

**MINISTRY: TELECOMMUNICATIONS AND POSTAL SERVICES**

Private Bag X860, Pretoria, 0001, Tel: +27 12 427 8111 Fax: +27 12 362 6915

Private Bag X9151, Cape Town, 8000, Tel: +27 21 467 9420 Fax: +27 21 462 1646

**EXPLANATORY MEMORANDUM**

# subject: ratification of the international telecommunications regulations (itrs), 2012

## date: 19 october 2016

1. **PURPOSE**

To request Parliament to ratify the revised International Telecommunication Regulations (ITRs), Dubai 2012, in line with section 231 (2) of the Constitution.

1. **SUMMARY**
   1. The ITRs constitute an international treaty, and form part of the Administrative Regulations of the International Telecommunications Union. South Africa acceded to the ITRs when it joined the ITU in 1994.
   2. The ITRs were originally agreed in 1988 and were revised for the first time in 2012. The communications landscape had been completely transformed in that period and the original regulations were badly out of date. The revised ITRs have laid the basis for the improved provision of quality telecommunications services globally, as well as for international cooperation in infrastructure provision, and in key areas such as Security of Telecommunication Networks. <http://www.itu.int/en/wcit-12/documents/final-acts-wcit-12.pdf>
2. **STRATEGIC FOCUS OF THE MEMORANDUM**

The ITRs are aligned to the National Development Plan, in particular the promotion of economic growth and greater inclusion through the development of a stronger broadband and telecommunications network and lower prices.

