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|  | **Addendum 8 to Document EG-ITRs-1/** |
| **7 September 2023** |
| **English only** |
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| Contribution from HILL | |
| ART. 8: CHARGING AND ACCOUNTING | |
| **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. 8 of the 2012 ITRs, Charging and accounting, which states:

***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.*

*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.*

***8.2 Accounting-rate principles***

***Terms and conditions***

*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.*

*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.*

*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.*

*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.*

***Collection charges***

*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.*

***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.*

***8.4 Service telecommunications***

*8.4.1 Authorized operating agencies may in principle forgo 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.*

*8.4.2 The general operational, charging and accounting principles applicable to service telecommunications should take account of the relevant ITU-T Recommendations.*

**Discussion of Article 8**

3. As stated in an academic writing [[2]](#footnote-2) article 8.1.1 does nothing other than to recognize the current reality: most telecommunication charging and accounting is negotiated by private sector entities, possibility with some conditions imposed by some national regulations (e.g. for roaming).

4. Since the provision is a mere statement of fact, and does not impose any rights or obligations on Member States, it does not, in our view, belong in a treaty.

5. Article 8.1.2 encourages states to take measures to encourage investments in telecommunications. In our view, this is a useful provision and it should remain unchanged.

6. The provisions under 8.2 (8.2.1-8.2.5) refer to accounting and charging methods that are used only in certain jurisdictions. Those jurisdictions can enshrine such methods in national law, or in regional agreements, if they so wish. In our view, these provisions are no longer useful.

7. The provisions under 8.4 (8.4.1-8.4.2) do not create rights or obligations for Member States: they purport to apply to private sector entities. As such, in our view, they do not belong in the ITRs, see the discussion regarding Article 1, Purpose and Scope.

8. Article 8.3.1, on taxation, is notoriously difficult to understand, interpret, and apply. If there is a desire to specify something about double taxation, then it should be stated clearly. In our view, the current provision is not useful and does not provide appropriate high-level guiding principles in the current telecommunication/ICT environment.

9. In light of the above, Member States are invited to consider the situation and to consider how to address it in the context of the review of the ITRs: Member States could consider abrogating all provisions of this article, except for 8.1.2, and, if desired, develop clear language regarding taxation to replace the current article 8.3.1.

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1. <https://www.itu.int/md/S23-CL-C-0121/en> [↑](#footnote-ref-1)
2. Hill, Richard (2013) *The New International Telecommunications Regulations and the Internet: A Commentary and Legislative History*,Schulthess/Springer, p. 104 [↑](#footnote-ref-2)