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|  | **Document EG-ITRs-1/10** |
| **6 October 2023** |
| **English only** |
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| Contribution from Hill | |
| PROPOSAL FOR WORKING METHODS AND WORK PLAN OF  EG-ITRS | |
| **Purpose**  Discussion  **Action required**  As this document is submitted past the deadline, the group may decide to consider it or not at its 16 October 2023 meeting. If it is accepted, the document is submitted to EG-ITRs **for discussion**.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **Reference**  [**EG-ITRs-1/1 : Draft Agenda**](https://www.itu.int/md/S23-EGITRS1-C-0001/en)  [**EG-ITRs-1/5: Multi-country contribution: Review of the International Telecommunication Regulations and working methods**](https://www.itu.int/md/S23-EGITRS1-C-0005/en)  [**EG-ITRs-1/6: Multi-country contribution: Work plan proposal for EG-ITRs**](https://www.itu.int/md/S23-EGITRS1-C-0006/en) : | |

**Background**

1. [Contribution EG-ITRs-1/5](https://www.itu.int/md/S23-EGITRS1-C-0005/en) states: “We suggest that one of the core activities should cover a *call for evidence* for 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.”

2. [Contribution EG-ITRs-1/6](https://www.itu.int/md/S23-EGITRS1-C-0006/en) proposes “a ‘call for evidence’ for 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.”

3. As stated 1.9 of our [Contribution EG-ITRs-1/2](https://www.itu.int/md/S23-EGITRS1-C-0002/en), “Requests for empirical data on the current use of the ITRs by operating agencies will inevitably result in replies to the effect that the ITRs are not used by operating agencies, because, in the current environment, operating agencies are mostly private companies and thus not directly bound by the ITRs, which are a treaty. While some provisions of the ITRs might be transposed to national law, operating agencies have no reason to know that they are indirectly affected by the ITRs.”

4. Indeed the situation is comparable to that of other treaties, such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards[[1]](#footnote-1), and the Vienna Convention on the International Sale of Goods[[2]](#footnote-2).

5. Both of those treaties underpin much international commerce and are extensively relied upon by commercial parties. However, business people agreeing international contracts and/or arbitration clauses are not necessarily aware of the fact that those contracts and arbitration clauses are governed by the cited treaties, because the treaties are transposed into national law. Direct references in contracts to the treaties would be unusual.

6. For example, for arbitration, a typical model clause is “All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.”[[3]](#footnote-3)

7. Furthermore, as outlined in [Contribution EG-ITRs-1/6](https://www.itu.int/md/S23-EGITRS1-C-0006/en) and its Addendum 15, there may be new trends in telecommunications/ICT, or emerging issues in international telecommunications/ICT environment, which may warrant consideration for inclusion in the ITRs in the future.

9. In particular, as noted in 1.3, 1.13-1.17, and 1.23-1.27 of [Contribution EG-ITRs-1/6](https://www.itu.int/md/S23-EGITRS1-C-0006/en), some countries apparently are of the view that treaty-level provisions are needed for matters such as spam and cybersecurity, because they have agreed such provision in trade agreements, and/or proposed that they be included in forthcoming trade agreements.

10. Thus it is proposed that a request for empirical data take into account the matters referred to above. A draft outline of a proposed request is presented below.

**Proposal**

11. In light of the above, it is proposed that, if the EG-ITRs decides to issue a request for empirical data, then:

1. The request should be sent to all Administrations and to all Sector Members.
2. Administrations be invited to forward the request to Operating Agencies.
3. The request contain the following elements:
   1. A preamble explaining that treaties bind states, so they do not directly bind private parties, but they may bind private parties by being transposed to national law.
   2. A short history of the ITRs since 1988.
   3. An explanation of why – as implicitly recognized in article 8 of the 2012 ITRs – the accounting rates of article 6 of the 1988 ITRs are no longer used for most international telecommunication services (see in this respect the discussion in 3 to 7 of Addendum 8 of our [Contribution EG-ITRs-1/2](https://www.itu.int/md/S23-EGITRS1-C-0002/en)).
   4. An invitation to comment on whether other provisions of the 1988 and/or 2012 ITRs:
      1. are relevant or useful because they have been transposed to national law;
      2. would be relevant or useful if they were transposed to national law;
      3. are redundant because they have been implemented in national law independently of the ITRs; or
      4. are not needed because there is no need to bind states to transpose such provisions to national law.
   5. An invitation to comment on whether new provisions in the ITRs would be relevant or useful if they were transposed to national law, for example regarding spam, cybersecurity, artificial intelligence, building a digital public infrastructure, bridging the digital gender gap, etc.

12. If the EG-ITRs decides to issue a request for empirical data, then we would, if the group agrees, be pleased to participate in the formulation of such a request.

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1. <https://www.newyorkconvention.org/> [↑](#footnote-ref-1)
2. <https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg> [↑](#footnote-ref-2)
3. <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/arbitration-clause/> [↑](#footnote-ref-3)