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| **Plenipotentiary Conference (PP-22) Bucharest, 26 September – 14 October 2022** |  |
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| PLENARY MEETING | **Addendum 26 to Document 44-E** |
|  | **9 August 2022** |
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| Member States of the European Conference of Postal and Telecommunications Administrations (CEPT) | |
| ECP 29 - DRAFT NEW RESOLUTION [EUR-3]: | |
| INVOCATION OF ARTICLE 48 OF THE ITU CONSTITUTION IN RELATION TO THE RADIO REGULATIONS | |
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**Clarifications on the invocation of Article 48 of the ITU Constitution   
in relation to the Radio Regulations**

**Abstract**: Clarification in relation to the invocation of Article 48 of the ITU Constitution is necessary when such a filing contains frequency assignments that cover both military and non-military radio installations. This resolution calls on ITU to provide the high-level principles for the invocation of Article 48 of the ITU Constitution to the notifying administrations, sufficient guidance to the Radiocommunication Bureau in the application of the Radio Regulations in relation to Article 48 of the Constitution and request WRC-23 to develop necessary amendments to the Radio Regulations and guidance to the BR, as appropriate.

**Introduction**: Under the current practice, the ITU Radiocommunication Bureau (BR) does not conduct an investigation under RR No. 13.6 when Article 48 of the ITU Constitution has been invoked for a frequency assignment. The Plenipotentiary Conference 2022 (PP-22) could initiate the establishment of a process leading to clear guidance and instructions on the invocation of Article 48 of the ITU Constitution. The issue of Article 48 of the ITU Constitution was reported in the WRC-12 Report of the Director BR on the activities of the Radiocommunication Sector, where the issue is mentioned in relation to application of RR No. 13.6. The WRC-15 Report of the Director BR on the activities of the Radiocommunication Sector under the “Report of the activities of the Radio Regulations Board” contains reference to the application of Article 48 of the ITU Constitution. WRC-19 discussed again the issue of potential misuse of Article 48 of the ITU Constitution in the application of the satellite procedures of the ITU Radio Regulations. The WRC-19, in accordance with Article 21 of the ITU Convention (CV), invited PP-22 to consider the question of invocation of Article 48 of the ITU Constitution in relation to the Radio Regulations and take necessary actions, as appropriate. PP-22 is expected to provide guidance and instructions on this subject. The invocation of Article 48 of the ITU Constitution should be discussed for both satellite and terrestrial frequency assignments.

**Proposal**: CEPT is proposing a new Resolution on the invocation of Article 48 of the ITU Constitution in relation to the Radio Regulations (RR), when a filing contains (a) frequency assignment(s) that cover both military and non-military radio installations. CEPT is of the view that PP-22 should provide the high-level principles for the invocation of Article 48 of the ITU Constitution to the notifying administrations, and sufficient guidelines for WRC-23 to develop guidance to the BR in the application of the RR, in particular for the investigations under No. 13.6, in cases where CS Article 48 has been invoked. In the case modifications to the RR are needed, those should be discussed at WRC-23, so PP-22 should request WRC-23 to develop necessary amendments to the Radio Regulations and guidance to the BR, as appropriate, in order to have more transparency with regard to frequency assignments for which Article 48 of the ITU Constitution is invoked.

The CEPT aims with the proposed PP-22 Resolution to provide clarification in relation to the invocation of Article 48 of the ITU Constitution. It is to be understood that such clarification shall apply to both past and new invocations of Article 48 of the ITU Constitution.

