**Note by the Chairman of EG-ITRs**

For the reference of members of EG-ITRs, the following principles were applied in preparing the second draft of the final report of EG-ITRs:

1. The content is based on (a) the written contributions received as input to the first, second, and third meetings of EG-ITRs, (b) the corresponding meeting reports of the three meetings which capture the discussions among members on the contributions, and (c) the comments made on the first draft of the final report of EG-ITRs. This is a fundamental aspect in ensuring that the process to draft the final report is contribution-driven, and for the purposes of traceability and transparency.

2. The various views have been accommodated and a balanced approach has been maintained in representing the different views, as far as possible. Some aspects may have been paraphrased for language or brevity, or for the purposes of consolidating multiple contributions putting forth a similar view.

**I hope these principles are acceptable for your consideration.**

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| **Expert Group on the International Telecommunication Regulations (EG-ITRs)** |  |
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|  | **Document EG-ITRs/REP/DRAFT 2.0-E** |
| **13 February 2018** |
| **Original: English** |
| SECOND draft of the FINAL REPORT OF the expert group on the international telecommunication regulations  |

1. **Introduction**

**1.1** In accordance with Article 4 "Instruments of the Union" of the ITU Constitution, the International Telecommunication Regulations (ITRs) are one of the two Administrative Regulations included in the list of Instruments of the Union (paragraph 29 of the Constitution).

Two versions of the ITRs exist: the 1988 ITRs and the 2012 ITRs. Background information concerning the two versions are available at:

<https://www.itu.int/en/wcit-12/Pages/itrs.aspx>

<https://www.itu.int/en/history/Pages/TelegraphAndTelephoneConferences.aspx?conf=4.33> and <https://www.itu.int/en/wcit-12/Pages/default.aspx>.

**1.2** In accordance with ITU Plenipotentiary Resolution 146 (Rev. Busan, 2014), the ITU Council, at its 2016 Session, adopted Resolution 1379, which resolves that an Expert Group on the International Telecommunication Regulations (EG‑ITRs), open to all Member States and Sector Members, be created.

**1.3** The Terms of Reference of the Group, as stated in Annex 1 of Council Resolution 1379, is as follows:

*1. On the basis of contributions submitted by Member States, Sector Members and inputs from the Directors of the Bureaux if necessary, the EG-ITRs shall undertake a review of the 2012 ITRs, taking into account new trends in telecommunications/ICT, emerging issues and obstacles that may arise from the implementation of the 2012 ITRs and WCIT-12 Resolutions and Recommendations.*

*2. The review should include among others:*

*a) An ehxamination of the 2012 ITRs to determine its applicability in a rapidly evolving international telecommunication environment, taking into account technology, services and existing multilateral and international legal obligations as well as changes in the scope of domestic regulatory regimes;*

*b) Legal analyses of the 2012 ITRs;*

*c) Analyses of any potential conflicts between the obligations of signatories to the 2012 ITRs and signatories to the 1988 ITRs with respect to implementation of the provisions of the 1988 and the 2012 ITRs.*

*3. The EG-ITRs will present a progress report to Council 2017 and a final report to Council 2018 for examination and submission to the 2018 Plenipotentiary Conference with the Council’s comments.*

**1.4** Council 2016 appointed Mr. Fernando Borjón (Mexico) as the chairman of the Group. Council 2017 appointed six vice-chairs as follows:

1. Mr. Guy-Michel Kouakou (Côte d'Ivoire)
2. Mr. Santiago Reyes-Borda (Canada)
3. Mr. Al Ansari Al-Mashakbeth (Jordan)
4. Mr. Xiping Huang (China)
5. Mr. Aleksei S. Borodin (Russian Federation)
6. Mr. Fabio Bigi (Italy)

**1.5** In accordance with Council Res. 1379, EG-ITRs held four physical meetings:

a. First meeting: 9 - 10 February 2017

b. Second Meeting: 13 - 15 September 2017

c. Third meeting: 17- 19 January 2018

d. Fourth meeting: 12 - 13 April 2018

The contributions received from members[[1]](#footnote-1) of the group throughout the process, as well as the progress reports of the individual meetings can be found on the EG-ITRs website at: <http://www.itu.int/en/council/eg-itrs/Pages/default.aspx>

1. **Review of the 2012 ITRs, taking into account new trends in telecommunications/ICT, emerging issues and obstacles that may arise from the implementation of the 2012 ITRs and WCIT-12 Resolutions and Recommendations**

**2.1 Applicability**

**2.1.1** Some general views were expressed on the applicability of the 2012 ITRs.

1. A member stated that the applicability of the 2012 ITRs should be understood in terms of the advantages derived from fulfilling the legal obligations thereof vis-à-vis other binding multilateral and/or international instruments. In general terms, 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.
2. Concerning the scope of applicability, a view based on the results of the survey of some operators was expressed that along with the rapid development of technologies, international telecommunication markets and operators’ providing services which respond to markets’ need are also ever-changing, and in order to accommodate this rapidly evolving international telecommunication environment, the ITRs should be flexible and future-proof which could be applied in the future. As described in WCIT-12 Resolution 4, the ITRs should be “*high-level guiding principles*” and should not stipulate details as detailed operational matters, matters which need to be updated frequently, matters which impose undue and unnecessary burden on operators etc. These should be excluded from the ITRs and delegated to operators, or would be defined in non-binding documents such as recommendation or guideline only when it is absolutely necessary and agreed among ITU members.
3. A member stated a view that each of the 193 ITU Member States faces unique regulatory challenges depending on context, the level of technical/economic development of each national market, and the need for intervention/regulation in each country. The ITRs are not effective to solve problems that have a limited scope and affect only some countries. In the member’s view, the ITRs should determine common rules to manage the interdependence among all nations in the provision of telecommunication/ICTs, and should reflect the following three commitments by signatories: (1) to strengthen national-level management of cross-border spillovers (e.g., ICT-related intellectual property rights infringements); (2) to protect any state’s sovereignty if it comes under attack (e.g., cyber-security threats); (3) to cooperate in mitigating global system risks (e.g., failure of communications infrastructure). The member with this view also noted that for the ITRs to be applicable, Member States should be willing to commit to these three objectives of international cooperation.
4. Some members considered that the ITRs should remain focused on relevant international public telecommunications issues and should not be extended to domestic issues or to issues related to the Internet.
5. Some members expressed the view that the ITRs should always seek to facilitate and never to restrict the development of telecommunications and the availability of communications services.

