



**Corrigendum 1 to
Document RRB22-2/15-E
5 July 2022
English**

SUMMARY OF DECISIONS
OF THE
90TH MEETING OF THE RADIO REGULATIONS BOARD

27 June – 1 July 2022

This corrigendum applies only to the English version of the Annex to the Summary of Decisions.

Annex.

Annex

Invocation of Article 48 of the ITU Constitution in relation to the Radio Regulations

Introduction

In its report to the World Radiocommunication Conference of 2019 (WRC-19) on issues affecting the fulfilment of the principles contained in Article 44 of the ITU Constitution, the Radio Regulations Board (hereinafter referred to as the Board) considered concerns raised by some administrations' application of Article 48 of the Constitution. These concerns were relating to the invocation of Article 48 in response to investigations initiated by the Radiocommunication Bureau (BR) in application of provisions of the Radio Regulations. WRC-19, in accordance with Article 21 of the Convention, invited the Plenipotentiary Conference 2022 (PP-22) to consider the question of the invocation of Article 48 in relation to the Radio Regulations and to take necessary actions, as appropriate.

Background

In its report to WRC-19, the Board identified concerns raised by some administrations regarding the appropriateness of other administrations' invocation of Article 48. The alleged cases of non-compliance with Article 48 that were presented to the Board can be categorized as follows:

- Administrations invoking Article 48 after the Bureau has launched an investigation to verify whether frequency assignments were actually in use within regulatory deadlines as a means to prevent the investigation and retain rights in the Master International Frequency Register (MIFR);
- Administrations invoking Article 48 for frequency assignments that are not used for military radio installations.

The Board considered that invoking Article 48 for the sole purpose of preventing the Bureau from investigating the status of satellite networks was incompatible with the Constitution and the Radio Regulations.

In addressing the cases mentioned above, the Board took into account the guidance offered by WRC-15, which had concluded that, once administrations had invoked Article 48 explicitly, information to respond to an investigation could no longer be requested by the Bureau or the Board. As a result, the Board was not in a position to make decisions on cases where Article 48 was invoked, in the absence of clear direction to ensure coherent application of the rights of administrations under Article 48 and their obligations under the Radio Regulations.

Since WRC-19, the Board has received a request to develop a rule of procedure in respect of Article 48. This request stemmed from concerns of Article 48 being invoked in response to a coordination request for terrestrial frequency assignments in order to avoid providing the characteristics of the assignments on which the objection was based, making it impossible to address potential interference. Noting that WRC-19 had invited PP-22 to provide guidance on the invocation of Article 48, the Board decided not to develop a rule of procedure on invoking Article 48 under the application of coordination procedures at that stage.

Discussion

Article 6 of the Constitution, on execution of the instruments of the Union, recognizes that Article 48 provides an exemption to the overall obligation to abide by the provisions of the Radio Regulations. Article 48 further recognizes that “*Member States retain their entire freedom with regard to military radio installations*”, as stipulated in No. 202 of the Constitution. The following two provisions of Article 48 confirm, however, that this recognition does not provide a complete and definitive derogation to the provisions of the Administrative Regulations:

203 2 *Nevertheless, these installations must, so far as possible, observe statutory provisions relative to giving assistance in case of distress and to the measures to be taken to prevent harmful interference, and the provisions of the Administrative Regulations concerning the types of emission and the frequencies to be used, according to the nature of the service performed by such installations.*

204 3 *Moreover, when these installations take part in the service of public correspondence or other services governed by the Administrative Regulations, they must, in general, comply with the regulatory provisions for the conduct of such services.*

The Board is of the view that these provisions of the Constitution do not imply that the rights for international recognition and protection could be obtained and maintained through the invocation of Article 48 without the relevant frequency assignments having been successfully recorded in the MIFR. In addition, the Board is very concerned about the potential for abuse of Article 48 and how such abuse would seriously compromise the integrity of the regulatory framework. Furthermore, in instances where there appears to be contradictory information suggesting that frequency assignments for which Article 48 has been invoked are not used for military radio installations, the Board should be able to invite the administration concerned to provide clarification.

Conclusions

The Board considers that it is necessary to provide clarity on the invocation of Article 48 in relation to the Radio Regulations and, further, that it is essential to avoid abuse of its application. The Board seeks guidance that could be used to address cases under Article 48. The Board invites PP-22 to confirm that:

- 1) a Member State invoking Article 48 for frequency assignments must use these frequency assignments exclusively for military radio installations;
- 2) Article 48 cannot be invoked for frequency assignments used by non-military radio installations or by both military and non-military radio installations;
- 3) the BR and the Board can seek clarification and consequently apply all relevant regulatory provisions if it appears from reliable information that a recorded frequency assignment for which Article 48 has been invoked is actually not in compliance with the article;
- 4) regardless of whether Article 48 is invoked, frequency assignments used by military radio installations are entitled to international recognition and the right to claim protection from harmful interference only if they are recorded in the MIFR.