



**Union
Syndicale
Fédérale**

des services publics européens et internationaux

Avenue des Gaulois, 36 – 1040 Brussels – Belgium

☎ +32.(2)733.98.00 – 📠 +32.(2)733.05.33

✉ usf@unionsyndicale.eu – 🌐 www.unionsyndicale.eu

Brussels, 14th December 2020

To H.E. Mr. George Rebelo Pinto CHIKOTI

Secretary General of OEACP

For the attention of the OEACP 111th session of the Council of Ministers
c/o

Organization of African, Caribbean and Pacific States (OEACP)

Rue de l'Aqueduc 118

1050 Ixelles, Brussels, Belgium

Email: sg@acp.int;

jestas.nyamanga@nje.go.tz, tanzania@skynet.be,

Staffbureau@acp.int

Subject: Staff Association Consultation

Dear Secretary General, dear Mr Chikoti,

The *Union Syndicale Fédérale* (USF) urgently calls your attention to the following USF comments about the decision to be taken by the 111th session of the OACPS Council of Ministers, 14 – 17 December 2020.

In order to avoid any misunderstanding, it should be stressed that the USF firmly believes in the importance and added value of the EU-ACPS cooperation, in the role of the OACPS Secretariat and in the professional dedication of our colleagues at the Secretariat. The USF also acknowledges the autonomy of the OACPS Secretariat to define and shape the Staff regulations applicable to its staff as being part of its operational autonomy.

However, USF is also aware of the OACPS Secretariat's intention to terminate all contracts on 31 December 2020 and re-employ some staff on 1 January 2021 under the so-called "revised Staff Regulations" and the "New Employment Regulations".

The USF considers that this decision is unheard of in the international public service and will have massive implications. Instead, the USF highly recommends following the classic

method of reforming the working conditions of international organisations: analysing and justifying the need for change, fully consult the staff representatives on the considered changes and define transitional measures, in order to achieve both the aims of the reform, the obligation to respect the acquired rights of individuals and thus overall legal certainty.

The USF strongly recommends a postponement of the currently considered action that foresees the termination of the contracts and the re-hiring exercise. To be fully clear on our intentions, the USF considers the radical approach described above as even harmful for the entire international public service. The radical approach would inevitably oblige the USF to use all available means – political and legal – to support individual staff members and their representatives, both in their own interest and in the long-term interest of all other affiliated employees in USF branches.

For you to assess the likely consequences of the considered radical approach, the USF would like to briefly indicate how the OACPS Secretariat's reform and restructuring exercise may be challenged:

- The justification for a termination of all contracts may be valid in the case of the disappearance of an administrative task (e.g., the closure of the of ACP-EU joint institutions such as, the Centre for the Development of Enterprise (CDE) or the Technical Centre for Agricultural and Rural Cooperation (CTA)...) followed by the disappearance of an organisation; this justification is obviously not the case of the OACPS Secretariat nor in the current context of the EU-ACP cooperation.
- The reform is intended to be cost neutral and no additional budget is foreseen; however, a high level of litigation is to be expected if staff decide to defend their acquired rights; costs may be incurred through cases the Secretariat will lose before the ILOAT and / or Belgian courts and also due to the representation costs in multiple cases.
- While individual legal cases will be pending, the OACPS Secretariat will find itself in a legal limbo, not knowing which of the measures will be accepted by the courts and which will not. All staffing, recruitment and general HR policy will be very difficult to manage.
- The insecurity related to costs and legal challenges will appear on two levels (acquired rights as defined by the ILOAT, acquired rights as defined by Belgian legislation).
- ILOAT 371 ruling "Mertens" is clear about upholding acquired rights, even if an organization is shut down and reborn under a new name; the same task and constitution indicate a continuation and therefore the upholding of acquired rights; restructuring of an organisation does not deprive the individual of an expected protection, see ILOAT 2867 (confirmed by the International Court of Justice in the advisory Opinion of 1st February 2012).
- Belgian legislation as such is strict on fixed term contracts; beyond Belgian legislation, EU legislation and the abundant CJEU case law on EU Directive 1999/70/EC would be applicable and enforceable as an inherent and prevalent element of Belgian legislation, especially where codified Belgian legislation is silent.
- Both ILOAT case law and Belgian legislation are strict on the need to fully inform and consult the staff representatives wherever fundamental changes in employment conditions are considered; this obligation was not fulfilled, as neither the so-called

“revised Staff Regulations” nor the “New Employment Regulations” were adequately submitted to the Secretariat’s staff representatives, neither was their opinion considered. Therefore, any validation of these sets of documents risk being quashed by the competent courts (see ILOAT 2352, ILOAT 2354 and many others). Likewise, the concurring recommendation of the ACP Council of Ministers of 2018 (Decision No; 9/CVIII/18 of 14 December 2018) was not followed, as the “New Employment Regulations” were circulated on 3 December 2020 (in English only). Therefore, any validation of these Regulations at the end of the currently held Ministerial conference would fail to meet the 15-day period foreseen for minimum consultation.

Should unexpressed dissatisfaction of the Secretariat towards individual staff members be the hidden motivation for the radical approach currently considered by the OACPS Secretariat, the USF considers that such dissatisfaction calls for a real treatment of the individual cases, thereby fully guaranteeing the rule of law, especially the right to be heard. Avoiding this necessary element of HR management and using funds from taxpayers’ money instead to finance an action unheard of in the history of international public service will not be met favourably by the media nor the general public.

The USF therefore suggests postponing the currently considered action, analyze and justify in full transparency the need for change, fully consult the staff representatives on the considered changes, and define transitional measures.

Yours sincerely,

Nicholas Mavraganis
President USF

(e.signed)

Peter Kempen
Secretary General USF

(e.signed)

CC:

- Chair OACPS Committee of Ambassadors
- OACPS Staff Association
- EU Commission, DG DEVCO
- EU Commission, *President*