**2.1.2** Two sets of divergent views were expressed by members on the applicability of the 2012 ITRs in a rapidly evolving international telecommunication environment.

**2.1.2.1.** Proponents of the first set of views expressed the following:

1. Some members, including some operators, expressed the view that many operators are no longer using the ITRs or using it in a very limited manner, as they operate under commercial agreements.
2. These members noted that when the ITRs were adopted in 1988 most telecommunications operators were state-owned enterprises and an international treaty was necessary to give private telecommunications carriers a baseline global framework that ensured interoperability and guaranteed revenue flow. Also, in a monopoly era, the absence of such regulations in an environment dominated by monopoly providers with market power could have resulted in poor interconnection, higher settlement charges, and poor quality of service.
3. These members highlighted that in the last two decades, international and domestic telecommunication markets have experienced extraordinary structural and technological changes. They were of the view that the monopoly environment has disappeared in the vast majority of countries, with the emergence of multiple competing private-sector operators in each country resulting in a competitive landscape. The presence of competition in a majority of countries means that most international telecommunication traffic is exchanged and terminated via competitive interconnection agreements, rather than through mutual agreements established through the ITRs framework. They believe that flexibility is indispensable for developing competitive business and promoting innovation in this rapidly changing international communications market.
4. The members with this view further stated that the ITRs are effectively irrelevant to international telecommunications traffic as the volume of such traffic being settled outside the accounting rate system increasingly dwarfs, and eventually will replace completely, the traffic being settled under that system. They noted that according to their knowledge, there are very few countries that continue to rely on the ITR-based accounting rate regime, and such traffic accounts only for less than 1% of global traffic flows (with some more examples cited in the corresponding contributions).
5. A member indicated that the ITU Constitution and Convention already contain provisions on cooperation in the provision of international telecommunication services.
6. These members were of the view that the successful deployment and use of telecommunication services and applications worldwide, as reflected and evidenced in several international telecommunication reports and publications, including those of the ITU, has not been the result of the ITRs, and that 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.
7. A operator considered that the inclusion of detailed rules within ITR will restrict freedom of trade between the international carriers, and will have a negative impact towards the telecommunication industry and users.
8. Some members noted that along with the rapid development of technologies, international telecommunications/ICT environments are drastically and rapidly evolving, and new trends/emerging issues are also ever-changing. As no one can predict how such new issues will develop in the future, it seems impossible to give a clear and precise definition of them.

These members are of the view that taking into account these facts, it is unfitting that continually changing new issues will be addressed by binding international instruments by making assumptions about how new issues will evolve. In addition, new issues cause a lack of stability to binding international instruments. Furthermore, setting an international legal framework to regulate new issues will make operators difficult to respond flexibly to rapidly evolving international environments, including technological change and emergence of new markets, and as a result decrease the potential of new business and technological innovation, which may make a negative impact on the global economic growth.

**2.1.2.2.** Proponents of the second set of views expressed the following:

1. Some members, including some operators, expressed the view that as one of the key instruments of the Union, the ITRs should be frequently reviewed by the affected parties and the ITU. The review should examine the applicability of the ITRs in the short, medium, and long term.
2. These members were of the view that ICTs now underpin everything we do, therefore an up to date Treaty-level provisions are required for ensuring a connected world in a secure, safe and affordable manner and those international services are offered fairly and efficiently. The convergence of technologies, and the appearance of new ones, has changed the landscape dramatically and the ITRs must be reviewed to reflect this.
3. These members expressed the view that that the assumption of competitive international market may not necessarily hold true globally. They highlighted that there are players who are still dominant at the international level, including in the provision of cross border services and there is a need for some regulations to deal with this at the international level.
4. These members were of the view that some items in the ITRs continue to be of current relevance within the international telecommunication sector environment, in so far as they promote regulatory consistency and generate trust in international telecommunications. They include:
* The security and robustness of international telecommunication networks as an individual and collective obligation for Member States, which must pursue the harmonious development of international telecommunication services offered to the public.
* Promotion of investment in international and national telecommunication networks, including in the provision of taxation framework for cross border services.
* The establishment of provisions to ensure international calling line identification.
* The appropriate use of numbering resources.
* The creation of enabling environments for the implementation of regional telecommunication traffic exchange points.

A member with this view also noted that these current provisions of the ITRs are complemented by the present environment in which telecommunication markets have transited to scenarios under which authorized operating agencies have bilateral agreements and competition is constantly increasing, generating lower prices and increased access to telecommunication services.

As commented by some members, regardless the percentage of global traffic flows (although it was requested to present the source of such data), the 2012 ITRs retained these provisions (Article 8 of 2012 ITRs) on purpose, because there is still a number of operating agencies from developing countries that continue to operate based on the accounting rate principles and ITRs remains the only legal instruments, that provides such a regime.

1. These members expressed the view that in bilateral agreements between some operating agencies, a number of provisitions are based on ITRs, and stated that some operators feel the need for more coordination with their counterparts in other countries and intergovernmental coordination on issues concerning, for example:
* charging and accounting aspects,
* network security,
* unsolicited messages,
* taxation and additional charges,
* offsetting,
* settlements for maritime communications
* State regulation impacting business models.
1. An operator noted that certainty, predictability and uniform application of international rules governing commercial activities are crucial in creating a favourable investment environment necessary to expand connectivity to everyone.
2. Some members were in favour of the regular review of the ITRs given the current trends in the telecommunication/ICT market.

Some members note that on the part of the developing countries, they are concerned with the total blurring of traditional telecom service borders brought about by advances in ICT worldwide, and with it, the advent of new trends in international telecom/ICT - essentially converged telecom and Internet services, the rapid growth of OTT in particular. Therefore, they are of the view that the developing countries have been advocating for the review of ITRs that focuses on the new trends in international telecom/ICT so as to enable the Regulations to keep up with times.

