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Test Mining – revised version of Draft Regulation 48bis

Presented by the German delegation

Background

Since 2019, Germany has been advocating for a mandatory test mining before applying for the approval of an exploitation activity. In the March session 2022, the concept was discussed in the IWG on Environmental Matters. Many delegations were generally supportive but requested more information and/or saw a need for more detailed discussions and potentially amendments to the German proposal for a Regulation 48bis on Test Mining.

Against this background and upon request by Council members, Germany has hosted a webinar on Test Mining on 14 of June 2022. About 120 experts and state representatives across regional groups attended the webinar. Based on presentations by German colleagues, the conceptual ideas and the draft regulation were intensively discussed.

For more detailed information, please see the webinar report:

<https://www.umweltbundesamt.de/webinar-on-test-mining-14-june-2022-hosted-germany>

Rationale of mandatory Test Mining

Test Mining is essential in order to test the envisaged exploitation techniques *in situ* and to investigate potential impacts on the marine environment. Information from field testing is required to provide the necessary evidence that no harmful effects will occur due to an exploitation project. Numerical modelling may be a helpful addition but cannot replace field data as retrieved from test mining.

Therefore, an obligation for contractors to conduct test mining projects before applying for the approval of exploitation projects is required. Through such an obligation a level playing field for all contractors could be established.

Further supportive arguments were exchanged in the webinar on 14 of June 2022.

New text version – some explanatory remarks

Based on the comments made during the webinar and further conceptual considerations, the draft regulation has been revised.

First, we have included the distinction between test mining as an overarching term, the test mining project and the test mining report. The latter should compile all relevant information gathered during the test mining project. The test mining report should be submitted together with the other Environmental Plans, and should particularly feed into to the Environmental Impact Assessment and Statement accordingly.

Second, during the webinar, a majority of participants expressed the opinion that Test Mining should take place during the *exploration* phase, but that the information gathered is needed for

the approval of *exploitation* activities. Therefore, it was the overall view that the regulation on Test mining belongs to the exploitation regulations.

Furthermore, the point was raised that test mining must not be undertaken as “disguised exploitation”. This statement was broadly supported. After further discussion, Germany was convinced that such a misuse could be prevented by the need of an approval for a test mining project including the need of an Environmental Impact Assessment. Thus, we declined to propose a separate paragraph in the regulation.

The paragraphs on previous test mining projects and an additional test mining project prior to the start of commercial productions have been revised for further clarification.

Revised Draft Regulation 48bis on Test Mining

1. *The purpose of test mining shall be to provide evidence by information gathered through test mining projects to ensure:*
 - a) *that the proposed mining equipment is technically appropriate,*
 - b) *that the proposed mining operation is economically feasible, and*
 - c) *that the effective protection of the Marine Environment from harmful effects is ensured in accordance with Article 145 of the Convention.*
2. *Subject to this Regulation, an applicant shall conduct a test mining project prior to submitting an application for a Plan of Work for Exploitation. Information gathered through test-mining projects shall be compiled in a test mining report in accordance with Annex XX [and/or the relevant Standard or Guideline], and shall inform the Environmental Plans pursuant to Regulation 11.*
3. *Test mining projects require an approval by the Authority and shall be carried out in accordance with the rules, regulations and procedures for exploration and the recommendations for the guidance of contractors, in particular the assessment of possible environmental impacts arising from the exploration for marine minerals in the Area.*
4. *A test mining project does not have to be undertaken if the evidence pursuant to Paragraph 1 has been provided through other test-mining projects by the applicant or in the context of another approved Plan of Work for Exploitation. In such a case, the applicant shall compile in its test-mining report the information already available, explaining why this is sufficient evidence, and the Commission shall assess whether the evidence pursuant to Paragraph 1 has been demonstrated in its review of the application and report to the Council pursuant to Regulations 11-15.*
5. *If a material change has been determined in accordance with Regulation 25 and 57 (2), the [relevant ISA organ] shall consider and determine whether and on which aspects an additional test mining project has to be undertaken in order to provide sufficient information pursuant to paragraph (1). In this case, paragraphs (2) and (3) apply.*