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Committee on Sanitary and Phytosanitary Measures

Original: English

## FOURTH REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES

### TRANSPARENCY UNDER THE SPS AGREEMENT (ARTICLE 7 AND ANNEX B) PROPOSALS FOR ACTIONS

*Submission by Chile, the European Union, Morocco and Norway*

The following communication, received on 8 May 2014, is being circulated at the request of the Delegations of Chile, the European Union, Morocco and Norway.

#### 1 INTRODUCTION

1.1. As part of the Fourth Review of the Operation and Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement), the SPS Committee at its meeting on 25-26 March 2014 invited Chile, the European Union, Morocco and Norway to submit, in writing, proposals for actions related to the fulfilment of transparency obligations under Article 7 and Annex B of the SPS Agreement.

1.2. This communication responds to that invitation and stems from the discussions at the October 2013 and March 2014 meetings of the SPS Committee, the EU's general communication on transparency from 17 December 2013<sup>1</sup> and the joint submission by Chile, the European Union, Morocco and Norway from 14 March 2014<sup>2</sup> on the same topic.

1.3. Chile, the European Union, Morocco and Norway have highlighted the importance of transparency in the SPS field as one of the fundamental tenets of the SPS Agreement. They recommend to Members to consider, during the 4<sup>th</sup> Review, the actions described in this communication which are aimed at better fulfilling the obligations for transparency enshrined in the SPS Agreement.

1.4. Such actions take two distinct forms: a) Specific proposals for modifications in the Recommended Procedures for implementing the Transparency Obligations of the SPS Agreement (Article 7)<sup>3</sup>; and b) Recommendations to the SPS Secretariat to consider when revising and modernizing the SPS Information Management System and (SPS IMS) and Notification Submission System (SPS NSS).

1.5. Specific proposals for modifications in the Recommended Procedures can be found in Annex 1 to this communication.

1.6. As reported by the SPS Secretariat at the March 2014 Committee meeting, a project to revise and modernize the SPS IMS and NSS tools had been approved and would start during the course of 2014. Members using both systems shall be invited to provide their remarks, which shall be collected, taken into account and tested for any future improvements. Ideas how to improve these

<sup>1</sup> G/SPS/GEN/1293 or G/SPS/W/274 from 19 February 2014.

<sup>2</sup> G/SPS/W/277.

<sup>3</sup> G/SPS/7/Rev.3, applicable as of 1 December 2008.

systems, already presented by the European Union during the October 2012 Transparency Workshop, can be found in Annex 2 to this communication.

1.7. A number of other suggestions are also listed below. These do not necessitate any formal changes to existing documents or systems. They are however useful to recall as Members redouble their efforts to implement transparency provisions more effectively.

## **2 THE QUALITY AND COMPLETENESS OF THE INFORMATION PROVIDED IN THE SPS NOTIFICATIONS**

2.1. In accordance with the SPS Agreement and the Recommended Procedures, Members shall inform of changes in the SPS measures that are: a) generally applicable, b) the content of which is not substantially the same as the content of an international standard, guideline or recommendation; and c) are expected to have significant effect on trade. Furthermore, Members are encouraged to notify also those SPS measures that are based on, conform to, or are substantially the same as an international standard, guideline or recommendation, if they are expected to have a significant effect on trade of other Members.

These provisions remain as valid today as when they were adopted. There is no need to change them. Greater attention however shall be paid to the quality and completeness of information provided in the notifications. See proposed language added to point 3 - Annex 1.

2.2. Members shall be encouraged to identify systematically in their SPS notifications the relevant international standard, guideline and recommendations related to the notified SPS measure (box 8 in regular notifications or box 9 in emergency notifications).

The SPS Secretariat is invited in its annual reports "Overview regarding the level of implementation of the Transparency Provisions of the SPS Agreement"<sup>4</sup> to report in detail how this possibility is being used by all Members. See proposed language added in the footnote 4 – Annex 1.

2.3. If a Member is of the opinion that a circulated notification is incorrectly presenting the notified measures as conforming to an international standard, guideline or recommendation, this Member should bring its concern to the attention of the notifying Member in order for that Member to issue a corrigendum without delay. If this does not take place this may be brought to the attention of the Committee by any Member who so wishes. In this case this shall be noted by the SPS Secretariat in its annual report on the level of implementation of the transparency provisions of the SPS Agreement and of the recommended transparency procedures.