1. It was emphasized by some members that a significant number of new trends have emerged in telecommunications/ICTs. They led to tremendous increase in number of users and industries “being digitized”, the amount of data transferred through, disseminated and collected by telecommunication/ICT networks, systems and applications. Special attention should be paid to new technologies such as Internet of Things, blockchain, Big Data, Artificial Intellegence, Cloud Computing, and so on. This has also created new emerging issues to be solved on the international level such as: privacy and data protection; deployment of new technologies and services; providing basis principles for fair competion between different services using traditional and new technologies; protection of critical information infrastructure; protection of telecommunication/ICT systems from unauthorised use, unsolicited bulk electronic communications, etc.; cybersecurity; the “digital gap” broadened day by day in the world;

**2.2 Legal Analyses**

**2.2.1** While noting that legal analyses can deal with various different aspects, some members considered that the concept in hand entails that the legal analyses of the 2012 ITRs must focus on confirming that each provision thereof complies with the Purpose of the Regulations as established in Article 1. In this regard a member expressed the concern some 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.

**2.2.2** Some members highlighted certain elements included in the 2012 ITRs that they consider important e.g. custody of international telecommunication numbering resources, international calling line identification (CLI) etc. In this regard, a member expressed the view that a periodic review of the ITRs should be considered, to ensure that they are adapted to society’s new needs in the field of telecommunications, such as: new trends in telephony (VoIP, IP telephony), Over the Top (OTT) services, the Internet of Things (IoT), and others.

**2.2.3** Similarly, a member noted that a comparison and legal analysis of the 1988 and 2012 ITRs indicate that the additions and changes in the latter are very relevant in guiding the global telecom/ICT development. For example, in the 2012 ITRs, the obligation of Respecting and Upholding Human Rights is affirmed; points concerning transparency and competition of international mobile roaming as well as reduction of tariff for international telecom interconnection are added; provisions for taking necessary measures to prevent the propagation of unsolicited bulk electronic communications, maintaining the telecom network security and adopting energy-efficiency and e-waste best practices are incorporated. In their view, all this demonstrates that the 2012 ITRs is by no means non-applicable or irrelevant, instead, it has its due legal applicability in the global telecom/ICT sphere. According to these members, the main problem with the 2012 ITRs is that it is in dire need of being enhanced in view of the new trends and new issues in telecom/ICT development worldwide, and in particular, the general principle of the international law of Development and Security in Parallel needs to be added to these Regulations.

**2.2.4** A member considered that, unlike the existing international legal instruments such as treaties on free trade, which do not always cover current issues and trends in the telecommunication sector, the ITRs have greater scope in that they recognize the importance of international standards for the global compatibility and interoperability of telecommunication networks and services and undertake to promote such standards through the work of competent international organizations including the ITU. Moreover, unlike other international instruments, the ITRs include provisions on safety-of-life with respect to distress telecommunications, security and robustness of networks, suspension of services, e-waste and accessibility matters. On the other hand, taking into consideration the WTO Agreement on Technical Barriers to Trade, and in particular Article 2, § 2.2, thereof, it is noted that the ITRs provide necessary regulatory elements and principles that do not affect trade and promote the removal of technical barriers to it.

**2.2.5** An operator was of the view that inconsistent application of ITRs results in specific and tangible detrimental effects to operating agencies. As an example, the operator stated that a number of countries, in which they operate, do not apply Article 8.3 of ITRs 2012 and Article 6.1.3 of ITRs 1988 despite their international commitments to do so.

**2.2.6** Some members noted that Resolutions contained in the Final Acts of the World Conference on International Telecommunications (Dubai, 2012) are not part of the Regulations. They do not require any ratification, acceptance or approval by individual Member States, and they are not inherently binding on Member States. Some members sought the advice of the ITU Legal Advisor in this regard (see 2.2.7 for the response of the Legal Advisor).

**2.2.7** The ITU Legal Advisor stated that the Resolutions are an integral part of the final acts of WCIT 2012. However, generally speaking, as in all treaty making conferences, the Resolutions (as well as, as appropriate, Decisions and Recommendations) are not part of the treaty (in this case, the ITRs) , and therefore do not have treaty status. It is also true that as they do not have treaty status, they do not go through (and are not subject to) the ratification, acceptance or approval processes which is generally necessary for Member States to become parties to a treaty concluded under the aegis of the Union.

Considering the part on whether Resolutions are not inherently binding on Member States, this is essentially true that these Resolutions in the final acts of the ITRs are not inherently binding on Members States. At the ITU, there are indeed some Resolutions that are binding in nature on Member States – i.e. those Resolutions that are incorporated by reference into the Radio Regulations.

**2.3 Potential Conflicts**

**2.3.1** Upon the request of the Group, the ITU Legal Advisor addressed the issue of conflict of international norms or standards. He noted that in this context, a conflict does not mean differences between two successive standards. He clarified that when we talk about a conflict in this context we talk about situations that arise as a result of two successive legal rules dealing with the same matter that are contradictory in nature, that are incompatible, and are nevertheless simultaneously applied to a specific concrete situation. Differences between two treaties does not necessarily implies that the treaties are incompatible *per se*.

The Legal Advisor noted that potential contradictions can arise between two successive international standards on the same issue in the same domain, and that is indeed the situation that could be found in this case because the 1988 ITRs and the 2012 ITRs refer to or are applied to the same domain and the same subject matter. Having said that, he emphasized that there are tools that can be used to resolve potential conflicts between two successive treaties in the same domain, and these tools are given to us in particular under Article 30 of the 1969 Vienna Convention on the Law of Treaties.

He then mentioned the different potential scenarios and the potential solutions which are offered by the Vienna Convention.

1. The first case would be when all parties to the 1988 treaty are also parties to the 2012 treaty. In this case, it is the latter treaty that applies except in such a case that in bilateral relations, Member States believe it is more appropriate to apply the former treaty, but normally it would be the more recent treaty that apply.
2. When parties to the previous treaty are not all parties to the subsequent treaty, as in the current case. In this case, two solutions are available.
	* In relations between parties to the second treaty, then it is the previous solution under Point 1 that applies. It is the subsequent treaty that is applied in relations between parties to the two treaties.
	* If one State is party to both and another is only party to one, the treaty to which both states are Parties governs their mutual rights and obligations.

So, even if there could be potential conflicts that may arise between the 1988 ITRs and the 2012 ITRs, we nevertheless have legal solutions within international law that would allow us to solve this potential conflict.

