

Germany – written submission on the definitions of ‘Incident’ and ‘Notifiable Event’ in the Further Revised Consolidated Text of the ISA’s Exploitation Regulations

Draft regulations 33 and 34, and the definitions of *Incident* and *Notifiable Event*, are central to the Authority’s compliance and emergency-response architecture. Germany is concerned that the drafting in the Further Revised Consolidated Text of the ISA’s Exploitation Regulations (FRCT) has become confused and internally inconsistent. We are therefore pleased to provide this written submission, following the Council discussion on this topic in relation to the FRCT in March 2026.

Explanatory Commentary

According to our understanding, *Incidents* and *Notifiable Events* are intended to be two distinct categories of event. Incidents are serious occurrences requiring immediate notification and a comprehensive response under draft regulation 33, while Notifiable Events are lower-level operational anomalies that should still be reported and noted by the Authority, but do not trigger the same emergency procedures. We support this approach, and see it can lead to a functional, proportionate, and enforceable system.

It should further be noted that there could be certain type of event that may be *either* an Incident, or a Notifiable Event, depending on the consequences of that event. For example, ‘an unauthorised Mining Discharge’ could be a ‘Notifiable Event’ if it were e.g., a brief and contained leak of a small volume of cleaned wastewater, but could be an ‘Incident’ if it were e.g. an ongoing leak of a large volume of combined ore and wastewater that is polluting a sensitive ecological site. In such instances, the *effect* of the event, not only the event itself, needs to be factored into the criterion. We see that the environmental threshold Standards will be an important reference point in this regard.

In determining whether an event is an ‘Incident’ or a ‘Notifiable Event’ we consider it is also helpful to bear in mind draft regulation 33, which sets out the process triggered by an ‘Incident’. This includes immediate implementation of the Contractor’s emergency response plan, urgent issue of instructions from the Compliance Committee, as well as consultation with sponsoring State(s), flag State(s), adjacent coastal State(s) and any relevant international organisations. For that reason, more minor operational anomalies should not be classified as ‘Incidents’ as it would lead to a disproportionate response. Equally we believe ‘Incidents’ should focus on potential harm to human health, the environment, and third parties - but not on pure disruption to the Contractor’s own operations. Such disruption is pertinent to the Authority and the Contractor - and as such should be a Notifiable Event; but is not a matter of potential harm to third parties, and as such should not be an Incident.

The draft regulation 34 process for ‘Notifiable Incident’ is about reporting information to the Authority for information. The main purpose is for the Authority to be able to identify risks and trends, to inform the Authority’s ongoing supervision and regulation of the Contractor, and with a view to preventing minor events escalating into major events of serious harm.

With this in mind, Germany considers that both definitions require further work.

We see the current formulation of the definition of *Incident* as problematic in several respects.

- First, it is circular: the term “Incident” is used within its own definition.
- Second, it relies heavily on the IMO Casualty Investigation Code, without adaptation. That does not work, in our view, as it covers a range of maritime events that fall outside the

ISA's jurisdiction, and also includes occurrences far too minor to trigger the serious response regime under DR33.

- Third, we see a new proposal to include “Notifiable Events” within the definition of “Incident”. We do not understand this. It would confuse the distinction between the two categories and undermine the tiered reporting system that draft regulations 33 and 34 are meant to establish.
- Fourth, we see a new proposed reference in the definition of ‘Incident’ to “*other relevant standards and guidelines for offshore exploitation operations*”, which we see as vague and unenforceable. An *Incident* is a key trigger for emergency response; it must be defined precisely and comprehensively, not left to open-ended interpretation.
- Finally, we see inconsistencies between the definition of Notifiable Event and the definition of Incident. Several items listed as Notifiable Events - such as significant leaks of hazardous substances, unauthorised mining discharges, or damage to submarine cables - appear potentially serious enough to warrant treatment as Incidents. Clear and objective rules are needed to clarify how such events are categorised (e.g., by reference to the impact of the event against the environmental threshold Standards).

Furthermore, we believe there are categories of events that are not currently captured by either definition. One example is the loss of equipment by the Contractor on the seafloor. Another one concerns environmental thresholds. We imagine there would be early warning points before a threshold is actually breached, that should be Notifiable Events, so the contractor is required to report and the Authority can be forewarned of near-breach, and can consider preventative action.

These gaps and overlaps suggest the need for a side-by-side review of both definitions to ensure they are mutually coherent, comprehensive, and aligned with the appropriate procedural response. We have conducted this exercise and propose the following revised definitions, which focus on the scale, nature and potential repercussions of an event.

