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|  | **Addendum 7 to Document EG-ITRs-1/2** |
| **7 September 2023** |
| **English only** |
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| Contribution from HILL | |
| ART. 7: UNSOLICITED BULK ELECTRONIC COMMUNICATIONS | |
| **Purpose**  Discussion  **Action required**  The document is submitted to EG-ITRs **for discussion**.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **Reference**  [Council Resolution 1379, revised 2023](https://www.itu.int/md/S23-CL-C-0121/en) | |

1. The work of the current ITR-EG is specified in its Terms of Reference[[1]](#footnote-1):

*2 Taking into consideration the work of the previous two Expert Groups, the review may consider, among others:*

*a) new trends in telecommunications/ICT and emerging issues in international telecommunications/ICT environment which may impact the ITRs,*

*b) 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, and*

*c) the relevance of the ITRs which “consist of high-level guiding principles” in the current telecommunication/ICT environment.*

2. This contribution focuses on Art. 7 of the 2012 ITRs, Unsolicited bulk electronic communications, which states:

*7.1 Member States should endeavor to take necessary measures to prevent the propagation of unsolicited bulk electronic communications and minimize its impact on international telecommunication services.*

*7.2 Member States are encouraged to cooperate in that sense.*

**Discussion of Article 7**

3. Criticism of this provision has been addressed in academic writings[[2]](#footnote-2), [[3]](#footnote-3).

4. Starting in 2017, several Member States, in particular developed countries, proposed that provisions regarding spam should be included in free trade agreements, including those agreed in the World Trade Organization (WTO).

5. As of early 2021, it appeared that the following text had been approved by the WTO Joint Statement Initiative (JSI) on e-commerce[[4]](#footnote-4):

C.1(2) Unsolicited commercial electronic messages

*Co-convenors' note: This article was cleaned in informal discussions then endorsed at the 5 February 2021 plenary meeting [of the Joint Statement Initiative on e-commerce.*

1. "Commercial electronic message" means an electronic message which is sent for commercial purposes to an electronic address of a person {FN1} through telecommunication services, comprising at least electronic mail and to the extent provided for under domestic laws and regulations, the types of messages. "Unsolicited commercial electronic message" means a commercial electronic message that is sent without the consent of the recipient or despite the explicit rejection of the recipient.

2. [Parties/Members] recognize the importance of promoting confidence and trust in electronic commerce, including through transparent and effective measures that limit unsolicited commercial electronic messages. Each [Party/Member] shall adopt or maintain measures that:

(a) require suppliers of commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages; or

(b) require the consent, as specified in the laws or regulations of each [Party/Member], of recipients to receive commercial electronic messages; or

(c) otherwise provide for the minimization of unsolicited commercial electronic messages.

3. Each [Party/Member] shall endeavor to ensure that commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are sent, and contain the necessary information to enable recipients to request cessation free of charge and at any time.

4. Each [Party/Member] shall provide access to either redress or recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraph 2.

5. [Parties/Members] shall endeavor to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

{FN1}: For greater certainty, the “electronic address of a person” does not cover IP addresses.

6. As can be seen, the provision agreed in the WTO JSI in 2021 is far more detailed and prescriptive than the provision in the 2012 ITRs.

7. Thus it appears that many Member States, in particular developed countries, are of the view that binding treaty-level provisions to combat spam are needed, and that they should be more detailed than the generic provision found in the 2012 ITRs.

8. Consequently, it appears that agreement on treaty-level provisions to combat spam is a new trend and/or and emerging issue in telecommunications/ICTs and its environment. (This has lead to comments from civil society[[5]](#footnote-5), [[6]](#footnote-6), [[7]](#footnote-7).)

9. Further, since new provisions are being proposed/agreed, it appears that the provisions of the 2012 ITRs do not provide appropriate high-level guiding principles in the current telecommunication/ICT environment.

10. Therefore, Member States are invited to consider the situation and to consider how to address it in the context of the review of the ITRs.

11. We note in passing that the footnote {FN1} in the WTO provision would appear to allow spam to be sent to an IP address; this could result in unwanted messages being sent directly to a user’s personal computer or smartphone, by targeting their IP address. For example, unwanted advertising could be sent directly to a personal computer or smartphone. Perhaps this was intended, in order to enshrine in a binding international treaty the current Internet funding model based on targeted advertising. Or perhaps it was not intended, and is a reflection of possible lack of technical knowledge by WTO negotiators.

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1. <https://www.itu.int/md/S23-CL-C-0121/en> [↑](#footnote-ref-1)
2. Hill, Richard (2013) ["WCIT: failure or success, impasse or way forward?"](http://ijlit.oxfordjournals.org/content/21/3/313.abstract), *International Journal of Law and Information Technology,* vol. 21 no. 3, p. 313,  DOI:10.1093/ijlit/eat008 [↑](#footnote-ref-2)
3. Hill, Richard (2013) *The New International Telecommunications Regulations and the Internet: A Commentary and Legislative History*,Schulthess/Springer, p. 75 [↑](#footnote-ref-3)
4. <https://www.itu.int/en/council/cwg-internet/Pages/display-oct2021.aspx?ListItemID=8>   
    <http://www.apig.ch/CWG-Internet%202021-2bis.pdf> [↑](#footnote-ref-4)
5. <https://www.newsclick.in/Why-Spam-Trade-Issue-Suits-Dominant-Developed-Countries> [↑](#footnote-ref-5)
6. <http://apig.ch/WTO%20ITU%20overlaps%20paper.pdf> [↑](#footnote-ref-6)
7. Hill, Richard (2020) “[A New Convention for Data and Cyberspace](https://itforchange.net/digital-new-deal/2020/10/30/a-new-convention-for-data-and-cyberspace/)”, in the call for a [Digital New Deal](https://itforchange.net/digital-new-deal/) (October 2020) [↑](#footnote-ref-7)