**2.3.2** Some members were of the view that they do not foresee any potential legal conflicts between the 1988 and the 2012 ITRs, and these members also noted the some operators do not face any issues due to the existence of both 2012 and 1988 versions of the ITRs

They further referred to the explanatory text provided on the ITU website with regard to the applicability of the two version of the Treaties (cited below), which they see as a guideline for future implementation:

*“The 2012 treaty replaces the 1988 treaty for the parties to the 2012 treaty. Non-parties to the 2012 treaty remain bound by the 1988 treaty. Relations between a non-party to the 2012 treaty and a party to the 2012 treaty are governed by the 1988 treaty. It has to be noted that for those signatories of the 2012 treaty, the latter shall apply provisionally as from 1 January 2015.”*

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, those with this view noted that it may be too early to make such a judgment as the 2012 ITRs only entered into force two years ago (January 1, 2015) for its earliest adopters. They further expressed the view that even if some significant difficulties were discovered, however, it would be important to take into account their scale and scope and their impact on cross-border services.

Some operators pointed out, in response to questions from the Member States about the possible challenges arising from the implementation of the 2012 ITR, that their companies have not experienced any practical obstacles in this regard, and that they expect this is due to the fact that practically all international traffic is exchanged through commercial agreements.

**2.3.3** Some members were of the view that only some countries being signatories to the 2012 ITRs as opposed to the 1988 ITRs could result into conflicts and limitations in terms of the implementation of the ITRs. They noted that application of 1988 ITRs is limited by the fact of obsolete understanding of the object and subjects of the Regulations, and application of 2012 ITRs is limited by the small number of acceded countries. They therefore are of the view that simultaneous application of both 1988 ITRs and 2012 ITRs provisions is not possible.

They particularly highlighted certain provisions of the 2012 ITRs which do not form part of the 1988 ITRs, such as the provisions on accessibility, reduction of e-waste, cooperation in combating unsolicited bulk electronic communications etc., and could therefore appear as problematic in their implementation between different Member States, also posing challenges for telecommunication operators.

Some members pointed out to potential conflicts with respect to implementation of 1988 and 2012 ITRs, which can arise from the fact that 1988 ITRs impose direct obligations on Member-States, whereas similar provisions in 2012 ITRs call only upon actions from authorized operating agencies.

**2.3.4** Some members were of the view that it still remains a legal fact that in case of any dispute beteween countries signatory to the 1988 ITRs, and countries that only signed the 2012 ITRS and never signed the 1988 ITRs, there would be an obvious conflict.

Some other members were of the view that there are no potential conflict and highlighted the ITU Legal Advisor’s opinion in this regard (Section 2.3.1).

**2.3.5 Views on holding a new World Conference on International Telecommunications (WCIT)**

While recognizing that the task of Expert Group is to undertake a review of the 2012 ITRs, and not to develop a new set of ITRs or propose a new WCIT, several views were expressed by members concerning the convening of a new WCIT. The views can be summarized as follows:

a. Some members were of the view that holding another WCIT is not favourable because finding global consensus is difficult, and the financial burdens and opportunity costs are high, as well as the reputational risk to ITU. They also considered that holding a new WCIT would cause significant uncertainty, which might hold back investment and development. These members are of the view that another WCIT should only be held after a unified consensus position regarding the applicability and effectiveness of the Regulations is reached.

b. Some members were in favour of the regular review of the ITRs given the current trends in the telecommunication/ICT market of the introduction of new technologies such as 5G, IoT, cloud computing, and Big Data platforms in the ICT sector. They stated that we are experiencing a new era with a paradigm shift in the ICT sector which requires a review of the treaties including the ITRs, that would highlight the related challenges as well as the opportunities.

1. **Summary**

**3.1**There are two divergent points of view on the applicability of the 2012 ITRs:

1. Some members expressed the view that with the extraordinary structural and technological changes international and domestic telecommunication markets resulting in competitive markets in a majority of countries, the ITRs are no longer relevant, and that operators are not using the ITRs or using it in a very limited manner as they operate under commercial agreements.
2. Some members expressed the view that ITRs continue to be of current relevance within the international telecommunication sector environment, as they promote regulatory consistency, facilitate coordination on issues concerning commercial agreements and beyond, and generate trust in international telecommunications.

**3.2** Legal analyses of the 2012 ITRs can deal with various different aspects. These include for example, confirming that each provision thereof complies with the Purpose of the Regulations as established in Article 1; the importance of an international legal instrument such as the ITRs for the global compatibility and interoperability of telecommunication networks and services when compared with other existing international instruments such as treaties on free trade; or the potential impact of the inconsistent application of ITRs.

Some members consider that 2012 ITRs are still useful and legally relevant, e.g. custody of international telecommunication numbering resources, and international calling line identification (CLI). In their view, the ITRs is in dire need of being enhanced in view of the new trends in telecom/ICT such as: new trends in telephony (VoIP, IP telephony), Over the Top (OTT) services, the Internet of Things (IoT), and others.

Some members noted that Resolutions contained in the Final Acts of the World Conference on International Telecommunications (Dubai, 2012) are not part of the Regulations and are not inherently binding on Member States.

**3.3** There are two divergent points of view about the potential conflicts between the 1988 and 2012 ITRs:

a. Some members are of the view that there are no legal conflicts between the 1988 and the 2012 ITRs.

b. Other members are of the view that simultaneous application of both 1988 ITRs and 2012 ITRs provisions is not possible.

**3.4** Holding another WCIT

a. Some members were of the view that holding another WCIT is not favourable because finding global consensus is difficult, and the financial burdens are high, as well as the reputational risk to ITU. They expressed the view that that a new WCIT should only be held after a unified consensus position regarding the applicability and effectiveness of the Regulations is reached.

b. Some members were in favour of the regular review of the ITRs given the current trends in the telecommunication/ICT market of the introduction of 5G, IoT, cloud computing and Big Data platforms in the ICT sector. As to when and how to revise it, it is up to the consensus of all the Member States.

[ANNEX 1]

[Some members supported the inclusion - as an Annex to the Final Report of EG-ITRs to Council 2018 - of a table with texts of both 1988 and 2012 ITRs that illustrate differences between the two versions of ITRs and may help in further discussion on potential conflicts with respect to implementation of provisions of the 1988 and the 2012 ITRs.

