

Concept for a structural streamlining of the ISA provisions on Environmental Impact Assessments during the Exploitation phase

(Draft as of 2 June 2023)

Introduction

During the first part of the 28th session Germany and Norway volunteered to co-head an intersessional working group related to streamlining the structure of the EIA provisions.

The group was tasked with looking at a way of streamlining the structure of the EIA provisions, including the placement of the important step of scoping, in the draft regulations on exploitation as well as other relevant sources related to the EIA process and the production of the EIS. These (existing so far) sources include:

- Draft regulation 46bis – Environmental Impact Assessment Process
- Draft regulation 46 bis (alt) – Scoping
- Draft regulation 47 – Environmental Impact Statement
- Annex IV – Environmental Impact Statement
- Annex IVbis - Scoping
- Draft EIA standard and guidelines (ISBA/27/C/4)
- Draft EIS guidelines (ISBA/27/C/5)

The group considers that the main elements of the overall EIA process, including scoping, the actual impact assessment (IA), and the preparation and form of the EIS are to a large extent addressed by the sources listed above. However, many delegations have voiced the need for a further streamlining and clearer structuring of these provisions related to the EIA/EIS and an evaluation of which elements and details are eventually needed at the different levels.

The intersessional working group has met for an introductory meeting on the 19 April 2023 and a more in-depth working meeting on the 16 May 2023. A draft version of this paper was circulated for comments and input before the second meeting in May 2023.

This concept paper was prepared by Germany and Norway for discussion in the context of the Council's Informal Working Group on the protection and preservation of the marine environment. The paper is based on the work in the intersessional working group and aims to provide a possible way forward on a target structure for the content of the EIA provisions. Importantly, it does not however, aim to assess or influence the ongoing negotiations of the *content* of the different provisions. Not necessarily all participants of the group agreed on all details this paper suggests and these will need further discussion.

The following delegations formed part of the group: Belgium, Canada, Chile, China, Cook Islands, Costa Rica, The Kingdom of Denmark, Finland, France, Fiji, Germany, Italy, Nauru, New Zealand, Mexico, The Federated States of Micronesia, The Netherlands, Norway, Pew Charitable Trusts, Russian Federation, Spain, South Africa on behalf of the African Group, Trinidad and Tobago, United Kingdom and the United States.

A key outcome of the group's deliberations is that the content of both Annex IV on the EIS and Annex IVbis on the Scoping Report seems better placed in standards than in Annexes to the Regulations. This ensures that these documents can more easily be further developed, and requirements adapted, with time and available knowledge.

Target structure for EIA provisions

The target structure presented below suggests an own Section of the Draft Regulations called “The Environmental Impact Assessment Process”. The group generally agreed that bundling the regulations related to the steps of the EIA Process (currently DR46bis, DR46bis alt and DR47) together in chronological order improves the readability. Within this section, we suggest developing one regulation for each procedural step of the overall EIA Process. Thus, we envisage separate provisions for Scoping, the Impact Assessment (referring to the actual process of collecting and collating the necessary information and assessing the impacts) and for the production of the written report summarizing the results of the assessment – the EIS. We suggest that for more substantial elements related to the individual steps, we include a reference to separate standards.

A separate provision for the procedural step of “identification of mitigation measures” is included in brackets. This is not because there is any disagreement as to whether the Contractor must identify the relevant mitigation measures as part of the EIS/EMMP. However, some delegations noted that the identification of mitigation measures is an integral part of the Impact Assessment step. We suggest that this deserves further discussion.

For illustration of the different elements of the EIA Process see the flowchart in the Annex to this paper.

Proposed structure

Section 2: The Environmental Impact Assessment Process

0) Procedural aspects of the Environmental Impact Assessment Process

a. Regulation [XX] – Environmental Impact Assessment Process

This first regulation of the section should only cover the *procedural steps* that any EIA – as a precondition to an assessment of a plan of work – should follow. Each of the individual steps will then be further detailed in specific subsequent regulations and Standards, referenced accordingly.

Currently available text for this Regulation:

- Current DR 46bis (could be condensed to the mere procedural steps with references to the respective following regulations and standards)

b. Standard – Environmental Impact Assessment Process

The details of the mandatory process should be further outlined in a Standard.

