INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ExxonMobil Petroleum & Chemical BV

v.

Kingdom of the Netherlands

(ICSID Case No. ARB/24/44)

PROCEDURAL ORDER NO. 5
DECISION ON THE CLAIMANT'S SECOND APPLICATION FOR PROVISIONAL MEASURES

Members of the Tribunal
Prof. Dr. Mohamed S. Abdel Wahab, President of the Tribunal
Prof. Stanimir A. Alexandrov, Arbitrator
Prof. Jorge E. Viñuales, Arbitrator

Secretary of the Tribunal
Izabela Chabinska

24 December 2025

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I. PROCEDURAL HISTORY

1. On 30 September 2024, ExxonMobil Petroleum & Chemical BV ("**EMPC"** or the "**Claimant**") filed its Request for Arbitration against the Kingdom of the Netherlands (the "**Netherlands**" or the "**Respondent**") arguing that the Respondent has breached its obligations under international law and Article 10(1) of the Energy Charter Treaty (**ECT**).[1] Accordingly, EMPC requested the institution of arbitration proceedings against the Netherlands in accordance with Article 26 of the ECT and Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "**ICSID Convention**"). For the purposes of these proceedings, both ExxonMobil Petroleum & Chemical BV and the Kingdom of the Netherlands will be referred to collectively as (the "**Parties**").

2. On 21 October 2024, the ICSID registered the Request for Arbitration under ICSID Case No. ARB/24/44 (the "**Case**" or "**Arbitration**").[2]

3. This proceeding is administered under the ICSID Arbitration Rules in force as of 1 July 2022 ("**ICSID Rules**" or "**ICSID Arbitration Rules**").

4. On 15 July 2025, the Secretary-General notified the Parties of the constitution of the Tribunal pursuant to ICSID Arbitration Rule 21(1), following the acceptance by the Tribunal Members of their appointments as arbitrators in this case.[3]

5. On 19 August 2025, EMPC submitted a Second Application for Provisional Measures under Article 47 of the ICSID Convention and ICSID Arbitration Rule 47 together with a cover letter of the same date, Annex A, Exhibits C-42bis, C-45bis, C-46bis, C-79 through C-123, and Legal Authorities CL-22ter, CL-46 through CL-49 (the "**Claimant's Second Application**") requesting that the Tribunal issue provisional measures to suspend the issuance of further statutory levies under the Temporary Groningen Act, or any other analogous payment demand in a different form, pending the issuance of the Tribunal's award in this Arbitration, including a request for immediate relief pending the Tribunal's decision on the Second Application (the "**Interim Provisional Relief**").[4]

6. On 20 August 2025, the Respondent requested leave to respond to the Claimant's Cover Letter of 19 August 2025 by 27 August 2025 and confirmed that "it will not take any

[1] Request for Arbitration dated 30 September 2024 ("**Request for Arbitration**").
[2] ICSID's Notice of Registration dated 21 October 2024.
[3] ICSID's Letter dated 15 July 2025.
[4] Claimant's Second Application for Provisional Measures dated 19 August 2025 (the "**Claimant's Second Application**"). *See also*: Cover Letter to Claimant's Second Application for Provisional Measures dated 19 August 2025.

actions that would deprive the request for immediate and provisional interim relief of its apparent object before Monday 1 September 2025."[5]

7. On the same date, the Claimant proposed that the issues of the Claimant's request for immediate relief pending a decision on its Second Application and the procedural timetable for briefing the Second Application be addressed orally during the hearing scheduled for 26 August 2025.[6]

8. Also on the same date, ICSID informed the Parties that the Tribunal considered the Respondent's request to revert with its position on briefing the Second Application by 27 August 2025 to be reasonable, and will not compel oral briefings on this matter unless the Respondent is in agreement to so proceed.[7]

9. On 27 August 2025, the Respondent sent a letter to the Tribunal in which the Netherlands requested the Tribunal to: a) fix the deadlines for the Response to 7 October 2025, for the Reply to 28 October 2025 and for the Rejoinder to 18 November 2025; and b) fix the deadlines for the Claimant's motivated submissions on its request for Interim Provisional Relief pending the Tribunal's decision on the Second Application to 2 September 2025, and for the Respondent's response thereto to 16 November 2025.[8]

10. On 28 August 2025, the Claimant requested the Tribunal's permission to respond to the Respondent's letter of 27 August 2025, which concerned the briefing schedule for the Claimant's Second Application for Provisional Measures and the Claimant's request for the Interim Provisional Relief in connection with that Application.[9]

11. On 29 August 2025, the Tribunal invited the Claimant to respond to the Respondent's letter of 27 August 2025 by 5 September 2025, and further invited the Respondent to reply, if it so wished, by 12 September 2025. In the interim, the Tribunal encouraged the Parties to explore areas of agreement regarding the briefing schedule in relation to the Claimant's Second Application for Provisional Measures.[10]

12. On 5 September 2025, the Claimant submitted its response and requested that: (i) if by 12 September 2025 the Respondent has failed to provide an undertaking not to issue the 2025 Levy or other Payment Demand during the pendency of the Second Application, then, regardless of the briefing schedule set for the Second Application, the Claimant requested

[5] The Respondent's E-mail to ICSID dated 20 August 2025.

[6] The Claimant's E-mail to ICSID dated 20 August 2025.

[7] ICSID Letter to the Parties dated 20 August 2025.

[8] The Respondent's Letter to the Tribunal dated 27 August 2025.

[9] The Claimant's E-mail to the Tribunal dated 28 August 2025.

[10] ICSID Letter to the Parties dated 29 August 2025.

that the Tribunal promptly grant the Provisional Order on the terms set forth in the Second Application; (ii) the Tribunal establish a timetable for further briefing on the Second Application that provides the Parties with equal time for their submissions, as was the case with the Claimant's first application for provisional measures of 12 June 2025 (the "First Application"). The Claimant will make itself available to provide further briefing on the application on whatever schedule the Tribunal considers reasonable; and (iii) the Tribunal communicate its availability for a virtual hearing on the Second Application allowing at least ten days after the last written submission.[11]

13. On 12 September 2025, the Netherlands submitted the Respondent's response to the Claimant's request for Interim Provisional Relief, together with its letter on the briefing schedule for the Second Application for Provisional Measures. In its submission, the Respondent requested that the Tribunal: (i) reject the request for Interim Provisional Relief made by EMPC in its Second Application, and in particular at paragraphs 82–84 and 90 thereof; (ii) reject the request for an undertaking to the Tribunal, EMPC, and NAM; and (iii) order EMPC to bear the costs associated with the determination of its request for the Interim Provisional Relief.[12]

14. On the same date, the Claimant requested the Tribunal's permission to submit a brief response to respond to paragraphs 17 to 29 of the Respondent's responsive submission on the Claimant's request for the Interim Provisional Relief. The Claimant proposed to do so by 17 September 2025.[13]

15. On 15 September 2025, the Tribunal granted the Claimant leave to respond to Respondent's Response by no later than 17 September 2025.[14] On the same date, the Netherlands requested to be granted until Monday 22 September 2025 to file a submission to respond to the Claimant's position on the matter of the Interim Provisional Relief.[15] Also on the same date, the Tribunal granted the Respondent's request to submit a response by 22 September 2025.[16]

16. On 17 September 2025, the Tribunal informed that Parties that it was required to issue directions in relation to two main issues:

"*…With respect to (a), i.e., the briefing schedule for Claimant's*

[11] Claimant's Letter to the Tribunal on Claimant's Second Application for Provisional Measures dated 5 September 2025.

[12] Respondent's Response to Claimant's Request for Interim Provisional Relief dated 12 September 2025, ¶ 33.

[13] Claimant's E-mail to ICSID dated 12 September 2025.

[14] ICSID's E-mail to the Parties dated 15 September 2025.

[15] Respondent's E-mail to ICSID dated 15 September 2025.

[16] ICSID's E-mail to the Parties dated 15 September 2025.

Second PM, the briefing schedule, the Parties are in disagreement with respect to (1) whether equal time limits should be granted to both Parties; and (2) the start date from which the time limits for the Parties' submissions on bifurcation are to be calculated.

On the issues of equal timing, the Tribunal accepts that equal treatment does not necessarily entail equal timing, but it also sees no reason, in relation to this specific issue, not to give equal time limits to both Parties. There is no compelling reason and no identified prejudice that requires giving the Parties different time limits.

On the start date for calculating periods and whether that should be 19 August 2025 or 26 August 2025, the Tribunal does not consider this to be a major issue and nothing much turns on this, especially if the Tribunal fixes the dates from the date of issuing its directions in this respect.

In light of the above, the Tribunal directs as follows:

- *Respondent shall file its full and complete response to Claimant's Second PM application by 8 October 2025 (i.e. three weeks from the date of these directions issued on 16 September 2025);*

- *Claimant shall file its rejoinder in response to Respondent by 29 October 2025 (i.e. three weeks from 8 October 2025); and*

- *Respondent shall file its final reply in response to Claimant's rejoinder by 19 November 2025 (i.e. three weeks from 29 October 2025).*

In relation to the virtual hearing pertaining to Claimant's Second PM, the earliest date the Tribunal is able to propose is 8 December 2025, and the Parties are kindly requested, and indeed strongly encouraged, to confirm availability on 8 December 2025. The Tribunal looks forward to receiving the Parties' confirmation by 22 September 2025."[17]

[17] ICSID's Letter to the Parties dated 17 September 2025.

17. On 17 September 2025, the Claimant confirmed its availability on 8 December 2025.[18] The Claimant also filed its reply as to the Claimant's Request for the Interim Provisional Relief with exhibit C-128.[19]

18. On 18 September 2025, the Respondent confirmed its availability for a virtual hearing on the Claimant's Second Application on 8 December 2025.[20]

19. On 19 September 2025, ICSID informed the Parties that, based on the Tribunal's communication of 17 September 2025 and the Parties' respective emails of 17 and 18 September 2025, the Tribunal confirmed that the hearing will be held by video conference on Monday, 8 December 2025.[21]

20. On 22 September 2025, the Respondent submitted its Response to the Claimant's Request for the Interim Provisional Relief, accompanied by three exhibits (R-0010, R-0011, and R-0012) together with courtesy translations.[22]

21. On 8 October 2025, the Netherlands submitted the Respondent's Response to Claimant's Second Application for Provisional Measures together with factual exhibits R-0013 through R-0017 and Legal Authorities RL-0035 through RL-0044 (the "**Respondent's Response**").[23]

22. On 29 October 2025, EMPC submitted the Claimant's Second Provisional Measures Application Reply with its factual exhibits C-130 through C-140 and legal authorities CL-0001 through CL-0049 (the "**Claimant's Reply**").[24]

23. On 31 October 2025, the Tribunal issued Procedural Order No. 4 (Decision on the Claimant's Request for Interim Provisional Relief) in which it decided that:

> "*For all the foregoing reasons:*
>
> *a) EMPC's request for an immediate order that the Netherlands refrains from imposing any future levy under the Temporary Groningen Act, and from making any other payment demand in connection with the subject matter of the present Arbitration, in*

[18] Claimant's E-mail to ICSID dated 17 September 2025.

[19] Claimant's Reply on Claimant's Request for Provisional Order dated 17 September 2025.

[20] Respondent's E-mail to ICSID dated 18 September 2025.

[21] ICSID's E-mail to the Parties dated 19 September 2025.

[22] Respondent's Letter to the Tribunal dated 22 September 2025.

[23] Respondent's Response to Claimant's Second Application for Provisional Measures dated 8 October 2025 (the "**Respondent's Response**").

[24] Claimant's Second Provisional Measures Application Reply dated 29 October 2025 (the "**Claimant's Reply**").

> *whatever form, until such time the Tribunal has ruled on the Second Application is denied; and*
>
> *b) If the 2025 Levy is issued, should the Netherlands insist in enforcing the payment of same against NAM and/or EMPC through any notice of collection, or enforcement action, then EMPC is granted leave to apply to the Tribunal to order an immediate suspension of the actions or steps taken (or to be taken) in respect of such notice of collection and/or enforcement until such time when the Tribunal has rendered its decision on the Second Application, noting that EMPC application must set out the exact scope and amount whose collection and/or enforcement would prejudice EMPC as well as the grounds for such prejudice; and*
>
> *c) The Tribunal reserves its decision on costs to a later stage.*"[25]

24. On 19 November 2025, the Netherlands submitted the Respondent's Rejoinder to Claimant's Second Application for Provisional Measures with its factual exhibits R-0019 through R-0029 and legal authorities RL-0040 bis, RL-0045 through RL-0055 (the "**Respondent's Rejoinder**").[26]

25. On 4 December 2025, the Claimant sought the Respondent's consent to submit thirteen exhibits into the record in advance of the scheduled hearing.[27] On 5 December 2025, the Tribunal informed the Parties that the Claimant's request was granted, with the exhibits to be submitted no later than 6 December 2025. The Tribunal also upheld the Respondent's right to submit responsive exhibits and invited the Respondent to confirm the Parties' agreement as outlined in the Claimant's communication.[28] The Respondent confirmed the agreement later that same day.[29] Accordingly, on 6 December 2025, the Claimant submitted exhibits C-0143 through C-0155, together with two indices.[30]

26. On 8 December 2025, the Tribunal held a video-conference session to hear the Parties' oral pleadings on EMPC's Second Application for Provisional Measures (the "**Hearing**").

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[25] Decision on the Claimant's Request for Interim Provisional Relief dated 31 October 2025, ¶ 77.

[26] Respondent's Rejoinder to Claimant's Second Application for Provisional Measures dated 19 November (the "**Respondent's Rejoinder**").

[27] Claimant's E-mail to ICSID dated 4 December 2025.

[28] ICSID's E-mail to the Parties dated 5 December 2025.

[29] Respondent's E-mail to ICSID dated 5 December 2025.

[30] Claimant's E-mail to ICSID dated 6 December 2025.

27. On 9 December 2025, the Tribunal, *inter alia*, invited the Parties to submit any observations by Friday, 12 December 2025 on the Claimant's additional exhibits submitted on 6 December 2025. The Tribunal further invited the Respondent to submit its observations by Thursday, 18 December 2025 on the Claimant's request for alternative relief discussed at the Hearing. In addition, the Tribunal invited the Respondent to file into the record, by no later than Friday, 12 December 2025, the two documents it had indicated at the Hearing that it wished to submit.[31]

28. On 12 December 2025, the Respondent submitted two new exhibits (R-0031 and its translation, and RL-0056) and confirmed that it had no further observations on the Claimant's additional exhibits submitted on 6 December 2025.[32]

29. On the same day, the Claimant, referring to the Hearing Transcript, requested the Tribunal's leave to submit a short response to the President's inquiry, not exceeding three pages, by 15 December 2025.[33]

30. On 13 December 2025, the Tribunal informed the Parties that, with reference to the Claimant's request to file a short reply of no more than three pages to the Tribunal's question directed to the Claimant, the Tribunal granted the request. The reply was to be filed no later than 15 December 2025. The Tribunal further granted the Respondent leave to address the Claimant's reply to the Tribunal's query as part of its 18 December 2025 submission on the alternative relief requested.[34]

31. On 15 December 2025, the Claimant submitted its response to the Tribunal's question regarding the Respondent's assurance.[35]

32. On 18 December 2025, the Respondent filed its Response to the Claimant's Alternative Request for Provisional Measures, accompanied by two legal authorities (RL-0057 and RL-0058).[36]

33. On 20 December 2025, the Tribunal received the Claimant's communication confirming that it will not be seeking leave to submit any further response to the Respondent's 18 December 2025 submission, and that it considers the briefing on its Second Application for Provisional Measures complete.

[31] ICSID's Letter to the Parties dated 9 December 2025.

[32] Respondent's E-mail to ICSID dated 12 December 2025.

[33] Claimant's E-mail to the Tribunal dated 12 December 2025.

[34] ICSID's E-mail to the Parties dated 13 December 2025.

[35] Claimant's Letter to the Tribunal dated 15 December 2025.

[36] Respondent's Response to the Claimant's Alternative Request for Provisional Measures dated 18 December 2025.

34. This Decision sets out the Tribunal's analysis and order in respect of the Claimant's Second Application for Provisional Measures, without prejudice to or determination of the merits of the underlying dispute. The Tribunal's findings herein are confined solely to the procedural and interim relief sought, and do not constitute, nor should they be construed as an adjudication on the substantive claims or defenses advanced by the Parties.

35. The Tribunal sets out the Parties' respective requests for relief in Section II and summarizes the Parties' positions in Section III of this Procedural Order. The fact that this Decision may not expressly reference all arguments does not mean that such arguments have not been considered. The Tribunal includes only those points which it considers most relevant for its decision. The Tribunal's analysis and decision are set out in Sections IV and V.

II. THE PARTIES' REQUEST FOR RELIEF

36. EMPC latest request for relief is as follows ("**Primary Relief**"):

> "*92. EMPC respectfully requests that the Tribunal preserve its rights by granting provisional measures. Specifically, EMPC requests that the Tribunal:*
>
> *(a) ORDER the Netherlands (i) to refrain from imposing any future levy under the Temporary Groningen Act, and from making any other payment demand in connection with the subject matter of the present arbitration, in whatever form, pending the issuance of a final award in this arbitration, and (ii) to provide a written undertaking to the Tribunal, EMPC, and NAM from an authorized representative acknowledging its commitment to abide by such order from the Tribunal;*
>
> *(b) ORDER the Netherlands to bear all fees and expenses incurred by both parties, ICSID, and the Tribunal in connection with the present application; and*
>
> *(c) GRANT any further or alternative provisional relief that the Tribunal considers just and appropriate.*
>
> *93. EMPC further requests that the Tribunal IMMEDIATELY AND PROVISIONALLY ORDER the relief set out in paragraph 92(a) above until such time as it has ruled on the present application.*"[37]

[37] Claimant's Reply, ¶¶ 92-93.

37. Alternatively, the Claimant requested that ("**Alternative Relief**"):

> "*...the Netherlands be ordered by the Tribunal to place 30% of the received amount of levy payments, corresponding to the interest of EMPC, or such other percentage considered by the Tribunal to be just and fair, into an escrow account administered by the Tribunal until the end of this arbitration, on terms to be agreed by the parties.*"[38]

38. The Respondent's latest request for relief is as follows:

> "*166. In light of the foregoing, the Tribunal is invited to:*
>
> *a. Reject in its entirety EMPC's Application; and*
>
> *b. Reserve its order as to costs.*" [39]

39. As to the Alternative Relief, the Respondent invited the Tribunal to:

> "*a. Reject in its entirety EMPC's Alternative Request; and*
>
> *b. Reserve its order as to costs.***"** [40]

III. THE PARTIES' POSITIONS

A. THE CLAIMANT'S POSITION

40. On 19 August 2025, the Claimant filed its Second Application for Provisional Measures. In this Application, EMPC contends that this Arbitration arises from billions of euros in unlawful payment demands imposed by instrumentalities of the Netherlands on its 50% held subsidiary, Nederlandse Aardolie Maatschappij BV ("**NAM**"). EMPC states that NAM has already paid €3.96 billion under protest in connection with these demands, which stem from the State's damage handling program and a building strengthening operation related to gas production-induced tremors at the Groningen Field, operated by NAM until production ceased in 2023.[41]

[38] Hearing Transcript, Claimant's Second Application for Provisional Measures dated 26 August 2025 (the "**Hearing Transcript**"), pp. 43:23-25; 44:1-6.

[39] Respondent's Rejoinder, ¶ 166.

[40] Respondent's Response to the Claimant's Alternative Request for Provisional Measures dated 18 December 2025, ¶ 36.

[41] Claimant's Second Application, ¶ 1.

41. EMPC contends that these payment demands violate international law as they are arbitrary, non-transparent, and extend NAM's liability beyond lawful limits, serving political purposes unrelated to legal criteria and tied to the Netherlands' proclaimed remedy for historic financial neglect of the Groningen region.[42]

42. EMPC argues that the Netherlands intends to continue imposing such demands beyond 2030, as confirmed in its latest budget. EMPC contends that the recent demand issued will exacerbate its losses during this Arbitration. At the same time, EMPC notes that the Netherlands has admitted before this Tribunal and in the Antwerp proceedings that it will not comply with any award rendered against it, thereby rendering enforcement futile.[43]

43. In general, EMPC asserts that this stance contradicts the ICSID Convention, which obliges Member States like the Netherlands to comply with awards under Articles 53 and 54. EMPC further argues that it requested confirmation of compliance on 5 August 2025, with a deadline extended to 16 August 2025. EMPC further notes that the Netherlands has not provided any response and has declined to affirm its commitment.[44]

44. Accordingly, the Claimant argues that as the Tribunal embarks on this Arbitration, it is being told by the Respondent that its award in this case will be disregarded. EMPC argues that, once an award is issued, the Tribunal will of course be *functus officio*. EMPC therefore urges the Tribunal to act urgently to protect the ICSID system's viability and prevent its award from being rendered ineffective. EMPC requests provisional measures to suspend further statutory levies under Chapter 6, Article 15 of the Temporary Groningen Act ("**TGA**"),[45]or any analogous demands, until the Tribunal issues its award. While this will not recover past excess payments, it will ensure the partial effectiveness of any award rendered in the Claimant's favor.[46]

45. In its Reply,[47] EMPC affirms that on 23 June 2025, in the context of its anti-suit injunction in the Antwerp Action, the Netherlands informed the Antwerp Court that EMPC "*has no legitimate interest in [these] ICSID arbitration proceedings*" because any award rendered in this Arbitration "*cannot be enforced within the EU.*" [48] EMPC further notes that the Netherlands stated that "*enforcement outside the EU would not serve any interest for*

[42] Ibid.

[43] Claimant's Second Application, ¶¶ 2-3.

[44] Claimant's Second Application, ¶¶ 4-5.

[45] Temporary Groningen Act (as amended), published in Netherlands Bulletin of Acts and Decrees 2023, Nos 164, 165, 1 July 2023, Article 15 (**C-51**).

[46] Claimant's Second Application, ¶¶ 6-7.

[47] Claimant's Reply, ¶ 2.

[48] *Kingdom of the Netherlands v. ExxonMobil Petroleum & Chemical BV, Antwerp Enterprise Court*, Netherlands Reply, Case No A/2025/00340 (Antwerp Court, Netherlands Reply), 22 June 2025, ¶ 60 (**C-77**).

EMPC either, since the amounts EMPC might be awarded might be considered illegal state aid by the European Commission."[49]

46. Moreover, EMPC contends that enforcement prospects are only relevant in the absence of voluntary compliance. The Claimant further asserts that the Netherlands made clear that it will not voluntarily comply with any award rendered against it in this Arbitration and will actively resist enforcement efforts initiated by EMPC, both within and outside the EU. It further confirmed that it will undertake all efforts within its control to ensure that any award in favor of EMPC will have no effect.[50]

47. EMPC submits that the Netherlands' statements fly in the face of its obligations under Articles 53 and 54 of the ICSID Convention, which require it to "*abide by and comply with*" any award rendered against it, "*recognize [the] award [. . .] as binding*," and "*enforce the pecuniary obligations imposed by that award.*" EMPC further argues that these provisions are core elements of the ICSID system and ensure the effectiveness of an ICSID tribunal's award. Therefore, the Claimant requested an assurance from the Netherlands that it would recognize and enforce any award rendered in this arbitration and voluntarily fulfill any obligations imposed thereby, which the Netherlands refused, contending that such an assurance would be "*entirely unnecessary and inappropriate*".[51]

48. The Claimant further contends that, despite multiple opportunities, the Netherlands has neither responded to, explained, nor acknowledged its statements made before the Antwerp Court and this Tribunal concerning the purported unenforceability of the Tribunal's eventual award, even though they are at the very heart of EMPC's Application.[52]

49. EMPC submits that the Netherlands' general claim of compliance with Articles 53 and 54 of the ICSID Convention cannot be reconciled with its specific statements of non-compliance. Given the clarity of its specific statements of non-compliance with an adverse award, EMPC contends that the Netherlands demonstrates it does not consider itself bound by these obligations in this Arbitration. EMPC further maintains that the Respondent's refusal to provide a clear assurance, its repeated reliance on intra-EU jurisdictional objections, and its silence in repudiating its Antwerp Court statement only reinforce EMPC's concerns.[53]

50. Accordingly, EMPC contends that the Netherlands' express admission in the Antwerp Court that it will not comply with an adverse award necessitates the Second Application.

