



Agenda item: 10

Statement on the ICE mechanism

Delivered by Ambassador Deiye, Republic of Nauru

22 March 2024

Thank you for giving me the floor.

We thank Norway for its continued leadership on the intersessional work on an ICE mechanism, and for the preparation of the briefing note and questions to guide our deliberations. We have come a long way in the development of an ICE mechanism and in settling much of the regulatory text. Establishing and implementing an effective and efficient ICE mechanism is a common goal to ensure that the rules of the ISA are complied with, and that the necessary enforcement action is taken in respect of non-compliance. Nauru is pleased to have contributed to the intersessional work.

We also thank Germany for their non-paper on a mixed approach proposal for the establishment of a compliance committee, and contribution to the regulatory text, particularly at regulation 102. The proper structure and functioning of our institutional framework is paramount. We must also build on and complement the work of existing organs and mechanisms, and the duties and responsibilities assigned under the Convention.

We have some upfront comments, before addressing any specific questions.

Our preference and subject to the input of other members is for the compliance committee to be a subsidiary body of the Council interfacing with other organs of the Authority, particularly the secretariat and the Legal and Technical Commission. The proposed inclusion of members of the Commission to form part of the committee is welcomed.

While placing a compliance committee in the Commission has some merit, we see challenges to this in terms of the Commission's workloads, and the Commission being the body making

recommendations to the Council on applications for the approval of plans of work. It is questionable whether the Commission should also be the same body charged with inspection, compliance and enforcement duties.

Nevertheless, all organs can contribute to identifying instances of alleged non-compliance through their existing functions, including that of the Commission in reviewing the annual reports of contractors. However, the examination of those alleged instances and determination as to whether there has been actual non-compliance should be determined by a separate body, accountable to the Council. This is important to ensure a consistent and fair approach to the regulation of a wide contractor base which includes States Parties, State-owned enterprises and sponsored commercial investors and the Enterprise.

Thank you, Mr Rapporteur

I provide the following comments on the specific questions posed, as well as other relevant observations.

The current proposed set of powers and functions of the Committee, in DR102, largely reflect our understanding of what the Committee's competences should consist of, subject to possible textual amendments to ensure the necessary interfaces are catered for and consistency with the rest of the Draft Regulations.

In relation to how the Committee makes decisions – in line with Paragraph 2, Section 3 of the 1994 Agreement, we support decision-making by consensus wherever possible. Where efforts at achieving consensus are exhausted, it is appropriate that decisions be made by a majority of the Committee members present and voting.

In relation to the composition of the Compliance Committee we would prefer for the composition and nomination process to focus on the technical qualities and expertise of candidates. Indeed, we need to set out the qualifications required for individuals to be nominated to the committee, preferably with strong regulatory backgrounds and experience. ICE decision-making must be objective and based on relevant data and information. Any politicising of the committee must be avoided as well as it being bureaucratic in nature – it must be run efficiently and be responsive. We see 15 members being an optimal number.

As to the costs of the Compliance Committee and ICE mechanism overall, these should be part of the ordinary budget the Authority, and we suggest a preliminary budget estimate be prepared as soon as the structure is more settled. The mechanism needs to be properly funded to ensure the engagement of high-quality inspectors and supporting resources.

For taking an incremental approach to establishing the Compliance Committee, we support the application of an evolutionary approach, which includes review of the ICE mechanism contemplated by regulation 105bis to ensure it is functioning appropriately. It maybe there is a role for the CARMU initially to undertake the necessary preliminary work towards the setting up the committee (irrespective of its positioning) and inspection mechanism and in preparing appropriate codes, guidelines, and standard operating procedures.

As to the modalities of carrying out inspections, we are not starting from scratch. Many member State delegations in this room have decades of experience and learnings in monitoring, compliance and enforcement, and the Authority can draw on existing national ICE mechanisms, particularly from oil and gas inspectorates given parallels with the remoteness of the activities and logistical challenges.

While the regulatory text focuses on physical inspections, we must factor in the use of remote monitoring technologies and real-time data and how these data are monitored by the ISA and instances of non-compliance identified and reported through to the Chief Inspector and the Committee. Integrating an AI solution would also be invaluable.

As to the Chief Inspector, he or she should report to the Compliance Committee in the first instance. It will be a key position in the ICE mechanism with appropriate powers to undertake the day-to-day management and administration of inspectors and the implementation of the inspection programme, engaging with contractors in relation to inspections and logistics associated with inspections, and receiving reports and notifications regarding inspection and surveillance. In doing so it will be important that the Chief Inspector is provided with appropriate administrative support by the Secretary-General.

We must also ensure proper cooperation with the regulatory authority of the Sponsoring State as to the administrative measures a sponsoring State may take in relation to non-compliance

and to minimise duplication and ensure contractors are not subject to conflicting instructions or obligations.

Finally, one aspect that needs our immediate attention is to put in place an overarching compliance assurance strategy or policy document. This will establish the Authority's policy approach to ICE and drive further our thinking on the operational aspects of an ICE framework.

These are our preliminary views on this matter.