Some members did not support the inclusion of such a table as an Annex, and did not see any conflict between the existence of two sets of ITRs. They stated that differences between the two versions of the treaty does not inevitably lead to conflicts in their implementation.

Article by article comparison of the 1988 and 2012 ITRs

Note:

In the table below, the following conventions apply:

– provisions containing editorial corrections are shown in *italics*;

– new provisions contained in the 2012 ITRs are shown in ***bold italics.***

|  |  |
| --- | --- |
| 1988 ITRs | 2012 ITRs |
| PREAMBLE**1** While the sovereign right of each country to regulate its telecommunications is fully recognized, the provisions of the present Regulations supplement the International Telecommunication Convention, with a view to attaining the purposes of the International Telecommunication Union in promoting the development of telecommunication services and their most efficient operation while harmonizing the development of facilities for world-wide telecommunications. | PREAMBLE**1** While the sovereign right of each State to regulate its telecommunications is fully recognized, the provisions of the present International Telecommunication Regulations (hereafter referred to as "Regulations") complement the Constitution and the Convention of the International Telecommunication Union, with a view to attaining the purposes of the International Telecommunication Union in promoting the development of telecommunication services and their most efficient operation while harmonizing the development of facilities for worldwide telecommunications.**2 *Member States affirm their commitment to implement these Regulations in a manner that respects and upholds their human rights obligations.*****3 *These Regulations recognize the right of access of Member States to international telecommunication services.*** |
| **Comment:** No. 2 in the Preamble of the 2012 ITRs is not technical or regulatory, and affirms the need to respect human rights such as privacy of communications, the right to free transmission of data, and protection of personal data. No. 3 of the 2012 ITRs reflects the spirit and the letter of the ITU Constitution and Convention. |
| Article 1Purpose and Scope of the Regulations2  1.1 *a)* These Regulations establish general principles which relate to the provision and operation of international telecommunication services offered to the public as well as to the underlying international telecommunication transport means used to provide such services. They also set rules applicable to administrations.\* | ARTICLE 1Purpose and Scope of the Regulations **4** 1.1 a) These Regulations establish general principles which relate to the provision and operation of international telecommunication services offered to the public as well as to the underlying international telecommunication transport means used to provide such services. ***These Regulations do not address the content-related aspects of telecommunications.*****5** *b)* These Regulations also contain provisions applicable to those operating agencies, authorized or recognized by a Member State, to establish, operate and engage in international telecommunications services to the public, hereinafter referred as "*authorized operating agencies*". |
| **Comment:** No. 5 *b)* of the 2012 ITRs reflects the changes that have been occurring in telecommunications in recent decades. At the present time, international telecommunication services are provided not only by recognized operating agencies but also by many private operators that have the relevant licences but are not “recognized operating agencies”. The 1988 ITRs more or less excludes operators not included on the “recognized” list from the international telecommunication system. This comment applies to all ITR provisions in which the term “private operating agencies” is used. |
| 6  1.4 References to *CCITT Recommendations and Instructions* in these Regulations are not to be taken as giving to those Recommendations and Instructions the same legal status as the Regulations. | **9**  1.4 References to *Recommendations of the ITU Telecommunication Standardization Sector (ITU-T)* in these Regulations are not to be taken as giving to those Recommendations the same legal status as these Regulations. |
| **Comment**: Updating an outdated provision. |
| 7  1.5 Within the framework of the present Regulations, the provision and operation of international telecommunication services *in each relation is pursuant to mutual agreement between administrations*.[[2]](#footnote-2) | 1.5 Within the framework of these Regulations, the provision and operation of international telecommunication services in each relation is *pursuant to mutual agreement between authorized operating agencies*. |
| **Comment**: Updating an outdated provision. |
| 8  1.6 In implementing the principles of these Regulations, administrations\* should comply with, to the greatest extent practicable, the relevant CCITT Recommendations, including any Instructions forming part of or derived from these Recommendations. | **11**  1.6 In implementing the principles of these Regulations, authorized operating agencies should comply with, to the greatest extent practicable, the relevant ITU-T Recommendations. |
| **Comment**: Updating an outdated provision. |
| **9**  1.7  *a)*  These Regulations recognize the right of any Member, subject to national law and should it decide to do so, to require that administrations and *private operating agencies*, which operate in its territory and provide an international telecommunication service to the public, be authorized by that Member.10  b) The Member concerned shall, as appropriate, encourage the application of relevant CCITT Recommendations by such service providers.11  с) The Members, where appropriate, shall cooperate in implementing the International Telecommunication Regulations. | 12  1.7  *a)*   These Regulations recognize the right of any Member State, subject to national law and should it decide to do so, to require that *authorized operating agencies* which operate in its territory and provide an international telecommunication service to the public be authorized by that Member State.13  *b)* The Member State concerned shall, as appropriate, encourage the application of relevant ITU‑T Recommendations by such service providers. 14  *c)* The Member States, where appropriate, shall cooperate in implementing these Regulations. |
| ARTICLE 2 Definitions**…**15  2.2 *International telecommunication service:* The offering of a telecommunication capability between telecommunication offices or stations of any nature that are in or belong to different countries. | ARTICLE 2Definitions**18**   2.3   *International telecommunication service:* The offering of a telecommunication capability between telecommunication offices or stations of any nature that are in or belong to different countries. |
| **Comment**: The definitions in the English versions of the 1988 and 2012 ITRs are identical. The Russian version of the 2012 ITRs correctly translates the term “service” as “услуга”. |
| 16  2.3 *Government telecommunication* | **19**  2.4 *Government telecommunications* |
| **17**  2.4  *Service telecommunication*A telecommunication that relates to public international telecommunications and that is exchanged among the following:– administrations;– *recognized private operating agencies*; | **20**  2.5  *Service telecommunication*: A telecommunication that relates to public international telecommunications and that is exchanged among the following:– Member States;– *authorized operating agencies*; and– … |
| **Comment**: Any term used in the ITRs must be defined, and this was done in the 2012 ITRs.The absence of a definition in the 1988 ITRs results in a lack of clarity in the settlement of legal disputes. |
| 18  2.5 *Privilege telecommunication* | Definition removed. |
| 22  2.7 *Relation*25  2.8 *Accounting rate:* The rate agreed between administrations[[3]](#footnote-3) in a given relation that is used for the establishment of international accounts.26  2.9 *Collection charge:* The charge established and collected by an administration[[4]](#footnote-4) from its customers for the use of an international telecommunication service. | **22**2.7 *Relation***25**2.8 *Accounting rate:* The rate agreed between authorized operating agencies, in a given relation that is used for the establishment of international accounts.**26**2.9 *Collection charge*: The charge established and collected by an authorized operating agency from its customers for the use of an international telecommunication service. |
| **Comment**: Identical terms ‑ “relation”, “accounting rate”, and collection charge” – are used in the English versions of 1988 and 2012. The Russian version of 2012 uses the correct current translations of these terms.The definitions of the 2012 ITRs refer only to an authorized operating agency. |