[49] Ibid.

[50] Claimant's Reply, ¶ 3.

[51] Claimant's Reply, ¶¶ 4-5.

[52] Claimant's Reply, ¶ 6.

[53] Claimant's Reply, ¶¶ 7-8.

EMPC argues that the Netherlands has made clear that, even if the Tribunal finds the disputed payment demands on NAM to be unlawful, it will not compensate EMPC – exposing EMPC to an unrecoverable and exponentially growing loss, now estimated by the State to reach billions of euros. The Claimant therefore seeks a temporary suspension of payment demands related to the damage handling and building strengthening programs, limited to the duration of this Arbitration to safeguard the effectiveness of the award and ensure that the Netherlands can only recover payments deemed lawful by the Tribunal, rather than imposing demands on NAM without compensating EMPC for resulting losses.[54]

51. The Tribunal notes that EMPC's submissions (i) set out the factual background for the current Application; (ii) address the elements required for the granting of provisional relief; and (iii) deal with the issue of costs. The Tribunal summarizes these matters below.

(1) Factual Background

52. In general, the Claimant contends that there are two sets of facts that provide the relevant background and context to this Application: the Respondent's imposition of payment demands and the imminent risk of new payment demands that will disturb the *status quo* and exacerbate the dispute, and the Respondent's statements that it will not comply with any adverse award, which will be explained further.[55]

53. On the one hand, EMPC argues that it faces an imminent and certain risk of the Respondent issuing further unlawful payment demands for the following reasons:

54. ***First,*** EMPC contends that NAM has satisfied €3.96 billion of erroneous payment demands imposed by the Dutch State in connection with tremors linked to NAM's gas production at the now-shuttered Groningen Field. EMPC's arbitration claims assert these demands, issued through invoices and statutory levies, violate international law and the ECT.[56]

55. The Claimant further contends that, since 2018, Dutch agencies have administered the Damage Handling Program and Strengthening Operation, targeting tremor-related property damage and building safety concerns. In addition, EMPC argues that the Ministry of Economic Affairs and Climate Change has demanded NAM cover payouts under both programs, including operational and administrative costs. The Claimant asserts that, initially governed by contractual frameworks, these demands have since 2020 (for damage) and 2023 (for strengthening) been issued as statutory levies under a permanent framework still in force. EMPC submits that, in total, through the contractual and statutory frameworks

[54] Claimant's Reply, ¶¶ 10-11.

[55] Claimant's Second Application, ¶ 9.

[56] Claimant's Second Application, ¶ 10.

described above, NAM has paid (under protest) payment demands worth €3.96 billion in the aggregate.[57]

56. EMPC further submits that the payment demands are "*fatally flawed*" in many respects as: (i) the Netherlands designed the Damage Handling Program on an unfounded principle of "*generosity*," leading to massive claim payouts beyond Dutch civil liability law. This principle permeates the statutory framework, rendering all levies flawed. For example, compensation was extended across a 72km area where, at the outer limits, the chance of damage from Groningen Field tremors was only 0.01% (1 in 10,000), nonetheless requiring NAM to pay all administration costs and compensation, far exceeding its lawful liability; (ii) the Netherlands unlawfully expanded the Strengthening Operation through arbitrary policy choices. EMPC argues that the Netherlands accepted regional demands to assess homes already deemed safe, applied obsolete standards and seismic models, and ignored the curtailment of production since 2018 and its complete cessation in October 2023, which greatly reduced seismic risk. Despite this, NAM must cover all administration and execution costs, while the Netherlands pursues what EMPC describes as an urban-renewal campaign at NAM's expense, often demolishing and rebuilding homes unnecessarily; and (iii) under both programs the Netherlands has imposed costs on NAM without transparency, due process, or procedural fairness, as NAM and its shareholders have been denied the opportunity to investigate the individual claims underlying the charges. EMPC further notes that, in other proceedings,[58] the Netherlands admitted it does not even retain the individual information forming the basis of the levies.[59]

57. In sum, EMPC submits that the Netherlands has designed the Damage Handling Program and Strengthening Operation to maximize compensation and building strengthening for political purposes, departing from Dutch civil law principles and prior agreements with NAM and its shareholders. EMPC argues that the Netherlands has arbitrarily required NAM to provide full reimbursement, effectively designating it as a bottomless pocket to finance the State's effort to revitalize the Groningen region and address historic neglect.[60]

58. ***Second,*** EMPC contends that the Respondent will make further erroneous payment demands of NAM for many billions of euros. Despite terminating production from the Groningen Field, EMPC argues that the State has publicly confirmed it will continue issuing levies tied to the Damage Handling Program and Strengthening Operation, based on the same flawed principles. In its April 2025 budget for 2025–2030, EMPC states that

[57] Claimant's Second Application, ¶¶ 11-13.

[58] See, e.g., *ExxonMobil Holding Company Holland LLC and Shell Nederland BV v. State of the Netherlands* (Netherlands Arbitration Institute Case No 5174) Award Regarding the Respondent's Request for Adjustment of the Interim Relief Granted, 30 May 2025, ¶¶ 26, 29 (**C-119**).

[59] Claimant's Second Application, ¶ 14.

[60] Claimant's Second Application, ¶ 15.

the State notes that damage claim payments are "*expected to continue beyond 2030*",[61] and that strengthening costs will extend into 2029 and 2030 due to delays in completing the operation by the proposed 2028 deadline.[62]

59. The Claimant argues that the budget outlines the total estimated costs for both programs through 2030 and confirms that these will be passed to NAM on a near 1:1 basis, stating "*the estimated receipts equal the estimated costs […] minus VAT costs that are not charged to […] NAM*".[63] EMPC states that the Netherlands explicitly intends to recover the full amount, exclusive of VAT, from NAM, without adjusting for NAM's lawful civil liability.[64]

60. In addition, the Claimant submits that the Respondent has clearly indicated it will not voluntarily comply with any eventual adverse award rendered in this Arbitration and will vigorously resist enforcement, such that any enforcement efforts, wherever pursued, would be futile.[65] EMPC argues that the Netherlands has itself confirmed its refusal to comply with any adverse award.[66]

61. EMPC refers to the Netherlands' submission of 23 June 2025 in the Antwerp Action, in which the Netherlands stated that: (a) "*Even if EMPC were to succeed in obtaining an arbitral award […] this award cannot be enforced within the EU pursuant to binding case law of the [Court of Justice of the European Union], so that EMPC has no legitimate interest in the ICSID arbitration proceedings*"; and (b) "*enforcement outside the EU would not serve any interest for EMPC either, since the amounts EMPC might be awarded might be considered illegal state aid by the European Commission*".[67]

62. The Claimant further contends that the Netherlands' predictions about the futility of enforcement efforts rest on a breach of its obligations under the ICSID Convention. EMPC asserts that Article 53 requires the Netherlands to voluntarily comply with any award rendered against it, which would eliminate the need for enforcement proceedings altogether. EMPC argues that the Netherlands effectively signals that it will not comply with its obligations under Article 54 of the ICSID Convention by suggesting that an award

[61] Spring Budget Memorandum 2025, Netherlands Parliamentary Papers, Session Year 2024-2025, File No 36725, Item No 1, 18 April 2025, p. 2 (**C-118**).

[62] Claimant's Second Application, ¶¶ 16-17.

[63] Spring Budget Memorandum 2025, Netherlands Parliamentary Papers, Session Year 2024-2025, File No 36725, Item No 1, 18 April 2025, p. 3 (**C-118**).

[64] Claimant's Second Application, ¶ 18.

[65] Claimant's Second Application, ¶ 20.

[66] Claimant's Second Application, ¶ 21. *See also*: Claimant's Reply, ¶ 21.

[67] *Kingdom of the Netherlands v. ExxonMobil Petroleum & Chemical BV, Antwerp Enterprise Court*, Netherlands Reply, Case No A/2025/00340 (Antwerp Court, Netherlands Reply), 22 June 2025, ¶ 60 (**C-77**).

cannot be enforced within the EU. The Claimant affirms that this provision requires the Netherlands to treat the award as binding and to enforce the pecuniary obligations imposed by the award as if it were a final judgment of a domestic court.[68]

63. Furthermore, EMPC highlights that the Netherlands made similarly concerning statements in its 4 July 2025 Observations of the Respondent on Claimant's First Application: (i) the Netherlands argued that its tort claim in the Antwerp Action would survive even if the Tribunal finds a valid arbitration agreement under Article 26(2)(c) of the ECT. EMPC argues that this position contradicts Articles 53 and 54, which require the Netherlands to recognize and abide by such an award with *res judicata* effect; (ii) the Netherlands also included a footnote stating its ICSID compliance representation is "without prejudice" to its position that Article 26(2)(c) of the ECT does not apply to Belgian investors.[69] EMPC contends this caveat substantively limits the compliance assurance and signals the Netherlands' intent not to honor an award based on jurisdiction under Article 26(2)(c); and (iii) the Netherlands submitted a letter from the European Commission urging Member States to "*use any available remedy*"[70] to suspend or withdraw enforcement of intra-EU investment arbitration awards. The Netherlands' reliance on this letter further demonstrates its intent not to comply with any award rendered in EMPC's favor.[71]

64. EMPC submits that, in light of these concerning statements, it requested a written assurance from the Netherlands that it will, subject only to the post-award remedies available under the ICSID Convention: (i) recognize as binding, promptly abide by (and if necessary enforce) the terms of any award rendered in this ICSID arbitration, including one that concludes in favor of jurisdiction based on the Netherlands' offer to arbitrate under Article 26(2)(c) of the ECT, and (ii) unconditionally, irrevocably and voluntarily fulfill any pecuniary or other obligations imposed by the award.[72] The Netherlands requested and received an extension but ultimately failed to provide any assurance, thereby declining to affirm compliance with Articles 53 and 54.[73]

65. On 25 November 2025, the Claimant asked the Respondent to:

> "*... confirm that its commitment voluntarily to comply forthwith with the terms of any adverse award issued by this tribunal in this arbitration (including terms requiring payment of damages) is unconditional and in particular the Netherlands will not argue that*

[68] Claimant's Second Application, ¶ 22.

[69] Observations of the Respondent on Claimant's First Application for Provisional Measures, 4 July 2025, ¶ 114.

[70] Letter from the European Commission to the Netherlands, 12 May 2025, ¶ 7 (**R-1**).

[71] Claimant's Second Application, ¶ 23.

[72] Letter from EMPC to the Netherlands, 5 August 2025, (**C-121)**.

[73] Claimant's Second Application, ¶¶ 24-25.

> *such compliance is: (a) subject to any steps or obligations it considers it may have under EU law (or any other source extraneous to the ICSID Convention), or (b) excused by any alleged lawful obligation under EU law (or any other source extraneous to the ICSID Convention).*"[74]

66. EMPC argues that it sought to make clear that the commitment to comply with the ICSID Convention was not a cleverly worded loophole. EMPC notes that the Netherlands refused, stating that it saw "*no need to further respond*" to the letter.[75] EMPC contends that this refusal lays bare the Respondent's true position: while the Respondent pays lip service to compliance with the ICSID Convention, it considers such compliance excused by its obligations under EU law.[76]

67. In its Reply, EMPC highlights that the Netherlands devotes much of its Response to its version of the history and legislative framework for the payment demands issued to NAM, along with a detailed recitation of various domestic proceedings. EMPC disputes much of this summary, which it views as largely unsupported and irrelevant to the Second Application, and reserves its right to respond to the inaccuracies at the proper time. EMPC clarifies two points to demonstrate that the Netherlands' explanation of the background is unreliable as follows:[77]

68. ***First,*** EMPC contends that the Netherlands misrepresents the agreements governing NAM's reimbursement for the State's administration of the Damage Handling Program and Strengthening Operation, falsely suggesting that NAM is contractually bound to compensate the State for "*all expenditure incurred*." EMPC states that, in fact, NAM is only obligated to compensate the State for expenditures incurred insofar as these expenditures reflect: (i) damages caused by gas extraction from the Groningen field; and (ii) strengthening that improves safety based on individual risk due to ground movements, assessed in accordance with regularly updated standards, to be assessed in accordance with principles of Dutch civil law as set out in the Civil Code.[78]

69. The Claimant further asserts that the Netherlands has ignored the limitations applicable to the Second Application by claiming that the relief sought, suspension of future unlawful payment demands, would allow NAM to "*avoid its contractual obligations*." EMPC contends that the Netherlands' position implies NAM and its parent companies agreed to be liable for all payments made under the Damage Handling Program and Strengthening

[74] Claimant's Letter to the Respondent dated 25 November 2025, (**C-143)**.

[75] Respondent's E-mail to the Claimant dated 2 December 2025, (**C-144)**.

[76] Hearing Transcript, pp. 20: 15-25; 21:1.

[77] Claimant's Reply, ¶ 13.

[78] Claimant's Reply, ¶ 14.

Operation, regardless of purpose. EMPC maintains this is incorrect and contradicted by the plain language of the relevant contracts.[79]

70. ***Second,*** EMPC argues that the various domestic proceedings described by the Netherlands in its Response are irrelevant to the availability or propriety of provisional measures in this ICSID arbitration. EMPC is not a party to any of these proceedings, none were brought under the ECT, and all are contractual or administrative matters under Dutch law. EMPC notes that the Netherlands itself appears aware of their irrelevance, as it offers no meaningful argument connecting them to EMPC's satisfaction of the provisional measures test. These proceedings have no impact on the need for provisional measures to ensure the effectiveness of the Tribunal's award under the ICSID Convention or any other aspect of EMPC's application.[80]

71. In brief, EMPC maintains that the Netherlands has packed its Response with incorrect and irrelevant statements that, *inter alia*, (*i*) mislead the Tribunal as to the arrangements between NAM and the State regarding the payment demands and (*ii*) suggest that the Tribunal need not provide EMPC with the relief it seeks here because other remedies are available to other parties in other *fora*. None of these statements bear in any way on the application of the provisional measures test.[81]

72. EMPC further contends that the Netherlands' assurance offers no confidence it will comply with any award in this Arbitration. The Claimant asserts that the Netherlands has consistently refused to explain how it could meet its obligations under Articles 53 and 54, given its support for the European Commission's position on the non-enforceability of intra-EU awards. EMPC maintains that, despite multiple opportunities, the Respondent has not articulated how those provisions operate in this Arbitration. Accordingly, EMPC concludes that the Netherlands' conduct shows it does not consider itself bound to either "*abide by and comply with the terms of the award*" or "*recognize [the] award […] as binding and enforce [its] pecuniary obligations*" *as if the award* "*were a final judgment of a court*" in the Netherlands.[82]

73. ***First,*** the Netherlands refused EMPC's request for a clear assurance that it would comply with any award from this Tribunal, dismissing it as "*inappropriate*" despite it reflecting obligations under Articles 53 and 54 of the ICSID Convention. Instead, it offered only a vague, general statement of compliance and failed to address its prior statements suggesting

[79] Claimant's Reply, ¶ 15.
[80] Claimant's Reply, ¶ 16.
[81] Claimant's Reply, ¶ 17.
[82] Claimant's Reply, ¶ 26.

non-compliance. This silence reinforces EMPC's concern that the Netherlands will refuse to commit to comply with an adverse award and enforce its pecuniary obligations.[83]

74. ***Second,*** EMPC asserts that the Netherlands maintains its prior representations that any award rendered by this Tribunal is not enforceable within or outside the EU, and that the European Commission's directive to resist recognition and enforcement of intra-EU investment awards reflects its own legal obligations. EMPC maintains that, in its Response, the Netherlands reaffirmed its view that there is no valid offer to arbitrate under Article 26(2)(c) of the ECT. Based on the Netherlands' representations to the Antwerp Court, EMPC states that it is plain that the Netherlands does not intend to voluntarily comply with any award rendered by this Tribunal and instead intends to resist enforcement on jurisdictional grounds, in direct violation of the ICSID Convention.[84]

75. ***Third,*** EMPC argues that, in its Response to the Second Application, the Netherlands made the perplexing claim that EMPC has no right to a guarantee of voluntary compliance and enforceability of the award through provisional measures. EMPC contends that the Netherlands offered no support for this assertion, despite the clear language of Articles 53 and 54 of the ICSID Convention, which require signatories to "*abide by and comply with*" the award and "*enforce the pecuniary obligations imposed by that award*." EMPC notes that these provisions establish rights that are well recognized as capable of protection by provisional measures. The Netherlands' effort to avoid such measures reflects a profound disregard for its obligations under the ICSID Convention and the authority of this Tribunal.[85]

(2) Elements for Provisional Measures

76. EMPC states that it already demonstrated, in its First Application,[86] and the Netherlands subsequently agreed that (i) this Tribunal has the power to order provisional measures, (ii) that such measures are legally binding on the Parties, and (iii) what criteria the Tribunal must consider when deciding on an application for provisional measures. These criteria are:

a) whether the tribunal has *prima facie* jurisdiction;

b) whether the application engages rights requiring protection;

[83] Claimant's Reply, ¶ 27.

[84] Claimant's Reply, ¶¶ 28-29.

[85] Claimant's Reply, ¶ 30.

[86] Claimant's First Application for Provisional Measures, 12 June 2025, ¶¶ 24-28.

c) whether there is "urgency";

d) whether the requested measures are "necessary"; and

e) whether the requested measures are "proportionate."[87]

77. The Claimant submits that it has satisfied each of these criteria.[88] EMPC discusses each in turn as follows.

a. Prima Facie Jurisdiction

78. EMPC argues that the Tribunal must first assess whether EMPC has established a *prima facie* case. EMPC maintains that, as outlined in its First Application, tribunals typically evaluate whether the Claimant has shown *prima facie* jurisdiction, and in some instances, whether there is a *prima facie* case on the merits. EMPC argues that it has demonstrated both.[89]

79. In summary, EMPC submits that *prima facie* jurisdiction is established because: (i) Belgium and the Netherlands were parties to the ECT when this arbitration was filed and remain parties to the ICSID Convention; (ii) EMPC is a protected investor under the ECT and a "*National of another Contracting State*" under the ICSID Convention; (iii) EMPC has protected investments in the Netherlands; (iv) this dispute arises out of those protected investments; and EMPC accepted the Netherlands' standing offer to arbitrate certain disputes under Article 26 of the ECT. EMPC further contends that it also showed that the Netherlands' jurisdictional objection is baseless and incompatible with at least fifty-seven cases. [90]

80. Moreover, EMPC contends that *prima facie* case on the merits is established through EMPC's Request for Arbitration, which details the factual and legal basis of its claims. The Netherlands did not challenge EMPC's explanation in its response to the First Application. Accordingly, EMPC has established a *prima facie* case.[91]

81. EMPC further affirms that both Parties agree the first prong of the provisional measures test is whether the Tribunal has *prima facie* jurisdiction. However, EMPC argues that the Netherlands misapplies this standard by arguing that no valid offer to arbitrate exists between an EU member state and an EU investor. EMPC explains that the *prima facie* jurisdiction test is not an "*in depth*" evaluation and typically focuses only on whether the

[87] Claimant's Second Application, ¶¶ 26-27.

[88] Claimant's Second Application, ¶ 28.

[89] Claimant's Second Application, ¶ 29.

[90] Claimant's Second Application, ¶ 30. *See also*: Claimant's Reply, ¶ 35.

[91] Claimant's Second Application, ¶ 30.

respondent has ratified the ICSID Convention and the relevant treaty text. EMPC also contends that the intra-EU objection is not part of this assessment, as the Netherlands itself conceded earlier. EMPC mentions that fifty-seven out of fifty-nine ICSID tribunals have rejected the intra-EU objection.[92]

82. Accordingly, EMPC concludes that it has plainly satisfied the *prima facie* jurisdiction standard.[93]

b. Existence of rights requiring preservation

83. The Claimant submits that the Tribunal must examine whether the Application seeks to preserve rights that are in need of protection as this Application seeks to protect two fundamental rights: (i) preservation of the effectiveness of the award, and (ii) maintenance of the *status quo* and non-aggravation of the dispute. EMPC contends that the Netherlands' indications that it will not comply with or enforce this Tribunal's award, coupled with the Netherlands' continued issuance of levies under the TGA, imperil both of these rights and warrant provisional measures.[94]

(i) EMPC's right to the preservation of the effectiveness of the award

84. EMPC asserts that the effectiveness of awards rendered under the ICSID Convention is central to the ICSID system. It further confirms its right to the preservation of the effectiveness of any award rendered under the ICSID Convention. EMPC also confirms that ICSID tribunals have consistently held that this right is protectable through provisional measures, as affirmed in *City Oriente v. Ecuador*.[95] EMPC further notes that, similarly, the tribunals in *Tokios Tokelés*[96] and *Klesch v. Germany*[97] emphasized that parties must refrain from conduct that prejudices the rendering or execution of an ICSID award.[98]

85. The Claimant states that preserving effectiveness means ensuring that relief granted is not merely theoretical but capable of implementation. EMPC notes that the tribunal in *Plama*

[92] Claimant's Reply, ¶¶ 33-34.

[93] Claimant's Reply, ¶ 35.

[94] Claimant's Second Application, ¶¶ 32-33.

[95] *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No ARB/06/21, Decision on Provisional Measures, 19 November 2007, ¶ 55 (**CL-48**).

[96] *Tokios Tokelés v. Ukraine*, ICSID Case No ARB/02/18, Order No 1, 1 July 2003, ¶ 2(a) (**CL-4**).

[97] *Klesch Group Holdings Limited & Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No ARB/23/49, Decision on Provisional Measures, 23 July 2024, ¶ 47 (**CL-26**).

[98] Claimant's Second Application, ¶¶ 34-36.

v. Bulgaria[99] clarified that provisional measures must safeguard the claimant's ability to have its claims fairly considered and any resulting relief effectively carried out.[100]

86. EMPC submits that the ICSID Convention ensures the effectiveness of awards by imposing two specific obligations on parties: (i) the obligation to comply with the award under Article 53 and (ii) the obligation to recognize and enforce the award under Article 54. Together, these Articles oblige parties to adhere to awards, irrespective of whether they are favorable or not, thereby ensuring that awards remain effective and capable of implementation.[101]

87. The Claimant argues that Article 53(1) of the ICSID Convention establishes an obligation that renders the award "*self-executing*" because "*[n]o further action is required by the [. . .] prevailing party*" to trigger the obligation to abide by and enforce the award.[102] That obligation "*begins immediately upon [the award's] rendering*". As Schreuer notes, in accordance with Article 53, "*non-compliance with an award by a party would be a breach of a legal obligation*."[103]

88. EMPC further contends that Articles 53 and 54 of the ICSID Convention impose independent and hierarchical duties. A State that refuses both voluntary compliance and enforcement breaches its obligations twice. As Schreuer explains, enforcement becomes necessary only when a party violates Article 53, and failure to enforce under Article 54 compounds the breach. The Claimant emphasizes that within the ICSID system, Article 53 is the primary obligation ensuring implementation of an award, while Article 54 serves only as a backup in case of breach. Accordingly, EMPC affirms that any indication that a party will not comply with Articles 53 or 54 threatens the award's effectiveness. EMPC argues that the Netherlands' own admissions raise such a threat, warranting provisional measures to protect the integrity of the ICSID system.[104]

89. EMPC further submits that the Netherlands' arguments that EMPC lacks a right to an effective award requiring protection must be rejected as follows:[105]

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[99] *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No ARB/03/24, Order, 6 September 2005, ¶ 40 (**CL-7**).

