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| **Council 2017 Geneva, 15-25 May 2017** |  |
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| **Agenda item: PL 1.9** | **Document C17/26-E** |
| **14 March 2017** |
| **Original: English** |
| Report by the Chairman of EG-ITRs | |
| REPORT OF THE FIRST MEETING OF THE EXPERT GROUP ON THE INTERNATIONAL TELECOMMUNICATION REGULATIONS (EG-ITRS) | |

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| Summary  This report summarizes the main results of the first meeting of the Expert Group on the International Telecommunication Regulations (EG-ITRs), held on 9-10 February 2017, in line with PP-14 Resolution 146 (Rev. Busan, 2014) and Council 2016 Resolution 1379.  Action required  The Council is invited to **note** the report and **provide guidance** with respect to item 6 on the dates of the final meeting of EG-ITRs prior to Council-18.  \_\_\_\_\_\_\_\_\_\_\_\_  References  [Resolution 146 (Rev. Busan, 2014)](http://www.itu.int/pub/S-CONF-PLEN-2015); [Council Resolution 1379](https://www.itu.int/md/S16-CL-C-0125/en) |

1. **Introduction**

**1.1** The Secretary-General, Mr Houlin Zhao, welcomed the participants to the first meeting of the Expert Group on the International Telecommunication Regulations (EG-ITRs). He noted that the ITRs are one of the treaties forming the foundation of ITU’s mission, the others being the ITU Constitution and Convention and the Radio Regulations, and therefore stressed the importance of the work that lies ahead of the Group.

**1.2** The Chairman thanked the Secretary-General, Deputy Secretary-General, and Directors for their support. The Chairman stressed the need for the Group to work together in the spirit of consensus to fulfil the tasks set forth by PP-14 and Council-16 in order to review the 2012 ITRs. He also emphasized that he looks forward to working closely with his Vice-Chairmen in this regard.

**2 Adoption of the Agenda and allocation of documents**

The agenda (Document EG-ITRs 1/1 (Rev.1)) was presented by the Chairman. Contribution EG-ITRs 1/12 containing proposed revisions to the agenda was then presented by the Russian Federation. After a discussion on various issues, including the need to address the structure of the final report to Council-18 as part of a broader discussion on next steps, a revised version of the agenda (1/1 (Rev.2)) was adopted and published.

**3 Discussion on working method of EG-ITRs, based on PP Res 146 (Rev. Busan, 2014) and Council 2016 Resolution 1379**

The Chairman addressed various issues in his remarks under this agenda item, including the following:

* The Chairman reiterated the Terms of reference of the Group, which is to review and not revise the 2012 ITRs.
* As instructed by the Council, the Group will have four meetings including one just prior to Council-18, where a final report should be presented by the Group.
* The work of the Group is based on contributions from Member States and Sector Members, Translation and Interpretation is available for the meetings of the Group.
* Council Resolution 1379 resolved that the General Rules of conferences, assemblies, and meetings of the Union and Rules of procedure of the Council related to working groups of the Council shall apply to the Group.
* This Group is open to both Member States and Sector Members. The seating arrangement in the room is such that Member States and Sector Members have free seating so that there is a good exchange of views. The Chairman emphasized that he would give the floor to anyone who asks for it – both Member States and Sector Members, without any distinction.
* On inputs from the Directors of the Bureaux, the Chairman mentioned that he was expecting the Bureau Directors to submit inputs to the Expert Group, as necessary, based on the instructions of PP-14 Res 146, and taking into account Council Resolution 1379.

**4 Summary of Contributions**

The contributions are summarized as follows:

**4.1** [**Contribution EG-ITRs 1/2**](https://www.itu.int/md/S17-CLEGITR1-C-0002/en) **from United States – “United States views on the review of the ITRs”**

Considering that a significant majority of Member States have competitive markets for domestic and international telecommunications markets, the United States is of the view that the ITRs are no longer necessary. The United States also believes that a number of the provisions are outside the stated purpose and scope of the ITRs as articulated in Article 1 of both the 1988 and 2012 ITRs. With respect to whether there will be any practical conflicts arising from the fact that the 1988 ITRs will apply in some relations between ITU Member States and the 2012 version in others, the United States notes that it may be too early to make such a judgment.