See proposed language after point 8 - Annex 1.

2.4. Information provided in a notification shall be clear, comprehensible and comparable with other notifications on the same topic. The title of the notification of the proposed or adopted SPS measure (box 5 of the regular or emergency notification) shall be short and simple and contain key words to allow easy identification of the measure concerned. More consistent use of tariff item number(s) for products covered by a given measure (box 3) should be recommended. The description of the content (box 6) could be further improved through standardisation of the language used.

See proposed language added in box 5 of the templates of regular and emergency notifications - Annex 1.

2.5. The SPS Secretariat is invited to actively promote the exchange of best practices from individual Members regarding notification practices, especially standardisation of the language used, including in training courses, transparency workshops, review of key words used in the SPS IMS and NSS systems.

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<sup>4</sup> G/SPS/GEN/804/Rev..., the most recent Rev.6 and dates from 7 October 2013.

2.6. The SPS Secretariat, while sending its regular mails with SPS notifications and other documents (twice a week), is invited to regroup notifications according to key topics/subject and type of notifications (emergency, regular, addenda, etc.).

This is an invitation to the SPS Secretariat to both actively promote best practices in its training, and to group notifications according to subject and type of notifications.

There is no need to include these provisions into the Recommended Procedures.

2.7. There is a need to define which measures can be qualified as trade facilitating.

Footnote 5 could become a new point, after point 13 – Annex 1.

Criteria against which a measure must be tested in order to qualify as trade facilitating should be further elaborated.

2.8. Developed country Members shall be reminded of their obligation under the SPS Agreement to provide, if requested, copies of notified documents in one of the WTO languages, or, in case of voluminous documents, a translation of a summary. All Members having sufficient capacities shall be encouraged to follow this practice. Translations, if requested, should be of appropriate quality and provided within a reasonable period of time (not more than 30 working days after the notification; in such cases concordant extension of the comment period shall be systematically granted, upon request, and notified to the WTO, in accordance with point 33 in G/SPS/7/Rev.3). If only summaries are available they should include all relevant information on the measure affecting trading partners, in particular, identifying the parts which deviate from an international standard, guideline or recommendation.

See also proposed language added in point 26 - Annex 1.

2.9. Members are reminded of the existence of the mechanism to inform each other of the availability of unofficial translations of notified SPS measures into one of the official WTO languages<sup>5</sup>, i.e. supplementary SPS notifications.

There is no need to include these provisions into the Recommended Procedures. The SPS Secretariat is invited to put in place a simple system to inform interested Members of all requests and all offers of unofficial translations, i.e. through dedicated mails/automated alerts from the NSS system to SPS National Enquiry Points on this subject.

### 3 THE TIMELINESS OF REGULAR AND EMERGENCY NOTIFICATIONS

3.1. Members shall be reminded that according to paragraph 5(a) of Annex B of the SPS Agreement they shall publish a notice at an early stage in such a manner as to enable interested Members to become acquainted with a proposal to introduce a particular measure. Any Member becoming aware of a situation when this is not the case may bring this to the attention of other Members of the SPS Committee under the agenda item dealing with Transparency. In addition this shall be noted by the SPS Secretariat in its annual report on the level of implementation of the transparency provisions of the SPS Agreement and of the recommended transparency procedures.

See proposed language after point 12 - Annex 1.

3.2. Members shall be reminded that they should grant at least 60 calendar days for comments to the measures proposed in notifications, where domestic regulatory mechanisms allow for it, except for proposed measures which facilitate trade and those which are substantially the same as an international standard, guideline or recommendation. If this period cannot be observed, Members should justify the reason in their regular notifications.

See proposed language added in point 14 - Annex 1.

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<sup>5</sup> According to G/SPS/7/Rev.3, point 28.

3.3. Members shall be reminded that an extension of the comment period shall be granted equally to all trading partners, not only to those requesting so, and this extension should be notified via an addendum.

See proposed added language in point 33 - Annex 1.