[100] Claimant's Second Application, ¶ 37.

[101] Claimant's Second Application, ¶ 38.

[102] SA Alexandrov, "Enforcement of ICSID Awards: Articles 53 and 54 of the ICSID Convention" in: C Binder (2009 edn), International Investment Law for the 21st Century: Essays in Honour of Christoph Schreuer 322, p. 4 (**CL-49**).

[103] S Schill, L Malintoppi, A Reinisch, C Schreuer, and A Sinclair (eds), Schreuer's Commentary on the ICSID Convention (3rd edn 2022) (Schreuer's Commentary on the ICSID Convention) (excerpts), Article 53 Commentary, ¶ 2 (**CL-22ter**). See: Claimant's Second Application, ¶¶ 39-40.

[104] Claimant's Second Application, ¶ 45.

[105] Claimant's Reply, ¶ 44.

90. ***First,*** EMPC states that the Netherlands disputes its assertion of a self-standing right to a guarantee, enforceable by way of provisional measures, of voluntary compliance with and enforceability of the award. In doing so, the Netherlands denies both the existence of EMPC's right to the award's effectiveness and that such a right may be protected by provisional measures. EMPC argues that the Netherlands provides no support for this denial, fails to engage with the extensive legal authorities confirming the right's existence, and contradicts the plain text of Articles 53 and 54 of the ICSID Convention and the Tribunal's powers under Article 47.[106]

91. ***Second,*** EMPC submits that the Netherlands offers an equally truncated argument that, even if EMPC does have a right to the effectiveness of the award, that right does not require protection because the Netherlands has assured its compliance with Articles 53 and 54. As EMPC has explained at length above, this assurance does not hold any weight and must be disregarded.[107]

92. EMPC concludes that the Netherlands' admitted intent not to comply with or enforce the award, as reflected in its statements outlined above and its continuing refusal to provide any assurance specific to this arbitration, imperils the award's effectiveness and its implementation. EMPC submits that this right, which constitutes a core tenet of the ICSID system, can and should be safeguarded through provisional measures.[108]

(ii) EMPC's right to the maintenance of the *status quo*

93. The Claimant submits that ICSID tribunals have consistently held that maintaining the *status quo* and preventing the aggravation of a dispute are "*well-established*" rights protectable by provisional measures.[109] EMPC states that ICSID Rule 47 explicitly authorizes tribunals to recommend such measures to preserve a party's rights, including to maintain or restore the *status quo* pending determination of the dispute.[110]

94. EMPC further argues that this principle has been widely recognized, including in disputes involving taxes or state-imposed payments. The Claimant notes that the *Klesch v. Germany* tribunal affirmed that Rule 47(1)(b) empowers tribunals to maintain the *status quo*,

[106] Claimant's Reply, ¶¶ 45-46.

[107] Claimant's Reply, ¶ 47.

[108] Claimant's Reply, ¶ 48.

[109] See, e.g., *Quiborax SA, Non Metallic Minerals SA and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No ARB/06/2, Decision on Provisional Measures, 26 February 2010, (**CL-14**), ¶ 134; *Klesch Group Holdings Limited & Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No ARB/23/49, Decision on Provisional Measures, 23 July 2024, ¶¶ 39, 47 (**CL-26**); and *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No ARB/06/21, Decision on Provisional Measures, 19 November 2007, ¶ 55 (**CL-48**).

[110] Claimant's Second Application, ¶ 46.

grounded in the principle that once arbitration is initiated, parties must not take steps that could aggravate the dispute or prejudice the award's execution.[111] EMPC notes that the *Biwater Gauff v. Tanzania*[112] tribunal emphasized that this power also serves to foster trust, ensure orderly proceedings, maintain fairness, and reduce external pressures.[113]

95. In sum, EMPC maintains that it is now settled that tribunals may direct parties not to take steps that might aggravate or exacerbate the dispute as stated in *Biwater Gauff v. Tanzania*.[114] EMPC argues that its right to the maintenance of the *status quo* is therefore beyond dispute and warrants protection. The Claimant argues that the Netherlands' continued pursuit of payment demands based on extra-legal criteria, such as the "*principle of generosity*", for further billions of euros inevitably aggravates the dispute and heightens the risk of non-compliance and non-enforcement of any eventual award adverse to the Netherlands.[115]

96. The Claimant affirms that protection of the right to an effective award is by itself a sufficient basis for the Tribunal to grant EMPC's requested provisional measures and so, if the Tribunal is satisfied in that regard (as it should be), there is no need to consider the question of the *status quo*. EMPC further states that the Netherlands' intent not to comply with the award and its plan to impose new levies threatens both the award's implementation and the *status quo*.[116]

97. The Claimant further notes that the Netherlands offers a series of "*disparate*" arguments that EMPC's right to maintenance of the *status quo* and non-aggravation of the dispute does not require protection. EMPC argues that all of these arguments fail as follows:[117]

98. ***As to the Netherlands' first argument,*** EMPC notes that the Netherlands argues that EMPC's right to maintenance of the *status quo* and non-aggravation does not require protection, citing *Plama v. Bulgaria* and *Nova Group v. Romania*. However, EMPC argues that both tribunals confirm that provisional measures may freeze the circumstances between the parties when necessary to ensure that the tribunal can fashion, and the claimant can obtain, meaningful relief. Far from undermining EMPC's case, EMPC argues that these

[111] *Klesch Group Holdings Limited & Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No ARB/23/49, Decision on Provisional Measures, 23 July 2024, ¶ 47 (**CL-26**). *See also*: Schreuer's Commentary on the ICSID Convention, Article 47 Commentary, ¶ 223 (**CL-22ter**).

[112] *Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania*, ICSID Case No ARB/05/22, Procedural Order No 3, 29 September 2006, ¶ 135 (**CL-9**).

[113] Claimant's Second Application, ¶¶ 47-48.

[114] *Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania*, ICSID Case No ARB/05/22, Procedural Order No 3, 29 September 2006, ¶ 135 (**CL-9**).

[115] Claimant's Second Application, ¶¶ 49-50.

[116] Claimant's Reply, ¶¶ 49-50.

[117] Claimant's Reply, ¶ 51.

precedents support it: EMPC seeks suspension of future payment demands precisely because the Netherlands' refusal to affirm compliance with any award has altered the *status quo* and jeopardizes the effectiveness of relief.[118]

99. ***As to the Netherlands' second argument,*** EMPC contends that the Netherlands' second argument is that the Second Application mis-identifies the *status quo* to be maintained, which, in its telling, consists of "*the existing framework under the HoA and the TGA*" and "*the continuation of [. . .] regular payment of levies*." EMPC argues that the Netherlands' characterization of the *status quo* is incorrect for three reasons as follows:[119]

100. ***First,*** EMPC argues that the *status quo* to be maintained is the parties' participation in an arbitration where the dispute is not aggravated and the award can grant effective relief. The Netherlands has sought to alter this *status quo* by declaring its refusal to comply with an adverse award while continuing to impose levy demands on NAM. EMPC submits that a temporary suspension of the levies would preserve the *status quo* and prevent aggravation of the dispute, thereby ensuring that the Tribunal can render an award capable of implementation, as was the case prior to the Netherlands' admission of non-compliance.[120]

101. ***Second,*** EMPC contends that the Netherlands' characterization of the *status quo* as NAM continuing to pay levies issued within the structure of the HoA and TGA obscures the fact that the TGA is not a stable framework. EMPC argues that, since it was first passed in 2020, the Netherlands has and intends to continue to modify the TGA and decrees based on the TGA to expand the Damage Handling Program and Strengthening Operation and the claims levied against NAM, to EMPC's detriment. Likewise, EMPC notes that the State agencies that administer the Damage Handling Program and Strengthening Operation routinely update their practices in ways that substantially affect EMPC's rights. As just a few examples, despite the clear legal limitations on NAM's liability: (i) In 2024, the IMG adopted a policy allowing claimants within a 72km zone where the chance of mining-related damage is as low as 0.01%—to receive €60,000 in repairs without any causation inquiry. This policy could apply to over 99% of claims and, if costs are passed to NAM, would significantly expand its liability; (ii) In 2025, the TGA was amended to allow levies not only for damage settlement but also for mitigating adverse consequences and broadly defined safety-related costs, including residents' health and well-being; and (iii) In 2023, the TGA and IMG policies were expanded to include damage allegedly linked to the Grijpskerk gas storage facility, despite such facilities not causing mining damage. These

[118] Claimant's Reply, ¶¶ 52-54.

[119] Claimant's Reply, ¶ 55.

[120] Claimant's Reply, ¶ 56.

developments, EMPC contends, fundamentally alter the *status quo* and violate the applicable legal frameworks.[121]

102. ***Third,*** EMPC asserts that the Netherlands' understanding of the *status quo* is facially unreasonable. The Claimant argues that, by interpreting NAM's agreement to reimburse specific expenses as a license to impose unlimited charges, the Netherlands distorts the agreed framework. EMPC further contends that this amounts to a perversion of the *status quo*, especially as the State continues to engage in repeated unlawful conduct during the arbitration while openly admitting it will not comply with any award intended to make EMPC whole.[122]

103. ***As to the Netherlands' third argument*** that suspending payment demands would impermissibly improve EMPC's position by prejudging the merits, EMPC states that it fails for two reasons: (i) suspension of the payment demands would only restore its rights to an effective award and maintenance of the *status quo* as the *Phoenix* tribunal's holding that provisional measures cannot be used to obtain rights never possessed is therefore inapplicable,[123] as EMPC's request seeks solely to protect rights it already holds; and (ii) suspension of the payment demands would not prejudge the merits, as the relief is temporary until the Tribunal decides the case. In the event that the Tribunal were to find against EMPC, the State could continue to make the payment demands. EMPC emphasizes that ICSID tribunals have consistently issued provisional measures restraining states from enforcing obligations at issue whose international legality is the very issue in dispute without finding that doing so prejudged the merits.[124]

104. ***As to the fourth argument,*** that the requested provisional measures aim only to avoid aggravation of money damages, EMPC states that it is incorrect. EMPC maintains that its application is not based on any claim of the Netherlands' impecuniosity, but on its ability to obtain effective relief, including damages for unlawful levies on NAM, given the Netherlands' stated intent not to comply with the award. The requested measures would not affect lawfully imposed charges, which NAM will pay in full once the arbitration concludes.[125]

[121] Claimant's Reply, ¶ 57.

[122] Claimant's Reply, ¶ 58.

[123] *Phoenix Action Ltd v. Czech Republic*, ICSID Case No ARB/06/5, Decision on Provisional Measures, 6 April 2007, ¶ 37 (**RL-37**).

[124] Claimant's Reply, ¶¶ 59-62.

[125] Claimant's Reply, ¶ 63.

105. Accordingly, EMPC concludes that its rights to an effective award and maintenance of the *status quo* require protection and that the Netherlands' arguments to the contrary must be rejected.[126]

c. Necessity

106. The Claimant argues that as to the "*necessity*" requirement, ICSID tribunals consider provisional measures necessary when they enable the avoidance of material risk of serious or grave damage to the requesting party. EMPC notes that some tribunals have adopted an alternative standard, whereby provisional measures are considered "*necessary*" if they prevent a harm that would not adequately be reparable by an award of damages. Here, regardless of which standard the Tribunal adopts, EMPC contends that it has satisfied this prong by demonstrating that suspension of the issuance of levies is required to protect the effectiveness of the award and avoid EMPC's irrecoverable loss of billions of euros in unlawful levy payments in the event of an award adverse to the Netherlands.[127]

107. On the one hand, EMPC submits that a provisional measure suspending the issuance of levies is necessary to preserve EMPC's right to the effectiveness of the award. Without such relief, EMPC argues that it will continue to incur substantial losses that the Netherlands has indicated it will not remedy, regardless of the arbitration's outcome and despite its obligations under Articles 53 and 54 of the ICSID Convention.[128]

108. EMPC further notes that ICSID tribunals have previously found provisional measures necessary when a party signals intent to impede or delay award implementation. In *Klesch v. Germany*,[129] the tribunal issued provisional measures after Germany failed to affirm it would comply with an adverse award and indicated it might use procedural tools to delay satisfaction. EMPC contends that the tribunal barred Germany from demanding or collecting payments under the challenged tax statute, and that this decision was based on a reasonable concern that enforcement of a favorable award might be delayed. Germany had not committed to repaying the solidarity contribution if the award favored the claimant and had reserved the right to use procedural mechanisms to delay enforcement.[130]

109. Moreover, EMPC argues that the Netherlands' position is more extreme as the Netherlands has explicitly stated it will not comply with any award upholding jurisdiction and finding breach of the ECT and has also signaled intent to obstruct enforcement through procedural

[126] Claimant's Reply, ¶ 64.

[127] Claimant's Second Application, ¶ 51.

[128] Claimant's Second Application, ¶ 52.

[129] *Klesch Group Holdings Limited & Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No ARB/23/49, Decision on Provisional Measures, 23 July 2024, ¶¶ 38, 60-61 (**CL-26**).

[130] Claimant's Second Application, ¶¶ 53-56.

tools, including its tort action in Belgian courts challenging the Tribunal's jurisdiction. Given these circumstances, EMPC states that a provisional measure suspending new levies under the TGA is essential to preserve the effectiveness of any potential award in EMPC's favor.[131]

110. In addition, EMPC further submits that its requested provisional measures are necessary to preserve EMPC's right to maintenance of the *status quo* and non-aggravation of the dispute. EMPC explains that its claim in this Arbitration is that, through its breaches of the ECT, the Netherlands has and will continue to make payment demands on NAM that far exceed NAM's contractual and legal liability. EMPC argues that, in doing so, the Netherlands has created an unjust asymmetry: absent the requested provisional measures, EMPC's subsidiary must pay 100% of the amounts levied in breach of international law, but if the Tribunal accepts EMPC's case on liability, the Netherlands will not pay EMPC anything nor enforce the award in any way.[132]

111. EMPC notes that other ICSID tribunals have recommended provisional measures enjoining a State from demanding or enforcing payment of a domestic law obligation where that obligation was (i) the very issue in dispute in the arbitration and (ii) the State had taken or could soon take action to aggravate the dispute and alter the *status quo* in relation to that obligation. For example, EMPC notes that the *Klesch Group v. Germany* tribunal barred Germany from demanding or collecting a solidarity contribution under a disputed tax law,[133] recognizing that enforcement could aggravate the dispute. EMPC argues that the tribunal emphasized that the contribution was the very subject of the arbitration and that claimants should not be compelled to pay it while the dispute remained unresolved.[134]

112. Similarly, the Claimant contends that, in *Perenco v. Ecuador*[135] and *City Oriente v. Ecuador*,[136] tribunals issued provisional measures to prevent Ecuador from demanding payments under a domestic law (identified as "Law 42"), which was central to the arbitration. EMPC argues that, in these cases, the tribunals explicitly rejected respondents' arguments that provisional measures suspending payment obligations were unnecessary on the basis that the investor could simply make the required payment and later recover the amounts in damages if successful in the arbitration. EMPC contends that the tribunals

[131] Claimant's Second Application, ¶¶ 57-58.

[132] Claimant's Second Application, ¶¶ 59-60.

[133] *Klesch Group Holdings Limited & Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No ARB/23/49, Decision on Provisional Measures, 23 July 2024, ¶¶ 65-67 (**CL-26**).

[134] Claimant's Second Application, ¶¶ 61-62.

[135] *Perenco Ecuador Ltd v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (PetroEcuador)*, ICSID Case No ARB/08/6, Decision on Provisional Measures, 8 May 2009, ¶ 17 (**CL-11**).

[136] *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No ARB/06/21, Decision on Provisional Measures, 19 November 2007, ¶¶ 1-6 (**CL-48**).

rejected this reasoning on grounds directly applicable here: (1) the investor was not only seeking monetary damages; (2) the payment obligation was connected with the very issue in dispute in the arbitration; and (3) there were indications that the state could impede satisfaction of the award and the state did not affirmatively state that it would comply with an award in the investor's favor.[137]

113. EMPC argues that this reasoning applies with even greater force here. The levies are the central issue in this arbitration, and the Netherlands has explicitly stated it will not comply with an adverse award or permit its enforcement. Unlike Ecuador, the Netherlands has confirmed its intent to disregard the Tribunal's decision. Therefore, suspension of new levies is essential to preserve EMPC's right to the *status quo* and allow the Tribunal to assess the levies and issue an effective final award.[138]

114. In addition, EMPC affirms that its requested provisional measures clearly fulfill the necessity requirement: absent a suspension of the payment demands, the Netherlands' current aggravation of this dispute will go unchecked, and EMPC will face the loss of billions of euros associated with unlawful levy payments that, in the Netherlands' own words, will not be paid even if so ordered by this Tribunal. EMPC argues that the Netherlands' arguments to the contrary fail as follows:[139]

115. ***First,*** EMPC submits that suspension of the payment demands remains necessary to protect its rights to an effective award and the *status quo*. EMPC argues that the Netherlands' assurance of compliance under Articles 53 and 54 of the ICSID Convention is an "empty promise," contradicted by its statements before the Antwerp Court and this Tribunal.[140]

116. ***Second,*** EMPC submits that the Netherlands' argument misunderstands the test for necessity. EMPC contends that the Respondent incorrectly asserts that the "material risk of grave or serious harm" standard is satisfied only where the investment remains a going concern and faces destruction. The Claimant notes that tribunals, including *Klesch v. Germany*,[141] have found the standard met independently of any risk of destruction, emphasizing instead the need to protect the right to maintenance of the *status quo*. Accordingly, EMPC contends that the Netherlands' claim that NAM would not be

[137] Claimant's Second Application, ¶¶ 63-65.

[138] Claimant's Second Application, ¶¶ 66-67.

[139] Claimant's Reply, ¶ 65.

[140] Claimant's Reply, ¶ 66.

[141] *Klesch Group Holdings Limited & Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No ARB/23/49, Decision on Provisional Measures, 23 July 2024, ¶¶ 33-35, 53-56 (**CL-26**).

destroyed by continued levy payments is irrelevant, as its stated refusal to comply with the award creates a substantial risk to EMPC.[142]

117. ***Third***, EMPC argues that the Netherlands is wrong in claiming EMPC "created a fact-specific, self-serving" alternative standard for necessity based on allegedly distinguishable cases. EMPC contends that the cited decisions, *Klesch* v. *Germany*, *Perenco* v. *Ecuador*, and *City Oriente* v. *Ecuador*, support the undisputed proposition that ICSID tribunals have found provisional measures prohibiting a State from demanding or enforcing payment of a disputed domestic law obligation necessary to protect a party's right to the maintenance of the *status quo*.[143]

118. ***Fourth,*** the Claimant addresses the Netherlands' suggestion that provisional measures are unnecessary because NAM has "*access to judicial review*" and other arbitration proceedings are ongoing, by contending that these parallel proceedings are irrelevant. EMPC is not a party to them, nor to any contracts with the State, and they do not address breaches of the ECT or the Netherlands' stated refusal to comply with and enforce an ICSID award, the harm EMPC seeks to prevent through its requested provisional measures. Furthermore, in the arbitration concerning breaches of the HoA, the Netherlands has argued that the tribunal lacks jurisdiction to suspend the issuance of levies,[144] which is precisely the relief EMPC seeks here. Thus, the existence of other proceedings under different legal frameworks, where the State denies the availability of EMPC's requested relief, has no bearing on the necessity of provisional measures in this Arbitration.[145]

119. For these reasons, EMPC maintains that its requested provisional measures are necessary to protect its rights to an effective award and the maintenance of the *status quo*.[146]

d. Urgency

120. EMPC submits that its requested measures are urgent, as urgency arises when the question cannot await the outcome of the award on the merits. EMPC argues the harm need not be certain; serious risks that the applicant's rights will be jeopardized are sufficient.[147] EMPC further contends that certain rights *per se* require urgent preservation when threatened. The Claimant states that tribunals have held that (i) "*where […] the issue is to protect […] the*

[142] Claimant's Reply, ¶¶ 69-71.

[143] Claimant's Reply, ¶ 72.

[144] *ExxonMobil Holding Company Holland LLC and Shell Nederland BV v. State of the Netherlands* (Netherlands Arbitration Institute Case No 5174) Netherlands' Statement of Defense Regarding Request for Interim Relief (excerpts), 14 October 2025, ¶ 3.6.1 (**C-140**).

[145] Claimant's Reply, ¶ 73.

[146] Claimant's Reply, ¶ 74.

[147] Claimant's Second Application, ¶ 68.

integrity of the final award, then the urgency requirement is met by the very own nature of the issue,"[148] and (ii) "*when the [requested provisional] measures are intended to protect against the aggravation of the dispute during the proceedings, the urgency requirement is fulfilled by definition*."[149] EMPC contends that the reason for such *per se* urgency is clear: where the effectiveness of the award or the *status quo* of the issue in dispute in the arbitration is threatened, such threats must be addressed before the award is issued, so that the award can fulfill its function of determining the matter in dispute and granting effective relief.[150]

121. EMPC further asserts that it has shown that the Netherlands' conduct threatens EMPC's rights to an effective award and the *status quo*. EMPC contends that the risk is serious because (i) the Netherlands has stated it will not comply with Articles 53 or 54 of the ICSID Convention, and (ii) it will soon issue further levies against EMPC's 50% held subsidiary, NAM.[151]

122. EMPC submits that the risk is imminent. EMPC further contends that the Netherlands has issued the levies, thereby using its own future breaches of international law to trap EMPC. EMPC argues that the Netherlands may impose obligations under Dutch law requiring NAM to pay billions of euros or face penalties, while refusing to comply with Articles 53 and 54 of the ICSID Convention, thereby obstructing EMPC's recovery if the Tribunal rules in its favor. Therefore, EMPC concludes that its requested provisional relief cannot await the outcome of the award and must be granted prior to the next levy under the TGA.[152]

123. EMPC maintains that the Netherlands does not dispute this standard, but offers two arguments for why EMPC's requested measures are not urgent. EMPC argues that both arguments fail:[153]

124. ***First,*** EMPC submits that, contrary to the Netherlands' claim, both the integrity of the final award and the right to non-aggravation of the dispute are in serious jeopardy. EMPC contends that the Netherlands has expressly stated its intent not to comply with or enforce the Tribunal's award and to continue issuing levies against NAM based on the same unlawful criteria. The Claimant asserts that both the existing and future levies place EMPC

[148] *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No ARB/06/21, Decision on Provisional Measures, 19 November 2007, ¶ 69 (**CL-48**).

[149] *Burlington Resources Inc and others v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (PetroEcuador)*, ICSID Case No ARB/08/5, Procedural Order No 1 on Burlington Oriente's Request for Provisional Measures, 29 June 2009, ¶ 74 (**CL-12**).

[150] Claimant's Second Application, ¶ 69.

[151] Claimant's Second Application, ¶ 70.

[152] Claimant's Second Application, ¶¶ 71-73.

