

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

1. Introduction

Draft regulation 107 concerns the review of the Regulations and 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 and has shared two facilitator's notes inviting delegations to provide clarification on a number of related issues.

The Kingdom of Belgium wishes to warmly thank delegations for their input, comments, and drafting suggestions. On this basis, the textual proposal for draft regulation 107 set out below has been prepared with a view to its inclusion in the further revised consolidated text.

2. Revised text

Regulation 107 Review of these Regulations

[1. Five years following ~~[Alt. 1 the approval of these Regulations by the Assembly]~~ ~~[Alt. 12 the signature conclusion of the first Exploitation Contract]/~~ ~~[Alt. 23 the first date of commencement of Commercial Production]~~, the Council shall undertake a comprehensive review of the manner in which these Regulations have operated in practice –and may also reasonably undertake ~~such additional~~ reviews [to the extent necessary] at any time thereafter.]

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

- (a) the manner in which these Regulations have operated in practice;
- (b) the effectiveness and enforceability of these Regulations, including potential regulatory gaps; ~~and~~
- (c) the manner in which these Regulations have ~~ensured compliance with~~ [Alt. 1 given effect to]/[Alt. 2 upheld] the principles, approaches, and policies pursuant to regulation 2, and the general obligations relating to the Marine Environment pursuant to regulation 44, paragraph ~~1~~ 1bis [and regulation 44ter]; ~~and~~
- (d) the manner in which the implementation of these Regulations contributes to the broader objectives set out in Part XI of the Convention.

1. Alt. bis The first review shall take place five years following the ~~approval of these Regulations by the Assembly,~~ [Alt. 1 conclusion of the first Exploitation Contract]/[Alt. 2 first date of commencement of Commercial Production] 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, aA][Any State party and any organ of the Authority, 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 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.~~

~~3. 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 [] years from the date of adoption of the amendments by the Council.]~~

~~34. Amendments to these Regulations shall be implemented by existing Contractors. Any amendments may provide for a transition period for implementation by existing Contractors of amendments to these Regulations.~~

3. Clarification of the revisions made

- Paragraph 1:

Views differed on the two options for paragraph 1: paragraph 1 as a standalone provision, and the alternative structure consisting of paragraphs 1 Alt., 1 Alt. bis and 1 Alt. ter. Similarly, views differed on the two commencement points for the first review: ‘the signature of the first Exploitation Contract’ and ‘the first date of commencement of Commercial Production’. For this reason, both options have been retained in the textual proposal.

Views also differed on the inclusion of ‘to the extent necessary’ in paragraph 1. This has therefore been bracketed.

It was finally noted that ‘The conclusion of the first Exploitation Contract’ is technically more accurate than ‘the signature of the first Exploitation Contract’. This has been reflected in the textual proposal.

- Paragraph 2:

Views differed on the need to include paragraph 2. It has therefore been placed in brackets.

The facilitator of the Friend of the President group on Monopolization has further confirmed that the inclusion of “and any organ of the Authority” would be acceptable in light of the comments made by some participants in the group on Monopolization who requested the inclusion of a reference to the EPC in this paragraph. This has therefore been retained.

- (old) Paragraph 3

No objection was voiced for the deletion of (old) paragraph 3. It is therefore deleted.

- (new) Paragraph 3

(old) Paragraph 4 has been renumbered to (new) paragraph 3, given the deletion of (old) paragraph 3.

4. Outstanding issues

In light of the discussion of this regulation during part II of the 31st session, the facilitator would welcome views on the following issues:

- The two options for paragraph 1: paragraph 1 as a standalone provision, or the alternative structure consisting of paragraphs 1 Alt., 1 Alt. bis and 1 Alt. ter.;
- The two commencement points for the first review: ‘the conclusion of the first Exploitation Contract’ and ‘the first date of commencement of Commercial Production’;
- The drafting of paragraph 1 Alt. bis, to clarify that the ten-year deadline operates independently if no contract is ever signed and no commercial production begins;
- The need to retain paragraph 2 (given that it reflects ‘revisions’ and therefore could be separate from the review);
- The need for a conditional clause in paragraph 2 to ensure that changes to the Regulations do not burden the Council and risk undermining legal stability and the predictability of exploitation activities;
- The possibility of moving (new) paragraph 3 from DR 107 to DR 58(1).

The facilitator wishes to stress that the foregoing is not an exhaustive list, but reflects input received. Other suggestions and proposals are therefore most welcome.

5. Contact details

Input, questions and comments before, during and after the discussion of this regulation during part II of the 31st session can be sent to the Belgian delegation at: thomas.voets@diplobel.fed.be