Currently available text:

Draft Standard on the EIA Process, as proposed by the LTC in 1/2022 (Doc. ISBA/27/C/4)

c. Guidelines – Environmental Impact Assessment Process

Any additional Guidance related to procedural aspects in the EIA Process, if needed (also Doc. ISBA/27/C/4).

Currently available text:

Draft Guidelines on the EIA Process as proposed by the LTC in 1/2022 (Doc. ISBA/27/C/4).

1) Scoping Phase

a. Regulation [XX] – Scoping

In this regulation, the requirement for the Contractor to conduct a scoping process and produce a scoping report should be outlined. The scoping report will outline the scope of the impact assessment and the concrete plan for the subsequent steps of the EIA process. It is suggested to have this regulation come first.

b. Standard on Scoping

In the Standard, the exact mandatory procedure of the Scoping step should be described. The format for the Scoping report could be annexed to the standard (rather than to the regulations).

Currently available text:

- DR46bisAlt (Scoping)
- DR46bis (text related to scoping)
- Annex IVbis (Scoping Report)

2) Impact Assessment

a. Regulation [XX] – Environmental Impact Assessment

The Impact Assessment is the core step in the overall EIA process. It is yet to be decided whether to name this “Environmental Impact assessment” (sensu strictu, as currently in the DRegs) or simply “Impact Assessment” (the term used by the LTC), in order to clearly distinguish this step from the overall “EIA process”. This step involves the environmental investigations, the measurement of impacts, e.g. through Test Mining and/or other technology tests¹, the prediction of impacts through modelling and the assessment of these impacts against the given baselines and against the boundaries given by the applicable environmental thresholds. The provisions for these assessments are currently only indirectly given by the requirements for the EIS, i.e. the outcome report of the EIA. We suggest that most of the provisions for the EIS given in draft Annex IV are in fact requirements for the assessment step. These and other requirements for the EIA should be provided as a binding Standard, in order to ensure comparability and a level playing field for Contractors. For example, if the EIS form requires information on the impacts on benthic habitats, this implies that such an assessment of impacts has actually been conducted, based on data, models and/or experiments.

Currently available text:

DR 46bis (excluding text related to scoping and EIS)
Annex IV on the EIS

b. Standard on the Impact Assessment

Here the above-mentioned details should be covered.

Currently available text:

Annex IV on the EIS

¹ Pending parallel discussions on test mining.

c. Guidelines for the Environmental Impact Assessment

In addition to the binding minimum requirements for the EIA, as given by the proposed Standard, additional potential environmental parameters or factors that may be relevant to the Plan of Work should be given in non-binding Guidelines. Furthermore, guidance on methodological aspects for the EIA investigations should be contained in these Guidelines.

Currently available text:

- EIA guidelines
- Annex IV (EIS)

3) (Identification of Mitigation Measures)

a. Standard on Mitigation Measures

This standard is referred to in Draft Regulation 45. If agreed, here the relevant potential measures according to the “mitigation hierarchy” (mainly avoid and minimize) could be described and attributed to any relevant potential impacts established through the EIA.

Currently available text:

- DR 46bis para. 3 (c))

4) Environmental Impact Statement

a. Regulation [XX] Environmental Impact Statement

In this regulation, the requirement to produce an EIS where the results of the EIA are summarized and commented should be provided.

b. Standard for the Environmental Impact Statement

In this Standard, the further requirements for the Environmental Impact Statement should be provided. This includes in particular a structure for the report as a form. The original purpose of Annex IV was to provide such a form. However, as requirements may need to be updated at certain intervals, we suggest these are better agreed as a Standard document. Furthermore, the content of Annex IV currently also includes requirements for the Impact assessment itself, so there will therefore be some repetition between the EIA Standard (No. 2b above) and this Standard on the EIS.

Currently available text:

- DR 47
- DR 46bis (text relating to EIS)
- Annex IV on the EIS
- Draft Guidelines for the preparation of Environmental Impact Statements, as proposed by the LTC in 1/2022 (Doc. ISBA/27/C/5).