| 27  2.10 *Instructions:* A collection of provisions drawn from one or more CCITT Recommendations dealing with practical operational procedures for the handling of telecommunication traffic (e.g., acceptance, transmission, accounting). | Definition removed. |
| ARTICLE 3 International Network§§ 3.1 – 3.4 refer to the administration or recognized private operating agency. | ARTICLE 3International network§§ 3.1 – 3.4 do not now refer to recognized private operating agencies and refer instead to “authorized operating agencies”. |
| No analogous provisions. | **31**  ***3.5  Member States shall endeavour to ensure that international telecommunication numbering resources specified in ITU-T Recommendations are used only by the assignees and only for the purposes for which they were assigned; and that unassigned resources are not used.******32  3.6   Member States shall endeavour to ensure that international calling line identification (CLI) information is provided taking into account the relevant ITU-T Recommendations.*** ***33  3.7  Member States should create an enabling environment for the implementation of regional telecommunication traffic exchange points, with a view to improving quality, increasing the connectivity and resilience of networks, fostering competition and reducing the costs of international telecommunication interconnections.***  |
| **Comment**: The new §§ 3.5 – 3.7 in the 2012 ITRs are intended to promote the adoption of additional measures to ensure high-quality and reliable international telecommunication services and the development of suitable infrastructure. |
| ARTICLE 4International Telecommunication Services32  4.1 Members shall promote the implementation of international telecommunication services and shall endeavour to make such services generally available to the public in their national network(s). | ARTICLE 4International telecommunication services**34**  4.1 Member States shall promote the development of international telecommunication services and shall foster their availability to the public. |
| **Comment**: the provision is updated to reflect changes in the telecommunication sector (market liberalization, the emergence of many non-state operators, and so on). |
| §§ 4.2 and 4.3 refer to administrations or private operating agencies. | §§ 4.2 and 4.3 are retained in essence but updated as regards the entities to which the ITRs are applicable. |
| No analogous provision. | ***4.4  Member States shall foster measures to ensure that authorized operating agencies provide free-of-charge, transparent, up-to-date and accurate information to end users on international telecommunication services, including international roaming prices and the associated relevant conditions, in a timely manner.*** |
| No analogous provision. | ***4.5  Member States shall foster measures to ensure that telecommunication services in international roaming of satisfactory quality are provided to visiting users.*** |
| No analogous provision. | ***4.6  Member States should foster cooperation among authorized operating agencies in order to avoid and mitigate inadvertent roaming charges in border zones.*** |
| No analogous provision. | ***4.7  Member States shall endeavour to promote competition in the provision of international roaming services and are encouraged to develop policies that foster competitive roaming prices for the benefit of end users.*** |
| **Comment:** §§ 4.4 – 4.7 in the 2012 ITRs introduce new obligations for Member States and authorized operating agencies, respectively, arising from the development of the telecommunication sector and the introduction of new types of international telecommunication service. |
| ARTICLE 5 Safety of Life and Priority of Telecommunications§§ 5.1 – 5.3 refer to administrations or private operating agencies. | ARTICLE 5Safety of life and priority of telecommunications§§ 5.1 – 5.3 have been updated with regard to the entities to which the ITRs and other ITU texts apply. |
|  | **48  *5.4 Member States should encourage authorized operating agencies to inform all users, including roaming users, in good time and free of charge, of the number to be used for calls to the emergency services.*** |
| **Comment**: § 5.4 introduces new obligations for Member States and authorized operating agencies, respectively, arising from the introduction of new types of international telecommunication services. |
| No analogous article. | ARTICLE 6Security and robustness of networks***49  6.1 Member States shall individually and collectively endeavour to ensure the security and robustness of international telecommunication networks in order to achieve effective use thereof and avoidance of technical harm thereto, as well as the harmonious development of international telecommunication services offered to the public.*** |
| **Comment**: Requirements regarding security and robustness of networks, and the international cooperation to achieve this, are key factors in the successful development of telecommunications/ICTs and the general economy, taking into account the increasing role of telecommunications/ICTs in the modern world. |
| No analogous article. | ARTICLE 7Unsolicited bulk electronic communications**50** ***7.1 Member States should endeavour to take necessary measures to prevent the propagation of unsolicited bulk electronic communications and minimize its impact on international telecommunication services.******51  7.2 Member States are encouraged to cooperate in that sense.*** |
| **Comment:** Unsolicited bulk electronic communications create significant problems for telecommunication operators and users. The absence of any obligations under this article could, deliberately or unintentionally, be used to cause adverse impact on the viability of a communication network or on telecommunication services. |
| ARTICLE 6 Charging and AccountingNo analogous provision. | ARTICLE 8Charging and accounting**52  8.1** **International telecommunication arrangements****53  *8.1.1  Subject to applicable national law, the terms and conditions for international telecommunication service arrangements may be established through commercial agreements or through accounting-rate principles established pursuant to national regulation.******54  8.1.2  Member States shall endeavour to encourage investments in international telecommunication networks and promote competitive wholesale pricing for traffic carried on such telecommunication networks.*** |
| 42  6.1 *Collection charges*43  6.1.1 Each administration[[5]](#footnote-5) shall, subject to applicable national law, establish the charges to be collected from its customers. The level of the charges is a national matter; however, in establishing these charges, administrations\* should try to avoid too great a dissymmetry between the charges applicable in each direction of the same relation.44  6.1.2 The charge levied by an administration\* on customers for a particular communication should in principle be the same in a given relation, regardless of the route chosen by that administration\*. | **61*****Collection charges*****62  8.2.5**The charges levied on customers for a particular communication should in principle be the same in a given relation, regardless of the international route used for that communication. In establishing these charges, Member States should try to avoid dissymmetry between the charges applicable in each direction of the same relation. |
| 45  6.1.3 Where, in accordance with the national law of a country, a fiscal tax is levied on collection charges for international telecommunication services, this tax shall normally be collected only in respect of international services billed to customers in that country, unless other arrangements are made to meet special circumstances. | **63  8.3 Taxation****64**8.3.1 Where, in accordance with the national law of a country, a fiscal tax is levied on collection charges for international telecommunication services, this tax shall normally be collected only in respect of international services billed to customers in that country, unless other arrangements are made to meet special circumstances. |
| **Comment**: The provision on taxation has been allocated to a separate § 8.3 of this article in the 2012 ITRs, with the aim of preventing double taxation and thereby helping to lower prices for telecommunication services for consumers. |
| 46  6.2 *Accounting rate*47  6.2.1  For each applicable service in a given relation, administrations[[6]](#footnote-6) shall by mutual agreement establish and revise accounting rates to be applied between them, in accordance with the provisions of Appendix 1 and taking into account relevant CCITT Recommendations and relevant cost trends. | **55  8.2 Accounting-rate principles** **56 *Terms and conditions*****57**8.2.1 The following provisions may apply where the terms and conditions of international telecommunication service arrangements are established through accounting-rate principles, established pursuant to national regulation. These provisions do not apply to arrangements established through commercial agreements.**58**8.2.2 For each applicable service in a given relation, authorized operating agencies shall, by mutual agreement, establish and revise accounting rates to be applied between them, in accordance with the provisions of Appendix 1 and taking into account the relevant ITU-T Recommendations.**59**8.2.3 Unless otherwise agreed, parties engaged in the provision of international telecommunication services shall follow the relevant provisions as set out in Appendices 1 and 2. |
