

Document reviewed		
Title of the draft being reviewed:	Draft standard and guidelines on the form and calculation of an environmental performance guarantee and review template	
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General Comments		
<p>The draft reviewed is a very welcome and reasonable first step, but some elements thereof require further consideration.</p>		
<p>The draft mentions both a “balanced” approach (para. 3) and a “flexible” approach (para. 4) in describing the form and calculation of the Environmental Performance Guarantee. As long as the approach taken actually ensures the availability of a fixed-sum security when needed, the approach’s label may well be chosen creatively. The idea of the Environmental Performance Guarantee as such, however, should not be hampered with by allowing too much leeway for contractors.</p>		
<p>In this sense, we consider it to be highly questionable that the balance mentioned in para. 3 of the draft emphasizes the ability of contractors to participate in activities in the Area. This aspect should not be part of the balancing exercise. Of course, neither form nor calculation of the Environmental Performance Guarantee should effectively prevent contractors from participating in activities in the Area. However, if that were the case, the analysis of available financial resources of contractors would also require more consideration. It is Germany’s firm view that if form and calculation of a reasonably set Environmental Performance Guarantee pose substantial impediments to the activities of some (non-state) contractors’ in the Area, then these contractors maybe are not up to their tasks. It should be the responsibility of the Authority and all its members to ensure that only such contractors are eligible for exploitation which are effectively able to provide the Authority with the amounts identified and alluded to in Draft regulation 26.</p>		
<p>Accordingly, the objective of the draft standard and guidelines should be to set up a framework for reasonably determining form and calculation of the Environmental Performance Guarantee. If this determination is done properly and reasonably, then there should not be any concerns whatsoever whether or not the Environmental Performance Guarantee hinders the ability of contractors to participate in activities in the Area.</p>		
Specific Comments		
page	line	comment
	369	The Environmental Performance Guarantee should be able to meet the likely costs, expenses and liabilities that may result from all the issues/events identified in Draft regulation 26. Accordingly, for the Environmental Performance Guarantee to be an effective instrument, it needs to be ensured that the Environmental Performance Guarantee is available whenever needed, even if the contractor goes bankrupt. In this regard, we have certain concerns whether a “self-guarantee or company

		guarantee” is, under all circumstances, able to satisfy this requirement. If this cannot be ensured, this option should be deleted from the menu of possible forms of the Environmental Performance Guarantee.
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