

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH SESSION:
COUNCIL - PART 3**

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete.

1. Name(s) of Delegation(s) making the proposal:

African Group of 47 Member States

2. Please indicate the relevant provision to which the textual proposal refers.

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3. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

[Environmental Performance Guarantee] [Decommissioning Bond]

1. A Contractor shall lodge an Environmental Performance Guarantee [Decommissioning Bond] in favour of the Authority and no later than the commencement date of production in the Mining Area.

2. The required form and amount of the Environmental Performance Guarantee [Decommissioning Bond] shall be determined according to the [Guidelines] [relevant] [Standards] [rules] [applicable Standard and take account of the applicable Guidelines], and shall reflect the ~~likely-forecasted~~ costs required for:

- a. The premature closure of Exploitation activities;
 - (a) **bis.** [The repair of an in-service submarine cable or pipeline in, or adjacent to, the application area that was damaged as a result of the Contractors activities;]
 - (a) **ter.** [Responding to, and remediating, a significant environmental Incident;]
- (b) The decommissioning and final closure of Exploitation activities, including the removal of any Installations and equipment; and
- ~~(e)~~ The post-closure monitoring and management of residual Environmental Effects.

3. [The Council shall decide the amount of an Environmental Performance Guarantee [Decommissioning Bond] in Standard taking into account the recommendation of the Commission and Finance Committee.] The amount of an Environmental Performance Guarantee [Decommissioning Bond] may be provided by way of instalments over a specified period according to the [relevant] [Guidelines] [applicable Standard] [Standards].

New 3 bis- The [Environmental Performance Bond] [Decommissioning Bond] shall take the form of a letter of credit or surety bond guaranteed by a financial institution with a long-term credit

rating of AA- or better from Fitch Ratings, Moody's or Standard & Poor and meeting the other financial criteria provided for in the Standard

4. The amount of the Environmental Performance Guarantee [Decommissioning Bond] shall be reviewed and updated [annually by the Contractor], ~~[where]~~:

- (a) [Where] [F][t]he Closure Plan is updated in accordance with these regulations;
or
- (b) As the result of:
 - (i) A performance assessment under regulation 52;
 - (ii) A modification of a Plan of Work under regulation 57; or
 - (iii) A review of activities under a Plan of Work under regulation 58; or
 - (iv) The Authority considers that the likely cost of the activities outlined in (2) have substantially increased; and
- (c) At the time of review by the Commission of a final Closure Plan under regulation 60.
- (d) [Inflation and other market or economic conditions impact on the amount of the guarantee that must be held.]

5. A Contractor shall, as a result of any review under paragraph 4 above, recalculate the amount of the Environmental Performance Guarantee [Decommissioning Bond] within 60 Days of a review date, submit this calculation to the Secretary General for forwarding to the Commission for their review- and lodge a revised guarantee in favour of the Authority.

6. The Authority shall hold such guarantee in accordance with its policies and procedures, which shall provide for:

- (a) The repayment or release of any Environmental Performance Guarantee [Decommissioning Bond], or part thereof, upon compliance by the Contractor of its obligations that are the subject of the Environmental Performance Guarantee [Decommissioning Bond]; or
- (b) The forfeiture of any Environmental Performance Guarantee [Decommissioning Bond], or part thereof, where the Contractor fails to comply with such obligations.

7. The requirement for an Environmental Performance Guarantee [Decommissioning Bond] under this regulation shall be applied in a uniform [and non-discriminatory] and non-discriminatory manner ~~[taking into account relevant factors such as: a Contractor's level of experience, record of past performance (i.e. environment or safety record), and the location of the activity, including proximity to in-service cables or pipelines].~~

8. The provision of an Environmental Performance Guarantee [Decommissioning Bond] by a Contractor does not limit the responsibility and liability of the Contractor under its exploitation contract in the amount of such guarantee.

4. Please indicate the rationale for the proposal. [150 word limit]

We consider that the environmental performance guarantee should be renamed a 'Decommissioning Bond' as this more accurately reflects its purpose. There needs to be a clearer division of responsibility between the Environmental Performance Guarantee (or Decommissioning Bond) and the Environmental Compensation Fund.

Our understanding was that the purpose of the Environmental Performance Guarantee was to provide funds if the Contractor could not meet its decommissioning and post mine closure, monitoring and management responsibilities. While the Environmental Compensation Fund existed to provide funds if neither the contractor nor sponsoring state was in a position to finance compensation or remediation of unexpected environmental damage.

As such, we do not support the inclusion of para 2, sub-para (a bis) and (a ter) which would be better covered under the environmental compensation fund.

New para 3 bis. We also consider that it is important that this Regulation is more prescriptive, and that the guarantee is a strong one and that funds are available if need be. We do not support contractors self-guaranteeing.

para 5, this recalculation needs to be submitted for review by the Commission (or perhaps an independent verifier) and approved by the Council.

para 7, we disagree with the proposed changes and suggest the reinsertion of "and non-discriminatory" as this phrasing has been used elsewhere in the regulations.

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