Proposal for Revised Definitions

Based on the above rationale, Germany proposes the following revised and streamlined definitions for the two key terms.

(1) Incident

“Incident” means any event or sequence of events arising from activities in the Area that results in, or presents an imminent and serious risk of resulting in:

1. *Harm to the Marine Environment in breach of the Plan of Work, environmental Standards including those setting out environmental threshold values, or any other of the rules, regulations and procedures of the Authority.*
2. *Death or serious injury to a person, or other serious harm to human health or safety at-sea.*
3. *Significant interference with other legitimate marine use or maritime actors operating in the vicinity.*
4. *Any other event reasonably assessed to require immediate activation of the Contractor’s emergency response procedures under its Emergency Response and Contingency Plan.*

A non-exhaustive list of examples of such events may include: fire, explosion, loss of control of machinery, collision, catastrophic equipment failure or damage, loss of vessel, failure of vessel or installation stability or dynamic positioning capability, loss of person from a ship, harm to person requiring medical evacuation, damage caused to third-party marine infrastructure or equipment (e.g. fishing gear, marine scientific research equipment, submarine cables or pipelines), unauthorised Mining Discharge or leak of hazardous or noxious substance of a scale or nature that presents serious or imminent risk of harm to the environment or human health.

(2) Notifiable Event

“Notifiable Event” means any event or sequence of events arising from activities in the Area that does not constitute an Incident but that may indicate elevated risk to safety, the Marine Environment, other legitimate marine users, or the Contractor’s ability to satisfactorily perform its Plan of Work.

A non-exhaustive list of examples of such events may include:

- *Reaching environmental early-warning indicator as set out in the Contractor’s Environmental Monitoring and Management Plan or in the Authority’s environmental threshold Standards.*
- *Unauthorised Mining Discharge that does not meet the definition of an Incident.*
- *Impairment or damage to safety critical or environmentally critical equipment.*
- *Data anomalies or sensor failure in environmental monitoring systems.*
- *Marine mammal fatality.*
- *Significant occupational lost time due to illness or injury.*
- *Loss of equipment on the seafloor or in the water column.*
- *Contact or suspected contact with third-party marine infrastructure (e.g., fishing gear, marine scientific research equipment, submarine cables or pipelines).*
- *Security related events, including threat or breaches of physical or cyber security.*
- *Damage to or failure of technology or equipment essential to the conduct of Exploitation activities.*
- *Adverse operating conditions that may cause significant or prolonged disruption to the regular operation of the Exploitation activities.*

Draft Regulations 33 and 34

Germany notes that additional work is also needed to ensure draft regulations 33 and 34 are suitably complementary and integrated, and appropriately tailored to the dual-track event identification and reporting regime.

As noted above, we believe that **DR33 (Incident)** should require an emergency response, as well as notification of a range of other interested parties, which the Authority should coordinate. We see this well-reflected in DR33 currently. But have the following additional comments on DR33:

- We suggest the title be amended to ‘Incidents’.

- We believe the notification requirement in DR33(2)(a) – currently proposed for deletion – should be retained insofar as it relates to reporting to the Secretary-General. Deleting it without relocating the obligation elsewhere leaves a gap. But we do not think the Authority should legislate for the Contractor’s reporting arrangements with the sponsoring State – as that is a matter for the domestic rules of the State. We also note that paragraph (4)(a) imposes a separate duty on the Secretary-General to consult with the sponsoring State and any other relevant States, which we see as the more appropriate means of communication and coordination – preferable to asking the Contractor to do the same, or to have both parties doing the same consultations simultaneously. With regards timing, we think ‘*immediately*’ may be unrealistic in offshore emergency situations, and ‘*at the earliest time possible*’ is imprecise. So, we prefer the combination of ‘*without undue delay*’ and ‘*no later than 24 hours*’, which we see as flexible enough to accommodate operational realities, but also conveys the urgency of the notification, and is clear and enforceable. So, we propose (2)(a) should be reinstated to read:

“2. The Contractor shall, upon becoming aware of an Incident:

(a) Notify the Secretary-General without undue delay and no later than 24 hours from the moment the Contractor becomes aware of the Incident;”

