

ISA 29th Session, Part I – Reading of the Draft Consolidated Text

Oral Statement by the Federal Republic of Germany

Delivered in March 2024

Regulation 20 - Term and renewal of exploitation contracts

In paragraph 1, we support the proposed edits for the term of the contract to run “from execution of the contract”. Regarding paragraph 2, we can accept the proposed edits.

Regarding paragraph 3, we note that a previous proposal in the form of paragraph 3 alt is now missing insofar as every request for an extension of an exploitation contract should be accompanied by a revised plan of work. As noted in Germany’s written comments, it is imperative that the ISA reserves for itself the power to assess an extension of a contract on its merits, including against past performance of the contractor. Indeed, the need to submit a revised plan of work at the time of contract renewal was noted by the LTC in ISBA/25/C/18 with respect to the renewal of existing exploration contracts. Obviously, things will change over the years and scientific knowledge will progress in the coming decades. We need to ensure the regulations allow the Authority to respond to such changes. As currently drafted, DR 20 could allow infinite renewals of the contract without the need to resubmit a plan of work. This is inconsistent with the fact that the plan of work sets out the activities which the contractor has to perform, and therefore will necessarily need to be re-written and re-assessed. Consequently, Germany would like to put this back on the table and automatically require that all applications for renewals be accompanied by a revised plan of work, and not just in the case where a Contractor deems it is making a material change to the plan of work as is currently worded. We must acknowledge that 30 years is a long time and things will change.

Concerning paragraph 6, we are surprised that our textual proposal to replace “shall” with “may”, which was supported by other states including the African Group, Chile and others at the last meeting, is not reflected in the consolidated draft. We disagree with the use of the word “shall” here, and would insist that this be replaced with “may”. Turning to sub-paragraph (a alt), we support the inclusion into the text. We can go along with the proposed deletion of sub-paragraph (b bis) as long as this requirement is properly reflected in

Regulation 13, but we see merit in retaining it here as well as since regulation 20 also applies to renewal of contracts. Moreover, if our proposal above that each application for renewal be subjected to an automatic revised plan of work is accepted, then having this requirement under sub-paragraph (b bis) covered in Regulation 13 would address our concern.

Alternatively or additionally, we strongly insist on retaining subparagraph (e) that cross refers to Regulation 13,. As for the new subparagraph (b bis) in the consolidated draft, and not to be confused with the other provision with the same numbering that we just addressed, Germany supports this new inclusion relating to PRZs and IRZs.

Still on the sub-paragraphs to paragraph 6, Germany would like to propose a new sub-paragraph, requiring the Commission to be satisfied that all related contractual obligations of the contractor, such as the requirement to maintain insurance coverage at all times during the conduct of exploitation activities, will continue to remain in force for the renewal period. We will provide text for this proposal in writing.

We could go along with the deletion of paragraph 7, if this is covered under paragraph 1. Currently, however, this part of paragraph one is included in square brackets only. Germany is still concerned that exploitation contracts may be extended continuously and for an indefinite period and we therefore ask to reinstate para 7, for the time being. We would like to hear the views of others about this.

We note that the new paragraph 9 does not seem to include previous edits and comments that were made, i.e. that the contract shall terminate after three months of expiring. In our view, the proposal to require submissions of requests for extensions at least two years before expiry would certainly give the Authority more time to consider such requests, but the process may be time consuming and there may be significant revisions to the plan of work and other accompanying plans, including consultations thereto, or requests for more information from the contractor - in which case allowing a contractor to continue mining operations upon the expiry of a contract would be undesirable. This is especially important since the Council may eventually decide on new contractual conditions to impose especially if there is a Material Change. It is also unclear to us whether other requirements, such as insurance (which we assume would be tied only to the original contract), would be met and continue to be covered under this period between expiry of the contract and renewal of the same in cases where the latter event does not come before the former. Certainly, the

Authority cannot allow operations to continue after the expiry of an exploitation contract if the insurance coverage is lapsed or other contractual obligations are no longer in force.