



Informal intersessional dialogue to facilitate further discussion on the possible scenarios and any other pertinent legal considerations in connection with section 1, paragraph 15, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea

ITALY'S SUBMISSION

- (1) What is the meaning of the phrase 'consider and provisionally approve' in? Can the Council disapprove a plan of work after having considered it? Can the consideration of a pending application be postponed until certain conditions are met? Does the use of the word 'elaboration' in subparagraph (c) carry any legal significance?

Italy does not consider the phrase 'consider and provisionally approve' in Section 1, paragraph 15 subparagraph (c) as containing an implicit obligation for the Council to approve a PoW for deep-sea mining submitted to the ISA. The only obligation arising from these terms provides for the Council to examine the PoW as presented by the LTC with its recommendation and, only if considered appropriate by the Council itself, to approve it provisionally (see below for the consequence of the term "provisionally"). The same provision requires that the provisional approval of a PoW depends on the applicable rules and principles of the UNCLOS and of the Agreement. This means that, from a procedural point of view, articles 3, 4 and 6 of Annex III to the UNCLOS apply. These provisions confer the organs of the ISA specific competences in terms of evaluation and approval of the PoW. In particular, **the LTC is entitled to review on a case-by-case basis any PoW for exploitation and recommend, as appropriate, its adoption to the Council.**

The practice of the LTC in the evaluation of PoW suggests that it is mostly aimed at **verifying that the proposal offers adequate guarantees of the protection of the marine environment**, according to the UNCLOS. The International Seabed Authority has the duty to develop detailed environmental provisions on deep-sea mining to ensure effective protection for the marine environment from harmful effects (article 145 of the UNCLOS and article 17 (2) (f) of its Annex III). Therefore, if the draft is not completed by the set deadline and an application of a PoW will be pending, it is expected that, in assessing the PoW, the LTC shall refer, as a minimum, to those environmental obligations already included in the exploration regulations. This entails, inter alia, that **the applicant should give evidence of applying a precautionary approach in taking measures to prevent, reduce and control pollution to the marine environment.**

The lack of an adopted Regulation and its stringent legal framework should also guide the LTC to keep a high threshold of precaution in evaluating the scientific base of the PoW. This also implies the full right of the LTC to require the perspective Contractor all additional information and details as may be necessary for a thorough examination of

the degree of implementation by the PoW of the existing rules, regulations and procedures, in particular in terms of protection of the marine environment.

- (2) What is the procedure and what are the criteria to be applied in the consideration and provisional approval of a pending application under subparagraph (c), in the light of, amongst others, article 145 of UNCLOS? In this regard, what roles do the Council and the Legal and Technical Commission (LTC) respectively play?

The basic concern on the Council considering and provisional approving a pending application under subparagraph (c) relates to the lack of sufficiently articulated regulations on the protection of the environment.

A possible solution would be to make use of the “rules, regulations and procedures” that the Council can approve on a provisional basis as mentioned in Section 1, paragraph 15 of the annex to the Agreement. In particular, the Council could **adopt additional specific procedures for the presentation of a PoW by future contractors**, and identify in greater details the preliminary conditions to be met before the start of exploitation activities, based on the precautionary approach, **in order to prevent, reduce and control pollution to the marine environment and minimize harmful effects resulting from exploitation**. One such procedure to be adopted by a Council’s decision could require applicants for a mining exploitation license to submit a complete test-mining report, positively assessed for its environmental impacts by the Legal and Technical Commission. Such procedure should imply the preliminary conduct of a test-mining in the exploration phase (in addition to the component test). It could require the future contractor to carry out environmental surveys following the execution of the test, with precise frequency to be respected.

Such procedure, which according to Section 1, paragraph 15 of the Agreement should be respected by all contractors and used by the Legal and Technical Commission as one of the parameters for the approval of a possible PoW in the absence of an approved Regulation on mining, would favor the collection of important environmental information in the light of which to establish the appropriate thresholds currently under discussion, in application of a precautionary approach.

- (3) What are the consequences of the Council provisionally approving a plan of work under subparagraph (c)? Does provisional approval of a plan of work equate to the conclusion of an exploitation contract?

A further point to consider concerns the **legal consequences of a provisional approval of a PoW and to which extent it would differ from a fully-fledged PoW**. Moreover, since the draft – once approved – will certainly contain more refined provisions compared to the UNCLOS and the Agreement, it is to clarify whether and how they would apply to an operator who has already provisionally undertaken mining activities, including how to handle exploitation contracts subject to different environmental regimes.

Such considerations could imply that the provisional approval of a PoW may not coincide with an exploitation contract which could include further details and conditions reflecting environmental obligations included, in particular, in the exploration regulations. This entails, inter alia, that **the applicant should give evidence of applying a precautionary approach in taking measures to prevent, reduce and control pollution to the marine environment**, whose compliance the Sponsoring State has the responsibility to ensure.