3.4. In accordance with paragraph 6(a) of Annex B of the SPS Agreement, any measure brought into force in urgent circumstances is required to be notified immediately and a brief indication of the objective and the rationale of the measure shall be provided (boxes 7 and 8 of the notification of emergency measures). There is a need to define in greater detail which measures can and cannot be qualified as an emergency measure and what "immediately" means in terms of calendar days after its entry into force.

See proposed language in point 14 - Annex 1.

3.5. There is a need to provide further guidelines and possibly amend existing notification templates for a situation when a notified emergency measure, due to the circumstances, is transformed into a "regular" measure.

3.6. Emergency measures are temporary. The date from which the requirements enter into force and the period of time during which they shall apply should be indicated (in box 11 of the emergency notification). In practice it has been observed that often the estimated duration is not provided and a measure which has been reported as emergency becomes permanent without notifying Members appropriately. The termination of the emergency measure has to be notified by an emergency addendum.<sup>6</sup> If however the measure is maintained and becomes permanent, it should be notified by a regular notification or by an addendum to the emergency notification. In this case the change from the emergency to a permanent measure shall be justified.

#### **4 INTERACTIONS WITH TRADING PARTNERS – REGULATORY DIALOGUE (HANDLING OF COMMENTS)**

4.1. The provisions of Chapter E of the Recommended Procedures regarding handling of comments received on a particular notification can be further explained. It is not sufficient to merely provide a comment period to trading partners. The comments received ought to indeed be taken into account, integrated into the legislative work, responded to, and if not accepted, then a justification should be provided. The whole process shall take place within reasonable, defined deadlines.

4.2. Consideration should be given to special provisions on how possible comments can be provided to emergency notifications and how interactions between notifying and affected Members should look like in such a situation.

See proposed language added in point 31 (ii) – Annex 1.

4.3. The examples of successful regulatory dialogues should be promoted through exchanges of best practices among Members, i.e. presented in training courses, transparency workshops and described by interested Members involved in general communications if they wish so.

4.4. The mechanism to make comments available to other Members<sup>7</sup> has the potential to be reinforced.

There is no need to include these provisions into the Recommended Procedures.

Members may already now wish to make such comments and the accompanying replies publicly available – leading by example. The Secretariat is invited to adapt the existing SPS IMS system for this purpose.

<sup>6</sup> G/SPS/7/Rev.3, page 24.

<sup>7</sup> G/SPS/7/Rev.3, page 5, point 32.

## 5 COMPREHENSIVE INFORMATION ABOUT SPS MEASURES IN FORCE

5.1. All Members are encouraged to make information on their SPS measures, adopted and planned, publicly available, via, for example, a dedicated website with lists and summaries of applicable SPS import conditions.<sup>8</sup> To be effective, this information needs to be kept updated in real time. Developed country members and those having sufficient capacities are invited to provide such information additionally in one of the WTO languages.

Members should be informed where such information can be easily found. The Secretariat is invited to adapt existing SPS IMS system for this purpose by providing links to such information.

5.2. Members shall be reminded that if due to comments received or for any other reason, an entry into force of the notified measure is postponed for a long time, or a measure is not adopted at all, it shall be notified through the addendum.

See proposed new point after point 36 - Annex 1.

5.3. Addenda to original notifications should be easily identifiable – titles shall be short and simple and contain key words. Moreover, a link to the original notification shall be included and added automatically by the SPS NSS system.

See proposed addition in the templates of the addenda notifications - Annex 1.

## 6 CONCLUSIONS

6.1. The above does not constitute an exhaustive list. There are other transparency provisions in the Recommended Procedures which may also merit being looked into, possibly at a later stage.

6.2. Chile, the European Union, Morocco and Norway welcome suggestions related to the transparency provisions of the SPS Agreement that other Members may wish to submit for consideration under the 4<sup>th</sup> review of the SPS Agreement.

6.3. The target date for the conclusion of the work on transparency under the 4<sup>th</sup> Review shall be 2015, i.e. before the planned workshop on transparency, back-to-back with the October 2015 Committee meeting. It is thought that this process could serve as a useful opportunity to make transparency practices more uniformly applied by Members.

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<sup>8</sup> G/SPS/7/Rev.3, page 5, point 21.

