



**Template for the review of the draft standards and guidelines
associated with the Draft regulations on exploitation of mineral resources in the Area**

I. Background

1. The Draft regulations on exploitation of mineral resources in the Area ([ISBA/25/C/WP.1](#)) require that certain issues are addressed in accordance with, or taking into account, standards and guidelines to be developed by the organs of the Authority. The standards will be adopted by the Council and will be legally binding on Contractors and the Authority, whereas the guidelines will be issued by the Legal and Technical Commission or the Secretary-General and will be recommendatory in nature.
2. Stakeholders consultations are an integral part of the process decided upon by the Commission for the development of the standards and guidelines ([ISBA/25/C/19/Add.1](#)).
3. The Legal and Technical Commission will consider the comments received through the stakeholders consultation at its next session.
4. The drafts include a cover page containing substantive background and contextual information on the approach taken by the Commission in developing each standard and guidelines. Review comments are not being sought on this background information.
5. Issues of format and consistency across the standards and guidelines will be reviewed by the secretariat and Commission once the content of the various standards and guidelines is finalized following stakeholders consultations.

II. Submitting Comments

6. To ensure that your comments are given due consideration, please send them by e-mail to ola@isa.org.jm, at your earliest convenience but **no later than the date announced on the ISA website for the relevant draft standards and guidelines**.
7. When submitting comments, please adhere to the following guidance as much as possible:
 - a. Please provide all comments in writing and in an MS Word .doc or .docx format using the table provided below.
 - b. The table format allows for an unlimited number of comments to be added. To add more comments, you may add more rows.

- c. Please provide full contact information for the individual/Government/organization submitting the comments.
 - d. Please avoid commenting on issues related to format, grammar, spelling or punctuation, unless it affects the overall meaning of the text, as the document will be formatted and edited when the final draft is prepared.
 - e. To facilitate the revision process please be as specific as possible in your comments. In areas where you feel additional or alternative text or information is required, please suggest what this text may look like or what information should be included.
 - f. Text may be copied from the draft into the table if stakeholders wish to use "track changes" in editing text (this is encouraged to ensure accuracy and avoid numbering errors).
 - g. If you refer to additional sources of information, please include these with your comments when possible or provide a complete reference or hyperlink.
 - h. All review comments will be posted on the ISA website, unless otherwise requested by the submitting entity.
8. Should you have any questions regarding the review process, please contact ola@isa.org.jm.

III. Template for Comments

- 9. Please use the review template below when providing comments.
- 10. Line and page numbers have been provided in the drafts. Please use these as a reference as illustrated in the table below.

TEMPLATE FOR COMMENTS

<i>Document reviewed</i>	
Title of the draft being reviewed:	Draft standard and guidelines on the form and calculation of an environmental performance guarantee
<i>Contact information</i>	
Surname:	Mance
Given Name:	Marijana
Government (if applicable):	
Organization (if applicable):	European Commission
Country:	
E-mail:	Marijana.MANCE@ec.europa.eu

General Comments

The European Commission considers that it is crucial to have a tool to ensure the orderly closure of a mine in case the operator is not in a position to close a mine according to the permit. In the EU Extractive Waste Directive¹ it is called “financial guarantee” (Art 14). The current draft Regulation 26 does not meet the standards with regard to rehabilitation. Decommissioning appears to include only closure, removal of equipment needs and post-closure monitoring and management of residual environmental effects, but no requirement to restore biodiversity.

1. The draft guidelines do not foresee that the Legal and Technical Commission has full access and control over the environmental guarantee. The Commission appears to be in a position to block the release of the guarantee but there is no provision allowing for the Commission to use the guarantee to pay decommissioning carried out by a third party. Such provision should be introduced.

2. The main motivation to set up the requirement for a guarantee is to ensure that the mine is orderly closed in case of bankruptcy of the operator. Therefore, the possibility for a “Self-guarantee or company guarantee” (line 369) is very problematic and needs to be removed from the text.

3. The introduction of an environmental performance guarantee to ensure that costs of closure and decommissioning are met, is a good idea. But it would be even better to expand it so that it acts as a guarantee that Contractors abide by their Environmental Management Systems. If a Contractor does not carry out its EMS properly and/or does not respond adequately to non-conformities and other incidents of environmental damage, not even after warnings from the Authority, then the guarantee ought to be (partly or entirely) seized by the Authority – until such time as the Contractor has addressed these issues. The Authority could use the seized guarantee money to finance third parties to remedy environmental damage caused by the negligent Contractor. If a guarantee has lessened in value because part of it has been seized, the Contractor ought to be obliged to make up the difference, so as to reach the original guarantee level again, on pain of having its contract revoked.

Specific Comments

Page	Line	Comments on Annex II
5	115	What is the endorsed method that the applicants must use? Please specify who endorsed the method.
5	117	What is the accepted calculation tool that applicants must use? Please specify who accepts the calculation tool.
6	155-168	What would happen if it turns out that the statements of independence produced by the validator are not truthful, or there is room for reasonable doubt as to the material independence (a validator may be formally independent, but economically reliant upon the custom of the Contractor)? Should not some clause be added allowing the Authority to take appropriate action in such situations?

¹ Directive 2006/21/EC on the management of waste from the extractive industries
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0021>

7	179-180, 188-91	From these lines, it becomes clear that the guarantee is not necessarily a sum of money deposited on the Authority's account and held by the Authority for the duration of the contract, but more likely to be something along the lines of a bank guarantee or similar (confirmed by lines 376-407). The advantage of that is that it imposes less of a liquidity burden on the contractor. The risk however, is that a guarantee could be lost, e.g. if the bank holding fails.
8	240-41	This line is rather cryptic. If it means that the contractor may not undertake any action to unilaterally cancel or modify e.g. a bank guarantee or other third-party guarantee it has lodged, then it is fine (although probably rather superfluous, as most guarantees cannot be modified unilaterally). But if it means that the contractor is able to put up a guarantee itself, e.g. by setting aside funds on a dedicated account or through its intrinsic value (see lines 370-375), then this carries great risks. Not in the least: what happens if the contractor goes bankrupt? After all, mining projects could last many years. As is very clear these days, even the most solid companies can rapidly decline in value as a result of transitions and disruptions in technology, policies and the world economy. Trusting the value of a company balance sheet many years into the future is not the most solid guarantee. This option ought to be discarded. The line needs to be written more clearly.
	338	After line 338 a line b) bis needs to be added: <i>the restoration of biodiversity;</i>
	341 - 350	More elaboration of a paragraph is needed in I.A 2. of draft Guidelines on the Commission's full access and control over the environmental guarantee so as to link it with the Standard and the Exploitation Regulations.
	369 - 375	Deletion of the whole paragraph starting with line 369: see the explanation in comments to lines 240-241.

Comments should be sent by e-mail to ola@isa.org.im