**4.2** [**Contribution EG-ITRs 1/3**](https://www.itu.int/md/S17-CLEGITR1-C-0003/en) **from Canada – “Review of the 2012 International Telecommunication Regulations“**

Canada had substantial concerns that supported its decision not to sign the Final Acts of the 2012, and will remain bound only by the 1988 ITRs. Successful deployment and use of telecommunication networks and services has not been the result of the ITRS. What has been and will continue to be a successful path for the deployment, adoption, and use of telecommunications and ICTS in a rapidly evolving telecommunications sector, is the creation and enhancement of regulatory environments that promote competition, investment, transparency, entrepreneurship, and innovation. Canada looks forward to continue working with all ITU members and stakeholders, particularly with developing and least developed countries, to ensure that the focus of our collective work in the Union remains on infrastructure and connectivity, and on capacity building and skills development to close the digital divides that still exist among and within nations.

**4.3** [**Contribution EG-ITRs 1/4**](https://www.itu.int/md/S17-CLEGITR1-C-0004/en) **from Jordan, Saudi Arabia, and the United Arab Emirates – “Contribution to the Expert Group on ITRs”**

In accordance with Council Resolution 1379, and considering that the ITRs are among the instruments of the Union stated in Article 4 of the Constitution, Jordan, Saudi Arabia, and the United Arab Emirates stressed on the importance of updating the ITRs from time to time, taking into account developments in the ICT environment. In that contribution, it has been stated that the starting point of the review by the EG should be the ITRs adopted in 2012. Pursuant to Nos. 1 and 2.1 of the group’s terms of reference, which stipulate that it should take into account new trends in telecommunications/ICT, emerging issues, etc., it is proposed that the EG begin by identifying new issues affecting the ICT environment relevant to the articles of the ITRs, examining each item thereof and then amending the 2012 ITRs accordingly, and adding new articles as needed.

**4.4** [**Contribution EG-ITRs 1/5 (Rev.1/Rev.2)**](https://www.itu.int/md/S17-CLEGITR1-C-0005/en) **from RCC – “Proposals regarding revision of the 2012 ITRs”**

RCC proposed as a basic approach to reviewing the ITRs, examining the main body of the 2012 Regulations and on the basis of contributions received from Member States and Sector Members, to examine and exchange information on issues not adequately reflected in the 2012 ITRs (take into account all current trends in telecommunications) and present it in the final report of the Group of Experts on the International Telecommunication Regulations (EG-ITR) for consideration by the Council in 2018 with a view to advancing the revision of the 2012 ITRs.

**4.5** [**Contribution EG-ITRs 1/6**](https://www.itu.int/md/S17-CLEGITR1-C-0006/en) **from RCC – “Proposals for preparation of the EG-ITRs Final report”**

Member States of RCC, following instructions in PP-14 Resolution 146 (Rev. Busan, 2014), Resolution 1379 adopted at Council-16 and Resolution 87 WTSA-16, proposed to determine the structure of the EG-ITRs final report at the group's first meeting. Consider as a basis the following structure for the EG-ITRs final report:

a) The main text of the final report, comprising the following sections:

* Introduction
* Basic information
* The work of EG-ITRs
* Results of the work of EG-ITRs;

b) Annexes to the EG-ITRs final report.

This contribution contains the description of materials to be included in the main text and annexes. It was also proposed to appoint rapporteurs for specific matters (sections, chapters, etc.).

It was also proposed to send a liaison statement inviting the Advisory groups and study groups of three sectors to contribute to EG-ITR through relevant advisory groups and bureaus’ Directors.