## ANNEX 1

### PROPOSED CHANGES TO THE RECOMMENDED PROCEDURES FOR IMPLEMENTING THE TRANSPARENCY OBLIGATIONS OF THE SPS AGREEMENT (ARTICLE 7)

Specific proposals for modifications are indicated on the basis of the current text in the Recommended Procedures for implementing the Transparency Obligations of the SPS Agreement (Article 7) (G/SPS/7/Rev.3).<sup>1</sup>

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...

3. These guidelines do not add to nor detract from the existing rights and obligations of Members under the SPS Agreement nor any other WTO Agreement. These guidelines do not provide any legal interpretation or modification to the SPS Agreement itself. They allow Members to pay greater attention to the quality and completeness of information provided in the notifications.

...

#### RECOMMENDED NOTIFICATION PROCEDURES

...

#### A. APPLICATION OF ANNEX B, PARAGRAPH 5 (PREAMBULAR PART) OF THE SPS AGREEMENT

...

8. Members are encouraged to notify all regulations that are based on, conform to, or are substantially the same as an international standard, guideline or recommendation, if they are expected to have a significant effect on trade of other Members.<sup>2</sup>

NEW POINT: If a Member is of the opinion that a circulated notification is incorrectly presenting the notified measures as conforming to an international standard, guideline or recommendation, this Member should bring its concern to the attention of the notifying Member in order for that Member to issue a corrigendum without delay. If this does not take place this may be brought to the attention of the Committee by any Member who so wishes. In this case this shall be noted by the SPS Secretariat in its annual report on the level of implementation of the transparency provisions of the SPS Agreement and of the recommended transparency procedures.

...

#### B. TIMING OF NOTIFICATIONS

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12. Paragraph 5(b) of Annex B of the SPS Agreement obliges Members to submit a notification at an early stage when amendments can still be introduced and comments taken into account. This should be done when a draft of the complete text of a regulation is available.

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<sup>1</sup> Due to formatting constraints, the footnote numbering is different from the one contained in G/SPS/7/Rev.3.

<sup>2</sup> The Secretariat should provide an annual report on the level of implementation of the transparency provisions of the SPS Agreement and of the recommended transparency procedures contained in this document, including, *inter alia*, a detailed overview of those regular and emergency notifications which relate to the adoption of international standards, guidelines and recommendations by all Members.

**NEW POINT: Any Member becoming aware of a situation where a measure is taken or planned to be taken by another Member and a notification is not issued at an early stage may bring this to the attention of the Member that should have issued such notification. It can also be brought to the attention of the Committee by any Member who so wishes. In this case this shall be noted by the SPS Secretariat in its annual report on the level of implementation of the transparency provisions of the SPS Agreement and of the recommended transparency procedures.**

13. Paragraph 5(d) of Annex B of the SPS Agreement obliges Members to allow a reasonable period of time for submission, discussion and consideration of comments. Members should normally allow a period of at least sixty calendar days for comments, except for proposed measures which facilitate trade<sup>3</sup> and those which are substantially the same as an international standard, guideline, or recommendation. Where domestic regulatory mechanisms allow, the 60-day comment period should normally begin with the circulation of the notification by the WTO Secretariat. Any Member which is able to provide a time-limit beyond sixty days is encouraged to do so. **If the 60-day comment period cannot be observed a notifying Member should justify why not in the notification.**

**NEW POINT: Trade facilitating measures ..... (definitions to be further developed).**

14. A notification should be made well before the entry into force of the relevant measure, except when urgent problems of health protection arise or threaten to arise for the Member concerned. In accordance with paragraph 6(a) of Annex B of the SPS Agreement, any regulation brought into force in urgent circumstances is required to be notified immediately **(within a maximum of "n" days after entry into force)** and a rationale for the urgent action provided **in the emergency notification.**

...

#### **D. PROVIDING DOCUMENTS RELATED TO A NOTIFICATION**

...

##### *Responding to requests*

...

22. Members ~~may also~~ **are encouraged to** submit an electronic version of the text of the notified draft regulation together with the notification format. These texts are stored on a WTO server and are accessible through a hyperlink in the notification format.<sup>4</sup> Information about the provision, storage, and language of attachments to SPS notifications is contained in Annex C of these procedures.

...

##### *Translation of documents*

...