- In DR33(2)(c), we suggest deletion of the final phrase “*in consultation with...as the case may be*”, because this is already covered under paragraph (4)(a) – but the language (2)(c) is inconsistently drafted, and could also be interpreted to mean that the Contractor is required to conduct consultations, rather than the Secretary-General (as we presume is the intention as per (4)(a)). We also suggest replacing ‘Secretary-General’ here with ‘the Authority’ to reflect that instructions in an Incident may come from different organs as the emergency response period unfolds.
- We support the insertion of “*reasonable*” in DR33(2)(d), as a requirement to take only “*necessary*” action would set an unduly narrow threshold for emergency response.
- Germany has concerns regarding due process in DR33(3). As drafted, the Secretary-General appears able to notify States of a Contractor’s non-compliance on his or her own initiative. Given the potential legal consequences for the Contractor and for States, we believe this step should be taken only following a determination of non-compliance by the Compliance Committee. We suggest this paragraph is re-drafted to be specific to the Authority’s institutional reporting, and also to include reporting internally of the initial notification of the Incident. So, we propose paragraph (3) should read:

“The Secretary-General shall promptly report to the Compliance Committee:

(a) any notification received of an Incident; and

(b) any failure by a Contractor to comply with this regulation.”

- Similarly, with DR33(4), we consider it would be more appropriate to the respective roles and responsibilities for the Compliance Committee to issue instructions and the Secretary-General to implement them. We also question the proposed deletion of DR33(4)(b), which requires the Secretary-General to act in accordance with relevant Standards and Guidelines. DR33 grants the Secretary-General a degree of discretion to act on behalf of the Authority in urgent and potentially life-threatening situations. This

may be justified, but it is equally important that the Council provide clear guardrails. Retaining the reference to Standards and Guidelines would help ensure that emergency actions are consistent, predictable, and subject to appropriate oversight.

- In paragraph (5), it is unclear which Inspection report is to be published: the Contractor's or the Authority's? We suggest both. We also think paragraph (5) could be made a final sub-paragraph of (4), as both paragraphs set out duties of the Secretary-General in the aftermath of an Incident.

In contrast to DR33, **DR34 (Notifiable Events)** is dealing with lesser issues that on their own are not emergencies, but may provide early warning indicators, or accumulate into a bigger picture of concern. We believe the procedure in DR34 should therefore require that Notifiable Events be reported to the Compliance Committee, either for consideration of possible follow-up action, or simply for noting. The Compliance Committee can also consider whether it agrees with the 'Notifiable Event' categorisation (or whether a re-classification to 'Incident' may be needed).

We suggest the following drafting amendments to DR34:

- We suggest the title be amended to 'Notifiable Events'.
- Paragraph (1) should be deleted, for the following reasons:
 - As above, it is for the sponsoring State to set its own reporting requirements, and not for the Authority to legislate arrangements between the Contractor and its sponsoring State.
 - Paragraph (2) covers the Contractor's notification to the Authority.
 - We believe the very nature of Notifiable Events should be such that they are not sufficiently serious or likely to affect third parties so as to require automatic notification to adjacent coastal states. If an event is so serious, then it should be managed as an Incident.
- In the chapeau to (2), we propose that "*as soon as reasonably practicable*" is an appropriate timeframe. Again, we recall that Notifiable Events may be minor - for example, a worker illness or a minor equipment malfunction - and are characterised by not requiring an emergency response (or they would be an Incident, by definition).
- For the same reason, we suggest deleting reference in paragraph (2)(a) to '*a statement regarding the implementation of an Emergency Response and Contingency Plan*'.
- Again, considering the nature of Notifiable Events, we consider it more proportionate for paragraph (3) to require the Secretary-General to transmit any notifications of Notifiable Events to the Compliance Committee (only). The Compliance Committee can then determine whether any regulatory response, notification to other actors, or escalation to the Council is warranted. If the latter actions are warranted, then that would suggest that the event has been misclassified and should be re-classified as an Incident. Therefore, we proposed the following drafting for paragraph (3):

"(3) Upon receipt of a notification of a Notifiable Event under paragraph 2, the Secretary-General shall transmit the notification to the Compliance Committee for its consideration as to whether any follow-up action is warranted including instructions to the Contractor, or notification to third parties or the Council. The consideration by the

Compliance Committee shall include an assessment as to whether the matter has been correctly classified as a Notifiable Event or should be re-classified as an Incident.”

