

## Program and Budget Committee

**Twenty-Sixth Session**  
**Geneva, July 10 to 14, 2017**

### CONSTITUTIONAL REFORM PRESENTATION

*Document prepared by the Secretariat*

#### I. INTRODUCTION

1. During the discussion of governance reform at the 25th session of the Program and Budget Committee (PBC), held from August 29 to September 2, 2016, the PBC “requested the Secretariat to prepare a presentation on the 2003 constitutional reform, for presentation at the 26th session of the PBC, in order to contribute to further discussions on the matter” (see document WO/PBC/25/21, Agenda Item 18). In October 2016, the Assemblies of the Member States of WIPO and of the Unions administered by it, each as far as it was concerned, took note of this decision by the PBC (see document A/56/17, paragraph 126).

2. This document addresses constitutional reform efforts that began in the late 1990s, yielded the adoption by Member States of one amendment in 1999, and culminated with the adoption of a package of amendments to several WIPO-administered treaties in 2003. The 1999 amendment to the WIPO Convention would limit the Director General to serving two six-year mandates. The 2003 amendments to the WIPO Convention and to other WIPO-administered treaties would: (1) abolish the WIPO Conference; (2) formalize the unitary contribution system and the changes in contribution classes that have been practiced since 1994; and (3) establish annual (rather than biennial) ordinary sessions of the WIPO General Assembly and of the other Assemblies of the Unions administered by WIPO.

3. To date, none of these amendments has entered into force because the Director General has not yet received the requisite number of notifications of acceptance of the amendments from WIPO Member States.

4. Concluding the ratification process for these amendments would improve WIPO's governance and make WIPO a more efficient organization. As observed in the Medium-Term Strategic Plan for 2016-2021, to a large degree, the 1999 and 2003 constitutional reform amendments codify policies and practices that WIPO is already implementing (see document A/56/10, paragraph I.2). As the Secretariat pointed out, the gap between WIPO's *de facto* operations and its constitutional structure is a source of complications in the administration and functioning of the Organization. By completing the ratification process for these amendments, WIPO Member States would establish a more coherent legal foundation for the Organization's operations and would enable full implementation of measures they adopted more than a decade ago after lengthy deliberations.

## II. TERM LIMITATIONS FOR THE DIRECTOR GENERAL

5. Currently, the WIPO Convention does not limit the number of terms that the Director General may serve. Article 9(3) provides: "The Director General shall be appointed for a fixed term, which shall be not less than six years. He shall be eligible for reappointment for fixed terms. The periods of the initial appointment and possible subsequent appointments, as well as all other conditions of the appointment, shall be fixed by the General Assembly".

6. In 1997, the WIPO General Assembly issued a statement by consensus recognizing the need for standard policies and practices for appointing the Organization's Director General. That statement noted "the growing practice within the United Nations System, of defining the rules concerning the maximum successive mandates of an Executive Head"; requested the Coordination Committee to recommend policies and practices for nominating and appointing Directors General; and invited the Coordination Committee to establish a working group to that end (document WO/GA/XXI/13, paragraph 236).

7. In response, the Coordination Committee established a Working Group on Policies and Practices for the Nomination and Appointment of Directors General in March 1998 (see document WO/CC/WG-DG/2). During its first session, the Working Group agreed to limit the Director General's mandate to either two six-year terms or twelve years total (see document WO/CC/WG-DG/2/2). The Coordination Committee subsequently recommended amending the WIPO Convention to limit the Director General to serving two fixed terms of six years each in September 1998 (document WO/CC/42/3). The WIPO General Assembly endorsed this recommendation later that same month (see document WO/GA/23/7 paragraph 22). In October 1998, the Secretariat circulated the proposed text for the amendment: "The Director General shall be appointed for a fixed term of six years. He shall be eligible for reappointment only for one further fixed term of six years. All other conditions of the appointment shall be fixed by the General Assembly". (See document A/34/4, paragraphs 8-10, 12). In September 1999, the WIPO Conference and the Assemblies of the Paris and Berne Unions unanimously adopted that proposed text amending Article 9(3) of the WIPO Convention (see document A/34/16, paragraph 148).