26. Where documents are not available in a WTO working language, developed country Members shall, upon request, supply a translation of the document, or in case of voluminous documents, a translation of a summary of the document, in a WTO working language in accordance with paragraph 8 of Annex B of the SPS Agreement. **All Members are encouraged to follow this practice. Such translations shall be of appropriate quality and provided within a reasonable period of time (not more than 30 working days after the notification; in such cases a concordant extension of the comment period shall be systematically granted, upon request, and notified to all Members, in accordance with point 33 below). If only summaries are available, they should include all relevant information on the measure**

<sup>3</sup> Trade facilitating measures could include, inter alia, the raising of the level of maximum residue limits of certain pesticides in certain products, the lifting of a ban on imports, or the simplification or elimination of certain certification/approval procedures.

<sup>4</sup> See G/SPS/GEN/818.

affected trading partners, in particular identifying the parts which deviate from international standard, guideline or recommendation.

...

## E. HANDLING OF COMMENTS ON NOTIFICATIONS

...

31. A Member receiving comments through the designated body should, without further request:

- i. acknowledge the receipt of such comments;
- ii. explain within a reasonable period of time, and at the earliest possible date before the adoption of the measure, to any Member from which it has received comments, how it will take these comments into account, integrate them into the legislative work, where possible, respond to, and, if they were not accepted, explain why, as well as, where appropriate, provide additional relevant information on the proposed sanitary or phytosanitary regulations concerned;
- iii. provide to any Member from which it has received comments, a copy of the corresponding sanitary or phytosanitary regulations as adopted or information that no corresponding sanitary or phytosanitary regulations will be adopted for the time being.

32. A Member receiving comments through the designated body may consider making available to other Members, where possible, non-confidential comments and questions it has received and answers it has provided, or summaries thereof, preferably via electronic means.

33. Members should grant requests for extension of the comment period equally to all Members wherever practicable, in particular with regard to notifications relating to products of particular interest to developing country Members, where there have been delays in receiving and translating the relevant documents or where there is a need for further clarification of the measure notified. A 30-day extension should normally be provided and notified to the WTO (see section below on Addenda).

...

## F. ADDENDA, REVISIONS AND CORRIGENDA

...

### Addenda

36. Members should notify changes in the status of a notified SPS regulation. The issuance of an addendum allows Members to track the status of an SPS regulation via its unique notification number. Addenda to SPS notifications should be made in a number of circumstances, such as:

- a. ...

NEW POINT: If the entry into force of a notified measure is postponed for a long time, or a measure is not adopted at all, it shall also be notified using an addendum.

37. ...



**ANNEX A-1: ROUTINE NOTIFICATIONS****COMPLETION OF FORMATS - ROUTINE NOTIFICATIONS  
(ANNEX B, PARAGRAPH 5 OF THE SPS AGREEMENT)**

Information contained in the notifications should be as complete as possible and no section should be left blank. Where necessary, "not known" or "not stated" should be indicated.

Item	Description
...	...
5. Title, language and number of pages of the notified document	<p><b><u>Short and simple</u></b> title of the <b><u>notification, containing listed key words to allow easy identification of the notified measures, related to</u></b> proposed or adopted (in the case of late submissions) sanitary or phytosanitary regulation. Number of pages in the notified document. Languages in which the notified document is available.</p> <p>If a translation of the whole document or its summary exists, indicate this here.</p> <p>If a Member submits the text of the draft regulation or a summary or translation thereof in PDF format along with the notification, the WTO Secretariat will facilitate access to this text through a hyperlink in the notification format.</p>
...	...

## ANNEX A-2: ROUTINE NOTIFICATIONS - ADDENDA



WORLD TRADE  
ORGANIZATION

G/SPS/N/COUNTRY/#/Add.#

date of distribution

(##-####)

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Committee on Sanitary and Phytosanitary Measures

Original:

## NOTIFICATION

*Addendum*

The following communication, received on # Month Year, is being circulated at the request of the Delegation of [Member].