[153] Claimant's Reply, ¶ 75.

in an impossible position: non-payment will result in liabilities under Dutch law (including potential interest penalties and enforcement actions), but, should NAM pay the levies, the Netherlands has provided no assurance that it will compensate EMPC for its corresponding losses if this Tribunal determines that the levies were unlawful, thereby requiring action prior to the issuance of the final award.[154]

125. ***Second,*** EMPC maintains that the Netherlands' claim of delay misunderstands the standard for urgency and misstates the facts. EMPC argues that the Second Application arose only after the Netherlands' statements in June and July 2025 indicating its intent not to comply with or enforce the Tribunal's award. EMPC notes that, despite a request for assurance on 5 August 2025, the Netherlands failed to provide any response.[155]

126. EMPC concludes that these circumstances demonstrate that the urgency of its Application stems from the Netherlands' conduct, not any delay by EMPC.[156]

e. Proportionality

127. EMPC argues that in assessing proportionality, tribunals weigh the harm to claimants against prejudice to respondents.[157] The Claimant contends that the requested measures are proportionate because the harm it seeks to prevent outweighs any prejudice to the Netherlands. EMPC further submits that the levies and invoices issued to date are procedurally and substantively flawed, relying on arbitrary criteria such as "generosity", and must therefore be reversed and reissued to reflect only legitimate liabilities attributable to NAM. For nearly seven years, EMPC has funded under protest the State's unlawful implementation of the Damage Handling and Strengthening Programs, notwithstanding their structural defects. The Claimant argues that with the Netherlands not complying with and actively inhibiting the enforcement of any award against it, EMPC is left without proper recourse to be made whole.[158]

128. Moreover, EMPC faces the risk of losing billions of euros in payment demands that may ultimately be found unlawful under international law. While the requested measures cannot reverse the €3.96 billion already paid, they are essential to prevent further unrecoverable losses until the Tribunal resolves EMPC's claims. Without provisional relief, EMPC's losses will be severe and irreparable, given the Netherlands' stated refusal to comply with

[154] Claimant's Reply, ¶ 76.

[155] Claimant's Reply, ¶¶ 77-78.

[156] Claimant's Reply, ¶ 79.

[157] *Fouad Alghanim & Sons Co for General Trading & Contracting, WLL and Mr Fouad Mohammed Thunyan Alghanim v. Hashemite Kingdom of Jordan*, ICSID Case No ARB/13/38, Order on Application for the Grant of Provisional Measures, 24 November 2014, ¶ 87 (**CL-17**).

[158] Claimant's Second Application, ¶¶ 74-75.

or enforce an adverse award. As to future levies, NAM has consistently satisfied all demands under the Temporary Groningen Act, and there is no basis to conclude it would not do so should the Tribunal uphold their legality.[159]

129. Furthermore, EMPC argues that the requested measures are reasonable and proportionate, as they align with and do not exceed the relief EMPC would be entitled to if successful in the Arbitration. EMPC affirms that the measures effectively pause issuance of future levies so that NAM is not obliged to make further payments during the pendency of this Arbitration, consistent with international law principles. The Claimant argues that, under Article 30 of the ILC Articles on State Responsibility, a State responsible for a continuing wrongful act must cease that act.[160] EMPC concludes that the Netherlands' wrongful conduct is ongoing, as it intends to continue issuing unlawful levies. EMPC therefore seeks cessation of such acts during this Arbitration.[161]

130. In its Reply, EMPC addresses the Netherlands' three arguments: (i) that suspending the levies would cause unspecified "*legal, budgetary and other consequences*" and hinder its response to an "*urgent public challenge*"; (ii) that EMPC's loss is reparable by damages and the financial burden is minimal; and (iii) that suspension would result in a windfall for EMPC in breach of its contractual obligations. EMPC asserts these arguments are fundamentally flawed as follows:[162]

131. ***First,*** EMPC argues that the Netherlands provides no support for its claim that suspension of the levies would cause significant harm. EMPC contends that, on the Netherlands' own case, it bears 73% of the costs of the Damage Handling Program and Strengthening Operation and "pre-finances" the programs subject to later reimbursement by NAM (with significant interest accruing). EMPC affirms that the levies represent only a minimal portion of the Netherlands' budget, for example, in 2023 NAM's purported 27% share amounted to just 0.062637% of the national budget. Moreover, the Claimant asserts that the Netherlands has publicly affirmed that the arbitration has no effect on Groningen residents and that damage settlement and building strengthening will proceed independently. EMPC argues that, as it seeks only a temporary suspension, any minimal impact on the Netherlands is not disproportionate to the severe and potentially permanent harm to EMPC, consistent with *Klesch v. Germany*.[163]

[159] Claimant's Second Application, ¶¶ 76-77.

[160] ILC Articles on State Responsibility, Article 30(1) (**CL-47**).

[161] Claimant's Second Application, ¶¶ 79-80.

[162] Claimant's Reply, ¶ 81.

[163] Claimant's Reply, ¶¶ 82-84. See: *Klesch Group Holdings Limited & Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No ARB/23/49, Decision on Provisional Measures, 23 July 2024, ¶¶ 75, 78-79 (**CL-26**).

132. ***Second,*** EMPC argues that the Netherlands' claim of minimal prejudice is plainly wrong given its stated unwillingness to pay damages under an adverse award. Likewise, EMPC contends that the Netherlands' reliance on NAM's prior levy payments under the Temporary Groningen Act misunderstands proportionality, as past payments under protest do not justify future unjustified ones, a position rejected in *Klesch v. Germany*. EMPC further asserts that the further suggestion that harm is minimal because NAM bears only 27% of levy costs is equally unavailing, since EMPC continues to suffer substantial and potentially irreparable harm and should not be obliged to satisfy unlawful payments that cannot be recouped.[164]

133. ***Third,*** EMPC submits that the Netherlands' claim that a temporary suspension of the levies would amount to a "*windfall*" for NAM is meritless. EMPC contends that a temporary pause in payment obligations is not a windfall as it is a procedural safeguard to preserve the effectiveness of the award and maintain the *status quo* while the Tribunal considers EMPC's claims. EMPC argues that if the Netherlands ultimately prevails, it may resume imposing levies as before, and NAM will remain liable. EMPC has explained that tribunals have repeatedly deemed such temporary suspensions appropriate in analogous provisional measures applications.[165]

134. ***Fourth,*** the Claimant argues that the Netherlands' claim, that suspending the levies would breach EMPC's contractual obligations, is both incorrect and irrelevant. EMPC is not a party to any contract with the State, and this Arbitration concerns violations of international law, not Dutch contract law. EMPC contends that, as the Netherlands itself acknowledges, separate proceedings are underway to assess the contractual obligations of NAM and others, in which EMPC is not involved. Accordingly, EMPC asserts that any contractual implications are for those proceedings, not this Tribunal.[166]

135. ***Finally,*** the Claimant's submits that, if the Tribunal is not with it on the primary relief, one option would be to allow the levies to continue and, following any payment, to require the State to place the proceeds into an escrow account reflecting only the Claimant's proportionate share of such payments. The Claimant notes that tribunals in *Burlington* (CL-12) and *Perenco* (CL-11) fashioned similar interim relief using an escrow account. In this way, if the Respondent ultimately prevails, the funds would return to it; whereas if the Claimant is successful, it would be entitled to the funds.[167]

[164] Claimant's Reply, ¶¶ 85-87.

[165] Claimant's Reply, ¶ 88.

[166] Claimant's Reply, ¶ 89.

[167] Hearing Transcript, p. 36:2-12.

136. The Claimant proposes that the Netherlands be ordered by the Tribunal to place 30% of the received amount of levy payments, corresponding to the interest of EMPC, or such other percentage considered by the Tribunal to be just and fair, into an escrow account administered by the Tribunal until the end of this arbitration, on terms to be agreed by the Parties (the "**Alternative Relief**"). If this relief is granted, the Claimant further proposes that the Parties revert to the Tribunal within 60 days of the order with areas of agreement or disagreement.[168]

137. The Claimant further clarifies that the 30% figure derives from the application of the divide between private and public interests set out in the 1963 Cooperation Agreement. The Claimant understands that there is agreement on that framework, and that tax deductions can be made against it. The Claimant submits that the disagreement lies in projecting forward, namely whether revenues will be closer to the floor or the ceiling, particularly given the material impact that the closure of the Groningen Field will have on NAM's revenues. The Claimant further clarifies that the 30% allocation is calculated from NAM's 60% interest, of which EMPC holds 50% compared to Shell, resulting in EMPC's 30% share. The Claimant therefore maintains that the figure is not arbitrary but firmly grounded in the Cooperation Agreement and the shareholding structure of NAM.[169]

138. EMPC replies to the Respondent's budgeting argument by submitting that it is circular, since it assumes the correctness of budgets that themselves embed the principle of "generosity" now under challenge in this Arbitration; the Claimant points to the recent €1.35 billion levies (C-146, C-147, C-148) as evidence that generosity is built into the State's fiscal framework, and argues that it is no defence to provisional measures to say that the State budgeted to recoup precisely what is being disputed, further noting that the Respondent exaggerates the alleged shortfall because, on its own figures, the State bears 73% of the levy costs and NAM 27%, and that under the alternative escrow solution the State would still receive full payment from NAM with only the Claimant's *pro rata* share placed in escrow, thereby diminishing any claimed burden.[170]

139. The Claimant contends that the Respondent's argument, that the requested measures are disproportionate because of a supposed risk that NAM will not pay the suspended amounts, is directly contrary to the Respondent's own Response submission, where it repeatedly acknowledged NAM's ability and willingness to pay. The Claimant notes that there is no valid concern that NAM will not pay; NAM has a track record of doing so. Moreover, once

[168] Hearing Transcript, pp. 34:24-25; 44:1-8.

[169] Hearing Transcript, pp. 166:9-24; 167:4-10.

[170] Hearing Transcript, pp. 37:9-19; 39:1-12.

again, with the alternative escrow solution, the Respondent's concern disappears entirely, as the Respondent would collect from NAM first before placing any amounts in escrow.[171]

140. Accordingly, the Claimant believes that this Alternative Relief takes into account the Tribunal's observation in PO4 that the Claimant's indirect share of each levy represents only a limited percentage. The proposed Alternative Relief ensures that the measures granted are commensurate solely with the Claimant's indirect share of such levy, and nothing more. Moreover, the Claimant notes the Tribunal's expressed concern with extending relief indirectly to third parties, principally the other private shareholder in NAM, Shell Nederland BV. The escrow solution would be linked exclusively to the Claimant's interest in the levy payments, and thus resolve that concern fully.[172]

141. In sum, EMPC submits that it has met all five prongs of the provisional measures test, and the Netherlands' own statements, both in this Arbitration and in the Antwerp Action, confirm the urgent threat to the award's effectiveness and the *status quo*, warranting the relief EMPC seeks.[173]

(3) Costs

142. EMPC argues that the Netherlands should be ordered to bear EMPC's costs associated with this Application as pursuant to Rule 52(3) of the ICSID Rules, the Tribunal may issue an interim decision on costs at any time. EMPC respectfully requests that the Tribunal order the Netherlands to bear all costs associated with this Application. EMPC considers a costs order appropriate at this stage due to the Netherlands' conduct, which includes violations of clear obligations under the ICSID Convention, specifically Articles 26 and 41 in connection with the Antwerp Action, and its stated intention to violate Articles 53 and 54 if a final award is rendered. EMPC contends that these actions have been taken knowingly and despite EMPC's requests to cease. Given this conduct, EMPC argues that it is concerned the Netherlands will continue breaching its international obligations to obstruct the arbitration and undermine any relief awarded. Accordingly, EMPC seeks an interim costs order to deter further violations and safeguard this Arbitration's integrity.[174]

B. THE RESPONDENT'S POSITION

143. In its Response to the Claimant's Second Application, the Netherlands submits that EMPC asks the Tribunal to order the Netherlands to refrain from imposing levies payable pursuant to applicable contracts and Dutch legislation by a third party to this Arbitration, NAM, in

[171] Hearing Transcript, p. 40:3-17.

[172] Hearing Transcript, p. 44:14-25.

[173] Claimant's Reply, ¶ 90.

[174] Claimant's Second Application, ¶¶ 85-87; Claimant's Reply, ¶ 91.

which EMPC purportedly holds an indirect 50% interest. The Respondent submits that NAM has paid equivalent levies over costs incurred in each of the last five years. The Netherlands argues that EMPC does not object to the contractual and statutory basis for the levies; it only objects to their amount, arguing that they "*extend NAM's liability far beyond lawful limits*".[175]

144. The Respondent further contends that it is plain that EMPC is trying to obtain a payment moratorium that forms part of the final relief it seeks, prior to the merits phase of this Arbitration. The Netherlands contends that it appears that the real objective of EMPC's Second Application is to obtain from the Tribunal a form of enforcement insurance by way of provisional measures which is a perversion of the ICSID framework on provisional measures.[176]

145. In addition, the Respondent submits that the two bases put forward by EMPC in support of its Second Application are far-fetched: EMPC contends that for NAM to continue paying the levies would be an aggravation of the *status quo*, whereas the Netherlands argues that, in reality, it is the Second Application that seeks to alter the long-standing *status quo* in order to gain an unfair advantage in this Arbitration; and (ii) EMPC's Second Application relies on a strawman fallacy, namely the allegation that "*the Netherlands has confirmed that it will not comply with any award rendered against it by this Tribunal*", to create the impression that there is a sudden threat to the effectiveness of the award to be rendered by this Tribunal.[177]

146. The Netherlands affirms that it has made no such threat of non-compliance. The Respondent asserts that EMPC's allegation rests on the claim that, at the time of its Second Application, the Netherlands had not responded to a letter demanding an explicit commitment to Articles 53 and 54 of the ICSID Convention. However, the Netherlands argues that the Application failed to mention that just four days earlier, the Netherlands had already reiterated its unequivocal assurance to comply with all international law obligations, including those under the ICSID Convention. Shortly thereafter, it explicitly assured the Tribunal of its commitment to Articles 53 and 54.[178] The Netherlands contends that EMPC dismissed this assurance as "*meaningless*,"[179] despite it being exactly what it had requested.[180]

[175] Respondent's Response, ¶¶ 2-3.

[176] Respondent's Response, ¶ 4.

[177] Respondent's Response, ¶¶ 5-7.

[178] Letter from the Netherlands to the Tribunal regarding the assurances given by the Netherlands dated 2 September 2025, p. 2.

[179] Letter from EMPC to the Netherlands dated 17 September 2025, p. 5.

[180] Respondent's Response, ¶ 8.

147. The Respondent affirms that EMPC's Second Application seeks full security for its indeterminate ECT claim throughout this Arbitration, thereby eliminating enforcement risk and preventing the Netherlands from raising billions of Euros in statutory levies owed by NAM, in which EMPC allegedly holds a 50% indirect shareholding. The Respondent further contends that these levies will inevitably exceed EMPC's claim, yet EMPC requests suspension despite never challenging the Netherlands' entitlement to impose them or the agreed premise that NAM's exploitation of the Groningen gas fields has caused repeated earthquakes, requiring compensation funded 27% by ExxonMobil and Shell and 73% by the Dutch State.[181]

148. Accordingly, the Respondent states that there is no basis for the Tribunal to conclude that the Netherlands will not comply with any award. The Netherlands asserts that it is a long-standing ICSID party with a strong record of compliance and has provided explicit assurances in this Arbitration. The Netherlands further contends that, under established ICSID jurisprudence, this alone defeats the Second Application. There is no "*urgency*" and no risk of "*irreparable harm*."[182]

149. In general, the Netherlands asserts that this Application fails to meet any of the five cumulative requirements for provisional measures. Accordingly, the Netherlands affirms that the Second Application must be rejected in its entirety under Article 47 of the ICSID Convention and Rule 47 of the ICSID Rules.[183]

150. Moreover, the Respondent argues that this ICSID Arbitration, like the parallel proceedings at the Netherlands Arbitration Institute ("**NAI**"), concerns only the calculation of levies under the applicable contracts and legislation. In short, EMPC alleges that the Netherlands' calculation of its indirect 13.5% liability for the levies has been (and continues to be) excessive. In the parallel NAI arbitrations, the Netherlands argues that NAM and its direct shareholders make virtually the same allegations about the Netherlands' calculation of ExxonMobil and Shell's combined indirect 27% liability for the levies. NAM's direct ExxonMobil and Shell shareholders have recently failed to obtain an order from an NAI tribunal for interim measures with respect to their indirect 27% liability for the levies on the basis, inter alia, that such measures would be against the "balance of interests" between the relevant ExxonMobil and Shell entities, on the one hand, and the Netherlands, on the other.[184] The Netherlands asserts that EMPC's Second Application is therefore a "*second*

[181] Respondent's Rejoinder, ¶¶ 2-3.

[182] Respondent's Response, ¶¶ 9-10.

[183] Respondent's Response, ¶ 12.

[184] *ExxonMobil Holding Company Holland LLC and Shell Nederland B.V. v. the State of the Netherlands*, NAI Case No. 5174, Arbitral Award Regarding the Request of Claimants for the Adoption of Interim Measures with regard to Levies, 14 November 2025 ("**HOA Interim Measures Award**") (**R-0020).**

bite at the cherry," now seeking to block the Netherlands from raising levies totaling approx. EUR 1.35 billion, even though EMPC challenges only its smaller 13.5% share.[185]

151. The Respondent further argues that granting such measures would alter the *status quo*, impermissibly affect third-party liabilities, and amount to unprecedented security for claim, and that EMPC knows also that any part of its indirect 13.5% liability for the levies which the Tribunal ultimately finds is excessive and in violation of the ECT will be recoverable by way of an eventual award of damages in this Arbitration. The Netherlands affirms that all of this is, in and of itself, sufficient to defeat EMPC's Second Application.[186]

152. Moreover, the Respondent argues that EMPC's reliance on an alleged "*express admission*" by the Netherlands in the Antwerp Court in June 2025 is unfounded, as no such admission was made. On the contrary, since June 2025 the Netherlands has repeatedly assured compliance with its international obligations under Articles 53 and 54 of the ICSID Convention, and has already complied with the Tribunal's Decision on EMPC's First PM Application dated 31 October 2025.[187]

153. The Netherlands affirms that any order of the kind requested in EMPC's Second Application would have serious, and potentially far-reaching, consequences for the Netherlands. The Respondent affirms that it would also expose the Netherlands to the risk of non-collection from NAM of billions of Euros of current and future levies, which seek the reimbursement of substantial costs that are not even challenged in this ICSID proceeding. Accordingly, the Netherlands argues that the Second Application stands to be rejected.[188]

154. The Tribunal notes that the Respondent's submissions (i) set out a background; (ii) address the elements relevant to provisional measures; and (iii) deal with the issue of costs. The Tribunal summarizes these matters below.

(1) Background

155. In its submissions, the Netherlands sets out a background, addressing the following matters:

[185] Respondent's Rejoinder, ¶¶ 5-6.

[186] Respondent's Rejoinder, ¶¶ 7-8.

[187] Respondent's Rejoinder, ¶ 9.

[188] Respondent's Rejoinder, ¶¶ 10-11.

a. Factual background to NAM's agreement to reimburse the Netherlands for damage and strengthening operations in Groningen

156. The Respondent submits that, prior to 1959, natural gas played a negligible role in the Dutch energy supply which changed when NAM discovered the Groningen gas field. In 1963, NAM received exclusive rights to exploit the Groningen Field. A Cooperation Agreement was signed between NAM, its shareholders, Shell Nederland B.V. ("**Shell**") and ExxonMobil Holding Company Holland LLC ("**EMHCH**"), and State-owned Energie Beheer Nederland B.V. ("**EBN**", in English: 'Energy Administration Netherlands B.V.') (the "**1963 Cooperation Agreement**").[189]

157. The Netherlands asserts that this agreement established the "*gasgebouw*" (gas building), forming the Groningen Partnership between NAM and EBN to jointly explore and extract gas. The Netherlands asserts that NAM was designated as the operator, while control in the Partnership is shared equally between NAM and EBN. The Respondent argues that costs and revenues are split 60/40, and NAM is authorised to charge expenses to the Partnership.[190]

158. The Netherlands acknowledges that while NAM's gas extraction brought economic benefits, it also caused significant damage. The Netherlands asserts that the first earthquake linked to extraction occurred in 1991, and over time, earthquakes grew stronger and more frequent. The worst was a 3.6 magnitude quake in 2012 near Huizinge, followed by a damaging 3.4 magnitude quake near Zeerijp in 2018. In response, the Dutch government, Shell, and EMHCH decided to phase out gas extraction in Groningen.[191]

159. The Respondent notes that under the Dutch Civil Code, NAM is responsible for damage caused by ground movement from gas extraction. The Netherlands further affirms that, for years, NAM handled damage claims directly, but the process was widely criticized. After the 2012 Huizinge earthquake, the risks of gas-induced earthquakes became clear, leading to a legal requirement for NAM to reinforce buildings. While NAM took on this task initially, the Netherlands argues that it also faced concerns and dissatisfaction from the local population.[192]

160. The Respondent contends that because NAM was ill-equipped to fulfill its statutory obligations to settle damage claims and carry out the strengthening operation, its shareholders, Shell and EMHCH, agreed in June 2018 to transfer these responsibilities to the Netherlands through an amendment to the 1963 Cooperation Agreement, formalized in

[189] Respondent's Response, ¶¶ 13-14.

[190] Respondent's Response, ¶ 15.

[191] Respondent's Response, ¶¶ 16-20.