## III. THE 2003 PACKAGE

8. The constitutional reform process that led to the 2003 amendments began in earnest in 1999, when the WIPO General Assembly recommended that the Director General establish a working group that would "consider and study proposals concerning constitutional reform" (see document A/34/16, paragraph 159). The Working Group on Constitutional Reform held six sessions between March 2000 and June 2002. In its final report, the Working Group recommended the amendments that later constituted the 2003 package (see document A/37/5).

9. In October 2003, WIPO Member States adopted a set of proposed amendments to the WIPO-administered treaties to formalize the unitary contribution system and the changes in contribution classes that have been practiced since 1994; abolish the WIPO Conference; and change the periodicity of the ordinary sessions of the WIPO General Assembly and the other Assemblies of the Unions administered by WIPO, from once every two years to once every year.

(i) *Formalizing Financial Changes.* Article 11 of the WIPO Convention is the main provision that addresses finances. As originally conceived, WIPO would have two separate budgets: the budget of expenses common to the Unions, and the budget of the Conference (see Article 11(1)). The budget of expenses common to the Unions would be financed in part from the contributions that WIPO Member States made to the individual Unions of which they were members (see Article 11(2)). The budget of the Conference would be financed in part from contributions by WIPO Member States that were not members of any of the Unions (see Article 11(3)). The contributions that WIPO Member States made to one or more Unions or to the Conference were based on contribution classes set out in the WIPO Convention or the relevant WIPO-administered treaty. By the late 1980s, WIPO Member States recognized that these financing provisions were problematic. One shortcoming was that the established contribution classes required developing countries to contribute a disproportionately large share of WIPO's budget as compared to the United Nations and other specialized agencies. In 1989 and 1991, WIPO Member States sought to remedy this problem by establishing additional contribution classes on a provisional basis. Those changes soon proved inadequate. In 1993, the Secretariat identified three disadvantages with the system of financing then in place: "(i) it is unnecessarily complicated, (ii) it discourages adherence to more than one of the six Contribution-financed Unions, [and] (iii) it is not equitable vis-à-vis most of the developing countries" (see document AB/XXIV/5, paragraph 23). It was proposed to address these concerns by establishing, again on a provisional basis, a unitary contribution system and additional contribution classes that would further reduce contributions by developing countries. Under the proposed unitary contribution system, "no State member of a Union would pay more—as a matter of fact, each would pay less—contributions than in the present multi-contribution system" (see paragraph 4). In September 1993, the WIPO Conference, the Assemblies of the Paris, Berne, IPC, Nice, Locarno, and Vienna Unions, and the Conferences of the Representatives of the Paris, Berne, and Nice Unions, each as far as it was concerned, adopted the proposals (see document AB/XXIV/18, paragraph 180).

With respect to the formalization of the unitary contribution system, the Working Group on Constitutional Reform wrote:

The Working Group unanimously agreed that the experience of the unitary contribution system and the new contribution classes had been positive. In practice, these modifications had proven to be simple, efficient and manageable. They had resulted in relatively lower membership contributions by new Member States acceding to the WIPO-administered treaties, and increases in the number and rate of adherences to those WIPO-administered treaties that provided for the payment of contributions by Contracting States. In light of the foregoing, the Working Group agreed to recommend the formalization of the unitary contribution system and the changes in contribution classes that had been operative in practice since 1994 [citations omitted].

Document A/37/5, paragraph 8.

