

## Facilitator's Note

### Draft Regulation 107: Review of the Regulations (FOP Group)

#### 1. Introduction

Draft regulation 107 concerns the review of the Regulations. During the second part of the thirtieth session, opposing views were expressed on both the overall content of this draft regulation and its individual paragraphs. The first part of the thirty-first session did not consider this item.

Nevertheless, as this draft regulation remains one of the key outstanding issues for advancing focused negotiations, the Kingdom of Belgium has indicated its availability to act as Friend of the President for this item.

This facilitator's note first presents the current text of draft regulation 107, then identifies the main outstanding issues. It subsequently formulates questions for clarification and outlines a possible way forward. Contact details for questions and comments are provided at the end.

#### 2. Current text

##### Regulation 107

##### Review of these Regulations

[1. Five years following [Alt. 1 the approval of these Regulations by the Assembly] [Alt. 2 the signature of the first Exploitation Contract] [Alt. 3 the first date of commencement of Commercial Production], the Council shall undertake a comprehensive review of the manner in which the se Regulations have operated in practice -and may also reasonably undertake such a review at any time thereafter.]

[1. Alt. The Council shall take a full review of these Regulations. This review shall, at least, include:

- (a) ~~T~~the manner in which the se Regulations have operated in practice;
- (b) ~~T~~the effectiveness and enforceability of the se Regulations; and
- (c) ~~T~~the manner in which the se Regulations have ensured compliance with the principles, approaches, and policies pursuant to regulation 2, and the general obligations relating to the Mmarine Eenvironment pursuant to regulation 44, paragraph-1 bis [and regulation 44ter].

1. Alt. bis The first review shall take place five years following the approval of these Regulations by the Assembly, and no later than ten years after the adoption of these Regulations by the Council.

1. Alt. ter After the review pursuant to paragraph 1bis, the Council may also undertake such a review at any time thereafter, but shall do so at least every ten years.]

[1.[quat.]/[bis] [Without prejudice to article 155 of the Convention, e]/[E]ach subsequent periodic review of these Regulations shall progressively evaluate the manner in which the implementation of these Regulations contributes to the broader objectives set out in Part XI of the Convention, including the equitable sharing of financial and other economic benefits derived from activities in the Area, the effective and balanced development of activities in reserved and non-reserved areas, the prevention of monopolization of

activities in the Area and the interests and needs of developing and small island States.]

2. [When in the light of improved knowledge, technological advancements, implementation experience or identification of regulatory gaps, it becomes evident that these Regulations are not adequate, a]ny State party, the Commission, the Enterprise, any Contractor (through its Sponsoring State), or Stakeholder (through a State party) may ~~at any time~~ [following the completion of the first review] ~~[request]/[suggest]~~ the Council to consider, at its next ordinary session, revisions to these Regulations and the matter shall be included in the provisional agenda of the Council for that session.

~~[2. Alt Any State party and any organ of the Authority may at any time request the Council to consider, at its next ordinary session, revisions to these Regulations and the matter shall be included in the provisional agenda of the Council for that session.]~~

~~3. The Council shall establish a process of public consultation and participation that gives adequate time and opportunity to comment on proposed revisions to these Regulations, save for the making [at any time] of an amendment to these Regulations that has no more than a minor effect or that corrects errors or makes minor technical changes.~~

4. In the light of that review, the Council may in accordance with the Convention and the Agreement adopt and apply provisionally, pending approval by the Assembly, amendments to these Regulations, taking into account the recommendations of the Commission or other subordinate organs. [Such provisional application shall not exceed [X] years from the date of adoption of the amendments by the Council.]

~~[5. Any amendments to these Regulations adopted by the Council and the Assembly, shall not be applied retroactively to the detriment of the Contractors that have already signed an Exploitation Contract with the Authority.]~~

~~[5.Alt. Amendments to these Regulations shall be implemented by existing Contractors, subject to any limitations in the Convention and the Agreement. Any amendments The Council may provide for a transition period for implementation by existing Contractors of amendments to these Regulations.]~~

### 3. Outstanding issues

- In relation to paragraph 1:

Three main options can be identified for paragraph 1:

- paragraph 1 alone;
- paragraph 1 together with paragraph 1bis;
- the alternative structure consisting of paragraph 1 Alt., 1 Alt. bis, 1 Alt. ter and 1 Alt. quat.

Paragraph 1 also provides for different options for the commencement point for calculating the review period. These include: five years following (i) approval of the Regulations by the Assembly, (ii) the signature of the first Exploitation Contract, or (iii) the first date of commencement of Commercial Production.

- In relation to paragraph 2:

The majority of delegations expressed a preference for the original version of paragraph 2. This text, however, still contains some bracketed language for which a decision is needed.

- In relation to paragraph 4:

At the end of the paragraph there remains bracketed text for which a decision is needed.

#### **4. Questions for clarification**

The Kingdom of Belgium invites delegations to provide clarification on the following issues:

- Which of the three options for paragraph 1 is preferred?
  - If the original paragraph 1 is retained, what should be the starting point for calculating the review period?
- Can the brackets around the opening language of paragraph 2 be removed?
- Should the Council be “requested” or “suggested” to consider revisions?
- Can the brackets at the end of paragraph 4 be removed?
  - If so, what should be the maximum duration for provisional application of amendments?
- Are there any additional issues relating to draft regulation 107 that should be considered?

#### **5. Proposed way forward**

The Kingdom of Belgium invites delegations to submit input by 26 May. Following this deadline, Belgium will review the input received and circulate a revised version of draft regulation 107 for written or virtual consideration during the week of 8 June, with a view to its inclusion in the next revision of the consolidated text by 15 June.

#### **6. Contact details**

Input, questions and comments may be sent to the Belgian delegation at: [thomas.voets@diplobel.fed.be](mailto:thomas.voets@diplobel.fed.be)