| **48**  6.3  Monetary unit**49**  6.3.1  In the absence of special arrangements concluded between administrations\*, the monetary unit to be used in the composition of accounting rates for international telecommunication services and in the establishment of international accounts shall be:– either the monetary unit of the International Monetary Fund (IMF), currently the Special Drawing Right (SDR), as defined by that organization;– *or the gold franc, equivalent to 1/3.061 SDR.50***50** 6.3.2 In accordance with relevant provisions of the International Telecommunication Convention, this provision shall not affect the possibility open to administrations\* of establishing bilateral arrangements for mutually acceptable coefficients between the monetary unit of the IMP and the gold franc. | **60**  8.2.4 In the absence of special arrangements concluded between authorized operating agencies, the monetary unit to be used in the composition of accounting rates for international telecommunication services and in the establishment of international accounts shall be:– either the monetary unit of the International Monetary Fund (IMF), currently the Special Drawing Right (SDR), as defined by that organization;– *or freely convertible currencies or other monetary unit agreed between the authorized operating agencies.*… |
| **Comment**: No. 60 (8.2.4) of the 2012 ITRs, which in the 1988 ITRs contained a reference to the “gold franc”, is outdated, while No. 60 (8.2.4) of the 2012 ITRs fully reflects the flexible practical approach used in the modern world. |
| 51  6.4 *Establishment of accounts and settlement of balances of account*52  6.4.1 Unless otherwise agreed, administrations\* shall follow the relevant provisions as set out in Appendices 1 and 2. | *No. 8.2.3 above* |
| 53  6.5 *Service and privilege telecommunications*54  6.5.1 Administrations[[7]](#footnote-7) shall follow the relevant provisions as set out in Appendix 3. | **65  8.4 Service telecommunications****66**8.4.1 Authorized operating agencies may in principle forego the inclusion of service telecommunications in international accounting, under the relevant provisions of the Constitution and the Convention and these Regulations, having due regard for the need for reciprocal arrangements. Authorized operating agencies may provide service telecommunications free of charge.**67**8.4.2 The general operational, charging and accounting principles applicable to service telecommunications should take account of the relevant ITU-T Recommendations. |
| **Comment**: The provisions of Appendix 3 of the 1988 ITRs were incorporated directly in the text of the 2012 ITRs. |
| ARTICLE 7Suspension of Services55  7.1 If a Member exercises its right in accordance with the Convention to suspend international telecommunication services partially or totally, that Member shall immediately notify the Secretary-General of the suspension and of the subsequent return to normal conditions by the most appropriate means of communication.56  7.2 The Secretary-General shall immediately bring such information to the attention of all other Members, using the most appropriate means of communication. | ARTICLE 9Suspension of services**68**9.1 If a Member State exercises its right in accordance with the Constitution and the Convention to suspend international telecommunication services partially or totally, that Member State shall immediately notify the Secretary-General of the suspension and of the subsequent return to normal conditions by the most appropriate means of communication.**69**9.2 The Secretary-General shall immediately bring such information to the attention of all other Member States, using the most appropriate means of communication. |
| ARTICLE 8Dissemination of Information | ARTICLE 10Dissemination of information***Comment:*** *The article has been updated but not fundamentally changed.* |
| No analogous article. | ARTICLE 11Energy efficiency/e-waste**71**  ***11.1 Member States are encouraged to adopt energy efficiency and e-waste best practices taking into account the relevant ITU-T Recommendations.*** |
| **Comment:** Article 12 of the 2012 ITRs reflects the widely recognized requirements of the UN and of many other international organizations and the legislation of ITU Member States concerning environmental protection. ITU-T brought together considerable experience and adopted a number of L-series Recommendations on issues of energy efficiency, e-waste and other questions pertaining to the environment. |
| No analogous article. | ARTICLE 12Accessibility**72** ***12.1*** ***Member States should promote access for persons with disabilities to international telecommunication services, taking into account the relevant ITU-T Recommendations.*** |
| **Comment**: Article 12 of the 2012 ITRs reflects the widely recognized requirements of the UN and of many other international organizations and the legislation of ITU Member States concerning the promotion of access to telecommunications for persons with disabilities, and includes a reference to Recommendations that reflect specific approaches to meeting those needs. |
| ARTICLE 9Special Arrangements**58**  9.1  *a)*  *Pursuant to Article 31 of the International Telecommunication Convention (Nairobi, 1982)*, special arrangements may be entered into on telecommunication matters which do not concern Members in general. Subject to national laws, *Members may allow administrations*\* or other organizations or persons to enter into such special mutual arrangements with *Members, administration*\* or other organizations or persons that are so allowed in another country for the establishment, operation, and use of special telecommunication networks, systems and services, in order to meet specialized international telecommunication needs within and/or between the territories of the Members concerned, and including, as necessary, those financial, technical, or operating conditions to be observed. | ARTICLE 13Special arrangements**73**  13.1   *a)*  *Pursuant to Article 42 of the Constitution*, special arrangements may be entered into on telecommunication matters which do not concern Member States in general. Subject to national laws, *Member States may allow authorized operating agencies* or other organizations or persons to enter into such special mutual arrangements with *Member States and authorized operating agencies*, or other organizations or persons that are so allowed in another country for the establishment, operation and use of special international telecommunication networks, systems and services, in order to meet specialized international telecommunication needs within and/or between the territories of the Member States concerned, and including, as necessary, the financial, technical or operating conditions to be observed. |
| **Comment**: See Comment on No. 2/1.1 a) of the 1988 ITRs and No. 5 b) of the 2012 ITRs. |
| ARTICLE 10Final Provisions61  10.1 These Regulations, of which Appendices 1, 2 and 3 form integral parts, shall enter into force on 1 July 1990 at 0001 hours UTC.62  10.2 On the date specified in No. 61, the Telegraph Regulations (Geneva, 1973) and the Telephone Regulations (Geneva, 1973) shall be replaced by these International Telecommunication Regulations (Melbourne, 1988) pursuant to the International Telecommunication Convention.63  10.3 If a Member makes reservations with regard to the application of one or more of the provisions of these Regulations, other Members and their administrations shall be free to disregard the said provision or provisions in their relations with the Member which has made such reservations and its administrations[[8]](#footnote-8).64  10.4 Members of the Union shall inform the Secretary-General of their approval of the International Telecommunication Regulations adopted by the Conference. The Secretary-General shall inform Members promptly of the receipt of such notifications of approval. | ARTICLE 14 Final provisions**76**  14.1 These Regulations, of which Appendices 1 and 2 form integral parts, shall enter into force on 1 January 2015, and shall be applied as of that date, consistent with all the provisions of Article 54 of the Constitution.**77**14.2 If a Member State makes reservations with regard to the application of one or more of the provisions of these Regulations, other Member States shall be free to disregard the said provision or provisions in their relations with the Member State which has made such reservations.  |
| **Comment**: Updating of outdated provisions. |

