule 8 (1) d). In approaching the ATT Secretariat, the State in arrears shall use an official document (Note verbale issued by the Government of the State concerned through the respective Diplomatic Mission).
7. The official document from the State in arrears should contain a proposal for a single or multi-year payment plan not exceeding six years and a payment calendar or time frame¹⁰.
8. Due to the time required for the preparation of necessary recommendations to a CSP, the official document requesting a financial arrangement should be submitted to the ATT Secretariat not later than 60 days before the start of a CSP, of the same year period¹¹.

⁹ As fiscal years for individual member state may differ, it is recommended that relevant details are provided to the ATT Secretariat in time in order to avoid additional administrative efforts.

¹⁰ Elements of a Multiyear Financial Plan may vary widely, with the intention of not being overly prescriptive, it is suggested that the plan contains payment projections based on existing or projected budget streams, and a feasible calendar, taken into consideration current policy and projected economic assumptions. It is, the payment plan should reflect an appropriate duration based on the amount in arrears, and the capacity of the state to address such arrears with the agreed timeframe (i.e. no more than six years, make first instalment a precondition for activation of a plan, and an open option for early settlement).

¹¹ Timeframe reflects Rule 15 of the Rules of Procedure (ATT/CSP1/CONF/1).

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9. On receipt of the official document requesting a financial arrangement, the ATT Secretariat will inform the President of the CSP and the Management Committee so as to initiate a process for consideration of the arrangement proposed. Following this, the Management Committee and the ATT Secretariat will evaluate the proposed payment arrangement. The Management Committee will subsequently prepare recommendations thereto to the CSP for consideration and decision-making at its next session. It is only the CSP that will take the necessary decision regarding a proposed payment arrangement or any other financial rule related decision.
 10. If a state party is in arrears with its contributions for two or more years, the measures outlined in rule 8.1.d will come into effect, unless explicitly waived by the CSP. Once a payment plan is considered and approved by the CSP, the payment of the first instalment will initiate the arrangement; i. e. the State Party concerned shall have the measures waived.
 11. The ATT Secretariat shall monitor compliance with the approved financial arrangement. In case of non-compliance the President of the CSP shall send a letter to the respective State, advising of the situation and requesting corrective measures to be implemented by the State in arrears to sustain the financial arrangement. The State will be required to return to compliance within 60 days. If the State continues to fail to fulfil its obligations in accordance with the approved financial arrangement, the temporary waiver will be withdrawn and measures contemplated in Rule 8 (1) d reinstated.