[192] Respondent's Response, ¶¶ 21-23.

the Heads of Agreement ("**HoA**"). Under the HoA, the Netherlands assumed direct responsibility for the Damage Handling Program and the Strengthening Operation, while NAM remained financially liable for the associated costs, which would be recovered via statutory levies.[193]

161. The Respondent further argues that interim arrangements preceding and following the HoA obligated NAM to cover these costs contractually. For example, under the February 2018 Temporary Damage Agreement, NAM agreed to fund damage settlements, administered by the Temporary Committee on Mining Damages Groningen ("**TCMG**"), and in November 2018, a similar Interim Payment Agreement extended to the Strengthening Operation. On 1 July 2020, the Temporary Groningen Act ("**TGA**") came into force, establishing the Instituut Mijnbouwschade Groningen ("**IMG**") to replace TCMG and independently handle damage claims under Dutch public law.[194]

162. The Netherlands submits that IMG determines NAM's liability based on the Dutch Civil Code, and the Netherlands pre-finances the activities, recovering costs through levies under the TGA. With the TGA's entry into force, the Temporary Damage Agreement was terminated. On 1 July 2023, the TGA was amended to codify the Strengthening Operation, now carried out by the National Coordinator Groningen ("**NCG**") under ministerial responsibility, with costs likewise recovered through statutory levies, leading to the termination of the Interim Payment Agreement on Strengthening.[195]

163. The Respondent further asserts that, as agreed by the parties to the HoA, the Dutch Government would recover costs incurred in connection with the Damage Handling Program and Strengthening Operation through statutory levies. The Netherlands contends that these levies are issued under Article 15 of the TGA by appealable decisions from the State Secretary of the Interior and Kingdom Relations. NAM is obliged to pay each levy within six weeks of issuance, in accordance with Dutch administrative law.[196]

164. The Respondent further contends that, in practice, the total costs are recovered through four separate yearly levies covering: (1) physical damage, (2) immaterial damage, (3) decreases in property value, and (4) strengthening. Before imposing a levy, the State Secretary assesses whether the costs were incurred in connection with the Damage Handling Program or Strengthening Operation, as required by the TGA. The Netherlands

[193] Respondent's Response, ¶¶ 24-26.
[194] Respondent's Response, ¶¶ 27-28.
[195] Respondent's Response, ¶¶ 29-31.
[196] Respondent's Response, ¶¶ 32-33.

argues that the outcome of this assessment is detailed in the decision, and all levies are subject to judicial review.[197]

165. The Respondent notes that, after a levy is issued, NAM deducts the costs through the gasgebouw. Due to the cost allocation and other general rules governing revenues and expenses, NAM bears only approximately 27% of the actual costs of the levies. The remaining 73% is borne by the Government via EBN. Given EMPC's asserted indirect 50% stake in NAM through EMHCH, EMPC itself bears approximately 13.5% of the levies. While EMPC claims that NAM has paid "payment demands worth €3.96 billion in the aggregate," its own share amounts to approximately €535 million (i.e., 13.5% of €3.96 billion). This Netherlands affirms that this detail is glossed over in EMPC's Second Application.[198]

166. The Netherlands argues that although €535 million is not insignificant, it is modest compared to what EMPC's alleged indirect 100% subsidiary, EMHCH, has earned from the Groningen Field, €32.5 billion up to 2020, and the substantial profits it continues to generate. The Respondent argues that NAM's 2024 Annual Report announced plans to pay €1.5 billion in dividends to EMHCH by June 2025, which is nearly three times EMPC's alleged share of the levies.[199]

167. The Netherlands further contends that NAM also includes a provision in its annual accounts anticipating future levies and planning for their payment. As for EMPC's assertions that NAM may be required to pay for claims that "go far beyond the civil liability framework," the Netherlands disagrees and notes that these issues pertain to the merits phase of the Arbitration, which will be addressed in due course.[200]

168. The Respondent highlights that the arrangement between Shell, EMHCH, and the Netherlands has many legal proceedings over the costs of the Damage Handling Program and Strengthening Operation. Beyond the current ICSID Arbitration, three additional proceedings are pending at the Netherlands Arbitration Institute (NAI): (i) NAM v. the State (Damage Arbitration): Covers costs of the Damage Handling Program from March 2018 to 1 July 2020, based on the arbitration clause in the Temporary Damage Agreement; (ii) NAM v. the State (Strengthening Arbitration): Concerns costs of the Strengthening Operation from 1 January 2018 to 1 July 2023 under the Interim Payment Agreement on

[197] Respondent's Response, ¶ 34.

[198] Respondent's Response, ¶¶ 35-36.

[199] Respondent's Response, ¶ 37.

[200] Respondent's Response, ¶¶ 38-39.

strengthening; and (iii) Shell and ExxonMobil v. the State: Alleges government breach of obligations under the HoA.[201]

169. The Respondent contends that a request for provisional measures may be made in all of these arbitral proceedings. Additionally, the Netherlands argues that the Parties have always had access to judicial review of the levies in conformity with due process guarantees in Article 6 of the European Convention on Human Rights. Accordingly, the Netherlands states that exercising these rights, NAM and EMHCH have initiated objection proceedings to challenge individual levies on numerous occasions.[202]

170. The Respondent further submits that EMHCH has also commenced two parallel proceedings before the North Netherlands District Court[203] seeking provisional measures in connection with EMHCH's pending objections to the following levies: (i) issued in 2022 concerning physical damage, decrease in property value, and immaterial damage; and (ii) issued in 2023 across all four levy categories. Both of EMHCH's requests were dismissed due to "*lack of urgency*" and because EMHCH could not demonstrate that it "*would face irreversible financial difficulties*" if NAM paid the levies.[204]

171. In addition, the Respondent asserts NAM has brought appeals at the North Netherlands District Court against two further administrative decisions: the first rejecting NAM's objection to the levy decision concerning physical damage for the third and fourth quarters of 2020 and of 2021, and the second rejecting NAM's objection to the levy decision concerning decrease in property value for the fourth quarter of 2020 and of 2021. Any decision by the North Netherlands District Court may eventually be appealed to the Dutch Council of State, the highest administrative appeals body in the Dutch judicial system.[205]

b. The Netherlands has assured this Tribunal and EMPC that it will comply with Articles 53 and 54 of the ICSID Convention

172. The Respondent argues that EMPC claims that "*the Netherlands has confirmed that it will not comply with any award rendered against it by the Tribunal*" and that it "*considers that the enforcement of any award rendered against it will be futile*." Accordingly, EMPC requests that the Tribunal order the Netherlands to "*provide a written undertaking to the Tribunal, EMPC, and NAM from an authorised representative acknowledging its*

[201] Respondent's Response, ¶¶ 40-41.

[202] Respondent's Response, ¶¶ 42-43.

[203] Judgment of North Netherlands District Court in *EMHCH v. State Secretary for Economic Affairs and Climate Policy* (Case Nos. LEE 24/2115, LEE 24/2116, and LEE 24/2117), dated 13 May 2024, p. 1 (**R-0016**); and Judgment of North Netherlands District Court in *EMHCH v. State Secretary for Interior and Kingdom Relations* (Case No. LEE 24/4839), dated 23 December 2024, p. 1 (**R-0017**).

[204] Respondent's Response, ¶ 44.

[205] Respondent's Response, ¶¶ 45-46.

commitment to abide by such order [of provisional measures] from the Tribunal." However, at the time of the Second Application, and as EMPC itself admits, the Netherlands had repeatedly offered an unequivocal assurance that it would comply with all of its international law obligations, including those under the ICSID Convention. Since then, the Netherlands has provided an additional specific assurance that it will comply with its obligations under Articles 53 and 54 of the ICSID Convention. Accordingly, the Netherlands affirms that EMPC's request that the Netherlands be ordered to comply with Articles 53 and 54 of the ICSID Convention is now moot.[206]

173. Further, the Netherlands submits that it would be wholly inappropriate for the Tribunal to require the Netherlands to provide an undertaking to NAM, a third party to this Arbitration, which would effectively also extend to Shell, a Dutch company and NAM's other shareholder, which likewise is not a party to these proceedings.[207]

174. The Respondent affirms that the Netherlands has provided adequate assurances that it will comply with its obligations, including under Articles 53 and 54 of the ICSID Convention in this Arbitration. Then, the Netherlands argues that, contrary to EMPC's second misleading premise, EMPC's Application would, if granted, result in both disruption of the *status quo* and an unwarranted aggravation of the underlying dispute relating to the levies.[208]

175. The Respondent argues that EMPC's claim that the Netherlands' specific and repeated assurances of compliance with its obligations under Articles 53 and 54 of the ICSID Convention are insufficient to provide "*comfort that the Netherlands will abide by an adverse award rendered in this case*" is unfounded for two reasons:[209]

176. ***First,*** the Netherlands contends that the examples invoked by EMPC do not prove its assertion. The Netherlands' statements in the Antwerp proceedings, that an arbitral award "*cannot be enforced within the EU pursuant to binding case law*" of the CJEU, or that "*amounts EMPC might be awarded might be considered illegal state aid*"—were not expressions of non-compliance but factual representations of EU law and European Commission practice, matters beyond the Netherlands' control. The Respondent further argues that EMPC's reliance on the Netherlands' jurisdictional reservation under Article 26(2)(c) of the ECT is misplaced, as such representation is standard and does not reflect intent to disregard a potential award. Likewise, a letter from the European Commission urging Member States to resist enforcement of intra-EU awards cannot be attributed to the

[206] Respondent's Response, ¶¶ 47-48.

[207] Respondent's Response, ¶ 49.

[208] Respondent's Rejoinder, ¶ 14.

[209] Respondent's Rejoinder, ¶ 15.

Netherlands. The Respondent recalls that, since its Observations to EMPC's First PM Application, it has repeatedly assured compliance with Articles 53 and 54 of the ICSID Convention, and that the Tribunal itself confirmed in Procedural Order No. 3 ("**PO 3**") that "*the Netherlands has been cooperative*" and found "*no reason to believe*" it would not abide by its assurances of 2 September 2025. Therefore, the Respondent contends that nothing has changed since then to undermine this conclusion and that EMPC's suspicions, speculations, and allegations are therefore unfounded.[210]

177. ***Second,*** the Respondent argues that the Netherlands' immediately complied with PO 3, in which this Tribunal recommended suspension of the Antwerp proceedings until a jurisdictional decision was rendered. The Netherlands further notes that it is incomprehensible that EMPC still maintains the Netherlands has been unwilling to provide assurances of compliance with Articles 53 and 54 of the ICSID Convention, when the Netherlands has expressly stated that its assurance extends to compliance with those provisions. The Respondent further contends that EMPC does not dispute the Netherlands' history of compliance with international law and decisions of international courts and tribunals. In any event, the Netherlands cannot provide an assurance clearer than the one given here, through its authorised Co-Agents co-signing these submissions: "*for the avoidance of doubt, the Netherlands is herewith assuring that it will comply with its obligations under Articles 53 and 54 of the ICSID Convention, including that it will comply with any adverse award rendered by this Tribunal in this arbitration*".[211]

178. The Respondent finally affirms that EMPC's Alternative Request is based on the same flawed premise as its Primary Relief, namely, that there is a "*need for provisional measures*" arising from earlier submissions allegedly suggesting noncompliance. The Respondent argues that, since July 2025, the Netherlands has repeatedly assured the Tribunal of its intention to comply with its obligations under the ICSID Convention and the ECT. At the Hearing, in the presence of its Co-Agent, the Netherlands confirmed this assurance is "*unconditional and it is unequivocal*",[212] and that it would "*do whatever is needed to comply with the award*,"[213] and that, irrespective of the "*modalities and the means with which compliance will take place … compliance is going to happen*" and is "*guaranteed*". The Netherlands further explained that this assurance is "*legally binding*"

[210] Respondent's Rejoinder, ¶¶ 16-22.

[211] Respondent's Rejoinder, ¶¶ 23-25.

[212] Hearing Transcript, p. 125:2-3.

[213] Hearing Transcript, p. 185:9-10

under international law, and the Tribunal itself noted it had "*no reason to question the good faith*" of these assurances.[214]

c. EMPC's Second Application is founded on a serious distortion of facts and would result in both disruption of the status quo and aggravation of the dispute

179. The Respondent contends that EMPC's Second Application misrepresents the *status quo*. EMPC conflates the "*maintenance of the status quo and non-aggravation of the dispute*" with "*preservation of the effectiveness of the award*," presenting a confusing and misleading view. The Netherlands argues that the annual issuance of levies under the Temporary Groningen Act reflects the true *status quo*. NAM has consistently paid these statutory levies since 2020 for the Damage Handling Programme and since 2024 for the Strengthening Operation, pursuant to the 2018 Heads of Agreement, and EMPC itself admits that all payment demands under the regime have been satisfied.[215]

180. The Respondent further contends that EMPC does not dispute the contractual or statutory basis of the levies, only their amount, and that when EMPC filed its Request for Arbitration, there was no imminent concern requiring interim relief, as this Tribunal noted. The Netherlands argues that EMPC is attempting to alter the *status quo*. Its allegation that the Netherlands misled the Tribunal regarding the Damage Handling Programme and Strengthening Operation is incorrect and regrettable for the following reasons: (i) the Respondent contends that Articles 5.2 and 5.7 of the HoA clearly provide that NAM must bear all costs of the Damage Handling Programme and the Strengthening Operation. EMPC cannot claim its rights are threatened by the levy while simultaneously contending that the obligation to pay is not its own obligation; and (ii) the Respondent further argues that EMPC's reliance on the Dutch Civil Code is misplaced, since the Civil Code does not regulate the strengthening operation, is only partly relevant to the damages operation, and does not cover operational costs such as the Civil Code is only partly relevant for the damages operation.[216]

181. The Respondent also maintains that the 2025 interim levy reflects the *status quo* of NAM's responsibility for handling damages caused by gas extraction and for the strengthening operation to limit safety risks, assessed under updated standards. The Netherlands argues that the applicability of the Civil Code and EMPC's contrary case on liability should be reserved for the merits. What matters in this PM proceeding is that any order preventing the Netherlands from imposing levies under the TGA throughout the arbitration would

[214] Respondent's Response to the Claimant's Alternative Request for Provisional Measures dated 18 December 2025, ¶¶ 7-9.

[215] Respondent's Rejoinder, ¶¶ 26-27.

[216] Respondent's Rejoinder, ¶¶ 28-32.

have severe legal and budgetary consequences, aggravate disputes between EMPC, third parties, and the Netherlands, and seriously disrupt the established *status quo*.[217]

182. The Respondent further contends that the parallel proceedings before Dutch courts and NAI arbitration tribunals are directly relevant to the Tribunal's assessment of EMPC's Second Application. Contrary to EMPC's claim that these proceedings are "*irrelevant*," they concern the very same subject-matter and relief sought in this Arbitration, as confirmed by EMPC's own Request for Bifurcation of 31 October 2025, and that all heads of claim included by EMPC in paragraphs 18 and 19 of the Request for Bifurcation describe allegations already advanced by NAM, EMHCH and Shell NL in the commercial arbitrations or Dutch court proceedings set out in the Annex to the Respondent's Letter of 27 August 2025.[218]

183. The Respondent highlights that EMHCH and Shell NL brought a parallel request for provisional measures in the arbitration proceedings under the HoA (the "**HoA Arbitration**"), administered by the NAI, seeking to postpone levies under the TGA. On 7 December 2023, EMHCH and Shell NL commenced the HoA Arbitration before the NAI. They filed their Statement of Claim on 5 June 2025, and later, on 2 October 2025, submitted a request for interim relief concerning the levies. In that request, the Netherlands contends that they sought either (i) a prohibition on the Netherlands imposing the levies, or (ii) in the alternative, suspension of their imposition until certain conditions were satisfied, specifically, agreement on audits to be conducted by the State Audit Service ("**ADR**"), completion of those audits, and adjustment of the levies accordingly.[219]

184. The Netherlands highlights that, on 14 November 2025, the HoA tribunal comprehensively rejected that Request, holding that that the fact that arbitral proceedings were ongoing between NAM and the Netherlands concerning the damage and strengthening operations did not require a suspension of the levies for the duration of that arbitration. It considered that the obligation of the Netherlands to repay, with interest, any levies or parts thereof that were deemed unlawfully imposed, was undisputed and that therefore EMHCH and Shell NL are not exposed to any risk of non-recovery. The HoA tribunal also held that it was sufficient that the outcome of the arbitral proceedings could affect future levies, and retroactively, adjust past ones. At the same time, the Netherlands argues that its need to recover advance payments made in the context of the damage and strengthening operations

[217] Respondent's Rejoinder, ¶¶ 33-34.

[218] Respondent's Rejoinder, ¶¶ 35-36.

[219] Respondent's Rejoinder, ¶¶ 37-38.

outweighed EMHCH and Shell NL's legal interest in a deferment of the imposition of levies.[220]

185. In addition, the Respondent submits that the Netherlands has stated in the HoA Arbitration that, if it later turns out that NAM has paid too much through the levies, NAM will be repaid the overpayment with statutory interest. Thus, there is no recovery risk. Moreover, the Netherlands contends that because the NAI proceedings relate to the same (or very similar) facts and seek the same (or very similar) relief as in the present proceedings and because the NAI proceedings are already at a more advanced stage (indeed, the very same request for provisional measures has already been decided upon), EMPC cannot demonstrate any urgency in the present case.[221]

186. The Respondent further argues that the Damage Handling Programme and the Strengthening Operation follow a set sequence. The Respondent contends that, prior to imposing the 2025 interim levy on 18 November 2025, the Netherlands took seriously the Tribunal's invitation in PO 4 to reconsider the need to issue this levy before determination of the Second Application. Yet, the Netherlands respectfully submits that issuing the levy was crucial, given the severity of the consequences of not doing so, as explained and acknowledged in the HoA Interim Measures Award. Importantly, the Netherlands does not intend to enforce the 2025 interim levy, should NAM decline to pay voluntarily, until the Tribunal has issued its decision on the Second Application.[222]

187. The Respondent further asserts that on 18 November 2025, namely for (i) physical damage (EUR 511 million), (ii) loss of value (EUR 30 million); (iii) immaterial damage (137 million) and (iv) strengthening (EUR 674 million) – in total (rounded up) EUR 1,352 billion (taken together, the "**2025 interim levy**"). The Netherlands decided to impose the levy for 2025 as an interim levy (i.e., a levy that remains subject to review and correction).[223]

188. The Respondent argues that the 2025 interim levy is of an interim nature, subject to review and correction following ADR audits. The HoA tribunal's decision of 20 February 2025 required the parties to discuss ADR instructions. The involvement of the ADR was required to audit the expenses underlying the levy. Pending these discussions, no additional audit could be finalized. Once the final audit report is received, the Netherlands will impose the final levy for 2025. The Netherlands does not anticipate that the total amount of the levies will change substantially as a result of the ADR's audits, a view with which the HoA

[220] Respondent's Rejoinder, ¶¶ 39-40.

[221] Respondent's Rejoinder, ¶¶ 41-42.

[222] Respondent's Rejoinder, ¶¶ 43-44.

[223] Respondent's Rejoinder, ¶ 45.

tribunal concurred in the HoA Interim Measures Award. In its Interim Measures Award, the HoA tribunal also held that the availability of an ADR audit was not a prerequisite for imposing levies, since the Netherlands is obliged to repay, with interest, any amounts later deemed unlawful.[224]

189. The Respondent argues that EMPC's reference to IMG's policy change allowing EUR 60,000 in repairs without causation analysis is misplaced, as these negligible costs were not included in the 2025 interim levy. The Netherlands further contends that other cost categories presuming causation, such as standard one-time compensation, do not materially alter the *status quo* but reflect refinements to the statutory framework under the TGA, communicated transparently in advance. The Netherlands asserts that these measures improve efficiency, impose no new obligations on EMPC, and remain rooted in the same legal basis and policy rationale as in previous years. The HoA tribunal confirmed that objections to such categories did not justify interim relief.[225]

190. Finally, the Respondent reiterates that the Netherlands does not intend to enforce the 2025 interim levy, should NAM decline to pay voluntarily, until this Tribunal has issued its decision on the Second Application, consistent with paragraph 76 of PO 4.[226]

191. In addition, the Respondent submits that any order requiring the Netherlands to refrain from imposing levies under the TGA throughout the life of this Arbitration would have severe legal and budgetary consequences, aggravate the dispute, and disrupt the *status quo*. In its Response, the Netherlands explained that suspending statutory levies for the duration of the arbitration would "entail significant legal, budgetary and other consequences," a point already raised in relation to the 2025 interim levy. The Tribunal itself acknowledged in PO 4 that granting "*immediate interim relief may interfere with Dutch regulatory functions and may well result in legal and budgetary consequences*" for the Netherlands, and the HoA tribunal reached a similar conclusion after detailed submissions.[227]

192. The Respondent argues that if the Tribunal were to order that the Netherlands cannot issue a "*final*" levy or enforce payment of the full amount, the Netherlands would suffer significant prejudice. The 2025 interim levy concerns costs for damage handling and strengthening operations already advanced by the Netherlands throughout 2024, and repayment was included as revenue in the 2025 budget of the Ministry of the Interior and Kingdom Relations ("**MIKR**"), adopted months before EMPC's Second Application.

[224] Respondent's Rejoinder, ¶¶ 46-47.
See: HOA Interim Measures Award, ¶¶ 145,147 (**R-0020**).
[225] Respondent's Rejoinder, ¶¶ 48-49. See: HOA Interim Measures Award, ¶¶ 153-160 (**R-0020**).
[226] Respondent's Rejoinder, ¶ 50.
[227] Respondent's Rejoinder, ¶¶ 51-52.

Payment by NAM was due by 30 December 2025, and failure to collect it would leave MIKR with a substantial budget deficit. The Netherlands observes that, although NAM's direct and indirect shareholders (Shell NL, EMHCH and purportedly EMPC) seemingly do not want NAM to repay any costs, NAM itself has voluntarily complied with the previous statutory levies (although it has only paid a portion of the contractual strengthening invoices for the years 2020 to 2023), even if it did so "*under protest*".[228]

193. The Respondent stresses that the impact of not receiving the 2025 interim levy as revenue for MIKR is significant. MIKR's total budget of EUR 5 billion will be almost entirely spent by December 2025 on national security and government services, making it nearly impossible to cover the resulting deficit by reducing other budget items. The levy, which was budgeted to account for 86% of MIKR's total revenue (around EUR 1.78 billion), and the late submission of EMPC's Second Application, leave little time to compensate for the shortfall. The government's budget rules require shortfalls to be covered by the ministry where they occur, and MIKR cannot resolve the gap using funding from other ministries. Additionally, the Netherlands argues that MIKR cannot make up for the budget shortfall in 2025 by including a surplus in the 2026 budget due to the Dutch government's commitments-cash accounting system, which does not allow revenues to carry over or be corrected in subsequent years. As such, the Netherlands argues that MIKR could only cover the EUR 1.35 billion budget gap, resulting from not imposing the 2025 interim levy, if the Netherlands borrowed that amount on the capital markets (as no windfalls are expected). In doing so, the Netherlands would also incur interest costs. Not imposing the 2025 interim levy would thus carry substantial financial consequences.[229]

194. The Respondent further argues that the Netherlands has already pre-financed these costs for one to two years (i.e. between 1 January 2024 and 31 December 2024), the longer that payment is delayed, the higher the risk that NAM will be ultimately unable to pay as interest on the pre-financed costs rises.[230]

195. In addition, the Respondent submits that preventing the Netherlands from issuing and collecting the 2026 and subsequent levies would cause severe disruption to its budgetary processes and aggravate the dispute as follows:[231]

196. ***First,*** the Netherlands argues that the Dutch government has already pre-financed the earthquake-related costs for 2025 and will continue to do so for the remainder of the year. In particular, the earthquake of 14 November 2025, with a magnitude of 3.4 on the Richter

[228] Respondent's Rejoinder, ¶¶ 53-55.

[229] Respondent's Rejoinder, ¶¶ 56-60.

[230] Respondent's Rejoinder, ¶ 61.

[231] Respondent's Rejoinder, ¶ 62.

scale has, within less than a week, already generated substantial damage claims. IMG must urgently address these claims, as acutely unsafe situations require immediate attention. The Respondent stresses that these costs, together with others, will form the basis of the 2026 levy and subsequent levies.[232]

197. ***Second***, the Respondent contends that MIKR's 2026 budget has already been submitted to Parliament for adoption and includes the 2026 levy, estimated at EUR 1.8 billion, to be repaid by NAM for the pre-financed costs. The Netherlands argues that the exact amount will be determined when the levy is drawn up. The Respondent further asserts that if the 2026 levy could not be imposed and collected, the resulting budget shortfall would have to be covered either by borrowing EUR 1.8 billion on the capital markets at interest costs or by cutting expenditure on other policies, thereby causing significant disruption to the Netherlands' budgetary framework.[233]

198. ***Third,*** the Respondent submits that the State Secretary of the Interior and Kingdom Relations and the Minister of Climate and Green Growth have assured Parliament that the damage handling and strengthening operations will continue, regardless of legal actions by NAM, Shell, ExxonMobil, or their subsidiaries. As a result, the Netherlands expects to pre-finance damage and strengthening costs amounting to billions of Euros in the coming years. If the 2026 levy were suspended, MIKR would need to cut expenditures on other policy areas such as public governance, national security, and the commemoration of slavery, affecting important operations. The Netherlands also faces legal consequences: with an estimated 2026 budget deficit of EUR 35.5 billion (2.9% of GDP), suspending both the 2025 and 2026 levies could push the deficit to EUR 38.65 billion (3.12% of GDP), potentially violating EU rules and triggering an 'excessive deficit procedure' under Article 126 of the Treaty on the Functioning of the European Union. Additionally, suspending levies beyond 2026 would require a significant overhaul of MIKR's budget, as levies account for over 85% of its projected revenue for 2025 and 90% for 2026.[234]

199. ***Finally,*** the Respondent argues that if the Netherlands were unable to raise the levies, the government's commitment to resolving the damage and strengthening problems would be cast in doubt by earthquake victims and the wider population in the region. Such doubt would undermine public confidence and weaken the prospects of achieving an ultimate solution that respects the rights and interests of all parties involved, namely local residents, NAM and its shareholders, and the Dutch government.[235]

[232] Respondent's Rejoinder, ¶¶ 63-64.

