

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

Oral Statement by the Federal Republic of Germany

Delivered in March 2024

Regulation 26 - Environmental Performance Guarantee

As a general comment, Germany would welcome the views of others as to whether the EPG should only apply to the decommissioning of mining activities or it should also apply to other instances. We note that a regional group had previously suggested renaming this as a ‘Decommissioning Bond’, which seems more fitting if that is the intended purpose.

We welcome the proposed edits in paragraph 2, namely, that the Commission should assess and recommend the form and amount of the guarantee or bond, and that the Council makes a determination thereupon. These additions give clarity to the process.

Germany opposes the deletion of the second sentence in paragraph 3, which would apply where the amount of the EPG is paid by instalments and not upfront. We must insist that commercial production can only commence once the full amount has been provided. There is the obvious risk that exploitation activities may have to be suspended and mine sites be closed prematurely for environmental reasons, and thereby, necessitating the Authority to access the EPG. We disagree that this requirement would negate the flexibility given for payments by instalments or is in any way counterintuitive to an instalment-based EPG. On the contrary, this flexibility to allow contractors some time from when a plan of work is approved to pay the EPG by instalments may be open to abuse if contractors can commence commercial production or large scale recovery before first depositing the full amount of the EPG. If there is no agreement on this compromise that we have proposed, we would consider the flexibility of payments by instalments on the EPG as an unacceptable risk to the Authority.

We note the deletion of paragraph 3 bis and that this has been placed in the “suspense document”. At this point, we do not think it should be removed completely from the regulation, although we can appreciate that there is no need to be overprescriptive in the regulations. That said, we see merit in addressing this requirement in clear terms in the regulations, and already being explicit that a forthcoming binding Standard will be more

prescriptive. We therefore suggest retaining this provision by simply using the following language: “The Environmental Performance Bond shall take the form of a letter of credit or surety bond guaranteed by a reputable financial institution and meet the other financial criteria provided for in the Standard”.

Germany welcomes the textual additions to paragraph 5. The additions provide further clarity on the review process on the part of the Authority, which should involve the Commission and the Council as per the initial process.

Finally, we reiterate our position on the additional text inserted in paragraph 8. We disagree with the proposed deletion of the second sentence. In our view, it is important to make it clear that failure to comply with the obligations relating to the EPG is a serious matter that gives rise to compliance measures. There are many other instances in the regulations where specific references have been made to the compliance measures under these regulations in the event of breaches by contractors. Similarly, we believe it is necessary to refer to the compliance measures of the Authority here. This is particularly important, for instance, in the light of our point above that the amount of the EPG must have been paid in full before commercial production or large scale recovery can commence. The Authority must have the explicit powers to suspend activities in cases where the Contractor unilaterally decides to commence commercial production or large-scale recovery despite not having paid the EPG amount in full. In response to a comment made by one written submission that the last sentence in paragraph 8 would already cover instances of non-compliance, we would like to respond that this is not what the said sentence seeks to address. The last sentence in paragraph 8 specifically covers situations where the Authority is forced to make recourse to the EPG and to ensure that the Contractor remains liable to the Authority for all costs incurred by the Authority in making such recourse. This sentence does not cover instances where Contractors have failed to fulfil the obligation to lodge an EPG or meet other required criteria. As such, it is important to retain the second sentence.