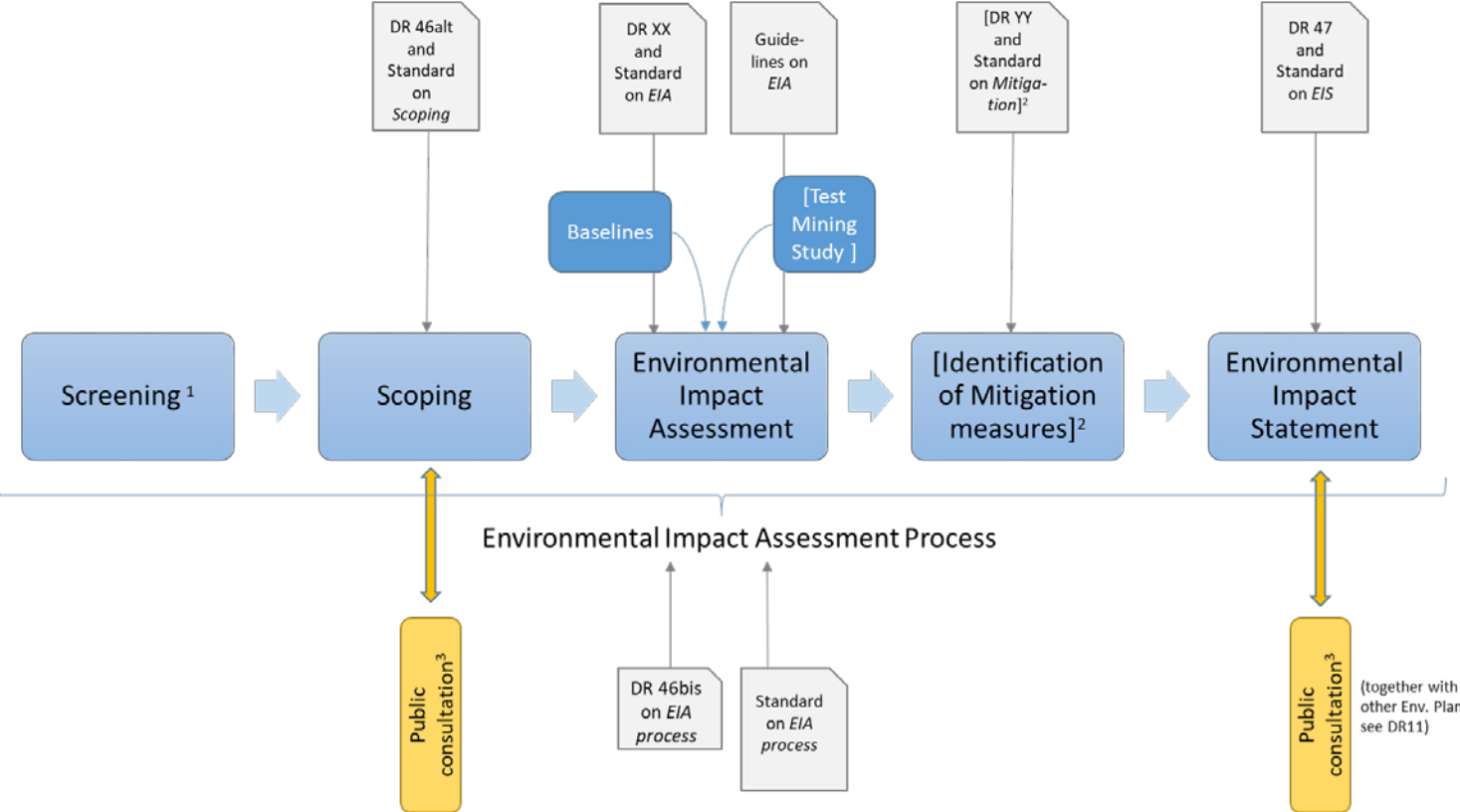
d. Guidelines for the Environmental Impact Statement

If needed, any further Guidance for the preparation of the Environmental Impact Statement can be covered in a non-binding Guidelines document.

Currently available text:

- Draft Guidelines for the preparation of Environmental Impact Statements, as proposed by the LTC in 1/2022 (Doc. ISBA/27/C/5).

Annex: Environmental Impact Assessment Process and proposed target structure



¹ *Screening* will not be part of the primary overall EIA process before first submission of a plan of work as the EIA will be mandatory. However will play a role in relation to amendments to a plan work that amount to material change.

² Mitigation measures will be reported as part of the EIA/EIS. It is yet to be discussed whether they are covered with a separate DR and Standard.

³ The issue of public consultation is currently developed in the intersessional working group on consultations.