**4.6** [**Contribution EG-ITRs 1/7 from RCC**](https://www.itu.int/md/S17-CLEGITR1-C-0007/en) **– “Updating General Secretariat documents concerning preparations for the WCIT-2012 and preparation of new documents on legal and procedural aspects of the examination and revision of ITRs, as well as procedures for accession to”**

At the 2016 session of the Council in question a number of Member States submitted contributions on the question of revision of the ITRs of 2012 which noted the need to have information on the legal and other aspects of the ITR review process, its status, and the likely consequences for the Union and for Member States, Sector Members and users of international telecommunication services worldwide.

However, some of the indicated questions had been comprehensively studied during the lengthy process of revision of the 1988 ITRs in various groups set up between 1998 and 2012.

Member States of RCC propose to request that the General Secretariat carry out a review of all documents drawn up by it between 1998 and 2012 concerning the legal and other aspects of the ITRs and review thereof.

**4.7** [**Contribution EG-ITRs 1/9**](https://www.itu.int/md/S17-CLEGITR1-C-0009/en) **from the Czech Republic, Denmark, the Netherlands, Sweden, and the United Kingdom – “Review of the 2012 International Telecommunication Regulations”**

The Czech Republic, Denmark, the Netherlands, Sweden, and the United Kingdom have not signed the 2012 ITRs and do not intend to do so. They see no difficulties caused by the existence of two sets of ITRs, in fact investment in and access to telecommunications services have continued to develop. Another WCIT would cause significant uncertainty which might hold back investment and development. It is not clear that a revision of the 2012 ITRs would attract consensus agreement, and this could put at risk the ITU’s reputation as an effective international body. Instead, the Union should focus on implementing the WSIS Action Lines, the 2030 Sustainable Development Agenda and fostering new investment and affordable telecommunications, particularly in developing countries. Another WCIT would also inevitably draw valuable resources from other areas, such as capacity building.

**4.8** [**Contribution EG-ITRs 1/10**](https://www.itu.int/md/S17-CLEGITR1-C-0010/en) **from VimpelCom Group – “Review of the ITRs: Application of Article 8.3 of ITRs 2012 and Article 6.13 of ITRs 1988”**

VimpelCom Group presented its contribution 1/10, in which it highlighted issues of inconsistent application and legal interpretation of Article 8.3 of ITRs 2012 and, identical, Article 6.1.3 of ITRs 1988. It provided specific examples of the Kyrgyz Republic and the Republic of Tajikistan where misunderstanding in application of these provisions led to double taxation of international telecommunication services leading to financial losses for operating agencies in millions of US dollars. VimpelCom suggested that EG-ITRs takes these issues into account in its work, requests ITU Secretary General to provide legal analysis of specific matters relevant to these issues, and, on the basis of such legal analysis, includes in its report a suggestion to the Council to invite Member States to apply Article 8.3 of ITRs 2012 and Article 6.1.3 of ITRs 1988 in an accurate, consistent, predictable and certain matter as well as consider a need to develop and adopt binding and/or non-binding instruments to reinforce certainty and predictability of these provisions.

**4.9** [**Contribution EG-ITRs 1/11 (Rev. 1)**](https://www.itu.int/md/S17-CLEGITR1-C-0011/en) **from Mexico – “Implications of the terms of reference of the Expert Group on ITRs”**

The Administration of Mexico deems it of the utmost importance that all participants in the Expert Group share the same understanding of the aforementioned terms of reference, as this will contribute pragmatically to the work and analysis to be undertaken with a view to achieving concrete results, with a view to focusing the work of the forthcoming meetings. Mexico recalls the elements to be taken into consideration only related to the 2012 ITRs. In terms of applicability Mexico expressed that generally speaking, this refers to the degree/level to which the provisions of the 2012 ITRs have been implemented in binding international instruments and national legal frameworks. Regarding the legal analysis the EG ITR must focus on confirming that each provision thereof complies with the Purpose of the Regulations as established in Article 1. On the conflicts between the obligations and application of the 1988 and 2012 ITRs Mexico reminded that there are specific interpretation made by the ITU on the matter which could be helpful to clarify some concerns from the Group. Finally, Mexico asked to the participants to bear in mind that a general review is needed prior the decision of having and revision and furthermore to suggest to the PP-18 whether or not World Conference on International Telecommunications is needed.