(ii) *Abolishing the WIPO Conference.* With respect to the WIPO Conference, the WIPO Secretariat had observed: The abolition of the WIPO Conference would involve few, if any, consequences of any significance in the practical functioning of WIPO. The

practical consequences would be mainly the beneficial ones associated with a reduction in the number of governing bodies connected with the Organization: one less governing body to convene, one less set of officers to elect, and one less formal report to draft and adopt (see document WO/GA/WG-CR/2/5, paragraph 9). After meeting to discuss this proposal, the Working Group endorsed an amendment to abolish the WIPO Conference. In its final report, the Working Group wrote:

[T]he WIPO Conference had been conceived at a time when there were relatively few members of the Paris and the Berne Unions and when, consequently, it had been considered necessary to establish a body which would receive into its membership States outside the Paris and Berne Unions that wished to join the international intellectual property community. Those historical circumstances had changed, and the membership of the Paris and Berne Unions had greatly expanded, leading to the desuetude of the WIPO Conference. The Working Group therefore supported the abolition of the WIPO Conference as a body that no longer, in practice, served any useful purpose. Document A/37/5 paragraph 7. To address the consequences of abolishing the WIPO Conference, the Working Group agreed that WIPO Member States that were not yet members of any Unions would participate in the WIPO General Assembly, albeit without the right to vote on any matter relating to a treaty to which the State was not party.

Id.

(iii) *Periodicity of Ordinary Sessions.* Article 6(4) of the WIPO Convention provides:

(a) The General Assembly shall meet once in every second calendar year in ordinary session, upon convocation by the Director General.

(b) The General Assembly shall meet in extraordinary session upon convocation by the Director General either at the request of the Coordination Committee or at the request of one-fourth of the States members of the General Assembly.

Most other WIPO-administered treaties likewise call for biennial ordinary sessions of the Assemblies and most other bodies. In a memorandum drafted for the Working Group in 2000, the Secretariat pointed out: "Two years might be considered to be too long an interval for ordinary meetings. Since 1980, for example, the WIPO General Assembly has been convened in extraordinary session on nine occasions, so that it has met 18 times in the 19 years since 1980" (document WO/GA/WG-CR/2, paragraph 100). The Working Group agreed, and recommended that amendments be introduced to the WIPO Convention and WIPO-administered treaties to provide for annual ordinary sessions of the WIPO General Assembly and the Assemblies of the Unions administered by WIPO (document A/37/5, paragraph 10). WIPO's practice in subsequent years has confirmed the inadequacy of biennial ordinary sessions: since 2000, the WIPO General Assembly has met at least once every year, meeting 8 times in ordinary sessions and 16 times in extraordinary sessions.

10. In 2002, the Assemblies of the Member States of WIPO, each in so far as it was concerned, "noted the proposed amendments to the WIPO Convention and other WIPO-administered treaties, adopted the three recommendations of the Working Group on Constitutional Reform", and invited Member States to "communicate any observations that they might have on the proposed texts for implementing the said recommendations" (document A/37/14, paragraph 301). In 2003, the Assemblies of the Paris and Berne Unions and the WIPO Conference, each in so far as it was concerned, adopted the proposed amendments to the WIPO Convention (document A/39/15, paragraph 166). The full text of the adopted amendments to the WIPO Convention is available in the annex to document A/39/2. Because fully implementing these amendments requires some conforming changes to other WIPO-administered treaties, the Assemblies of the Member States of WIPO, each in so far as it

was concerned, also adopted the proposed amendments to the Paris Convention and to the other WIPO-administered treaties (document A/39/15, paragraph 167). The text of these amendments is available in the Annex to document A/39/3.

#### IV. ENTRY INTO FORCE OF THE AMENDMENTS

11. For amendments to the WIPO Convention to enter into force, the Director General must receive written notifications of acceptance from three-fourths of WIPO Member States at the time the amendment was adopted<sup>1</sup>. Once the Director General receives the requisite number of notifications, the amendment will bind all WIPO Member States<sup>2</sup>. To date, the Director General has received 52 out of 129 needed notifications for the 1999 amendment and 15 out of 135 needed notifications for the 2003 package of amendments. See WIPO Publication 423, attached as Annex I<sup>3</sup>.