ADD EUR/44A26/1

Draft New Resolution [EUR-3]

Invocation of Article 48 of the ITU Constitution in relation to the Radio Regulations

The Plenipotentiary Conference of the International Telecommunication Union (Bucharest, 2022),

recalling

*a)* Resolution 68/50 “Transparency and confidence-building measures in outer space activities” adopted by the United Nations General Assembly on 5 December 2013;

*b)* The report A/68/189 of the Group of Governmental Experts on Transparency and Confidence-Building Measures in Outer Space Activities transmitted to the Sixty-eighth session of the United Nations General Assembly;

*c)* that Member States retain their entire freedom with regard to military radio installations as defined in Article 48 of the ITU Constitution;

*d)* Article 48 of the ITU Constitution provides Member States their freedom with regard to military radio installations, reflecting a longstanding State practice with respect to the governance of international telecommunications,

noting

*a)* that ITU Member States invoke Article 48 of the ITU Constitution in relation to both satellite and terrestrial frequency assignments;

*b)* that the Article 48 of the ITU Constitution refers to military radio installations and not to stations used for governmental purposes in general,

considering

*a)* that ITU Member States rely on satellite technologies for a range of activities such as Earth exploration, telecommunications, navigation, etc.;

*b)* that reliable satellite applications are becoming an integral part of national and international infrastructures;

*c)* that users of satellite services as well as their providers have a legitimate expectation that those services which have been established in accordance with the Radio Regulations, will be able to operate without experiencing interference or disruption;

*d)* that, while recognising the sovereign right of each State over its telecommunication, the ITU is concerned with maintenance and extension of cooperation with regard to the use of telecommunication on the international plane;

*e)* that there is a need for additional guidance by the Union to ensure that a Member State which invokes Article 48 of the ITU Constitution for a frequency assignment is aware of the obligation to use such a frequency assignment only for military radio installations and to prevent invocation in other cases,

recognizing

*a)* Article 45 of the ITU Constitution on Harmful Interference;

*b)* Article 48 of the ITU Constitution on Installations for National Defence Services;

*c)* Article 6 of the ITU Constitution on Execution of the Instruments of the Union;

*d)* Section II Article 13 of the Radio Regulations on the Maintenance of the Master Register and of World Plans by the Bureau and especially No. 13.6;

*e)* Article 15 of the Radio Regulations on Interferences;

*f)* Article 44 of the ITU Constitution (No. 196) on the Use of the Radio-Frequency Spectrum and of the Geostationary-Satellite and Other Satellite Orbits;

*g)* Article 8 of the Radio Regulations on the Status of frequency assignments recorded in the Master International Frequency Register,

resolves

1 that the right of administrations to invoke Article 48 of the ITU Constitution shall not be restricted;

2 that a Member State which invokes Article 48 of the ITU Constitution for a frequency assignment retains its entire freedom only for military radio installations using this frequency assignment and undertakes obligations to use this frequency assignment exclusively for military radio installations;

3 that Member States shall use separate frequency assignments for military and non-military radio installations in case of dual use when Article 48 of the ITU Constitution has been invoked;

4 that whenever a Member State uses a frequency assignment for non-military radio installations no exception shall be made when applying RR No. **13.6** or/and other provisions of the Radio Regulations, and any international rights arising from the previous invocation of Article 48 of the ITU Constitution shall no longer be valid for such assignment;

5 that an invocation of Article 48 of the ITU Constitution cannot be revoked by the notifying administration;

6 that the sole invocation of Article 48 of the ITU Constitution by an ITU Member State does not grant international recognition and protection for any frequency assignment not recorded in the MIFR,

instructs WRC-23

1 pursuant to No. 119 of the ITU Convention, to include in its agenda, the consideration of the issue in detail and to develop the necessary amendments to the Radio Regulations and instructions to the RRB and BR, as appropriate, in order to have more transparency with regard to frequency assignments for which Article 48 of the ITU Constitution is invoked;

2 to consider the implementation of resolves 3 and develop any necessary regulatory provisions,

instructs the Secretary-General

to bring this resolution to the attention of WRC-23,

instructs the Director of the Radiocommunication Bureau

to prepare a report on the matter as referred to in the resolves above for consideration by WRC-23,

invites the Radio Regulations Board

to report on the matter as referred to in the resolves above for consideration by WRC-23.

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