1. **DISCUSSION**
   1. The International Telecommunication Regulations were originally agreed in Melbourne in 1988. It took many years within the International Telecommunications Union (ITU) to agree to host a World Conference on International Telecommunications (WCIT) to revise the ITRs. This was because some developed countries were afraid that discussion in a Multilateral setting could focus attention on internet and content related issues. Even once it had been agreed to hold the WCIT, there were attempts to limit the agenda in advance, in order to limit the extent of the agreement. The World Conference eventually took place from 3to 14 December 2012 in Dubai, United Arab Emirates. The South Africa delegation was led by the then Minister of Communications, Ms Dina Pule, and included the Departments of International Relations and Cooperation (DIRCO), Defence (DOD), State Security Agency (SSA), as well as the Independent Communications Authority of South Africa (ICASA), Telkom, and private sector companies in the Information and Communications Technology (ICT) sector.
   2. The original ITRs of 1988 set out the principles for the interconnection of networks, and the fair and efficient provision of international services. They laid the basis for cooperation between Governments, giving priority to emergency telecommunications, and charging for the traffic exchanged between operators in different countries. They facilitated the era of privatisation, competition and deregulation that followed, and subsequently the growth of ICTs, including the Internet.
   3. However the WCIT of 2012 was highly significant and long overdue. When the original ITRs were agreed in 1988, there were three fundamental factors influencing telecommunications, namely time, distance and location. But the world of ICTs has changed dramatically since that time and these factors are less significant today. Since 1988, much of the sector has been privatised and liberalised and the internet has exploded to become a major global form of communication. There is an increasing use of networks and applications based on the Internet protocol (IP). Technological convergence has blurred the distinction between voice and data traffic. Mobile phones were scarcely available in 1988 but have since become the dominant telecommunication device. Today even inexpensive mobile phones have become sophisticated computers, with Africa becoming the fastest growing market.
   4. As much as it was necessary to update the ITRs to address the transformation of the telecommunications environment, it was also controversial. Diplomatic initiatives coupled with media campaigns focused on the ‘secret agenda’ of Governments to try and control the internet and curtail free speech. On-line activists responded. Members of the South African delegation received warning emails from the internet group known as ‘Anonymous’. Members of other delegations complained (in confidence) that their personal details had been posted on the internet and they had been labelled ‘Enemies of the Internet’. Others complained that their country had been put under pressure on voting and had been told not to sign the treaty. To some extent this pressure from countries vested in the internet could be deemed successful. The new Treaty includes text ‘*the Regulations do not address the content related aspects of telecommunications*’. However, the persuasion used was excessive, and in reality most countries had not even given consideration to redefining the work of the ITU to such an extent.
   5. From the outset of the conference, every mention of the word ‘Internet’ was followed by a series of interventions by delegations stating that they had no mandate to discuss the internet or any content related issues. South Africa had a key role in the debates that followed, as Chair of the Africa group, which remained mostly united against considerable pressure.
   6. A key area of tension concerned the article dealing with *Security and Robustness of Networks*. The term Cybersecurity was deemed too controversial because it could include internet related issues. However, it acknowledged the threats are international in nature and it encouraged cooperation amongst Member States to protect their networks. This is relevant to the ITUs Global Cybersecurity Agenda and the establishment of Computer Emergency Response Teams. South Africa is part of international initiatives in this regard. The Africa Group was in favour of this article.
   7. Also controversial was the article dealing with SPAM (entitled: *Unsolicited Bulk Electronic Communications).* The word SPAM was not allowed to be used because of possible content implications, so it was substituted for one of the definitions of SPAM, which did not change the meaning of the article. Many smaller developing countries argued that they were not the source of SPAM, but that they were expected to pay to manage and control its negative impact. The article states that ‘Member States should endeavour to take the necessary measures to prevent the propagation of Unsolicited Bulk Electronic Communications…’. South Africa’s existing legislation does cover SPAM, and this will be further strengthened through the implementation of the Protection of Personalised Information Act No. 4 of 2013. Even though the treaty excludes on-line content, there are a number of technical measures which do not use content filtering that are available as ITU standards. The Africa group supported this article.
   8. The articles on *Security and Robustness of Networks*, and *Unsolicited Bulk Electronic Communications* both proved to be highly contentious. Despite lengthy discussions, many developed countries then backtracked to argue for the exclusion of these two articles. Developing countries countered that these articles were essential to protecting the functioning of their networks, which had required considerable investment. The developed countries involved received their first major indication of the mood of the majority of developing countries, when the provision on Security was passed by show of hands. In the end both articles were included in the final treaty.
   9. South Africa also chaired the Ad-hoc Group dealing with the Right of Access of Member States to telecommunication services. Before the establishment of the group, a proposal by the United States of America (USA) had led to the inclusion of text in the Preamble committing Member States to implement the regulations ‘in a manner that respects and upholds their human rights obligations’. Other countries, such as Cuba, Sudan and Algeria then also insisted on adding text to ‘recognise the right of access of Member States to international telecommunication services’. It is well known that some countries have experienced unilateral actions by others that have limited or prevented their access to international telecommunication networks. However there was no consensus on this issue in the ad-hoc group. After a formal vote the text was included in the final treaty.
   10. A number of provisions were added or updated, including measures to:
       1. Ensure a satisfactory Quality of Service for end-users around the world, in line with ITU Standards.
       2. Ensure transparency of international roaming prices, whereby ‘Member States shall foster measures to ensure that authorised operating agencies provide free-of-charge, transparent, up-to-date and accurate information to end users on international telecommunication services, including international roaming prices and the associated relevant conditions, in a timely manner.’ This text is designed to address the issue of ‘bill shock’ when customers who are roaming are suddenly presented with huge bills by their service provider, typically today arising from data usage. Further, the text encourages international competition in the provision of roaming services, including competitive roaming prices.
       3. Encourage energy efficiency and e-waste best practises, in line with ITU standards.
       4. Prevent the misuse of number resources, which often is associated with fraudulent practises. In this respect assistance can be sought from the ITU with respect to best practise in terms of implementing the relevant ITU standards.
       5. Reinforce the principle of Priority of safety-of-life telecommunications, such as distress telecommunications during emergencies. This article goes further to ensure that all users (including roaming users) would have timely information, provided free of charge, on access to emergency services.
       6. Encourage the development of regional telecommunication traffic exchange points, which could have a positive impact on the quality, cost and resilience of international telecommunication connections, especially in developing countries.
       7. Encourage investments in international telecommunications networks and to encourage competitive wholesale pricing for the traffic carried on such networks, again improving the cost and quality of international telecommunication traffic.
       8. Promote the application of basic pricing principles for international services, which will have positive economic benefits for Member States and citizens. \
       9. Further economic benefits included the provision of guidelines for dispute resolution, and the promotion of measures to prevent double taxation for international services.
   11. The treaty updated the regulatory framework through which charges for maritime telecommunications are collected and paid, thus providing the necessary confidence to ensure that critical maritime traffic will be carried. World Conference on International Telecommunications 2012 (WCIT-12) also retained provisions essential for the settlement of accounts to ensure the continued integrity of the Global Maritime Distress and Safety System (GMDSS).
   12. The positive impact of investment in ICTs and Broadband on a country’s Gross Domestic Product (GDP) has been widely acknowledged, and is cross-cutting across diverse sectors. The updated international regulations and associated standards can lower transaction costs, improve the efficient use of infrastructure, and can contribute to lowering the cost of doing business in South Africa. International standards can also produce economies of scale that will make ICT devices more accessible through lower prices.
   13. A total of 89 countries (representing over 60% of the world’s population) signed the revised ITRs, out of 152 present. In dealings between Member States that signed that new treaty, and those that only signed the old treaty, the old treaty is still applied.
2. **IMPLEMENTATION PLAN**
   1. Measures to ensure implementation have been discussed with ICASA and relevant stakeholders. The proposed policy amendments are aligned to national policies and the integrated ICT Policy.
3. **FINANCIAL IMPLICATIONS**
   1. The ratification of ITRs have no financial implications.
4. **LEGAL AND CONSTITUTIONAL IMPLICATIONS**
   1. The International Telecommunication Regulations fall within Section 231(2) of the Constitution and therefore need to be approved by resolution in both the National Assembly and National Council of Provinces.
   2. Legal opinions have been provided by the Office of the Chief State Law Adviser: Department of Justice (see **Annexure A**) and Department of International Relations and Cooperation (see **Annexure B**). A list of countries that have signed the Final Acts are attached (see **Annexure C**).
5. **RECOMMENDATION**

It is recommended that Parliament considers and approves the ratification of the revised International Telecommunication Regulations (ITRs), Dubai 2012, in line with section 231(2) of the Constitution.