12. As noted above, fully implementing the 2003 amendments would also require amending eleven other WIPO-administered treaties. These are:

- Paris Convention for the Protection of Industrial Property (Paris Convention);
- Berne Convention for the Protection of Literary and Artistic Works (Berne Convention);
- Madrid Agreement Concerning the International Registration of Marks (Madrid Agreement);
- Hague Agreement Concerning the International Deposit of Industrial Designs (Hague Agreement);
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks (Nice Agreement);
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (Lisbon Agreement);
- Locarno Agreement Establishing an International Classification for Industrial Designs (the Locarno Agreement);
- Patent Cooperation Treaty (PCT);
- Strasbourg Agreement Concerning the International Patent Classification (Strasbourg Agreement);
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (Vienna Agreement); and

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<sup>1</sup> Per Article 17(3) of the WIPO Convention, “[a]ny amendment shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the States Members of the Organization, entitled to vote on the proposal for amendment at the time the Conference adopted the amendment”.

<sup>2</sup> WIPO Convention, Article 17(3) “Any amendments thus accepted shall bind all the States which are Members of the Organization at the time the amendment enters into force or which become Members at a subsequent date, provided that any amendment increasing the financial obligations of Member States shall bind only those States which have notified their acceptance of such amendment”.

<sup>3</sup> The relevant pages of WIPO Publication 423 are also available on WIPO’s website at:  
[http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/wipo\\_article\\_9-3.pdf](http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/wipo_article_9-3.pdf) and  
[http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/wipo\\_amendments.pdf](http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/wipo_amendments.pdf).

- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (Budapest Treaty).

13. For each of these eleven treaties, the amendments would enter into force and bind all parties after being approved by three-fourths of the parties to the relevant treaty<sup>4</sup>.

14. In order to facilitate ratification of the 2003 amendments, the Director General provided a model notification of acceptance that allowed states to accept the amendments to all treaties to which they were party by means of a single document (WIPO Circular No. 2443, attached as Annex II). To date, the Director General has received only a fraction of the needed notifications for each treaty:

- Paris Convention: 12 notifications out of 123;
- Berne Convention: 12 notifications out of 114;
- Madrid Agreement: 4 notifications out of 41;
- Hague Agreement: 4 notifications out of 27;
- Nice Agreement: 10 notifications out of 54;
- Lisbon Agreement: 1 notification out of 15;
- Locarno Agreement: 5 notifications out of 33;
- PCT: 10 notifications out of 93;
- Strasbourg Agreement: 8 notifications out of 41;
- Vienna Agreement: 3 notifications out of 15; and
- Budapest Treaty: 8 notifications out of 44.

## V. CONCLUSION

15. Over a period lasting nearly two decades, WIPO Member States have devoted significant time and energy to governance and constitutional reform. In 1999 and again in 2003, these efforts yielded the adoption of amendments to the WIPO Convention and to other WIPO-administered treaties. Although these amendments were adopted by consensus, Member States have not completed the ratification process, and none of the amendments has yet entered into force. As a result, there is a gap between WIPO's operations and its constitutional structure. By submitting the needed written notifications that would allow these amendments to enter into force, WIPO Member States would close this gap and complete a process of rationalizing the Organization's governance structure they began many years ago.

*16. The Program and Budget Committee (PBC) is invited to take note of the status of the constitutional reform process presented in the current document.*

[Annexes follow]

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<sup>4</sup> Paris Convention Article 17(3); Berne Convention Article 26(3); Madrid Agreement Article 13(3); Hague Agreement 5(3); Nice Agreement Article 8(3); Lisbon Agreement Article 12(3); Locarno Agreement Article 8(3); PCT Article 61(3); Strasbourg Agreement Article 11(3); Vienna Agreement Article 11(3); Budapest Treaty Article 14(3).