**5 Discussions**

The Expert Group examined the various contributions, which were appreciated by the Group.

**5.1 Discussion on Contribution EG-ITRs 1/2 from United States**

A member[[1]](#footnote-1) noted that the assumption of competitive international market may not necessarily hold true globally and requested the secretariat to provide information on competition in international telecommunication markets.

Regarding applicability, a member highlighted that there are players who are still dominant at the international level, and there is a need for some regulations to deal with this at the international level. The member also noted that the 1988 ITRs covers a very small amount of international traffic and should no longer be force.

A member requested information from the secretariat on the number of Member States who are currently party to the ITRs, which the secretariat confirmed was available on the ITU website, and the related links will be also posted on the EG ITRs website.

Some members reiterated queries concerning the need to identify difficulties with specific provisions of the ITRs.

**5.2 Discussion on Contribution EG-ITRs 1/3 from Canada**

Some members supported that as addressed in the contribution, Study Groups should not directly contribute to the EG-ITRs. The Chair clarified that he had addressed the latter under agenda item 3.

On queries concerning difficulties with specific provisions of the ITRs, the contributor noted that the information on their stated position are on record and in the document, and expressed having concerns regarding the scope and applicability of the ITRs to consider being party to the treaty.

It was also suggested that the fundamental issues raised in all the contributions could be considered and discussed together.

Some members reiterated queries concerning the need to identify difficulties with specific provisions of the ITRs.

**5.3 Discussion on Contribution EG-ITRs 1/9 from the Czech Republic, Denmark, the Netherlands, Sweden, and the United Kingdom**

On interventions concerning a new treaty, the Chairman reminded the meeting that the mandate of the EG-ITRs is to review the 2012 ITRs and not discuss a new treaty.

Some members reiterated queries concerning the need to identify difficulties with specific provisions of the ITRs.

Some members emphasized the need to remain focused on fostering investment and other priorities, and not reopening the discussion from WCIT-12.

**5.4 Discussion on Contribution EG-ITRs 1/4 from Jordan, Saudi Arabia, and the United Arab Emirates**

Some members were of the view that identifying new issues is not part of the ToR of the Group. Some other members indicated that these are in accordance with the ToR (item 2a).

Some members viewed the first step of the Group is to review the 2012 ITRs. Analysing the new issues and putting it within a framework for future consideration could be done at a later stage.

**5.5 Discussion on Contribution EG-ITRs 1/5 (Rev.1/Rev.2) from RCC**

Some members were of the view that the issues raised in the contribution fall outside the ToR of the Group. Some other members indicated that these are in accordance with the ToR (item 2a).

Some members reemphasized that the Group was tasked to review the 2012 ITRs, and to focus on articles in the 2012 version, including any difficulties raising from their implementation.

Some members were of the view that as part of its work, the Group should also examine the articles of the ITRs for a possible revision to include new technology trends, as the contribution asks for.

Responding to queries, the contributor further elaborated on the reasoning for some of the new issues that were raised in the contribution and established that it was clearly understood that the scope of analysis at this moment is that the Group is a carrying out a review process.

**5.6 Discussion on Contribution EG-ITRs 1/7 from RCC**

Some members noted that the work requested from the secretariat in the contribution requires significant time and resources and should be undertaken only if a specific need is identified by the Group at a later stage. However, the secretariat may, to the extent practicable and where necessary, provide information to the Group.

Some members noted that it is important that the Group is contribution-driven.

The Chairman suggested using hyperlinks to existing documents as a way of access these existing documents.

**5.7 Discussion on Contribution EG-ITRs 1/10 from VimpelCom Group**

A member suggested that relevant WTO instruments should be investigated and also that ITRs may not be the right instrument to resolve the issues raised, which concern international trade in services. Another member noted that they, as a Member State, were not part of the WTO and therefore the ITRs was the only relevant international instrument available to them.