[233] Respondent's Rejoinder, ¶ 65.

[234] Respondent's Rejoinder, ¶¶ 66-68.

[235] Respondent's Rejoinder, ¶ 69.

(2) Elements for Provisional Measures

200. The Netherlands submits that the Parties agree that the Tribunal has discretion under Article 47 of the ICSID Convention and Rule 47(1) of the ICSID Rules to recommend provisional measures. However, the Netherlands argues that EMPC's Second Application fails to acknowledge the exceptional nature of the relief sought. Tribunals have emphasized that provisional measures are "*extraordinary measure[s] which should not be granted lightly*,"[236] and must be approached with caution, especially when "*the jurisdiction of the tribunal to entertain the dispute has not been established*."[237] The Respondent maintains that, even under exceptional circumstances, such measures must be strictly limited to what is necessary to fulfill the ICSID Convention's objectives, must be proportionate, and must not unduly infringe on the other party's rights.[238]

201. The Respondent further asserts that it is common ground that five cumulative requirements must be satisfied for provisional measures to be ordered: (i) prima facie jurisdiction of the tribunal; (ii) engagement of rights requiring protection; (iii) necessity to avoid irreparable harm; (iv) urgency; and (v) proportionality of the requested measure.[239]

202. The Respondent further affirms that the discretion to prescribe provisional measures ought not be exercised in this case. The Netherlands contends that EMPC fails to meet the burden for the cumulative conditions required for granting such measures, and the Tribunal should decline to exercise its discretion in EMPC's favour. In any event, EMPC cannot act as the sole arbiter of the lawfulness of levies payable under the existing framework; this is a matter for the Tribunal to address at the merits phase, should jurisdiction be established.[240] Each of these elements shall be discussed.

a. Prima facie jurisdiction

203. The Netherlands maintains that it is well established that a tribunal will only grant provisional measures if it is satisfied that it has prima facie jurisdiction to determine the merits of the case. To make this determination, the Respondent argues that the Tribunal must assess whether the claims fall within the Parties' consent and confirm that a valid offer to arbitrate exists under the applicable treaty. The Netherlands submits that this Tribunal does not have *prima facie* jurisdiction because no valid offer to arbitrate exists

[236] *Emilio Agustín Maffezini v. The Kingdom of Spain*, ICSID Case No ARB/97/7, Procedural Order No 2, Decision on Request for Provisional Measures, 28 October 1999, ¶ 10 (**RL-0011**).

[237] *Perenco Ecuador Ltd. v. Republic of Ecuador*, ICSID Case No ARB/08/6, Decision on Provisional Measures, 8 May 2009, ¶ 43 (**RL-0013**).

[238] Respondent's Response, ¶¶ 50-51.

[239] Respondent's Response, ¶ 52.

[240] Respondent's Rejoinder, ¶ 70.

between a Member State of the European Union and an EU investor. The Netherlands states that the Parties' positions on this issue have already been fully briefed in connection with EMPC's First PM Application, and it does not repeat those submissions here.[241]

b. Existence of rights requiring preservation

204. The Netherlands submits that EMPC's Second Application purportedly seeks to protect two fundamental rights: (i) the preservation of the effectiveness of the award, and (ii) the maintenance of the *status quo* and non-aggravation of the dispute. However, the Netherlands contends that neither of these rights warrants protection in this instance.[242]

(i) Preservation of the effectiveness of the award

205. The Respondent submits that EMPC contends that provisional measures are warranted because it considers that the Netherlands has made statements which, in its view, would constitute a threat to the effectiveness of any award rendered in this Arbitration. The Netherlands disputes EMPC's assertion that it has a self-standing right to a guarantee, divorced from the principle of maintenance of the *status quo* and enforceable by way of provisional measures, of voluntary compliance with and enforceability of the award. In any event, and as explained above,[243] the Netherlands has made explicit assurances that it will comply with Articles 53 and 54 of the ICSID Convention. In these circumstances, there is no arguable basis for EMPC's claim that its right to preservation of the effectiveness of the award requires protection.[244]

206. The Respondent further argues that there is no self-standing right to effectiveness of the award, separate from the *status quo* and non-aggravation of the dispute. Moreover, the right to non-aggravation is not engaged where, as here, the party seeking provisional measures is itself attempting to alter the *status quo* as follows.[245]

207. The Respondent asserts that EMPC's contention that provisional measures are warranted due to the Netherlands' alleged "*intent not to comply with or enforce the award*" is unfounded. Even if EMPC's characterization were true (which it is not), the argument fails because there is no self-standing right to effectiveness of the award. EMPC conflates two principles: (1) that parties may not take steps during arbitration that prejudice the effectiveness of the award, and (2) an absolute right to voluntary compliance and

[241] Respondent's Response, ¶¶ 54-55.
[242] Respondent's Response, ¶ 56.
[243] Supra, ¶ 176.
[244] Respondent's Response, ¶¶ 57-59.
[245] Respondent's Rejoinder, ¶ 78.

enforceability. Only the first principle is capable of protection, as part of the broader preservation of the *status quo*.[246]

208. The Respondent stresses that ICSID jurisprudence, including the 1968 Explanatory Note to Rule 39 and Schreuer's Commentary, confirms that provisional measures protect against aggravation of the dispute, not to guarantee voluntary compliance. The cases cited by EMPC (e.g., *Tokios* and *Millicom*) granted measures to prevent aggravation or preserve exclusivity of ICSID proceedings, not to create a new right to enforceability. EMPC impermissibly seeks to expand the principle into an absolute right, which is incorrect. No provisional measure is positively required to protect prospective voluntary compliance and recognition and enforcement of the award—which are obligations that arise only once an award has been issued.[247]

209. The Respondent further argues that Articles 53 and 54 of the ICSID Convention do not concern collection risk, as confirmed in *Erkosol v. Italy*.[248] Execution of awards is governed by national law, including rules on immunity of State assets. Properly characterized, EMPC's application is a request for security for claim, requiring the respondent State to post security before the final award, an exceedingly rare and unprecedented measure in investor-State disputes, with only two known applications (both rejected).[249]

210. The Respondent highlights that EMPC's reliance on the "*effectiveness of the award*" is a fig leaf for its attempt to secure against collection risk. EMPC itself admits the measures are sought to prevent "*potentially irrecoverable loss of billions of Euros*," which is essentially a request for security. Moreover, the relief sought exceeds even the scope of security for claim, as it covers levies largely comprised of sums EMPC does not dispute, and would allow EMPC immediate benefit from the funds. Therefore, the Respondent concludes that the requested measure is inappropriate because it would absolve NAM, a non-party to this Arbitration, from its levy obligations, to the benefit of other non-parties (Shell NL and EMHCH).[250]

211. The Respondent further submits that EMPC's Alternative Request continues to rely on an alleged standalone right to guaranteed, prompt, and full compliance with an award. The Respondent argues that this argument is defeated by the Netherlands' unconditional and

[246] Respondent's Rejoinder, ¶¶ 79-80.

[247] Respondent's Rejoinder, ¶¶ 81-85.

[248] *Eskosol S.p.A. in liquidazione v. Italian Republic*, ICSID Case No ARB/15/50, Procedural Order No 3 (Decision on Respondent's Request for Provisional Measures), 12 April 2017, para. 34 (**RL-0049**).

[249] Respondent's Rejoinder, ¶¶ 86-87.

[250] Respondent's Rejoinder, ¶¶ 88-92.

unequivocal assurances, and the Respondent further maintains that such a purported right is not capable of protection through provisional measures.[251]

(ii) Maintenance of the *status quo* and non-aggravation of the dispute

212. The Respondent submits that none of EMPC's argument – namely, that "*maintenance of the status quo and non-aggravation of the dispute is a 'well-established' right capable of protection by provisional measures*," and that "*the Netherlands' continued demands for payment … inevitably exacerbate the dispute and the risks of non-compliance and non-enforcement with an eventual award adverse to the Netherlands*" – withstand scrutiny as follows.[252]

213. ***First,*** the Netherlands maintains that ICSID tribunals have made clear that the principle of non-aggravation of the dispute applies only to "*actions which would make resolution of the dispute by the Tribunal more difficult*." The Netherlands asserts that, as the ICSID tribunal in *Plama v. Bulgaria* explained, the right to non-aggravation is a right to maintain the *status quo* "*when a change of circumstances threatens the ability of the Arbitral Tribunal to grant the relief which a party seeks and the capability of giving effect to the relief*."[253] Likewise, provisional measures may be warranted when actions threaten a party's right to present its case, such as interference with access to documentary evidence and witnesses.[254]

214. However, the Respondent contends that the mere fact that evolving circumstances in the host State might increase the harm that the investor complains of does not *ipso facto* violate its rights. The Respondent affirms that, as the *Nova Group v. Romania* tribunal noted, provisional measures cannot be used simply to "*freeze*" circumstances pending the resolution of the dispute. The tribunal stated that such an approach would "…*mean that by the simple step of initiating an ICSID claim, an investor obtains a sweeping right to freeze all circumstances as they then exist*."[255] Similarly, in *Phoenix Action v. Czech Republic*, the tribunal explained that provisional measures are meant to "…*maintain the status quo, not to improve the situation of the Claimant before the rendering of the Tribunal's award*."[256] For these reasons, the Netherlands maintains that ICSID tribunals, including in *Occidental v. Ecuador*, have consistently held that provisional measures are not designed

[251] Respondent's Response to the Claimant's Alternative Request for Provisional Measures dated 18 December 2025, ¶ 22.

[252] Respondent's Response, ¶ 60.

[253] *Plama Consortium Limited v. Republic of Bulgaria,* ICSID Case No ARB/03/24, Order on Provisional Measures, 6 September 2005, ¶ 45 (**CL-0007**).

[254] Respondent's Response, ¶¶ 61-62.

[255] *Nova Group Investments, B.V. v. Romania*, ICSID Case No ARB/16/19, Procedural Order No 7 Concerning the Claimant's Request for Provisional Measures, 29 March 2017, ¶ 236 (**RL-0009**).

[256] *Phoenix Action Ltd v. Czech Republic*, ICSID Case No ARB/06/5, Decision on Provisional Measures, 6 April 2007, ¶ 37 (**RL-0037**).

to merely "…*mitigate the final amount of damages*"[257] but are intended to prevent aggravation of the dispute by addressing the behavior of the parties, not by reducing damages.[258]

215. The Netherlands submits that its continued issuance of payment demands over the past five years, which EMPC does not dispute as legally grounded, does not threaten the Tribunal's ability to resolve the dispute or EMPC's ability to present its case. Since the adoption of the TGA, the Netherlands has managed the Damage Handling Program and Strengthening Operation, and NAM has made annual compensation payments based on levies under Dutch law. The core dispute concerns the amount and calculation method of those levies.[259]

216. The Netherlands contends that EMPC's request is an impermissible attempt to improve its position by having the Tribunal prejudge the merits, seeking to preserve a *status quo* in which NAM avoids its contractual levy obligations, when the actual *status quo* reflects ongoing payments under the existing framework. As *Occidental v. Ecuador* noted, EMPC's aim is not to prevent "*aggravation of the dispute per se, but rather aggravation of the monetary damages resulting from an already existing dispute*," effectively seeking "*a sweeping right to freeze*" levy impositions without necessity for preserving its rights.[260]

217. The Netherlands further submits that EMPC cites four cases "*involving taxes or other payments sought by the state*" in which the right to maintain the *status quo* and prevent aggravation of the dispute was safeguarded. The Respondent argues that, at this juncture, it is important to recall that EMPC's Second Application does not relate to a tax but rather to a payment owed to the Netherlands resulting from the Netherlands' pre-financing of the Damage Handling Program and Strengthening Operation. A closer analysis of the cited jurisprudence makes clear that it has no bearing on the present case.[261]

218. The Respondent further submits that EMPC's Second Application is false as a matter of fact and flawed as a matter of law and applicable jurisprudence as follows:[262]

219. The Respondent stresses that ICSID jurisprudence, including *Plama v. Bulgaria* and the Tribunal's PO 3 in this Arbitration, defines rights requiring protection as those ensuring the applicant's claims can be fairly considered and decided, and that any arbitral decision granting relief can be effectively carried out. The Respondent further argues such rights

[257] *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador*, ICSID Case No ARB/06/11, Decision on Provisional Measures, 17 August 2007, ¶ 97 (**RL-0010**).
[258] Respondent's Response, ¶¶ 63-65.
[259] Respondent's Response, ¶ 66.
[260] Respondent's Response, ¶¶ 67-68.
[261] Respondent's Response, ¶ 69.
[262] Respondent's Rejoinder, ¶ 75.

must bear a sufficient link to the subject matter of the dispute and that EMPC attempts to introduce its own definition of "*rights requiring protection*," unsupported by the authorities it cites, and this must be rejected.[263]

220. The Netherlands further notes that in relation to procedural rights such as the preservation of the *status quo* and non-aggravation of the dispute, the rights to be preserved must similarly be related to the dispute, as stated in *Teinver S.A and others* v. *Argentina*,[264] "*in the sense that those rights must relate to the applicant's ability to have its claims and requests for relief in the arbitration fairly considered and decided by the arbitral tribunal and for any arbitral decision which grants the relief sought to be effective and capable of carrying out*".[265]

221. In addition, the Respondent argues that EMPC's contention that provisional measures are warranted to maintain the *status quo* is misplaced, as EMPC distorts the meaning of what the *status quo* actually is. Legally, the *status quo* refers to the factual and legal situation at the time of the measures, not to past circumstances or future expectations. The Respondent submits that, as recognised by the Tribunal in PO 4, the current circumstances are unchanged: (i) levies under the TGA have been in place since 2020; (ii) NAM, EMPC's half-owned indirect subsidiary, is the entity required to make annual payments, not EMPC itself; and (iii) EMPC's indirect share of the payable amounts is limited, with the Netherlands' figure of 13.5% remaining unchallenged.[266]

222. The Respondent further contends that the HoA tribunal similarly held that the interests of EMHCH and Shell NL in suspending or prohibiting levies do not outweigh the State's interest in maintaining the existing situation. The Netherlands further argues that the existing rights requires NAM to reimburse the Netherlands for costs pre-financed in 2024 through levies, and interim relief would interfere with these arrangements.[267]

223. The Respondent submits that EMPC, aware that the current factual and legal state of affairs undermines its case, attempts to invent a self-serving definition of *status quo* and discredit the Netherlands' description. Each of these arguments is untenable as follows:[268]

224. ***First,*** the Respondent argues that EMPC avoids providing any proper definition of the *status quo*. Instead, EMPC asserts that the *status quo* "*includes [the Parties'] participation*

[263] Respondent's Rejoinder, ¶ 76.

[264] *Teinver S.A and others v. Argentine Republic*, ICSID Case No ARB/09/1, Decision on Provisional Measures, 8 April 2016, ¶ 177 (**RL-0048**).

[265] Respondent's Rejoinder, ¶ 77.

[266] Respondent's Rejoinder, ¶¶ 93-94.

[267] Respondent's Rejoinder, ¶ 95.

[268] Respondent's Rejoinder, ¶ 96.

in an arbitration in which the dispute is not aggravated and the award can grant effective relief," and that it is aimed at "*ensuring that the Tribunal can render an award capable of being implemented*." The Netherlands argues that EMPC cites no jurisprudence for this contrived and circular understanding, which defies logic. The Respondent stresses that EMPC fails to identify the factual or legal state of affairs that requires preservation pending resolution of the dispute, or the point in time at which such state of affairs must be assessed.[269]

225. ***Second,*** the Respondent argues that EMPC claims the Netherlands' characterisation of the *status quo* "*obscures the fact that the TGA is not a stable framework*" because the TGA has been modified and the agencies administering the Damage Handling Programme and Strengthening Operation "*routinely update their practices*." However, the Respondent highlights that EMPC overstates the practical consequences of these amendments. The Netherlands considers that such issues pertain to the merits of the case, but nonetheless notes that the alleged instability does not materially affect the definition of the *status quo* for purposes of provisional measures. While the Netherlands considers that this pertains to the merits, it notes the following: [270]

a) the HoA tribunal held that the amounts awarded with respect to the first amendments mentioned by EMPC on that basis were not significant;
b) the assertion that the 17 July 2025 amendments of the TGA have caused a material cost increase, and a related impact on NAM's rights, is premature and unfounded, as this is still to be established over the coming period;
c) the assertion that the inclusion of the Grijpskerk gas storage facility in the IMG's procedure causes a substantial change is unfounded, as Grijpskerk and the facility located there were already included in the impact area affected by gas production from the Groningen field; and
d) more generally, in the HoA Interim Measures Award, the HoA tribunal considered EMHCH and Shell NL's arguments concerning the allegedly significant financial consequences of several "*recent policy changes*" but concluded that these consequences did not warrant ordering interim relief.

226. The Respondent further contends that the right to maintain the *status quo* is not intended to improve the Claimant's position before the rendering of an award, which appears to be common ground. The Respondent contends that it is also common ground that the Tribunal should not prejudge the merits when issuing provisional measures. Yet, the Netherlands submits that this is precisely what EMPC seeks to achieve.[271]

[269] Respondent's Rejoinder, ¶ 97.

[270] Respondent's Rejoinder, ¶ 98. See: HOA Interim Measures Award, ¶¶ 57 (a, b, c), 153, and 154-160.

[271] Respondent's Rejoinder, ¶ 99.

227. In addition, the Respondent submits that EMPC has failed to engage with the Netherlands' analysis of case law, instead attempting to expand the relevance of cited cases from those "*involving taxes of other payments sought by the state*" to "*domestic law payment obligations*," in apparent recognition of their irrelevance. The Respondent further stresses that applying the correct definition of *status quo* makes clear that NAM has been under an obligation to pay, and has paid, statutory levies pursuant to Dutch legislation for the past five years. The Netherlands contends that EMPC's contrary position does not withstand scrutiny.[272]

228. The Respondent argues that EMPC's allegation that provisional measures would not improve its situation is unsustainable. EMPC offers no response to the fact that, until the arbitration commenced, NAM was making substantial payments under the applicable legal framework. The Netherlands contends that if the requested measures were granted, NAM's payment obligations would be suspended, leaving the relevant funds at its disposal for the entire duration of the Arbitration, funds that could be allocated elsewhere, presumably with a view to earning a profit.[273]

229. The Respondent further contends that EMPC is wrong to claim that granting the provisional measures it seeks would not require the Tribunal to prejudge the merits as follows:[274]

a) The Respondent stresses that EMPC's request for provisional measures forms part of the relief sought in its Request for Arbitration. Granting such measures would require the Tribunal to decide prematurely that suspending contractual and statutory obligations is preferable to requiring their continued performance—a question reserved for the merits. Ordering suspension would also disturb the *status quo* by preventing reimbursement of undisputed costs.

b) EMPC fails to engage with this point and instead relies on fallacious logic, asserting that provisional measures are "*by definition temporary*" and therefore cannot prejudge the merits. The Respondent notes this proposition is unsound and contradicted by jurisprudence and commentary, as tribunals have repeatedly denied provisional measures that would prejudge the merits.

c) EMPC's claim that the requested relief would "*only restore EMPC's rights to an effective award and maintenance of the status quo*" does not rebut the Netherlands' argument. The requested relief, if granted, would indeed prejudge the merits of the case.

[272] Respondent's Rejoinder, ¶¶ 99-101.

[273] Respondent's Rejoinder, ¶ 102.

[274] Respondent's Rejoinder, ¶ 103.

230. The Respondent argues that EMPC's claim that it seeks to preserve its ability to obtain damages rather than avoid aggravation of monetary damages does not demonstrate any alteration of the *status quo*. It is simply another attempt to assert a self-standing right to effectiveness of the award. The Netherlands submits that two cases cited by EMPC do not establish such a right. In particular, the passage from *Plama v. Bulgaria*[275] does not mention "*effectiveness of the award*" at all, but rather confirms that the right to non-aggravation refers to actions that would make resolution of the dispute more difficult, and is tied to maintaining the *status quo* when a change of circumstances threatens the Tribunal's ability to grant relief.[276]

231. The Netherlands further contends that, citing *Nova Group v. Romania*,[277] that if a tribunal can fashion "*meaningful relief*" in its final award, provisional measures are not required under Article 47 of the ICSID Convention. In this case, neither the alleged "*admission*" in the Antwerp Court nor the continued imposition of levies constitutes a change of circumstance that threatens the Tribunal's ability to grant effective relief or resolve the dispute.[278]

232. The Respondent argues that EMPC's Alternative Request would disrupt the existing *status quo* by preventing MIKR from being reimbursed for a significant portion of the costs it has prefinanced in connection with the Damage Handling Program and the Strengthening Operation. The Respondent asserts that this portion, representing EMPC's indirect share of the levies, would instead remain locked in escrow until the conclusion of the arbitration, forcing MIKR to bear the expense itself.[279]

233. The Respondent further contends that the Alternative Request would require the Tribunal to prejudge both the merits and quantum of EMPC's claims, as it overlaps with the relief sought in EMPC's Request for Arbitration. In particular, the Netherlands argues that determining which percentage of the levies should be paid into escrow would necessitate deciding which portion constitutes "*lawful payments*," which by definition requires the Tribunal to determine which portion of the levies is considered by EMPC to breach the ECT.[280]

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[275] *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No ARB/03/24, Order on Provisional Measures, 6 September 2005, ¶ 45 (**CL-0007**).

[276] Respondent's Rejoinder, ¶ 104.

[277] *Nova Group Investments, B.V. v. Romania*, ICSID Case No ARB/16/19, Procedural Order No 7, Decision on Claimant's Request for Provisional Measures, 29 March 2017, ¶ 239 (**RL-0009**).

[278] Respondent's Rejoinder, ¶¶ 105-106.

[279] Respondent's Response to the Claimant's Alternative Request for Provisional Measures dated 18 December 2025, ¶ 25.

[280] Ibid, ¶ 26.