**ACTIONS IN RESPECT OF TREATIES ADMINISTERED BY WIPO OR AMENDMENTS THERETO, NOT YET IN FORCE**  
(continued)

**AMENDMENTS TO WIPO-ADMINISTERED TREATIES ADOPTED BY THE ASSEMBLIES OF WIPO MEMBER STATES ON OCTOBER 1, 2003<sup>5</sup>**

Status on April 13, 2017

State	Date on which State deposited its Notification of Acceptance
Australia .....	December 16, 2008
Denmark .....	October 13, 2004
Finland.....	November 10, 2004
Mauritius .....	December 3, 2004
Mexico.....	August 3, 2007
Monaco.....	April 8, 2004
Morocco.....	May 31, 2011
Netherlands.....	October 16, 2008
Republic of Korea.....	April 21, 2004
Saint Lucia.....	June 4, 2004
Saudi Arabia .....	March 9, 2004
Slovenia .....	August 1, 2007
Spain.....	February 10, 2012
Sweden .....	February 28, 2008
Tonga.....	September 16, 2004

(15)

<sup>5</sup> The said amendments are: (i) the abolition of the WIPO Conference, (ii) the formalization of the unitary contribution system and changes in contribution classes, and (iii) a change in the periodicity of the ordinary sessions of the WIPO General Assembly and the other Assemblies of the Unions administered by WIPO. The said amendments shall enter into force one month after written notifications of acceptance have been received by the Director General from three-fourths of the Member States of WIPO in accordance with the relevant provisions of the WIPO-administered treaties.

**ACTIONS IN RESPECT OF TREATIES ADMINISTERED BY WIPO OR AMENDMENTS THERETO, NOT YET IN FORCE**  
(continued)

**AMENDMENT TO ARTICLE 9(3) OF THE WIPO CONVENTION, AS ADOPTED BY THE ASSEMBLIES OF WIPO MEMBER STATES IN SEPTEMBER 1999\***

Status on April 13, 2017

State	Date on which State deposited its Notification of Acceptance	State	Date on which State deposited its Notification of Acceptance
Andorra.....	January 12, 2001	Madagascar.....	January 24, 2000
Argentina.....	August 23, 2004	Mauritius.....	January 12, 2000
Australia.....	December 16, 2008	Netherlands.....	April 10, 2003
Belarus.....	July 7, 2011	Niger.....	January 29, 2001
Benin.....	January 19, 2000	Nigeria.....	May 31, 2000
Brazil.....	January 3, 2000	Panama.....	February 23, 2000
Burkina Faso.....	February 28, 2000	Poland.....	November 13, 2000
Canada.....	August 11, 2000	Republic of Korea.....	April 20, 2000
China.....	May 1, 2000	Republic of Moldova.....	September 27, 2001
Cuba.....	July 12, 2002	Saint Lucia.....	January 10, 2000
Democratic People's Republic of Korea.....	March 24, 2000	Saudi Arabia.....	March 30, 2000
Denmark.....	January 7, 2000	Senegal.....	February 23, 2000
Dominica.....	April 6, 2000	Slovenia.....	May 21, 2001
Ecuador.....	December 21, 1999	Spain.....	November 10, 2000
El Salvador.....	November 10, 2003	Sri Lanka.....	March 14, 2000
Finland.....	March 28, 2000	Sweden.....	February 28, 2008
France.....	March 21, 2007	Switzerland.....	June 28, 2001
Germany.....	April 11, 2003	Thailand.....	August 21, 2000
Guatemala.....	November 14, 2001	The former Yugoslav Republic of Macedonia.....	April 26, 2000
Holy See.....	December 16, 1999	Turkey.....	May 19, 2000
India.....	September 22, 2000	Uganda.....	February 1, 1999
Ireland.....	March 16, 2001	United Kingdom.....	October 14, 2002
Italy.....	September 19, 2008	United Republic of Tanzania.....	March 16, 2000
Japan.....	July 9, 2002	United States of America.....	December 14, 2007
Jordan.....	February 1, 2000	Viet Nam.....	January 20, 2000
Kyrgyzstan.....	February 26, 2002		
Luxembourg.....	January 24, 2003		

(52)

[Annex II follows]

\* The said amendment shall enter into force one month after written notifications of acceptance have been received by the Director General from three-fourths of the Member States of WIPO in accordance with Article 17(3) of the WIPO Convention. The total number of Member States of WIPO when this amendment was adopted stood at 171. The total number of notifications of acceptance required from Member States for its entry into force is 129.



