

Friends of the President on Draft Regulation 40 - Report

This document contains the report of the organizers of the Friends of the President for Draft Regulation 40 (Prevention of Corruption) on the FOP group's work towards the textual proposal made for the 1 December 2025 deadline. This report describes the work undertaken by the FOP group and contains a number of recommendations by the organizers for the negotiations on the Exploitation Regulations.

During the March 2025 Council session, a number of delegations intervened with comments on DR 40. These delegations undertook to compile a joint textual proposal incorporating all these comments. During the July 2025 Council session, the concerned delegations opted to constitute a FOP group for DR 40 and invite comments on the draft by all other delegations. The FOP has since called for, and received, written comments twice. The textual proposal submitted by the FOP group incorporates these comments.

The organizers of the FOP group have taken note of several valued comments, which strictly speaking may exceed the scope of DR 40, but which they wish to record in view of their merit:

- DR 40 contained the defined term “Rules of the Authority”. The organizers understand that this definition has been redrafted during a ‘drafting scrub’ in 2024 to “rules, regulations and procedures of the Authority”. Nevertheless, the organizers understand that “Rules of the Authority” was understood to refer to a broader category of rules, including Exploitation Contracts, decisions of the organs of the Authority, etc. Delegations may wish to reflect upon whether situations foreseen in the Draft Regulations might indeed warrant the use of such a broader definition;
- DR 40(3) provides that “[t]he obligations under paragraphs 1, 1.bis, 1.ter and 1.quat are fundamental terms of the Exploitation Contract [...]”. It should be made clear to the Contractors that compliance with these paragraphs indeed has such weight and what the consequences of a potential breach thereof may be. To do so, language to that effect should also be included in the Exploitation Contract itself; and
- There seems to be a broad understanding within the FOP group that DR 40 serves to regulate Contractor conduct in relation to Exploitation activities. Delegations should consider the adoption of a broader ‘anti-bribery and anti-corruption policy’ for the Authority, in which the conduct of the Authority itself and its employees is also regulated.
- It may be desirable to regulate the consequences of disapproval of an extension of a Plan of Work pursuant to paragraph 4 or DR 40, in the Exploitation Regulations. Such should presumably take place in Section 3 of Part XI of the Exploitation Regulations (Enforcement and penalties).