|  |  |
| --- | --- |
|  | **Document EG-ITRs-2/2** |
| **8 November 2023** |
| **English only** |
|  |  |
| Contribution from Hill |
| PROPOSAL FOR REQUEST FOR EMPIRICAL DATA |
| **Purpose**This is a resubmission of the main body of EG-ITRs-1/10, which was submitted too late to be discussed at the previous meeting of the group, with the addition of a draft request for empirical data.**Action required**The Expert Group on the International Telecommunication Regulations is invited to **discuss** this document.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**Reference** [*EG-ITRs-1/2: Contribution from Hill: Overall considerations*](https://www.itu.int/md/S23-EGITRS1-C-0002/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)  |

**Summary**

This contributions presents a draft request for empirical data that could be sent to Member States and Sector Members, if the EG-ITRs is of the view that there is a need to request 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.

**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-1/2](https://www.itu.int/md/S23-EGITRS1-C-0002/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-1/2](https://www.itu.int/md/S23-EGITRS1-C-0002/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.
	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.

13. A proposed first draft, for comment and discussion, of an actual request for empirical data is shown in Annex 1 below.

**Annex 1 to EG-ITRs 2/2
Draft request for empirical data**

**TO**: Member States and Sector Members

Member States are invited to forward this request to their Operating Agencies

**Subject**: Request for empirical data

The purpose of this request is to obtain 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.

Specific questions for recipients are shown in boxes in the text. Recipients are of course invited to submit any other comments which they deem useful for the work described below.

**1. Background**

The International Telecommunication Regulations (ITRs)[[4]](#footnote-4) are one of the four basic instruments of the International Telecommunication Union. They are established with a view to facilitating global interconnection and interoperability of telecommunication facilities and to promoting the harmonious development and efficient operation of technical facilities, as well as the efficiency, usefulness and availability to the public of international telecommunication services.[[5]](#footnote-5)

At present, there are two versions of the ITRs, one agreed in 1988 which binds all ITU Member States, and another agreed in 2012 which binds 91[[6]](#footnote-6) Member States.

PP [Resolution 146 (Rev. Bucharest, 2022)](https://www.itu.int/en/council/Documents/basic-texts-2023/RES-146-E.pdf) *instructs*the Secretary-General:
1  to reconvene an EG‑ITR [Expert Group on the ITRs], open to the ITU Member States and Sector Members, with terms of reference and working methods established by the ITU Council
2  to submit the report of EG‑ITR on the outcome of the review to the Council for consideration, publication and subsequent submission to the 2026 plenipotentiary conference.

The 2023 Session of ITU Council modified [Resolution 1379​](https://www.itu.int/md/S23-CL-C-0121/en): Expert Group on the International Tel​ecommunication Regulations (EG-ITRs) and approved the following Terms of Reference:

1 On the basis of contributions submitted by Member States, Sector Members and inputs from the Directors of the Bureaux if necessary, the EG-ITRs shall continue to review the ITRs.

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.

As mentioned above, this request for information is being sent pursuant to item 2(b) of the above Terms of Reference.

**2. Preamble**

The ITRs is a treaty. As such, it binds Member States, but does not directly apply to or bind private-sector entities, such as most Operating Agencies in most Members States.

Member States may transpose provisions of the ITRs into national law, so, in that sense, the ITRs might impact Operating Agencies.

**3. Brief history of the ITRs**

The purpose of the first international agreements regarding telecommunications was to allow cross-border transmission of telegrams. Such agreements were negotiated amongst European countries starting in 1849, and were continually revised over the years, resulting in the agreement of Telegraph Regulations and the Telephone Regulations, which were last revised in 1973. Throughout all these developments, the basic principles dealing with tariffs remained unchanged, including that the rate for a communication between two countries would be the same no matter what the route (thus preventing price competition).

The Telegraph Regulations and Telephone Regulations were superseded in 1988 by the International Telecommunication Regulations, which were greatly influenced by the increasingly strong trend, at the time, towards privatization, liberalization and convergence of services.