Title outlining what the SPS measure or product is

[Text]

[\[A link to the original notification\]](#)

**This addendum concerns a:**

- Modification of final date for comments
- Notification of adoption, publication, or entry into force of regulation
- Modification of content and/or scope of previously notified draft regulation
- Withdrawal of proposed regulation
- Change in proposed date of adoption, publication, or date of entry into force
- Other [provide brief description]

**Comment period:** *(If the addendum extends the scope of the previously notified measure in terms of products and/or potentially affected Members, a new deadline for receipt of comments should be provided, normally of at least 60 calendar days. Under other circumstances, such as extension of originally announced final date for comments, the comment period provided in the Addendum may vary.)*

- Sixty days from the date of circulation of the addendum to the notification ([DATE]) or [DATE: dd/mm/yy]

**Agency or authority designated to handle comments:**  National Notification Authority,  National Enquiry Point, or address, fax number and E-mail address (if available) of other body:

**Text available from:**  National Notification Authority,  National Enquiry Point, or address, fax number and E-mail address (if available) of other body:

**ANNEX B-1: EMERGENCY NOTIFICATIONS****COMPLETION OF FORMATS - EMERGENCY NOTIFICATIONS  
(ANNEX B, PARAGRAPH 6 OF THE SPS AGREEMENT)**

Information contained in the notification form should be as complete as possible and no section should be left blank. Where necessary, "not known" or "not stated" should be indicated.

Item	Description
...	...
5. Title, language and number of pages of the notified document	<p><b><u>Short and simple title of the notification, containing key words to allow easy identification of the notified measures, related to</u></b> <del>Title of</del> the proposed or adopted (in the case of late submissions) sanitary or phytosanitary regulation. Number of pages in the notified document. Languages in which the notified document is available.</p> <p>If a translation of the whole document or its summary exists, indicate this here.</p> <p>If a Member submits the text of the draft regulation or a summary or translation thereof in PDF format along with the notification, the WTO Secretariat will facilitate access to this text through a hyperlink in the notification format.</p>
...	...

**ANNEX B-2: EMERGENCY NOTIFICATIONS - ADDENDA**



WORLD TRADE  
ORGANIZATION

G/SPS/N/COUNTRY/#/Add.#

date of distribution

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**Committee on Sanitary and Phytosanitary Measures**

Original:

**NOTIFICATION OF EMERGENCY MEASURES**

*Addendum*

The following communication, received on # Month Year, is being circulated at the request of the Delegation of [Member].

\_\_\_\_\_

Title outlining what the SPS measure or product is

[Text]

**[\[A link to the original notification\]](#)**

**This addendum concerns a:**

- Modification of final date for comments
- Modification of content and/or scope of previously notified draft regulation
- Withdrawal of proposed regulation
- Change in period of application of measure
- Other [provide brief description]

**Agency or authority designated to handle comments:**  National Notification Authority,  National Enquiry Point, or address, fax number and E-mail address (if available) of other body:

**Text available from:**  National Notification Authority,  National Enquiry Point, or address, fax number and E-mail address (if available) of other body:

## ANNEX 2

### MODERNIZATION OF SPS NSS AND SPS IMS SYSTEMS

At the March 2014 Committee meeting the SPS Secretariat reported that a project to revise and modernize the SPS Notification Submission System (NSS) and SPS Information Management System (IMS) had been approved and would start this year.

The ideas described below were provided by the European Union during the October 2012 Workshop on Transparency. They remain valid and may be taken into account during the modernization of both systems:

- a. When preparing a notification in the SPS NSS the user should be able to validate the 14 tabs independently (e.g. green tick/red cross on each tab), and not in a consecutive way, allowing to switch from one tab to another in any order (e.g. from 1 to 14 and back to 3). This would improve the overall usability, especially when several different entities need to fill in a form. The notification should be only allowed for sending when all tabs have been validated.
- b. When links to full texts are indicated, the system should check and validate them.
- c. The size of full texts to be attached should not be limited to 4 MB.
- d. Some free text fields are not useful, and could be better adapted (e.g. the language selection should be a dropdown field).
- e. Prepared provisional notifications should display the title of the notification, not the provisional number. This would make provisional notifications easier to identify.
- f. Each Member should be able to save and manage their list of contacts to be used in the "contact fields". It would reduce the number of copy/paste actions and also reduce the number of possible errors.

The SPS Secretariat is invited to provide information to Members when the planned modernization of the SPS NSS and SPS IMS tools, taking into account comments from Members, is expected to be finalized.

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