

## Joint written comments of Germany and the Netherlands

**(1) Is there a legal basis for the Council to postpone (i) the consideration and/or (ii) the provisional approval of a pending application of a plan of work under subparagraph (c), and if so, under what circumstances? [paragraph 25 (a) of the briefing note]**

- Article 6 of Annex III to the Convention provides the following: "Six months after the entry into force of this Convention, and thereafter each fourth month, the Authority shall take up for consideration proposed plans of work". Section 3, paragraph 11, of the Annex to the 1994 Agreement provides the following: "If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. The prescribed period shall normally be 60 days unless the Council decides to provide for a longer period".
- This means that the Council should strive to take a decision on approval or disapproval within the prescribed period, as otherwise the recommendation shall be deemed to have been approved, but Council is also allowed to set a longer period for consideration. As pointed out by China and others in earlier discussions on this issue, the Council may therefore choose to provide for a longer period for the consideration and defer the taking of a decision, for instance until the necessary rules, regulations and procedures relating to exploitation are in place.

**(2) What guidelines or directives may the Council give to the LTC, and/or what criteria may the Council establish for the LTC, for the purpose of reviewing a plan of work under subparagraph (c)? [paragraph 25 (c) of the briefing note]**

- On the basis of Article 165.2(b) of the Convention, the Commission shall review formal written plans of work for activities in the Area in accordance with article 153, paragraph 3, and submit appropriate recommendations to the Council. The Commission has to base its recommendations solely on the grounds stated in Annex III of the Convention. As set out in Article 6.3 of Annex III of the Convention, all proposed plans of work have to comply with and are governed by the relevant provisions of this Convention and the rules, regulations and procedures of the Authority, including those on operational requirements, financial contributions and the undertakings concerning the transfer of technology.
- In the context of a review of an application for a plan of work for exploitation, these rules, regulations and procedures of the Authority have to include the necessary rules, regulations, and procedures relating to exploitation, which will set out the substantive criteria and conditions against which applications for plans of work have to be assessed. In the absence of the necessary rules, regulations and procedures relating to exploitation, the Commission will not have been enabled in accordance with the grounds stated in Annex III of the Convention to perform its review function and consequently will not be in a position to submit a recommendation for approval to the Council.
- It is therefore submitted that the Council may give the LTC the following guidelines or directives:

In the event a plan of work for exploitation is submitted before the elaboration and adoption of the necessary rules, regulations and procedures relating to exploitation:

- (a) it would not be appropriate to give a recommendation for approval of such a plan of work; and
- (b) it would be appropriate to instead give a comprehensive report on the proposed plan of work for exploitation to the Council, including but not limited to the environmental implications and the financial viability of the proposed project for exploitation.

