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|  | **Document EG-ITRs-2/12** |
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| **English only** |
| Contribution from the Czech Republic, Germany (Federal Republic of), Bulgaria (Republic of), Croatia (Republic of), Denmark, Spain, Hungary, Latvia (Republic of), Netherlands (Kingdom of the), Poland (Republic of), Portugal, Slovak Republic, Romania, United Kingdom of Great Britain and Northern Ireland, and Sweden |
| FINDINGS OF THE PREVIOUS TWO EXPERT GROUPS |
| **Purpose**This contribution considers the findings of the previous two Expert Groups on the International Telecommunication Regulations and what they can contribute to the work of the third Expert Group. **Action required**The document is submitted to second meeting of the EG-ITRs for **discussion** and to be **reflected in the progress report to Council**.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**References** *Council Resolution 1379 (MOD 2023) (document* [*C23/121*](https://www.itu.int/md/S23-CL-C-0121/en)*);* [*Final Report Expert Group (2016 – 2018)*](https://www.itu.int/md/S18-CL-C-0026/en)*;* [*Final Report Expert Group (2019 – 2022)*](https://www.itu.int/md/S22-PP-C-0035/en)*;* [*EG-ITRs-4/7*](https://www.itu.int/md/S18-CLEGITR4-C-0007/en)*;* [*EG-ITRs-2/6*](https://www.itu.int/md/S20-EGITR2-C-0006/en) |

**Taking into consideration the work of the previous two Expert Groups**

**Background**

1. The Terms of Reference of this Expert Group, set out in Council Resolution 1379, say that we should be “Taking into consideration the work of the previous two Expert Groups”. The previous two Expert Groups undertook a very wide range of work, including a detailed provision-by-provision analysis, and held comprehensive discussions, with contributions from across the ITU.
2. We believe it is important to make full use of the findings from the previous two Expert Groups so we can use this knowledge and further our understanding. This contribution considers the work of the previous two Expert Groups and highlights relevant areas for this current review to take into consideration.

**The first Expert Group (2016 – 2018)**

1. The first Expert Group met between 2016 – 2018. Its Terms of Reference are set out at [Annex A](#AnnexA). It agreed a final report which showed that:
* there were two sets of divergent views on the applicability of the 2012 ITRs in a rapidly evolving international telecommunication environment,
* the Group did not find any examples of any issues or “real-world” difficulties that have arisen from differences between the 2012 and the 1988 texts,
* the Group found that there could not be a conflict between the 2012 and 1988 texts because the Vienna Convention would always make it clear which provisions apply,
* the Group heard that a very large proportion of operators no longer use the ITRs and instead rely on commercial arrangements.
1. We would draw attention in particular to contribution EG-ITRs-4/7-E from Bell Mobility (Canada); KDDI, NTT DOCOMO Inc. (Japan); BT (United Kingdom); AT&T, Verizon (United States of America). This contribution stated:
* “Together, our companies exchange traffic with other operators to provide international telecommunication services to more than 220 UN recognized countries and territories. Based on our collective operational experience, the ITRs are no longer applicable to or relevant in today’s highly competitive international telecommunications market. Rather, our companies exchange virtually all international traffic globally through commercially-negotiated agreements; any traffic settled under the ITRs is negligible.”
* “The continued successful deployment and use of telecommunication infrastructure and services worldwide is mostly realized through policy frameworks that support ongoing innovation, market-based competition and private sector investment, and not through a treaty instrument.”

This is particularly relevant as the Terms of Reference of our current review say that we should consider “empirical data on the current use of the ITRs by operating agencies and/or administrations and the proportion of global telecommunication services which now rely on the ITRs”. Some members of the first Expert Group noted that according to their knowledge less than 1 % of global traffic flows continued to rely on the ITR-based accounting rate regime.

**The second Expert Group (2019 – 2022)**

1. The second Expert Group met between 2019 – 2022. Its Terms of Reference are also set out at Annex A. The Group undertook a wide-ranging and comprehensive review, including around 40 contributions from Member States and Sector Members from all ITU regions. It produced an extensive report of 212 pages, including a detailed provision-by-provision examination of the ITRs.
2. The Group found that there was still a range of views on the ITRs:
	* Some members were of the opinion that the provisions continue to be relevant as they are applicable in fostering the provision and development of networks and services and flexible to accommodate new trends and emerging issues.
	* Some members were of the opinion that the provisions of the ITRs are not relevant, as they are no longer applicable in fostering the provision and development of networks and services or flexible to accommodate new trends and emerging issues.

This divergence of views has remained consistent across the previous two Expert Groups.

**Conclusion**

1. The previous two Expert Groups covered a wide range of issues and a range of inputs. These included legal analysis, considering new trends and emerging technology, the views of the directors of the Bureaux, contributions from private sector operators and the diverse views of Member States. We should now take work into our consideration, as set out in our Terms of Reference, and include these findings in the report of the Group.

**ANNEX A**

**Terms of Reference of the First Expert Group**

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 examination 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.

**Terms of Reference of the Second Expert Group**

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 comprehensive review of the ITRs.

2 The EG-ITRs shall undertake a provision-by-provision examination of the ITRs, focusing on the 2012 ITRs, taking into account new trends in telecommunications/ICT and emerging issues in international telecommunications/ICT environment.

3 The review should include, among others:

a) applicability of the provisions of the ITRs in fostering the provision and development of international telecommunication/ICT services and networks;

b) flexibility of, or lack thereof, the provisions of the ITRs to accommodate new trends in telecommunications/ICT and emerging issues in international telecommunications/ICT environment;

4 The EG-ITRs will present a progress report reflecting all views on the ITRs review to Council 2020 and Council 2021, and a final report to Council 2022 for examination and submission to the 2022 Plenipotentiary Conference with the Council’s comments.