234. To conclude, the Respondent asserts that EMPC's Second Application is an attempt to alter the *status quo* and evade its subsidiaries' contractual and statutory obligations. What EMPC seeks is not preservation of the existing state of affairs, but a form of security for its claim, effectively insurance against enforcement risk, resulting in substitution of the *status quo* with one more favourable to EMPC.[281]

c. Necessity

235. The Respondent submits that the measures sought by EMPC are not necessary to avoid harm. The Netherlands contends that a provisional measure is considered "*necessary*" only if it is required to prevent irreparable harm, which is harm that cannot be adequately repaired by an award of damages, as stated in *Occidental* v. *Ecuador*.[282] The Respondent further contends that EMPC does not, and cannot, demonstrate that the harm it purports to suffer meets this threshold. While some investment tribunals apply a lower standard, requiring a material risk of serious or grave harm to the requesting party's rights, the Netherlands maintains that regardless of which standard applies, EMPC fails to meet the test.[283]

236. The Netherlands submits that it has already provided an assurance that it will comply with Articles 53 and 54 of the ICSID Convention. Accordingly, the Netherlands asserts that the provisional measure sought by EMPC is not necessary to preserve its right to the effectiveness of the award.[284]

237. The Respondent further argues that EMPC's claim that provisional measures are necessary to preserve the *status quo* and prevent harm is misplaced: (i) The measures are not needed to avoid irreparable harm, as EMPC's claim of "*irrecoverable*" levy payments is contradicted by the Netherlands' assurance of compliance with Articles 53 and 54 of the ICSID Convention. With this assurance, EMPC cannot show that suspending levies is required to prevent irreparable harm; and (ii) EMPC fails to demonstrate a material risk of serious harm to its rights. NAM remains a going concern, reports healthy profits, and has sufficient funds to pay levies through 2024. Additionally, NAM's shareholders earned €32.5 billion from the Groningen Field by 2020, with plans to pay €3 billion in dividends in 2025, roughly three times EMPC's share of the levies.[285]

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[281] Respondent's Rejoinder, ¶ 107.

[282] *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador*, ICSID Case No ARB/06/11, Decision on Provisional Measures, 17 August 2007, ¶ 59 (**RL-0010**).

[283] Respondent's Response, ¶¶ 70-71.

[284] Respondent's Response, ¶¶ 73-74.

[285] Respondent's Response, ¶¶ 75-79.

238. The Netherlands submits that, unable to meet either standard, EMPC relies on a fact-specific, self-serving interpretation drawn from *Klesch v. Germany*, *Perenco v. Ecuador*, and *City Oriente v. Ecuador*, arguing that tribunals will recommend provisional measures enjoining a State from demanding or enforcing payment of a domestic law obligation where that obligation is "*(i) the very issue in dispute in the arbitration and (ii) the State had taken or could soon take action to aggravate the dispute and alter the status quo in relation to that obligation*."[286]

239. The Respondent argues that the cases cited by EMPC are distinguishable from the current situation: (i) In *Klesch v. Germany*, the claimants argued that a one-off solidarity contribution violated the ECT and sought provisional measures to prevent enforcement. The tribunal agreed, as the payment would alter the *status quo*. However, in this case, NAM has been regularly paying levies, and EMPC seeks compensation for these payments, not to change the *status quo*. There is no risk of prosecution under Dutch law, and unlike Germany, the Netherlands has provided assurances of compliance with ICSID Articles 53 and 54; (ii) in *City Oriente v. Ecuador*, the tribunal ordered provisional measures to preserve the *status quo* of a contract, as Ecuador sought to modify it unilaterally. Here, the *status quo* is based on the HoA and TGA, with EMPC agreeing to NAM bearing part of the damage and strengthening costs. The Netherlands submits that EMPC's request would alter this framework, and unlike *City Oriente*, the Netherlands has not engaged in coercive actions or criminal proceedings; and (iii) in *Perenco v. Ecuador*, provisional measures were granted to prevent asset seizures due to unpaid dues. However, the Netherlands argues that EMPC provides no evidence that its investment in the Netherlands is at risk due to ongoing levy payments.[287]

240. The Respondent argues that EMPC's Second Application overlooks the fact that NAM has always had access to judicial review regarding the HoA and levy calculations, a right exercised by its shareholders multiple times. The Netherlands contends that there are currently three pending arbitrations before the NAI and administrative proceedings in Dutch courts. Additionally, the Netherlands submits that EMHCH has previously sought similar provisional measures before the North Netherlands District Court, but these were denied due to a lack of urgency and irreparable harm. Provisional measures are also available in the NAI arbitrations, where evidence has already been submitted. The Respondent asserts that EMPC's application attempts to bypass these agreed-upon judicial mechanisms for resolving such disputes.[288]

[286] Respondent's Response, ¶ 80.

[287] Respondent's Response, ¶ 81.

[288] Respondent's Response, ¶¶ 82-84.

241. The Respondent further contends that EMPC's argument that irreparable prejudice "may" arise from the Netherlands' alleged unwillingness to pay damages under an adverse award fails as a matter of law. The Netherlands submits that EMPC has not explained how any portion of the levies paid by NAM to date, or any future levies, could not be adequately repaired by an award of damages. Moreover, the Respondent argues that EMPC cannot demonstrate a material risk of serious or grave harm for the following reasons:[289]

242. ***First,*** the Respondent submits that EMPC's contention that provisional measures remain necessary despite the Netherlands' assurances of compliance with Articles 53 and 54 of the ICSID Convention is unfounded. The Netherlands has expressly assured the Tribunal that it will comply with Articles 53 and 54 of the ICSID Convention with respect to any award issued by this Tribunal in this Arbitration. The Netherlands further contends that EMPC's continued conflation of the *status quo* with collection risk is unsupported by its own authorities. The Respondent argues that EMPC's reliance on *Klesch* is misplaced. In *Klesch*, provisional measures were warranted because the solidarity contribution was being imposed for the first time, and the claimants' requests for relief were mutually exclusive – declaratory relief if the contribution was not imposed, or damages if it was. Payment of the contribution would have fundamentally altered the *status quo*. By contrast, in the present case, the Netherlands contends that NAM has consistently paid levies since 2020, and it is EMPC's Second Application that seeks to alter the *status quo* by suspending those payments. The Respondent stresses that EMPC's attempt to analogize enforcement risk in *Klesch* is inapplicable. Unlike Germany in *Klesch*, the Netherlands has repeatedly assured EMPC and the Tribunal that it will comply with Articles 53 and 54 of the ICSID Convention. Accordingly, the Netherlands argues that EMPC's accusations are false and ignore that the Netherlands has already incurred and advanced costs by pre-financing the Damage Handling Programme and Strengthening Operation since their inception. The Respondent submits that NAM and its shareholders (Shell NL and EMHCH) agreed to these arrangements in contracts, including the HoA, which remain in force.[290]

243. ***Second,*** the Respondent argues that EMPC is "*wrong*" to contend that satisfaction of the "*material risk of grave or serious harm*" standard does not require showing that the investment remains a going concern or faces a substantial risk of destruction. EMPC relies only on *Klesch* and *Ipek*, but the weight of jurisprudence and scholarly commentary confirms that where the alleged harm is purely pecuniary, provisional measures are "*necessary*" only if there is a substantial risk that the investment will be destroyed. The Respondent cites the *CEMEX* tribunal, which distinguished between situations where alleged prejudice can be compensated by damages and those where there is a serious risk

[289] Respondent's Rejoinder, ¶¶ 109-111.

[290] Respondent's Rejoinder, ¶¶ 112-117.

of destruction of a going concern.[291] In this case, the Netherlands submits that EMPC does not dispute that it will remain a going concern and can continue to participate in the arbitration even if its requested provisional measures are not granted.[292]

244. The Netherlands further argues that the apparent outliers to this general rule, upon which EMPC relies – *Klesch* and *Ipek* – are readily distinguishable on the facts: (i) in *Klesch*, the tribunal found provisional measures necessary because the legality of the claimants' obligation to pay the solidarity contribution was central to the dispute, with the claimants arguing that the payment was an attempt to enforce a disputed liability. In contrast, EMPC does not dispute NAM's obligation to reimburse expenses for the Damage Handling Programme and Strengthening Operation, but rather challenges the calculation of the levies. Furthermore, the "*disputed liability*" in this case has been in existence since 2020 for the Damage Handling Programme and 2023 for the Strengthening Operation; and (ii) in *Ipek*, the tribunal the tribunal granted provisional measures ordering Turkey to suspend certain criminal and civil proceedings (the "SPA Proceedings"), but neither request for provisional measures was based on purely financial harm. It is therefore unclear why EMPC invokes Ipek in this context. Moreover, the only request in Ipek that did involve purely financial harm, measures to protect the assets of the Koza Group, was expressly denied, because the claimant would be entitled to compensation if its expropriation claim ultimately succeeded.[293]

245. ***Third,*** the Respondent submits that EMPC wrongly relies on *Klesch*, *City Oriente*, and *Perenco* to claim that ICSID tribunals have found provisional measures prohibiting a state from enforcing disputed domestic law obligations necessary to protect the *status quo*. The Respondent stresses that *City Oriente* and *Perenco* both involved demands for additional payments by Ecuador outside the scope of existing contractual arrangements. By contrast, the Netherlands argues that EMPC's Second Application would itself disrupt the existing contractual and statutory framework. Moreover, in *City Oriente*, Ecuador initiated criminal proceedings against the claimant's executives in disregard of tribunal orders, and in *Perenco*, the claimant faced imminent seizure of its assets threatening destruction of its business. Neither circumstance is present here.[294]

246. The Respondent further argues that EMPC's Alternative Request firmly puts to rest any remaining doubt as to whether there is a risk of irreparable harm if EMPC's Second Application were denied, since EMPC is clearly ready and able to bear its percentage

[291] *CEMEX Caracas Investments B.V. and CEMEX Caracas II Investments B.V. v. Bolivarian Republic of Venezuela,* ICSID Case No ARB/08/15, Decision on the Claimants' Request for Provisional Measures, 3 March 2010, ¶ 55 (**RL-0053**).

[292] Respondent's Rejoinder, ¶¶ 118-120.

[293] Respondent's Rejoinder, ¶ 121.

[294] Respondent's Rejoinder, ¶ 122.

portion of the statutory levies for the remainder of this Arbitration, and there is no risk of serious or grave harm in the meantime because there is no prospect that EMPC's investment will be destroyed by the Netherlands, which is the prevailing standard. The Respondent further maintains that the Alternative Request continues to rest on the false premise that its measures are necessary due to perceived enforcement risk, and emphasizes that it is also unnecessary in light of the Netherlands' strong creditworthiness, with Standard & Poor's assigning it a AAA rating. Security in the manner proposed by EMPC, usually seen in the context of security for costs orders and virtually unprecedented in investor-State proceedings, will be denied where the party from whom security is sought has sufficient assets to meet such an order and those assets are available for its satisfaction.[295]

247. Accordingly, the Respondent concludes that EMPC's requested provisional measures fail to meet the necessity requirement.[296]

d. Urgency

248. The Netherlands submits that the measures sought by EMPC are not urgent. The Respondent contends that it is common ground that provisional measures are only urgent if they cannot await the outcome of the award on the merits as: (i) EMPC contends that urgency is "*fulfilled by definition*" when there is a threat to the integrity of the final award or the right to non-aggravation of the dispute. However, as previously explained, the Netherlands maintains that neither right is threatened in this case, which is fatal to EMPC's Second Application; and (ii) and in any event, any urgency EMPC now claims in connection with its Second Application is a result of its own delay. The Netherlands asserts that tribunals have made clear that a party requesting provisional measures cannot claim urgency where such urgency is of its own making.[297] The Respondent argues that, since 2020, NAM has participated in the annual levy process, and EMPC has therefore been fully aware of the schedule for levy issuance. For example, in 2024, a levy was issued in November and became payable in December. Despite having filed its Request for Arbitration in September 2024, EMPC chose to wait until 19 August 2025, almost a year later, to seek these provisional measures. Accordingly, the Netherlands submits that EMPC's requested provisional measures fail to meet the urgency requirement.[298]

[295] Respondent's Response to the Claimant's Alternative Request for Provisional Measures dated 18 December 2025, ¶¶ 27-29.

[296] Respondent's Rejoinder, ¶ 123.

[297] For example: *Libra LLC and others v. Republic of Azerbaijan*, ICSID Case No ARB/23/46, Decision on the Claimants' Request for a Temporary Restraining Order, 26 December 2024, ¶¶ 17-18 (**RL-0043**).

[298] Respondent's Response, ¶¶ 85-87.

249. The Respondent further argues that both Parties agree a provisional measure is only urgent if it cannot await the outcome of the award on the merits. The Netherlands submits that EMPC's Second Application fails to meet this standard as follows:[299]

250. ***First,*** the Respondent argues that EMPC's assertion that its rights to the integrity of the final award and non-aggravation of the dispute are in "*serious jeopardy*" misunderstands the test for necessity. As the Tribunal noted, urgency in provisional measures arises only when there is a need to obtain the requested measure at a certain point in the procedure before the issuance of an award, as explained in *Biwater Gauff v. Tanzania*.[300] The Netherlands contends that the criterion of urgency may be met when there is a risk to the integrity of the proceedings, however, jurisprudence and commentary are clear that the rights sought to be protected in those instances are generally procedural in nature, such that they may exist only for the duration of the arbitral proceedings.[301] Accordingly, the Netherlands argues that EMPC's claim that the risk to the effectiveness of the award warrants urgency is misplaced, as no standalone right to voluntary compliance or enforcement of an award exists. Moreover, the Respondent further asserts that EMPC's reliance on *City Oriente* and *Burlington* to support its "*per se urgency*" argument is misplaced. Neither case concerned alleged threats of non-compliance with or non-enforcement of a tribunal's award. The Netherlands maintains that, in both cases, the provisional measures were necessary to prevent the initiation of actions that would disrupt the pre-existing contractual framework. Here, however, the Netherlands concludes that EMPC's reliance on enforcement and collection risk as the basis for its Second Application does not meet the necessary threshold for urgency, as the Netherlands denies these risks.[302]

251. ***Second,*** the Respondent argues that EMPC cannot demonstrate any imminent risk of harm to the *status quo*. The Netherlands submits that the Claimant offers no response to the fact that it filed its Request for Arbitration more than a year ago without seeking provisional measures concerning the payment of levies. The Netherlands argues that this Tribunal has already acknowledged that the levy schedule is known and predictable and that EMPC has no answer to the fact that, even if EMPC's Second Application is refused, it remains able to pursue the Arbitration, and both EMPC and NAM will continue to operate as going concerns.[303]

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[299] Respondent's Rejoinder, ¶ 124.

[300] PO 3, para. 81 (citing *Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania*, ICSID Case No ARB/05/22, Procedural Order No 1, 31 March 2006, ¶ 76 (**CL-0008**).

[301] C. Miles, Provisional Measures before International Courts and Tribunals, Cambridge University Press, 2017, p. 269 (**RL-0040bis (Extract)**).

[302] Respondent's Rejoinder, ¶¶ 125-130.

[303] Respondent's Rejoinder, ¶ 131.

252. ***Third,*** the Respondent submits that the ongoing parallel proceedings concern the same or very similar facts and seek the same or very similar relief as in the present Arbitration. Since those parallel proceedings are more advanced, the Netherlands maintains that the Claimant has not demonstrated any urgency in this case.[304]

253. Finally, the Respondent argues that provisional measures are only urgent if they cannot await the outcome of the award on the merits, and EMPC's Alternative Request plainly fails this test since it contemplates payment of the disputed amounts into an escrow account for the duration of the arbitration; indeed, the North Netherlands District Court recently rejected NAM's parallel request for provisional measures, noting there was "*no financial emergency*" and "*no urgent interest*" to protect, which underscores the absence of urgency here. Accordingly, the Respondent maintains that EMPC's only remaining argument on urgency rests on perceived enforcement risk, and even if such risk had existed, which it did not, the Netherlands' binding, unconditional, and unequivocal assurances have eliminated any basis for urgency.[305]

254. In sum, the Netherlands concludes that EMPC's requested provisional measures fail to meet the urgency requirement.[306]

e. Proportionality

255. The Netherlands submits that the provisional measures sought by EMPC are disproportionate and must be assessed in terms of the balance of convenience. The Respondent asserts that, if granted, the harm to the Netherlands would far outweigh any potential harm to EMPC, as: (i) since the adoption of the TGA, the Netherlands has managed and pre-financed the multi-billion euro Damage Handling Program and Strengthening Operation in Groningen, with NAM reimbursing these costs through annual levies. The Netherlands notes that EMPC's requested relief would force the Government to continue financing these efforts without reimbursement, placing the burden solely on Dutch taxpayers and disrupting a nationally significant program backed by Parliamentary inquiry and multiple arbitrations; and (ii) EMPC seeks to restrain the Netherlands from levying NAM, a third party to this arbitration in which EMPC allegedly holds only an indirect 50% stake, thus also affecting Shell, another non-party shareholder. Accordingly, the Netherlands maintains that this would have serious legal and budgetary consequences.[307]

[304] Respondent's Rejoinder, ¶ 132.

[305] Respondent's Response to the Claimant's Alternative Request for Provisional Measures dated 18 December 2025, ¶¶ 30-31.

[306] Respondent's Rejoinder, ¶ 133.

[307] Respondent's Response, ¶¶ 88-89.

256. The Respondent further argues that any prejudice suffered by EMPC is reparable by an award of damages, and NAM's financial records show it routinely provisions for levies and remains financially sound, as NAM's annual balance sheet typically includes provisions for levies, with the 2025 levy expected to be paid in line with past practice. The Netherlands asserts that NAM, on balance, bears only 27% of the costs related to the Groningen Field, with EMPC's 50% stake entitling it to only 13.5% of the levies. The Respondent also counters EMPC's claim of "*irreparable*" losses, noting that the Netherlands has assured compliance with Articles 53 and 54 of the ICSID Convention, ensuring EMPC's recourse if needed. The Respondent further rejects EMPC's request for a windfall at the expense of the Dutch taxpayer, emphasizing that NAM has complied with all levies since 2020, and disputes only the amounts, not the legal basis. Lastly, the Netherlands highlights that EMPC and its affiliates have access to alternative remedies in other forums regarding the levies.[308]

257. Accordingly, the Netherlands affirms that any order to "*refrain from imposing any future levy under the Temporary Groningen Act*" would be grossly disproportionate, as it would disrupt the established legal and financial framework underpinning the Damage Handling Program and Strengthening Operation. Such a measure would shift the financial burden entirely onto Dutch taxpayers, aggravate the dispute under the ECT, and destabilize the relationship between NAM, its shareholders (EMHCH and Shell), and the Netherlands. Moreover, the Netherlands maintains that such relief would allow ExxonMobil to evade responsibility for compensating damage caused by decades of gas extraction, despite EMPC's own acknowledgment that the link between extraction and earthquake damage was known at the time of its investment.[309]

258. The Respondent further affirms that the harm to the Netherlands if EMPC's Second Application were granted would significantly outweigh any conceivable harm to EMPC if the Application were refused, and that the measures sought are manifestly disproportionate.[310]

259. The Respondent highlights that EMPC fails to explain how it would be proportionate for the Tribunal to order the Netherlands, and thus the Dutch taxpayer, to finance 100% of the multi-billion euro costs of the Damage Handling Programme and Strengthening Operations in Groningen without reimbursement from NAM, despite NAM's contractual commitment to cover 27% of those costs. The Netherlands stresses that nor does EMPC address how it would be proportionate to prevent the Netherlands from recovering that 27% share when EMPC's indirect subsidiary, EMHCH, is liable for only half of that amount (13.5%), and

[308] Respondent's Response, ¶ 90.

[309] Respondent's Response, ¶¶ 91-92.

[310] Respondent's Rejoinder, ¶ 136.

EMPC does not dispute either that liability share or the underlying fact that its exploitation of the Groningen gas fields necessitated the damage and strengthening operations.[311]

260. The Respondent argues that EMPC is only challenging the quantum of its 13.5% liability. EMPC itself admits, in its Request for Bifurcation, that it cannot presently quantify how excessive the levies have been or will be, acknowledging that its liability case involves a "vast constellation of potential liability findings" across hundreds of thousands of individual payment decisions and generating at least 1,024 possible combinations of breach. The Respondent stresses two certainties: (i) None of EMPC's damages scenarios will eliminate its entire 13.5% contractual liability for the levies; and (ii) Many, and perhaps most, of EMPC's scenarios, even if successful, would only reduce a small portion of that liability.[312]

261. Thus, the Netherlands asserts that EMPC's Second Application effectively asks the Tribunal to prevent the Netherlands, for the full duration of this Arbitration (potentially bifurcated or even trifurcated), from raising contractual levies from NAM, a third party with no rights under the ECT, amounting to 27% of the ongoing costs of the damage and strengthening operations, merely to shield EMPC from paying an undefined fraction of its 13.5% share.[313]

262. The Respondent further argues that EMPC's Second Application seeks unbalanced provisional relief on the basis of an assertion that any eventual damages award is "*potentially irrecoverable*." In reality, the Netherlands highlights that EMPC is attempting to obtain pre-award security over an undefined portion of its 50% share of NAM levies, by way of an order preventing the Netherlands from raising any levies at all. This request is made despite the Netherlands' clear and repeated assurances that it will comply with its international obligations under Articles 53 and 54 of the ICSID Convention, including with respect to the Tribunal's final award.[314]

263. In addition, the Respondent maintains that the requested measures are manifestly disproportionate because there is no guarantee that the Netherlands could ever recover the suspended levies from NAM. By the conclusion of this Arbitration, unrecovered levies would amount to several billions of euros. The Netherlands highlights that EMPC's own Exhibit C-139 confirms NAM is already in default for more than EUR 550 million in invoices relating to the strengthening operation for 2020–2023, while guarantees previously provided by Shell NL and EMHCH have lapsed. At the same time, the

[311] Respondent's Rejoinder, ¶ 137.

[312] Respondent's Rejoinder, ¶¶ 138-139.

[313] Respondent's Rejoinder, ¶ 140.

[314] Respondent's Rejoinder, ¶ 141.

Netherlands asserts that NAM paid a EUR 3 billion dividend to Shell NL and EMHCH in 2024. Therefore, the Netherlands affirms that it has grave and well-founded concerns that its taxpayers would be left indefinitely out-of-pocket for billions of euros in lost contractual levies, most of which are not even challenged in this Arbitration. Accordingly, the Respondent maintains that EMPC's request amounts to full pre-award security in an amount likely to exceed any conceivable award, and is manifestly disproportionate and unwarranted.[315] Moreover, the Respondent concludes that the critical premise of EMPC's Second Application, that the Netherlands will not comply with an adverse award, is unfounded as follows.[316]

264. The Respondent replied to EMPC's arguments regarding proportionality as follows:

265. ***As to the EMPC's first argument,*** The Netherlands argues that EMPC's attempt to downplay the serious prejudice caused by suspending the levies is misguided. The Respondent contends that EMPC's assertion that the legal, budgetary, and other consequences of the suspension are "unspecified" and that the levies "account for a minimal portion of the Netherlands' budget" is inaccurate. The Netherlands argues that, contrary to EMPC's claim, suspending the levies would have significant adverse effects, particularly on MIKR's 2025 budget, where the levy constitutes more than 85% of total revenues. The Respondent further argues that if the levy is delayed, MIKR would face a substantial budget deficit that cannot be offset by other ministries due to the Dutch government's cash-based accounting system. The Netherlands contends that this disruption would also extend beyond 2025, as MIKR would be forced to pre-finance multi-billion euro damage and strengthening costs, further straining its budgetary processes. The Netherlands asserts that EMPC's reliance on the percentage of the levies relative to the national budget is irrelevant, as the real issue is the significant practical impact on MIKR's operations and the broader Dutch financial system. The Respondent also rejects EMPC's claim that suspending the levies would have no impact on the administration of the Damage Handling Programme and Strengthening Operation, emphasizing that any suspension would absolve NAM, Shell, and ExxonMobil of their financial responsibilities and impose the burden on the Netherlands. The Netherlands argues that the commitment to continue supporting the residents of Groningen, despite the arbitration, further highlights the substantial adverse budgetary consequences of granting EMPC's requested provisional measures.[317]

266. ***As to EMPC's second argument,*** the Netherlands argues that any financial prejudice to EMPC from indirectly funding 13.5% of the Damage Handling Programme and

[315] Respondent's Rejoinder, ¶¶ 142-143.

