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|  | **Document EG-ITRs-4/2** |
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| **English only** |
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| Contribution by HILL |
| IMPORTANCE OF SPECIAL ARRANGEMENTS |
| **Purpose**This contribution discusses the importance of the Special Arrangements article of the ITRs.**Action required**The Expert Group on the International Telecommunication Regulations is invited to **consider** this document.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**References***Council* [*Resolution 1379*](https://www.itu.int/md/S23-CL-C-0121/en) *(Terms of Reference); Documents* [*EG-ITRs-2/19*](https://www.itu.int/md/S24-EGITRS2-C-0019/en)*,* [*EG-ITRs-3/2*](https://www.itu.int/md/S24-EGITRS3-C-0002/en)*, and* [*EG-ITRs-3/7*](https://www.itu.int/md/S24-EGITRS3-C-0007/en) |

Summary

Some contributions have stated that operators do not use the ITRs. Indeed most operators do not explicitly refer to the ITRs in their commercial contracts, however they rely on the ITRs in order to avoid having to use the accounting rate system. Transparency would be improved if all Member States could agree to the provisions of Article 8 of the 2012 ITRs.

Background

1 It has been stated that operators do not use the ITRs (see, for example, Documents [EG‑ITRs-2/19](https://www.itu.int/md/S24-EGITRS2-C-0019/en) and [EG-ITRs-3/7](https://www.itu.int/md/S24-EGITRS3-C-0007/en)).

2 As stated in our contribution [EG-ITRs-3/2](https://www.itu.int/md/S24-EGITRS3-C-0002/en):

1.8 While most international telecommunication services no longer use the accounting rates of Article 6 of the 1988 ITRs, Internet traffic is enabled by the Special Arrangements of Article 9 of the 1988 ITRs[[1]](#footnote-1). Indeed, the 2012 ITRs recognize the fact, in their Article 8, that accounting rates are no longer prevalent, however Special [Arrangements] were retained as Article 13, in order to ensure that Internet traffic would not be disrupted.

1.9 Requests for empirical data on the current use of the ITRs by operating agencies will inevitably result in replies to the effect that the ITRs are not used by operating agencies, because, in the current environment, operating agencies are mostly private companies and thus not directly bound by the ITRs, which are a treaty. While some provisions of the ITRs might be transposed to national law, operating agencies have no reason to know that they are indirectly affected by the ITRs.

1.10 Requests for empirical data on the current use of the ITRs by administrations and the proportion of global telecommunication services which now rely on the ITRs should result in replies to the effect that essentially all international Internet traffic is enabled by the Special Arrangements provision of the ITRs.

3 Indeed Article 6 of the ITU Constitution states:

1 The Member States are bound to abide by the provisions of this Constitution, the Convention and the Administrative Regulations in all telecommunication offices and stations established or operated by them which engage in international services or which are capable of causing harmful interference to radio services of other countries, except in regard to services exempted from these obligations in accordance with the provisions of Article 48 of this Constitution.

2 The Member States are also bound to take the necessary steps to impose the observance of the provisions of this Constitution, the Convention and the Administrative Regulations upon operating agencies authorized by them to establish and operate telecommunications and which engage in international services or which operate stations capable of causing harmful interference to the radio services of other countries.

4 Article 6 of the 1988 ITRs states:

6.2.1 For each applicable service in a given relation, administrations [or private recognized 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 relevant CCITT Recommendations and relevant cost trends.

5 Since all ITU Member States are bound by the 1988 ITRs, they are all bound by the provision cited above.

6 In some countries, some operators are considered private recognized operating agencies. Thus, Member States are bound by the ITU Constitution to take the necessary steps to impose the observance of the cited provision of Article 6 on such operators. That is, such operators would have to use the accounting rate system.

7 Information on Recognized Operating Agencies (which is the term currently used for “private recognized operating agencies”) can be found at:
<https://www.itu.int/en/ITU-T/inr/Pages/roa.aspx>.

8 The list, by country, of Recognized Operating Agencies is at:
<https://www.itu.int/oth/T0204>.

It can be seen from this list that some operators in Bulgaria, Czech Republic, Croatia, Denmark, France, Germany, Italy, Netherlands, Portugal, Romania, Sweden, United Kingdom, and United States (among other countries) are Recognized Operating Agencies. It appears that, in some countries, most (if not all) operators are considered to be Recognized Operating Agencies.

9 As noted above, such operators would, pursuant to Article 6 of the 1988 ITRs, have to use the accounting rate system. However, Article 9 of the 1988 ITRs states:

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 private recognized operating agencies] or other organizations or persons to enter into such special mutual agreements with Members, administrations [or private recognized operating agencies] 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.

10 Thus, pursuant to the cited Article 9, Member States may agree to waive the requirement to impose use of the accounting rate system.

11 And indeed, this is now the prevailing practice, and it was recognized and enshrined in Article 8 of the 2012 ITRs, which states:

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.

12 However, not all ITU Member States have adopted the 2012 ITRs.

13 So, the Member States that have not adopted the 2012 ITRs do rely on the Special Arrangements provision (Article 9 of the 1988 ITRs) in order to avoid having to impose the accounting rate system on certain operators (recognized private operating agencies).

14 Thus, some operators in those Members States implicitly use the 1988 ITRs in order to avoid having to use the accounting rate system.

Proposal

15 Transparency would be improved if all Member States could agree to a new version of the ITRs that contains the language of Article 8 of the 2012 ITRs.

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1. Hill, Richard (2013), *The New International Telecommunications Regulations and the Internet: A Commentary and Legislative History*,Schulthess/Springer, p. 8. [↑](#footnote-ref-1)