- We do not see rationale for retaining paragraph (4). It is not the Authority’s role to tell the Contractor when to communicate with national regulators (and indeed it may be unhelpful for the Authority to require them to do so for minor events).
- We are unsure why paragraph (5) has been included in DR34. It relates to complaints received by a Contractor (not by the Authority). We do not think every complaint received by a Contractor should be a ‘Notifiable Event’. Many such complaints may be an internal matter (e.g., human resources) or minor (e.g., quality of catering). It would not seem appropriate or proportionate for the ISA to require the Contractor to inform the Authority of any complaint it receives. The Authority will have its own public complaints mechanism (and also whistleblowing procedures) which should be accessible to any person who wishes to raise a concern about an ISA contractor with the Authority. Germany would support the draft Regulations containing a requirement for Contractors to have their own accessible and fair complaints procedures – as this is a hallmark of any conscientious and accountable company. But we consider that would be better located elsewhere e.g., DR18 bis [Obligations of the Contractor], or it may already be covered in the obligation to apply ‘Good Industry Practice’. We propose deletion of paragraph (5) from DR34.

We consider that all Incidents and Notifiable Events should also be included in annual reports by Contractors. As that is already covered by DR38 [Annual Report] paragraph (2)(e bis), it does not need to be repeated in DRs33 and 34.

We provide a clean copy of our proposed DRs 33 and 34 below:

Regulation 33

Incidents

1. The Contractor shall suspend Exploitation activities and follow the procedures set forth in regulation 29 bis if it is reasonably foreseeable that proceeding or continuing would cause or contribute to an Incident, or reduce or prevent the effective management of an Incident.

1.bis A Contractor shall maintain an Incident Register on board any mining vessel or Installation [or Facility]¹ engaged in Exploitation activities.

2. The Contractor shall:

(a) Notify the Secretary-General without undue delay and no later than 24 hours from the moment the Contractor becomes aware of an Incident;

(b) Upon becoming aware of an Incident, immediately implement the Emergency Response and Contingency Plan as applicable for responding to the Incident;

¹ We note the Regulations currently contain two defined terms that appear to overlap: “Installation” – which is used frequently throughout the FRCT, and “Facility” – which is used only once in the FRCT. It may be unnecessary to keep these two separate terms, but we include both for now, pending further consideration by the Council.

- (c) Undertake promptly, and within such timeframe as stipulated, any instructions received from the Authority in relation to Incident response;
- (d) Take all other measures necessary and reasonable in the circumstances to limit adverse effects of an Incident;
- (e) Record any Incident in the Incidents Register; and
- (f) Following resolution of an Incident, provide the Secretary-General with an Incident report which details the Incident and any corresponding data on its nature, scale, and impacts, the Contractor's response, findings, and any proposed measures to minimise or reduce the risk of similar Incidents occurring in the future.

3. The Secretary-General shall promptly report to the Compliance Committee:

- (a) any notification received of an Incident; and
- (b) any failure by a Contractor to comply with this regulation.

4. The Secretary-General shall, in overseeing a response to an Incident:

- (a) request and implement instructions from the Compliance Committee, and keep the Compliance Committee updated as the Incident response progresses;
- (b) consult with the Sponsoring State or State, and other relevant States or international organisations, insofar as it is feasible to do so taking account of the urgency in the situation;
- (c) follow any relevant Standards and Guidelines;
- (d) report the occurrence of any Incidents and how the response was managed to the Commission and the Council at their next available meeting;
- (e) publish copies of Incident reports submitted by the Contractor in accordance with paragraph (2)(f) and made by the Authority in accordance with paragraph (4)(d), in the Seabed Mining Register, ensuring that any Confidential Information is redacted.

Regulation 34

Notifiable Events

1. The Contractor shall as soon as reasonably practicable after becoming aware of a Notifiable Event:

- (a) provide written notification to the Secretary-General including a description of the event, any immediate response action taken, and any further action planned; and
- (b) record the Notifiable Events in the Incidents Register.

2. Upon receipt of a notification of a Notifiable Event under paragraph 1, the Secretary General shall transmit the notification to the Compliance Committee.

3. Upon notification of a Notifiable Event, the Compliance Committee shall:

- (a) ensure the matter is noted on the relevant Contractor's record,

(b) consider whether the Notifiable Event is an isolated event or suggests a pattern of conduct or escalation of risk, and

(c) make an assessment as to:

(i) whether the matter has been correctly classified as a Notifiable Event or should be re-classified as an Incident, in which case regulation 34 shall apply; or

(ii) whether any follow-up action is warranted in response to the Notifiable Event, such as instructions to the Contractor, notification to third parties, reporting to the Council, or other compliance actions pursuant to regulation 103.