

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

Oral Statement by the Federal Republic of Germany

Delivered in July 2024

Regulation 40 - Prevention of Corruption

Germany considers this provision to be an important one.

We support the proposal just made by Ghana on behalf of the African Group, that in paragraph 1, the second “Contractors” should be spelt with a small letter “c” and not capital “C” as we understand this term refers to consultants or experts engaged by the Authority. Moreover, Germany would like to include the words “offer or promise” before the word “make”; as well as the words “or personal favour” after the word “reward”. Likewise, we think the phrase “under these Regulations” at the end should be replaced with “under the Rules of the Authority”. We note that the definition of “Rules of the Authority” in the Schedule has been removed in this version of the consolidated text, and we would like to see this term reintroduced.

Additionally, the current drafting might create a loophole in that a Contractor may itself not make such offers, but a third person could do so on its behalf or under its instructions, and therefore defeat the intent of this provision. As such, Germany proposes a new paragraph 1 bis as follows: “A Contractor shall not encourage, instruct or allow any other person or government to offer, promise or make any such gift or reward or personal favour referred to in paragraph 1.”

Germany welcomes paragraph 2. However, we suggest to have be some discussion on whether such national level anti-bribery and anti-corruption laws and the accompanying repercussions would be sufficient, as this may differ from jurisdiction to jurisdiction. It may also be the case that some national legislation, as they currently exist, might not be applicable to such instances, that is they might not have extra-territorial application. As such, these laws relating to anti-bribery and anti-corruption belonging to states that are considering to sponsor exploitation activities would need to be amended and extended to

cover entities sponsored to conduct activities in the Area. Germany would like to propose that the application of a plan of work and/or the certificate of sponsorship submitted by a sponsoring state include information of whether and what laws exist within the sponsoring state on anti-bribery and anti-corruption, and to confirm that such laws extend to entities that are sponsored to conduct activities in the Area. The LTC can, as part of the evaluation of the application, include such information in its report to Council. We will make respective textual proposals during the next round of written comments.

Moving on, like Costa Rica, also Germany noted that this regulation does not prescribe any power for the Authority to take action in cases where this provision has been contravened. Without such a provision, this regulation could be futile. Without wanting to preempt Costa Rica's announced wording, we suggest adding a new paragraph 3, as follows: "If there is any indication or reason to believe that this regulation has been contravened, the Compliance Committee shall take the matter up for urgent consideration, including to determine if any measures against the Contractor under Regulation 103 would be appropriate, as well as whether to recommend to the Council that an investigation be carried out against all person or persons involved, including those involved in making, and those in receipt of such offer, promise or actual gift or reward or personal favour. The Secretary-General shall gather and forward all available and potential information and evidence in support of such allegation to the Compliance Committee. The Secretary-General shall also notify the relevant sponsoring State, who shall cooperate with the Authority as well as consider further action pursuant to its national legislation."

Lastly, we believe that there might be a significant gap if this regulation only applies to Exploitation Contractors. As such, Germany proposes as new paragraph 4: "This provision shall equally apply to Applicants and prospective Contractors. If the Authority determines that this provision has been contravened, the application for the approval of a plan of work shall be dismissed, or the approval shall be reversed in instances where approval has already been granted, as the case may be."