The 1988 ITRs contained a key provision in article 9, Special Arrangements, which – for the first time in the history of these treaties – explicitly allowed private operators to use leased lines to provide services, including data services. This provision facilitated the expansion of networks based on the TCP/IP protocol and of the services popularly referred to as the Internet: it did so by removing restrictions that could have impeded the expansion of such services. These trends were further facilitated by agreements made in the Global Agreement on Trade in Services (GATS) in 1994 (Annex on Telecommunications) and in 1996 (Reference Paper on Basic Telecommunication Services).

**4. Accounting rates**

The accounting rate system was the traditional accounting regime that had been in force since 1865 for telegraphy, whereby interconnected operators shared their international revenues on the basis of agreements between their respective governments. Since most operators were state-owned monopolies, this amounted to a revenue sharing agreement between governments. Although tariffs were supposed to be based on costs, in practice they often were not: high prices for international connections were used to subsidize national connections. That system came under increasing pressure in the mid-1980’s, when it became clear that prices were not declining as fast as costs (the cost declines were largely due to the dramatic technological advances that also resulted in the rapid growth of the information technology industry).

The developments enabled by the 1988 ITRs rapidly led to the demise of the traditional “accounting rate” system: although it was enshrined in article 6 of the ITRs, the special arrangements provision of article 9 allowed Member States to allow operators to bypass the accounting rate system.

Consequently, the accounting and charging methods referred to, and described, in article 6 of the 1988 ITRs (and article 8 of the 2012 ITRs) are no longer universally used.

**Question 1**: Recipients are invited to comment on whether the said accounting and charging provisions of the ITRs are currently used by operating agencies and/or administrations and on the proportion of global telecommunication services which now rely on them.

**Question 2**: Recipients are invited to comment on whether the special arrangements provisions of the ITRs (article 9 of the 1988 ITRs; article 13 of the 2012 ITRs) are currently used by operating agencies and/or administrations and on the proportion of global telecommunication services which now rely on them.

**5. Invitation to comment on other provisions of the ITRs**

The text of the ITRs is found at:

 <https://www.itu.int/en/wcit-12/Pages/itrs.aspx>

For convenience, the 2012 version is reproduced as an annex to this request for empirical data.

**Question 3**: Recipients are invited to comment on whether other provisions of the 1988 and/or 2012 ITRs:

 (a) are relevant or useful because they have been transposed to national law;

 (b) would be relevant or useful if they were transposed to national law;

 (c) are redundant because they have been implemented in national law independently of the ITRs; or

 (d) are not needed because there is no need to bind states to transpose such provisions to national law.

**6. Invitation to comment regarding new provisions**

The 2012 ITRs introduced new articles on issues not covered in the 1988 ITRs, in particular regarding security and robustness of networks, unsolicited bulk electronic communications (spam), energy efficiency/e-waste, and accessibility.

During the review of the 2012 ITRs, various suggestions have been made regarding additional new issues that might be considered if there were an agreement to revise the ITRs again.

**Question 4**: Recipients are invited to comment on whether new provisions in the ITRs would be relevant or useful if they were transposed to national law, for example regarding cybersecurity, spam, energy efficiency/e-waste, accessibility, use of artificial intelligence in international telecommunications services, building a digital public infrastructure, bridging the digital gender gap, Universal Acceptance[[7]](#footnote-7), or any other issues that the recipients consider appropriate for inclusion in the ITRs.

**Annex to
Request for empirical data**

[Final Acts of the World Conference on International Telecommunications (Dubai, 2012)](https://www.itu.int/en/council/Documents/S-CONF-WCIT-2012-MSW-E.pdf)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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)
4. <https://www.itu.int/en/wcit-12/Pages/itrs.aspx> [↑](#footnote-ref-4)
5. Article 1.3 of the ITRs [↑](#footnote-ref-5)
6. <https://www.itu.int/online/mm/scripts/gensel25?agrmtid=0000925268> [↑](#footnote-ref-6)
7. <https://www.icann.org/ua> . This topic has been proposed for the 2024 open consultation of the Council Working Group on International Internet-related Public Policy Issues, see
 <https://www.itu.int/md/S23-RCLINTPOL18-231018-DL> [↑](#footnote-ref-7)