

Participation of civil society in ITU

Richard Hill¹

Civil society can participate in ITU activities in two ways: by becoming a Sector Member, or by being included in a national delegation.

Most civil society organizations are not in a position to be able to pay the annual membership fees. ITU does grant exemptions from payment of membership fees, but the criteria for granting exemption should be revisited to make exemption the default, normal case, for non-profit organizations. Indeed other UN agencies have processes for accrediting non-profit organizations as observers, and they do not require payment of membership fees from those organizations.

Inclusion in national delegations is not always a practical alternative, because states are free to determine the composition of national delegations, and some states do not have fully open policies regarding participation of civil society in their delegations (see for example the exchange of E-Mails in the Annex to this paper).

Thus it is proposed that the Plenipotentiary Conference consider the matter and adopt a decision or resolution establishing an accreditation system that would allow civil society to participate without having to pay membership fees and without being part of a national delegation.

Annex: Exchange of E-Mails

The concerned Swiss authorities have agreed that the anonymized version below can be made public.

From: Richard Hill [mailto:rhill@hill-a.ch]
Sent: jeudi, 9. octobre 2014 08:38
To: xxx@bakom.admin.ch
Cc:
Subject: RE: Your request for admission in the Swiss delegation at ITU's PP-14

Dear Mr xxx,

Thank you for this legalistic and formalistic reply.

I note with regret that you do not explain what higher interest of the Confederation might be served by refusing my request.

And I note with extreme disappointment that OFCOM's refusal is in flagrant contradiction with the public stance that Switzerland has always taken in favor of the multi-stakeholder model regarding discussions of Internet matters.

Given the time required for a formal appeal process, there is obviously no point in going down that road: the Plenipotentiary Conference would

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be over before the appeal could even be initiated. Therefore I do not require a formal written decision in one of the official Swiss languages.

I trust that you have no objection to my making this exchange of E-Mails public. If you prefer, I will remove the names of the OFCOM officials before publication, since I understand that these are not personal communications, but views expressed on behalf of OFCOM as an entity.

I remain sincerely yours,
R. Hill

-----Original Message-----

From: xxx@bakom.admin.ch

Sent: jeudi, 9. octobre 2014 01:58

To: rhill@hill-a.ch

Cc:

Subject: AW: Your request for admission in the Swiss delegation at ITU's PP-14

Dear Mr Hill,

A team of OFCOM's legal advisers appraised anew your request to be admitted in the Swiss delegation that is going to attend PP-14. It came to the conclusion that OFCOM does not act illegally by not acceding to your request. On following grounds:

- There is no federal law or governmental decree that enshrines a legal right for citizens/third parties to be admitted in the delegations dispatched by the Federal Council to international conferences. Additionally the Guidelines of the Federal Council, that actually are directives for internal use of the federal administration, do not lay down such a right either.

- Furthermore, by not acceding to your request OFCOM does not breach the constitutional provisions on equal treatment and interdiction of arbitrary (articles 8 and 9 of the Federal Constitution respectively). The Guidelines of the Federal Council comply with these constitutional safeguards. Consequently OFCOM envisages to associate third parties to the delegations dispatched to international treaty-making conferences only when they, first, notably contribute to the formulation of Switzerland's policy and, second, smooth the integration in interior political affairs of the issues of international policy addressed by the conference (n° 15, 2nd para., of the Guidelines).

In case you are insisting to lodge an appeal against OFCOM's negative response, OFCOM would have to craft a much more detailed formal decision in one of the Swiss official languages. This decision would then have to be conveyed to you by postal services.

We would be grateful for your careful consideration of the arguments above and we remain,

Yours sincerely,

xxx

Von: Richard Hill [mailto:rhill@hill-a.ch]
Gesendet: Montag, 29. September 2014 16:54
An: xxx BAKOM
Cc:
Betreff: RE: Your request for admission in the Swiss delegation at
ITU's PP-14

Dear xxx,

Thank you very much for your courteous and informative reply.

I note that paragraph 15 of the cited Directive actually establishes the principle that civil society organizations such as the one that I represent should be admitted to participate in the Swiss delegations.

It is paragraph 17 that establishes an exception, if the higher interests of the Federation require it, in particular for conferences that negotiate binding treaties or the creation of international organizations.

You are correct to note that the ITU Plenipotentiary Conference does have the power to negotiate binding treaties, namely the ITU Constitution and Convention. However, I am sure that you will agree with me that it is unlikely that any significant changes to the ITU Constitution and Convention will be proposed, much less agreed, at the forthcoming Plenipotentiary Conference.

On the contrary, most of the Conference will be devoted to discussing non binding resolutions, in particular the resolutions concerning Internet matters, if the European Common Proposals are submitted to the Conference, and the resolution concerning the convening of the next World Conference on International Telecommunications.

Since, as you know, I have considerable knowledge of these matters, and also of other matters of interest to Switzerland, such as opening access to ITU documents, and the intricacies of the ITU's rules of procedure, it seems to me that my presence could be of assistance to the Swiss delegation.

Further, I was under the impression that Switzerland favored the multi-stakeholder model for consultations regarding Internet-related issues.

Thus, I respectfully request that you kindly reconsider your refusal to allow me to participate in the Swiss delegation, or, in the alternative, that you indicate which superior interest of the Confederation is served by not allowing me to participate and that you indicate what, if any, appeal mechanisms can be invoked against a refusal.

Thanking you again I remain, sincerely yours,
Richard Hill

-----Original Message-----

From: xxx@bakom.admin.ch
Sent: lundi, 29. septembre 2014 15:52
To: rhill@hill-a.ch
Cc:
Subject: Your request for admission in the Swiss delegation at ITU's PP-14

Dear Mr Hill,
Thank you for your request to be admitted in the delegation of the Swiss Confederation that will attend the 2014 Plenipotentiary Conference (PP-14) of the International Telecommunication Union (ITU).

PP-14 is a treaty-making conference. The latitude of the Federal Office of Communications (OFCOM) in order to include third parties in the delegation is lessened for such conferences. The Ministry of Foreign Affairs drew in particular our attention on the relevant provision (para. 15) of the Guidelines of the Federal Council on the composition of Swiss delegations dispatched to international conferences (<http://www.admin.ch/opc/fr/federal-gazette/2012/8761.pdf>).

As a consequence we came to the conclusion that OFCOM ought to exercise extreme reserve when admitting third parties in the delegation to PP-14 and could not respond positively to your request.

None the less we remain fully open to exchanging views with you on issues pertaining to PP-14 and/or meeting with you.

Thanking you for your understanding, we remain,
Yours sincerely,

xxx
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Federal Department of the Environment,
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