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[ANNEX 2]

[Some members supported the inclusion - as an Annex to the Final Report of EG-ITRs to Council 2018 - of a table with texts of both 1988 and 2012 ITRs that illustrate differences between the two versions of ITRs and may help in further discussion on potential conflicts with respect to implementation of provisions of the 1988 and the 2012 ITRs.

Some members did not support the inclusion of such a table as an Annex, and did not see any conflict between the existence of two sets of ITRs. They stated that differences between the two versions of the treaty does not inevitably lead to conflicts in their implementation.

Note: The differences between the ITRs were examined. Without outlining minor or cosmetic differences resulting from change of terminology at ITU and changes in technology, the major differences are reflected in the table below:

|  |  |  |
| --- | --- | --- |
|  | **1988 TREATY** | **2012 TREATY** |
| Recognition of Human Rights | There is no reference to Human rights or the right of member States to access International Telecommunication services. | Introduced affirmation by member states to apply the regulations in a manner that upholds human rights. Also introduced recognition of member states ‘right to international Telecommunications |
| Reference to ITU constitution | Only refers to the ITU convention as the document complemented | Includes the constitution of the international Telecommunications as one of the documents complimented by the ITR |
| Content | No reference to content of communications | Specifically indicates that the ITRs do not address issues of content |
| Shift in responsibility from member states to operationalise agencies | Provision of service and most obligations were reflected as the responsibility of administrations. For example, Member States were responsible for determining international routes , maintaining quality of service and providing information to the ITU Secretary General | Actual provision of services and most network related responsibilities are now the responsibility of mainly the authorised operating agencies not Administrations now referred to as Member States. Operating agencies can also now provide information directly to the ITU Secretary General |
| Enforceability of member states obligations | Member state obligations were couched in a mandatory tone which made them easily enforceable , for example, Member states had to ensure cooperation within the framework of the regulations, and maintain quality of service | Member states only have to endeavour to carry out their obligations or to foster measures. Endeavour being synonymous with the word ,”try” certainly makes those obligations difficult to enforce |
| Energy efficiency and E-waste | Not provided for. Energy shortages were not a problem at the time. | Member States to adopt Energy Efficiency and E-Waste best practices. |
|  | Not provided for  | Member States to promote access to international telecommunication services by persons with disabilities |
| Security | Silent on security | Member States were given the responsibility to ensure Security and robustness of networks |
| Bulk transmissions | Silent on bulk transmissions, as the problem did not exist in 1988 | Member States given responsibility to take measures to prevent transmission of BULK electronic communications |
|  | Silent on this as the problem did not exist in 1988 | Member States given the task to deal with roaming issues and prevent inadvertent roaming. |
|  | Silent on numbering resources | Member States given the responsibility to manage the use of numbering resources as well as the creation of regional traffic exchange points to increase quality, connectivity, resilience |

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1. Henceforth in this document, ‘members’ refers to members of EG-ITRs i.e. Member States and Sector Members (including operators). In some cases, Member States or operators may be listed separately for additional specificity. [↑](#footnote-ref-1)
2. or recognized private operating agency(ies). [↑](#footnote-ref-2)
3. or recognized private operating agency(ies). [↑](#footnote-ref-3)
4. or recognized private operating agency(ies). [↑](#footnote-ref-4)
5. or recognized private operating agency(ies). [↑](#footnote-ref-5)
6. or recognized private operating agency(ies). [↑](#footnote-ref-6)
7. or recognized private operating agency(ies). [↑](#footnote-ref-7)
8. or recognized private operating agency(ies). [↑](#footnote-ref-8)