Considering that the contribution raises an issue limited to a geographical area, a member suggested that further thought be given to the contribution at a later stage. It was suggested that the Group wait for further contributions on the matter, especially from other Operator Sector Members.

An Operator Sector Member mentioned that it did not face any issues in the application of the 1988 or the 2012 ITRs in regions that it operated in.

One Member State noted that some operators from their region do face problems.

The contributor clarified that the contribution is asking for improvement of the applicability of the ITRs, and not enforcement.

Some members suggested that this contribution be carried over to the next meeting. The meeting agreed with this course of action.

**5.8 Discussion on Contribution EG-ITRs 1/11 (Rev. 1) from Mexico**

The vice chair from the region of the contributor noted that the contribution was very clear on the process the Group needs to follow.

Some members stated their view that holding a new WCIT would require significant resources and should be avoided.

**5.9 Discussion on Contribution EG-ITRs 1/6 from RCC – “Proposals for preparation of the EG-ITRs Final report”**

Some members raised a discrepancy between the specified date of 31 December 2017 and the 36-month deadline as listed in Article 54 of the Constitution, and requested a legal opinion from the ITU Legal Advisor on the provisional application, who noted that the provisional application applies only to those Member States who signed the ITRs at the conference. The contributor clarified that this was indeed the interpretation in their contribution.

Some members expressed the view that it was premature to discuss the Final Report to Council-18, and that the ToR of the Group is to review and not revise the ITRs. Some other members are of the view that the group should develop the structure of the Final Report at this meeting.

A member also expressed the view that appointment of rapporteurs as suggested in the contribution is outside the ToR of the Group. Some other members indicated that these are in accordance with General Rules of Conferences, Assemblies, and Meetings of the Union (provision 64).

Some members expressed the view that the contribution was useful when the Group decides on an overall view and vision of the Final Report, and that the Group, as per the General Rules that apply to the Group, can convene sub-groups if necessary to aid it in its work.

Some members noted that the draft liaison to Study Groups included in the Annex of the contribution may not be appropriate or needed at this stage. They also noted that, according to the ToR of the Group, it is the responsibility of the Directors of the Bureaux to provide inputs from Sectors to the Group.

A member suggested that the Group should first look at any potential conflict between the two versions of the ITRs.

Some members noted that while progressing on the work of the Group, it is important to bear in mind the need to maintain the unity of the Union.

**6 Discussion of next steps, including structure of the Final Report to Council-18**

The Chairman suggested to identify the problems, if any, from the point of view of the ToR of the Group.

In response, various members noted that identifying and discussing the concerns in the 2012 ITRs is a way of proceeding with implementing the terms of reference. They noted the need for more contributions from Member States and Sector Members on the different issues as this would lead to better evidence-based analysis by the Group.

During the discussion, the secretariat clarified the schedule of the upcoming meetings – that it will be held during the clusters of Council Working Group meetings from 11-22 September 2017, end January 2018, and the final meeting prior to Council-18, pending the decision of Council-17.

**7 Actions to be taken**

**7.1** The Group agreed on proceeding with a step-by-step approach. The next step would be to identify any challenges that may arise from the implementation of the 2012 ITRs, in accordance with the ToR of the Group. In this regard, the Group invites Member States and Sector Members to submit contributions as per the terms of reference of the Group.

**7.2** The Group further invites Sector Members to submit contributions sharing their experiences in accordance with the ToR of the Group.

**8 Closing of the Meeting**

In closing, the Chairman thanked all the ITU Member States and Sector Members who made contributions and participated in the work of the Expert Group, the Vice-Chairmen-elect, and ITU Elected Officials and the secretariat for their efficient assistance during the meeting.

The Group thanked the Chairman and secretariat for their effective organization and management of the Group.

**Chairman: Mr Fernando Borjón (Mexico)**

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1. “Member” refers to a member of the Expert Group on ITRs, which include both Member States and Sector Members [↑](#footnote-ref-1)