|  |  |
| --- | --- |
| **Expert Group on the International Telecommunication Regulations (EG-ITRs)** |  |
| **Third meeting – Virtual meeting, 17-18 September 2020** |  |
|  |  |
|  | **Document EG-ITRs-3\11-E** |
|  | **7 September 2020** |
|  | **Original: English** |
| Netherlands | |
| Provision-by-provision examination of the ITRs | |

**Introduction**

The Netherlands is pleased to offer to the Expert Group on the ITRs its view on the Articles 5 to 8 and Appendix 1 of the ITRs, in accordance with the Terms of Reference and the draft Agenda of the third meeting of the EG-ITRs.

**Discussion**

We are of the view that the provisions in the 2012 ITR do not support a competitive market where operators plan and forecast their own national and international traffic and services. In that sense the ITRs are incompatible with a competitive market and regulatory environment, as these are developing, as are the technological advances. Revising the 2012 ITRs to address these developments will not lead to the support of these developments but will limit it.

The telecommunication/ICT landscape has experienced fundamental changes. Although many provisions were well intended in the past and have served their purpose in the former monopoly approach based telecommunications environment, the provisions as part of a Treaty instrument are not suitable to accommodate the changing market environment and, when strictly enforced, may deter the introduction of new services essential to improving affordability and consumer choice.

We are of the view that the benefits of telecommunication/ICTs experienced by countries worldwide is not based on just the 2012 ITRs, but during the past years more and more based on the open and dynamic telecommunications market.

**Summary**

Given the dynamic, competitive nature of the communications market, and the fact that the telecommunications/ICT sector is increasingly being integrated into the broader digital economy, it is unclear how an inflexible treaty instrument such as the ITRs can play a positive role in promoting future growth and prosperity in the international telecommunication marketplace.

