

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

### Oral Statement by the Federal Republic of Germany

Delivered in July 2024

#### **Regulation 93 bis - Stakeholder Consultation**

First of all, Germany would like to thank the United Kingdom as facilitator and all members of the intersessional work on stakeholder consultation for their dedication and hard work.

Germany believes this is a critical and much needed provision but is concerned about the current DR 93.bis. We believe it misses a number of key points and it does not fully reflect public participation obligations under international law. We have 3 main points.

First, we share the notion of Spain, that consultation **should not** be limited to “*directly affected*” stakeholders as currently suggested in a number of brackets. This is unjustifiably narrow, leaves the Contractor discretion as to who to consult with, and it does not align with broad public participation requirements under international law. During the intersessional WG, the concept of “directly affected” stakeholders was used to describe a group of stakeholders with whom the Contractor would be required to engage throughout the whole EIA. In other words, the public is invited to submit comments during the dedicated stakeholder engagement processes and there is a smaller group of directly affected stakeholders who are engaged the whole time. We are concerned to see a suggestion to limit all stakeholder consultations to a small group of stakeholders. We, as states, have obligations under international law to ensure public participation in environmental decision-making. Over 60 states are bound by either the Aarhus Convention or the Escazu Agreement, which require states to ensure public participation in environmental matters. Similarly, the new BBNJ Agreement sets a high standard for public participation during environmental impact assessments. We should align the ISA’s stakeholder consultation with the BBNJ Agreement, to avoid legal inconsistencies. We therefore strongly suggest deleting the bracketed text on “*potentially directly affected*” stakeholders throughout DR 93.bis.

Second, Germany suggests that DR 93.bis should have several paragraphs, the first set of paragraphs should deal with stakeholder consultation by the Applicant or Contractor while the second set of paragraphs should deal with stakeholder consultation by the Authority.

The Contractor and the Authority both have obligations to facilitate public participation. Both exist in parallel. But the current DR 93.bis only addresses stakeholder consultations run by the Contractor. This is a key oversight. The Authority should conduct a round of stakeholder engagement when it receives an application for exploitation. This consultation should be on the **full** application, except confidential information, and not only on the EIA, as reflected in DR 11. As part of this engagement process, we consider it important that the Authority responds to stakeholder comments received in line with best practice for transparency and public participation.

Third, the current DR 93.bis seems to conflate the roles of the Contractor and the Secretariat. When a Contractor (or Applicant) needs to conduct a stakeholder engagement process, it is the responsibility of the Contractor to notify stakeholders and carry out the engagement process. The Secretariat may assume a supporting role, for example by amplifying the call for stakeholder input or by offering a permanent webspace to publish stakeholder comments. However, the current **paragraphs 3 to 6** place the obligation to notify stakeholders on the Secretary-General, which is problematic. The obligation itself must remain with the Contractor so as to maintain clear lines of accountability. The Secretariat should not have to take on administrative duties for a Contractor, not least because the Authority is the regulator and enforcement body for seabed mining in the Area. Therefore, the Authority and its Secretariat need to provide arms-length supervision of Contractors.