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| **Expert Group on the International Telecommunication Regulations (EG-ITRs)** |  |
| **Fourth meeting – Virtual meeting, 3-4 February 2021** |  |
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|  | **Document EG-ITRs-4\4-E** |
|  | **18 January 2021** |
|  | **Original: English** |
| The Netherlands | |
| PROVISION-BY-PROVISION EXAMINATION OF THE ITRS | |
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**Introduction**

The Netherlands is pleased to offer to the Expert Group on the ITRs its view on the Articles 9 to 14 and Appendix 2 of the ITRs, in accordance with the Terms of Reference and the draft Agenda of the fourth meeting of the EG-ITRs.

**Discussion**

We are of the view that the provisions in the 2012 ITRs 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, in the view of The Netherlands, not lead to the support of these developments but will limit it.

The telecommunication/ICT landscape has experienced fundamental changes. Although many provisions in the ITRs were applicable 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 increasing benefits of telecommunication/ICTs experienced during the past years are more and more a result from 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 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.

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| **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** |
|  | **Suspension of services** | **Article 7: Suspension of Services** |  |  |  |
| 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. | 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. | This provision does not support provisioning of networks and services any more since the provisioning has moved from member state level to private companies level. The provision is superfluous | The provision does not serve benefits for accommodating new trends, since these trends and issues are being developed from private sector initiatives. An obligation to notify suspension of services has therefor become outdated, and not needed any more. |  |
| 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. | 7.2 The Secretary-General shall immediately bring such information to the attention of all other Members, using the most appropriate means of communication. | In line with provision 9.1 being superfluous, this obligation for the SG is also superfluous. Discontinuation of a service is primarily an action by providers of the services ate sector. | In line with provision 9.1 being not needed any more, this obligation for the SG is also superfluous. Discontinuation of a service related to a new trend or emerging issue is primarily an action by providers of the services ate sector. |  |
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|  | **Dissemination of information** | **Article 8: Dissemination of Information** |  |  |  |
| 10.1 | Using the most suitable and economical means, the Secretary-General shall disseminate information provided, of an administrative, operational, or statistical nature, concerning international telecommunication services. Such information shall be disseminated in accordance with the relevant provisions of the Constitution and the Convention and of this Article, on the basis of decisions taken by the Council or by competent ITU conferences, and taking account of conclusions or decisions of ITU assemblies. If so authorized by the Member State concerned, the information may be transmitted to the Secretary-General directly by an authorized operating agency, and shall then be disseminated by the Secretary-General. Member States should transmit such information to the Secretary-General in a timely manner, taking into account the relevant ITU-T Recommendations. | 8.1 Using the most suitable and economical means, the Secretary-General shall  disseminate information, provided by administrations\*, of an administrative, operational, tariff or statistical nature concerning international telecommunication routes  and services. Such information shall be disseminated in accordance with the relevant  provisions of the Convention and of this Article, on the basis of decisions taken by the  Administrative Council or by competent administrative conferences, and taking  account of conclusions or decisions of Plenary Assemblies of the International  Consultative Committees. | This provision does not help in fostering provision and development of networks and services; it also should not be set on an treaty level, since it is an element of the role of ITU to share and disseminate information between all members. | This provision does not help in provide flexibility in accommodating new trends and emergent issues; it also should not be set on an treaty level, since it is an element of the role of ITU to share and disseminate information between all members. |  |
|  | **Energy efficiency/e-waste** |  |  |  |  |
| 11.1 | Member States are encouraged to adopt energy-efficiency and e-waste best practices taking into account the relevant ITU-T Recommendations. |  | This provision is not necessary since the issue is covered in the Basel Convention. | This provision is not necessary since the issue is covered in the Basel Convention. |  |
|  | **Accessibility** |  |  |  |  |
| 12.1 | Member States should promote access for persons with disabilities to international telecommunication services, taking into account the relevant ITU-T Recommendations. |  | Access for persons with disabilities is an important issue, but the mere promoting of access should not be a provision in a telecommunications treaty, since this issue is part of change in societal and cultural environments and frameworks. The issue should be addressed on a higher level to be able to foster the provision and development of networks and services. | Access for persons with disabilities is an important issue, but the mere promoting of access should not be a provision in a telecommunications treaty, but on a higher level to be able to accommodate new trends and emergent issues.  The provision does not provide the needed flexibility.  . |  |
|  | **Special arrangements** | **Article 9: Special Arrangements** |  |  |  |
| 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.  b) Any such special arrangements shall endeavour to avoid technical harm to the operation of the telecommunication facilities of third countries. | 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, administrations\* 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.  b) Any such special arrangements should avoid technical harm to the operation  of the telecommunication facilities of third countries. | This provision intends to set out a procedure for specific non-regular, and unforeseen, issues that might come into play between Member States and which are not covered by the Treaty.  Since this covers dedicated specific issues it does not facilitate the provision and development of networks and services. | This provision intends to set out a procedure for specific non-regular, and unforeseen, issues that might come into play between Member States and which are not covered by the Treaty.  Since this covers dedicated specific issues it is not relevant with regard to providing flexibility in accommodating new trends and emergent issues. |  |
| 13.2 | Member States should, where appropriate, encourage the parties to any special arrangements that are made pursuant to No. 73 (13.1) above to take into account relevant provisions of ITU-T Recommendations. | 9.2 Members should, where appropriate, encourage the parties to any special  arrangements that are made pursuant to No. 58 to take into account relevant provisions of CCITT Recommendations. | The provision 13.1 intends to set out a procedure for specific non-regular, and unforeseen, issues that might come into play between Member States and which are not covered by the Treaty.  Since provision 13.2 sets a working process related to provision 13.1, this provision also does not facilitate the provision and development of networks and services. | The provision 13.1 intends to set out a procedure for specific non-regular, and unforeseen, issues that might come into play between Member States and which are not covered by the Treaty.  Since provision 13.2 sets a working process related to provision 13.1, this provision it is not relevant with regard to providing flexibility in accommodating new trends and emergent issues. |  |
|  | **Final provisions** | **Article 10: Final Provisions** |  |  |  |
| 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. | 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.  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. | This provision addresses the entering into force is irrelevant to the provision and development of networks and services. | This provision addresses the entering into force and therefor is irrelevant to the provision of flexibility in accommodating new trends and emergent issues. |  |
| 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. | 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\*.  \* or recognized private operating agency(ies) | Since this provision allows Member States to make reservations on any provision of the Treaty, the effectiveness of the Treaty is weakened.  This provision therefore does not help in fostering the provision and development of networks and services. | Since this provision allows Member States to make reservations on any provision of the Treaty, the effectiveness the Treaty is weakened. This does not support flexibility when new trends or emerging issues arise. |  |
|  |  | 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. |  |  |  |

Our view on Appendix 2 is already covered by our general view and the analysis of the provisions, in particular Article 8, therefore it is not included again to avoid duplication.

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