WORLDINTELLECTUALPROPERTY  
ORGANIZATION

世界知识产权组织



ORGANIZACION MUNDIAL  
DE LA PROPIEDAD INTELECTUAL

ORGANISATION MONDIALE  
DE LA PROPRIÉTÉ INTELLECTUELLE

المنظمة العالمية للملكية الفكرية

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C. N 2443  
CO-OI

The Director General of the World Intellectual Property Organization (WIPO) presents his compliments to the Minister for Foreign Affairs and has the honor to inform His Excellency's Government that the WIPO Conference and the competent Assemblies of certain Unions administered by WIPO unanimously adopted on October 1, 2003, amendments to the Convention Establishing the World Intellectual Property Organization (the WIPO Convention), as well as to other WIPO-administered treaties.<sup>1</sup>

- The text of the adopted amendments to the WIPO Convention are
- ./ reproduced as Annex I, and the text of the adopted amendments to the other
  - ./ WIPO-administered treaties, as Annex II.

In accordance with the relevant provisions of the WIPO-administered treaties, the said amendments will enter into force one month after written notifications of acceptance, effected in accordance with their respective

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Paris Convention for the Protection of Industrial Property (the Paris Convention), Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention), Madrid Agreement Concerning the International Registration of Marks (the Madrid Agreement), Hague Agreement Concerning the International Deposit of Industrial Designs (the Hague Agreement), Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks (the Nice Agreement), Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (the Lisbon Agreement), Locarno Agreement Establishing an International Classification for Industrial Designs (the Locarno Agreement), Patent Cooperation Treaty (PCT), Strasbourg Agreement Concerning the International Patent Classification (the Strasbourg Agreement), Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (the Vienna Agreement) and Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (the Budapest Treaty).

C. N 2443  
CO-OI

constitutional processes, have been received by the Director General of WIPO from three-fourths of the States Members of WIPO at the time the Conference and the competent Assemblies adopted the amendments.

His Excellency's Government is hereby invited to notify the Director General of WIPO in writing if it accepts the said amendments. A model written  
./ notification is attached.

November 27, 2008

A handwritten signature in black ink, consisting of a large, stylized loop followed by a vertical stroke.

Attachment to WIPO Circular No. C. N. 2443  
CO-OI

MODEL OF NOTIFICATION OF ACCEPTANCE OF THE AMENDMENTS  
TO THE CONVENTION ESTABLISHING  
THE WORLD INTELLECTUAL PROPERTY ORGANIZATION  
AND TO OTHER WIPO-ADMINISTERED TREATIES

The Government of [.....] hereby notifies the Director General of WIPO that it accepts the amendments to the Convention Establishing the World Intellectual Property Organization, and the amendments to the Paris Convention for the Protection of Industrial Property (the Paris Convention), the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention), the Madrid Agreement Concerning the International Registration of Marks (the Madrid Agreement), the Hague Agreement Concerning the International Deposit of Industrial Designs (the Hague Agreement), the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks (the Nice Agreement), the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (the Lisbon Agreement), the Locarno Agreement Establishing an International Classification for Industrial Designs (the Locarno Agreement), the Patent Cooperation Treaty (PCT), the Strasbourg Agreement Concerning the International Patent Classification (the Strasbourg Agreement), the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (the Vienna Agreement) and the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (the Budapest Treaty),<sup>1</sup> as adopted on October 1, 2003, by the WIPO Conference, the Paris Union, the Berne Union, the Madrid Union, the Hague Union, the Nice Union, the Lisbon Union, the Locarno Union, the PCT Union, the IPC Union, the Vienna Union and the Budapest Union.<sup>2</sup>

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(Signature)•  
(Title)

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• The Notification should be signed by the Head of State, or the Head of Government or the Minister for Foreign Affairs.

Please delete any treaty to which the State is not party.

<sup>2</sup> Please delete any Union of which the State is not a member.