We are not convinced that new treaty-level provisions will help any country build an enabling environment to attract investment and bridge a digital divide where this still exists.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **2012 Article** | **Sub article and Provision** | **Related 1988 sub article and provision** | **Applicability in fostering provision and development of networks and services** | **Flexibility to accommodate New trends and Emergent issues** | **Summary Outcome** |
|  | **Article 5 : Safety of life and priority of telecommunications** |  |  |  |  |
| 5.1 | Safety-of-life telecommunications, such as distress telecommunications, shall be entitled to transmission as of right and, where technically practicable, have absolute priority over all other telecommunications, in accordance with the relevant articles of the Constitution and the Convention and taking due account of the relevant ITU-T Recommendations. |  | This provision is applicable to any network or service.  Already addressed by Article 40 of the Constitution. | This provision is partly flexible, since it does not support emerging future communication channels |  |
| 5.2 | Government telecommunications, including telecommunications relative to the application of certain provisions of the United Nations Charter, shall, where technically practicable, enjoy priority over telecommunications other than those referred to in No. 45 (5.1) above, in accordance with the relevant provisions of the Constitution and the Convention and taking due account of the relevant ITU-T Recommendations. |  | This provision is superfluous since Government telecommunications are more and more subject to traffic management in modern telecommunications network technology. | This provision is superfluous since Government telecommunications are more and more subject to traffic management in modern telecommunications network technology. |  |
| 5.3 | The provisions governing the priority enjoyed by any other telecommunication services are contained in the relevant ITU-T Recommendations. |  | This provision is superfluous since ITU-T Recommendations are the default | This provision is superfluous since ITU-T Recommendations are the default |  |
| 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. |  | This provision is based on existing network technology, so not applicable to future networks and services which might consist of different processes to contact emergency services | This provision is not flexible in the sense that emerging trends in networks and services might lead to other processes to contact emergency services. |  |
|  | **Article 6 : Security and robustness of networks** |  |  |  |  |
| 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. |  | This is not applicable because “Member States shall endeavour to ensure” is unenforceable.  It is unclear how Member States should ensure this, as operation of telecommunication networks in the modern telecommunications market is mostly the responsibility of the private sector. | Security and robustness of international telecommunication networks are in modern telecommunications market implemented mostly by private sector, and will develop with developments of the networks and services |  |
|  | **Article 7 : Unsolicited bulk electronic communications** |  |  |  |  |
| 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. |  | The provision is related to the taking of measures on a national level, so should not be included in an international treaty. | The phenomenon of unsolicited bulk electronic communications is developing fast, along with the telecommunications market and services. What kind of measures are deemed necessary and should be taken by whom will change over time. So this provision might not support this change. |  |
| 7.2 | Member States are encouraged to cooperate in that sense. |  | This provision is superfluous, since Member States are already working according to the intentions of the ITU mission. | The question of “flexibility” is irrelevant here because this provision simply states very high-level intentions. |  |
|  | **Article 8 : Charging and accounting** |  |  |  |  |
|  | **8.1 International telecommunication arrangements** |  |  |  |  |
| 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. |  | This is a matter for mutual agreement between operating agencies. It is not necessary to have an intergovernmental treaty to state this.  In addition, this provision is irrelevant in an international treaty as it is “subject to national law”. | In the modern telecommunications market, agreements are primarily made between private sector companies.  In addition, this provision is irrelevant in an international treaty as it is “subject to national law”. |  |
| 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. |  | This provision is not applicable in a modern telecommunications market, where investments are decided upon and made by private companies, which will lead to competitive wholesales. | In the modern telecommunications environment, new trends and emergent issues regarding networks are managed directly through mutual agreements between operating agencies. |  |
|  | **8.2 Accounting-rate principles** |  |  |  |  |
| 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 |  | This provision is very limited applicable, since it does not cover commercial agreements which are the majority of agreements in modern telecommunications environment.  In addition, this provision is irrelevant in an international treaty as it is “pursuant to national regulation”. | This provision is not flexible since it does not cover commercial agreements which are the majority of agreements in modern telecommunications environment.  In addition, this provision is irrelevant in an international treaty as it is “pursuant to national regulation”. |  |
| 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. |  | This provision is very limited applicable, since it does not cover commercial agreements which are the majority of agreements in modern telecommunications environment. | This provision is not flexible, since it does not cover commercial agreements which are the majority of agreements in modern telecommunications environment. |  |
| 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 |  | This provision is very limited applicable, since it does not cover commercial agreements which are the majority of agreements in modern telecommunications environment. | This provision is not flexible, since it does not cover commercial agreements which are the majority of agreements in modern telecommunications environment. |  |
| 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. |  | This provision is very limited applicable, since it does not cover commercial agreements which are the majority of agreements in modern telecommunications environment. | This provision is not flexible, since it does not cover commercial agreements which are the majority of agreements in modern telecommunications environment. |  |
| 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. |  | This provision is very limited applicable, since it does not cover commercial agreements which are the majority of agreements in modern telecommunications environment. | This provision is not flexible, since it does not cover commercial agreements which are the majority of agreements in modern telecommunications environment. |  |
|  | **8.3 Taxation** |  |  |  |  |
| 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. |  | This provision is not applicable, because since development od telecommunications environment it is unclear if an issue like special circumstances will exist in the future. | This provision is not flexible since the development of the telecommunications is unpredictable and therefor it is unclear what could be understood by special circumstances in the future. |  |
|  | **8.4 Service telecommunications** |  |  |  |  |
| 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. |  | This provision addresses actions an agency “may” perform, and therefore should not be included in a Treaty. | This provision addresses actions an agency “may” perform, and therefore unclear with regard to flexibility to accommodate New trends and Emergent issues. |  |
| 8.4.2 | The general operational, charging and accounting principles applicable to service telecommunications should take account of the relevant ITU-T Recommendations. |  | This provision is quite general and therefore always applicable. | This provision is not flexible. It is not clear how to comply with this provision because there are unlikely to be Recommendations for the newest trends and issues. |  |

Our views on Appendix 1 are already covered by the analysis of Articles 5 to 8, therefore it is not included again to avoid duplication.