[316] Respondent's Rejoinder, ¶ 146.

[317] Respondent's Rejoinder, ¶¶ 147-152.

Strengthening Operation would, in principle be reparable by way of an award of damages if any part of EMPC's share was found to violate the ECT. The Respondent contends that EMPC's claim about "potentially irrecoverable" losses has already been refuted through prior assurances. The Netherlands rejects EMPC's argument that NAM should avoid making payments, as NAM has the financial ability and contractual obligation to comply, and is not protected by the ECT. The Respondent further emphasizes that the ability of NAM to pay the 2025 Levy is relevant to the proportionality test, with NAM capable of making the payment based on its financials. Finally, the Netherlands points out that EMPC's indirect 13.5% share in the levy is significant for the Tribunal's balance of harm, as any suspension would require the Netherlands to bear 27% of the levy.[318]

267. ***As to EMPC's third argument,*** the Netherlands argues that the provisional measures sought by EMPC would result in a windfall not only for EMPC but also for NAM and its direct shareholders, Shell NL and EMHCH. The Respondent contends that such measures would relieve NAM and its shareholders of their obligation to pay significant ongoing levies, plus interest, over the course of the arbitration, enabling them to reallocate funds for other purposes at the expense of Dutch taxpayers. The Netherlands asserts that EMPC's claim that NAM could simply resume payments if the Netherlands prevails is misleading, as granting the provisional measures would leave NAM owing billions in backdated levies by the end of the arbitration, with no guarantee it will be able to pay. The Respondent highlights that NAM is already in default for over EUR 550 million and that its risk of default will increase as backdated levies accumulate. This risk is exacerbated by NAM's continued dividend payments to ExxonMobil and Shell, which dissipate funds that could otherwise be used for levies, and by the fact that ExxonMobil and Shell have allowed their previous unlimited guarantees regarding levy payments to lapse.[319]

268. The Netherlands argues that NAM and its shareholders are engaged in parallel NAI arbitration proceedings against the Netherlands with respect to the levies. The tribunal declined to order interim relief with respect to the levies, requested by the claimants (EMHCH and Shell NL) by applying a "*balancing of interest*" test. The NAI tribunal also rejected an alternative request of Shell NL and EMHCH to suspend the payment term of levies and the obligation to pay statutory interest. The Respondent submits that the NAI tribunal concluded that the "balancing of interests" indicated against any order of interim relief suspending the levies, notwithstanding the fact that the budgetary risks to EMHCH and Shell NL, with respect to their direct 27% liability, in that case were double those at

[318] Respondent's Rejoinder, ¶¶ 153-155.

[319] Respondent's Rejoinder, ¶¶ 156-157.

issue for EMPC, and that that the interim relief requested by EMHCH and Shell NL was much less onerous than the interim relief requested by EMPC in its Second Application.[320]

269. Finally, the Respondent submits that EMPC's Alternative Request does not tip the balance of convenience in EMPC's favour, as considerable harm would be inflicted on the Netherlands if granted, including sole responsibility for financing a significant portion of the Damage Handling Program and Strengthening Operation for years to come, with the total estimated amount of levies projected over the life of a five-year arbitration being EUR 8.77 billion, of which up to 30%—EUR 2.631 billion—would be placed into escrow, and serious budgetary consequences would arise, including exposure to repayment of levies in other fora while escrow remains undiminished. The Respondent contends that, by contrast, the prejudice to EMPC if the request were refused would be minimal, since its argument that any damages awarded in this Arbitration are "potentially irrecoverable" as a result of perceived enforcement risk, such that it risks being left with a "worthless piece of paper," is entirely disposed of by the Netherlands' assurances, and its portrayal of liability for levies is highly misleading. Thus, the Respondent asserts that EMPC's Alternative Request is manifestly disproportionate.[321]

270. Accordingly, the Respondent asserts that EMPC's request is "*all the more*" disproportionate. The Claimant argues that absent any compelling reason under Article 47 of the ICSID Convention, the Tribunal should consider the proportionality assessment of the NAI tribunal in the HoA Arbitration.[322]

271. In sum, the Respondent concludes that the measures requested in EMPC's Second Application are manifestly disproportionate and that, on this basis alone, the Application must be rejected.[323]

(3) Costs

272. The Netherlands argues that no costs order should be issued in connection with this Application. Given the Netherlands' constructive and good faith conduct, and in light of the unfounded nature of the Application, the Netherlands submits that no costs order should be made in relation to the Application. Nevertheless, the Netherlands reserves the right to

[320] Respondent's Rejoinder, ¶¶ 156-162.

[321] Respondent's Response to the Claimant's Alternative Request for Provisional Measures dated 18 December 2025, ¶¶ 33-35.

[322] Respondent's Rejoinder, ¶¶ 163-164.

[323] Respondent's Rejoinder, ¶ 165.

seek reimbursement of its costs, including all fees and expenses, as well as the costs of ICSID and the Tribunal in connection with the Application, at a later stage.[324]

273. In its Rejoinder, the Netherlands requests that the Tribunal reserve its decision regarding costs.[325]

IV. TRIBUNAL'S ANALYSIS

A. LEGAL FRAMEWORK

274. As articulated in PO 3,[326] the Tribunal's power to rule on the Claimant's Application for Provisional Measures is enshrined in the ICSID Convention and in the ICSID Arbitration Rules. Article 47 of the ICSID Convention establishes that:

> "*Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party.*"

275. In addition, Rule 47 of the ICSID Arbitration Rules provides that:

> *"(1) A party may at any time request that the Tribunal recommend provisional measures to preserve that party's rights, including measures to:*
>
> *(a) prevent action that is likely to cause current or imminent harm to that party or prejudice to the arbitral process;*
>
> *(b) maintain or restore the status quo pending determination of the dispute; or*
>
> *(c) preserve evidence that may be relevant to the resolution of the dispute.*
>
> *(2) The following procedure shall apply:*
>
> *(a) the request shall specify the rights to be preserved, the measures requested, and the circumstances that require such measures;*

[324] Respondent's Response, ¶ 93.

[325] Respondent's Rejoinder, ¶ 166.

[326] PO 3, ¶ 188.

(b) the Tribunal shall fix time limits for submissions on the request;

(c) if a party requests provisional measures before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the request so that the Tribunal may consider the request promptly upon its constitution; and

(d) the Tribunal shall issue its decision on the request within 30 days after the later of the constitution of the Tribunal or the last submission on the request.

(3) In deciding whether to recommend provisional measures, the Tribunal shall consider all relevant circumstances, including:

(a) whether the measures are urgent and necessary; and

(b) the effect that the measures may have on each party.

(4) The Tribunal may recommend provisional measures on its own initiative. The Tribunal may also recommend provisional measures different from those requested by a party.

(5) A party shall promptly disclose any material change in the circumstances upon which the Tribunal recommended provisional measures.

(6) The Tribunal may at any time modify or revoke the provisional measures, on its own initiative or upon a party's request.

(7) A party may request any judicial or other authority to order provisional measures if such recourse is permitted by the instrument recording the parties' consent to arbitration."

276. Moreover, Article 53 of the ICSID Convention states that:

"*(1) The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention.*

> *(2) For the purposes of this Section, "award" shall include any decision interpreting, revising or annulling such award pursuant to Articles 50, 51 or 52.*"

277. In addition, Article 54 of the ICSID Convention provides that:

> "*(1) Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.*
>
> *(2) A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.*
>
> *(3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.*"

278. The Tribunal notes the Respondent's submission that provisional measures are extraordinary and should be approached with caution, particularly where jurisdiction has not yet been definitively established.[327] The Tribunal recalls, however, that the relevant standard at this stage is *prima facie* jurisdiction, not a final determination, and finds that the Claimant has presented a plausible basis under the ICSID Convention and Arbitration Rules and the ECT sufficient to consider its Application, as already discussed in PO 3.[328] Nevertheless, the Tribunal agrees that provisional measures are generally extraordinary and exceptional in nature, which requires careful consideration of the requirements for granting the requested relief in light of the specific circumstances of each case and its factual and legal matrix.

279. The Respondent contends that discretion ought not be exercised in EMPC's favour and that EMPC cannot act as the sole arbiter of the lawfulness of levies under the existing

[327] Respondent's Response, ¶ 51.

[328] PO 3, ¶¶ 214-221.

framework.[329] The Tribunal agrees that the legality of the levies is a matter reserved for the merits phase, should jurisdiction be confirmed, and emphasizes that its present analysis is confined to whether provisional measures are warranted to preserve rights pending that determination. Accordingly, the Tribunal will exercise its discretion to assess the Application against the cumulative requirements that the Claimant has the burden of satisfying to obtain interim relief, without prejudging the merits of the dispute.

280. As to the requirements for granting provisional measures, and as established in PO3, the Parties are in agreement that five criteria must be satisfied cumulatively. However, they diverge in their views as to whether these requirements are met in the present Application, a matter which the Tribunal will address in the following section. The requirements are as follows:

> *(a) whether the Tribunal has prima facie jurisdiction;*
>
> *(b) whether the Application engages rights requiring protection;*
>
> *(c) whether there is "urgency";*
>
> *(d) whether the requested measures are "necessary"; and*
>
> *(e) whether the requested measures are "proportionate.*

281. Finally, the Tribunal affirms that, as explained in PO 3, although Article 47 of the ICSID Convention and Rule 47(1) of the ICSID Arbitration Rules state that tribunals may "*recommend*" provisional measures, such "*recommendations*" are indeed legally binding.

B. TRIBUNAL'S DISCUSSION

282. In this section, the Tribunal will address the Parties' positions outlined above to determine whether the provisional measures requested by the Claimant are warranted in the present circumstances. The Tribunal will not, and indeed cannot at this stage, make any determination on the underlying jurisdictional issues or the merits of the case. Accordingly, its analysis is based solely on the record as it currently stands and should not be interpreted as prejudging any future findings of fact or conclusions of law.

283. While the Tribunal has reviewed the factual background presented by the Parties, it is not appropriate to examine these facts in detail within the context of this Application, as many pertain directly to the merits of the dispute and can only be addressed in the award, if the

[329] Respondent's Rejoinder, ¶ 70.

Tribunal's jurisdiction over the claims is established. The Tribunal will therefore confine itself to those aspects of the record that are relevant to the determination of this Application, emphasizing that any consideration of such facts is limited to the present stage and does not constitute a final decision on the underlying issues.

284. In addition, the Tribunal recalls its decision in PO 4 on the Claimant's Request for Immediate Interim Relief, in which it considered the circumstances then presented and ruled upon the relief sought. The Tribunal emphasizes, however, that the present Application is distinct from the request addressed in PO 4, both in terms of the nature of the relief sought and the applicable standard. The Tribunal therefore clarifies that its prior determination in PO 4 does not prejudge the outcome of the present Application, which must be assessed independently on its own merits and within the framework established by the ICSID Convention and Arbitration Rules.

285. The Tribunal notes that, in its Second Application, EMPC requested that the Netherlands refrain from imposing any future levy under the Temporary Groningen Act and from making any other payment demand in connection with the subject matter of the present Arbitration, in whatever form, pending the issuance of a final award, and further provide a written undertaking to the Tribunal, EMPC, and NAM, signed by an authorized representative, acknowledging its commitment to abide by such order from the Tribunal (the "**Primary Relief**"). Alternatively, EMPC requested that the Tribunal order the Netherlands to place 30% of the amounts received from levy payments made by NAM – corresponding to EMPC's interest – or such other percentage as the Tribunal considers just and fair, into an escrow account administered by the Tribunal until the conclusion of this Arbitration, on terms to be agreed by the Parties (the "**Alternative Relief**").[330]

286. Having examined the Parties' submissions, together with the factual exhibits and legal authorities on record, the Tribunal is not satisfied that the requirements for granting the relief (whether the Primary Relief or the Alternative Relief) requested by the Claimant are met in the present circumstances. Moreover, in light of the unconditional and unequivocal assurances provided most recently by the Respondent in its Rejoinder, as clarified and emphasized at the Hearing, and then repeated in its submission of 18 December 2025, the Tribunal is fully satisfied that there is no basis for granting the relief sought by the Claimant. The Tribunal will now address the reasons for denying the Claimant's Second Application.

[330] Supra, ¶¶ 36-37.

(1) Whether the Tribunal has prima facie jurisdiction in respect of the Second Application

287. The Tribunal notes that the Respondent has again argued in respect of this Second Application that the Tribunal must assess whether the claims fall within the Parties' consent and confirm that a valid offer to arbitrate exists under the applicable treaty. The Netherlands maintains that no valid offer to arbitrate exists between a Member State of the European Union and an EU investor, and therefore that this Tribunal lacks *prima facie* jurisdiction.[331]

288. The Tribunal recalls, however, that the Netherlands raised this very same objection in the First Application, and that the Tribunal addressed and decided this matter in PO 3. The Tribunal further observes that the Netherlands did not expressly pursue this objection in its Rejoinder.

289. Accordingly, the Tribunal refers to its detailed reasoning in PO 3 on this matter,[332] and, for the purposes of the present Second Application, concludes that it has *prima facie* jurisdiction to consider this Second Application. This conclusion applies both to the Primary Relief and to the Alternative Relief.

(2) Whether there exist certain rights which require protection

290. The Tribunal notes that EMPC's Second Application is premised on the protection of two fundamental rights: (i) the preservation of the effectiveness of any future award rendered by the Tribunal, and (ii) the maintenance of the *status quo* and the prevention of aggravation of the dispute. The Tribunal further observes, as confirmed by the Claimant, that the Claimant's position is that (a) the Primary Relief simultaneously addresses the *status quo*, non-aggravation, and effectiveness of the award by preventing levies from being imposed and suspending them until the merits have been decided; and (b) the Alternative Relief is directed specifically at ensuring the effectiveness of the award by requiring that a certain sum be placed in escrow until the merits have been determined.[333]

291. Given that the premise of both the Primary and Alternative Reliefs is essentially the same, the Tribunal considers them together, as the central question is whether the Claimant has established that there exist certain right(s) that require protection by virtue of an extraordinary protective measure. This is examined below with reference to the arguments

[331] Respondent's Response, ¶¶ 54-55.

[332] PO 3, ¶¶ 214-221.

[333] Hearing Transcript, pp. 167: 14-25; 168:1-2.

advanced by EMPC, the counterarguments presented by the Netherlands, and the jurisprudence relied upon by both Parties.

a. Preservation of the Effectiveness of the Award

292. The Tribunal considers that EMPC's central argument is that the effectiveness of awards rendered under the ICSID Convention lies at the core of the system and may, in appropriate circumstances, be safeguarded by provisional measures. EMPC submits that this right is protectable, relying on jurisprudence such as *City Oriente v. Ecuador*,[334] where the tribunal affirmed that Article 47 authorizes measures prohibiting actions that frustrate an award's effectiveness, and *Tokios Tokelés v. Ukraine*[335] and *Klesch v. Germany*,[336] which the Claimant reads as emphasizing that parties must refrain from conduct capable of having a prejudicial effect on the rendering or implementation of an eventual ICSID award. EMPC also invokes *Plama v. Bulgaria*,[337] in which the tribunal clarified that provisional measures must safeguard the claimant's ability to have its claims fairly considered and any resulting relief effectively carried out.[338]

293. On the basis of this jurisprudence, the Tribunal is of the view that provisional measures, though exceptional and extraordinary in nature, may indeed be requested to safeguard the integrity of the proceedings and/or to ensure that the arbitral process remains meaningful, and that any relief ultimately granted is not deprived of effect. These rights are clearly protected by the ICSID Convention, provided that the specific requirements applicable to the granting of provisional measures are satisfied where the conduct by either party is such that it risks undermining such rights. Thus, there may indeed be exceptional and extraordinary circumstances which require, and in accordance with established criteria, to guarantee that its eventual award can be both rendered and effectively implemented.

294. This position was affirmed by the tribunal in *City Oriente v. Ecuador*, which held that provisional measures may be warranted to prohibit any action that:

[334] *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No ARB/06/21, Decision on Provisional Measures, 19 November 2007, ¶ 55 (**CL-48**).

[335] *Tokios Tokelés v. Ukraine*, ICSID Case No ARB/02/18, Order No 1, 1 July 2003, ¶ 2(a) (**CL-4**).

[336] *Klesch Group Holdings Limited & Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No ARB/23/49, Decision on Provisional Measures, 23 July 2024, ¶ 47 (**CL-26**).

[337] *Plama Consortium Limited v. Republic of Bulgaria,* ICSID Case No ARB/03/24, Order, 6 September 2005, ¶ 40 (**CL-7**).

[338] Claimant's Second Application, ¶¶ 34-37.

> "*…affects the disputed rights, aggravates the dispute, frustrates the effectiveness of the award or entails having either party take justice into their own hands.*"[339]

295. Likewise, in *Millicom* v. *Senegal* the tribunal observed that:

> "*It is also undisputed and indisputable that provisional measures form an essential part of the operation and the effectiveness of the ICSID arbitration system; while waiting for a decision to be given on the merits of a case and provided that the conditions have been met, the aim is to ensure as far as possible that no decisions can be taken that risk depriving that decision of its main effect in fact.*"[340]

296. The Tribunal further affirms that provisional measures are not confined to narrowly defined situations. Pursuant to Article 47 of the ICSID Convention, the tribunal enjoys wide discretion to determine whether the circumstances "*so require*" and to order "*any*" provisional measures necessary to preserve the respective rights of either party, as affirmed in *Erkosol* v. *Italy*:

> "*As a threshold matter, nothing in the Convention or the Rules, addressing an ICSID tribunal's authority to recommend provisional measures, suggests that this authority is limited only to certain types of measures, or alternatively stated, excludes certain types of measures.*" [341]

297. Meanwhile, the Tribunal notes the Respondent's position that there is no self-standing right to effectiveness of the award.[342] However, the Tribunal considers that the effectiveness of the award is closely linked to the right to an effective remedy, and that there may be exceptional circumstances under which such right may be deprived of its meaning unless interim relief is granted. The jurisprudence cited above makes clear that provisional measures may be granted to safeguard not only substantive rights but also procedural rights, including the integrity of the arbitral process and the enforceability of any eventual award, as also stated in *RSM v. Saint Lucia*:

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[339] *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No ARB/06/21, Decision on Provisional Measures, 19 November 2007, ¶ 55 (**CL-48**).

[340] *Millicom International Operations BV and Sentel GSM SA v. Republic of Senegal*, ICSID Case No ARB/08/20, Decision on the Application for Provisional Measures Submitted by the Claimants on 24 August 2009, 9 December 2009, ¶ 42 (**CL-13**).

[341] *Eskosol S.p.A. in liquidazione v. Italian Republic*, ICSID Case No ARB/15/50, Procedural Order No 3, Decision on Respondent's Request for Provisional Measures, 12 April 2017, ¶ 31 (**RL-0049**).

[342] Respondent's Rejoinder, ¶ 79.

> "*The predominant objective of provisional measures is to protect the integrity of the proceedings. This integrity comprises both substantive and procedural rights, such as, e.g., the preservation of evidence. The right to seek reimbursement of one's costs in the case of a favorable award likewise constitutes a procedural right in that sense. Hence, there has to be an effective mechanism for protecting this right in order to render it meaningful.*"[343]

298. The Tribunal has taken note of the jurisprudence cited by the Respondent in this regard, and mainly the tribunal decision in *Erkosol v. Italy*, in which it was stated that "*But the Convention generally does not concern itself with collection risk, and indeed, Article 54(3) makes explicit that '[e]xecution of the award' is to be governed by national law, including (as confirmed in Article 55) national law related to the immunity of State assets*."[344]

299. However, in the view of the Tribunal, *Eskosol* is distinguishable on several grounds: (i) it concerned a security-for-costs application in which Italy requested the tribunal to direct Eskosol to post an irrevocable bank guarantee or analogous security; (ii) the *Eskosol* tribunal further emphasized that some tribunals have doubted whether such a "right" is entitled to protection under Article 47 and Rule 39(1), while others have accepted that it may be protectable but only in exceptional circumstances; (iii) ultimately, the *Eskosol* tribunal concluded that even if such a right was in principle deserving of protection, Italy had failed to demonstrate the existence of exceptional circumstances, recalling that provisional measures should be recommended only where necessary to preserve identified rights, urgently required prior to the award, and proportionate in the balance of equities.[345]

300. In *Nova Group v. Romania*, the tribunal also stated that:

> "*If a Tribunal would be able to fashion meaningful relief (monetary or otherwise) in its final award, then it is difficult to conclude that a particular measure is 'required'' at the provisional measures stage.*"[346]

301. However, that same decision recognized an important distinction:

> "*By contrast, where the right at issue involves a party's ability to effectively pursue and litigate its claim* […] *the injury to the right is*

[343] *RSM Production Corporation v. Saint Lucia*, ICSID Case No ARB/12/10, Decision on Saint Lucia's Request for Security for Costs, 13 August 2014, ¶ 69.

[344] *Eskosol S.p.A. in liquidazione v. Italian Republic*, ICSID Case No ARB/15/50, Procedural Order No 3, Decision on Respondent's Request for Provisional Measures, 12 April 2017, ¶ 34 (**RL-0049**).

[345] Ibid, ¶¶ 35-36.

[346] *Nova Group Investments, B.V. v. Romania*, ICSID Case No ARB/16/19, Procedural Order No 7, Decision on Claimant's Request for Provisional Measures, 29 March 2017, ¶ 239 (**RL-0009**).

> *inherently irreparable by monetary damages. Given that reality, where issues of procedural integrity are at stake, it is sufficient at the provisional measures stage to show that there is a 'material risk' of harm should the measures not be granted, not that harm to procedural integrity is absolutely 'certain to occur' if the measures are not granted.*"[347]

302. The Tribunal is therefore of the view that a party's right to an effective and meaningful award is indeed a right that warrants protection through provisional measures, but that remains subject to, *inter alia*, necessity and proportionality to ensure that such protection is exercised in exceptional circumstances, where the risk that the award may be deprived of any effect is well established. In this regard, the Claimant must establish the existence of circumstances, in which its right to obtain a meaningful award requires safeguarding, and that provisional measures are necessary to preserve the effectiveness of such an award pending the final outcome of the case. In particular, the Claimant must demonstrate that, absent such measures, there exists a *real* and *imminent* risk that the award would be deprived of its practical effect, thereby undermining the integrity of the arbitral process and effectively depriving the right to an effective remedy of its meaning.

303. The Tribunal notes that EMPC's Second Application is premised on certain statements that it presents as indications by the Netherlands that it will not comply with or enforce this Tribunal's award, coupled with the Netherlands' continued issuance of levies under the Temporary Groningen Act.[348] The Claimant contends that Articles 53 and 54 of the ICSID Convention impose specific obligations on parties to comply with and enforce awards, thereby safeguarding their effectiveness. Accordingly, the Claimant maintains that any indication from a party that it will not comply with these obligations constitutes a direct threat to the effectiveness of the award.[349]

304. In this regard, the Tribunal has considered the submissions of both Parties and notes the Claimant's concerns regarding the Respondent's indications and assurances. In determining the applicable standard by which this matter must be assessed, the Tribunal recalls the Claimant's observation during the hearing that the Respondent need not employ any particular wording, but that "…*the Tribunal then has to look at the overall factual matrix of what is before them*."[350]

305. The Tribunal agrees, and considers that it needs to assess whether there is indeed a *real* and *imminent* risk that, if jurisdiction over the Claimant's claims is established and if the

[347] Ibid, ¶ 240.

[348] Claimant's Second Application, ¶¶ 32-33.

[349] Ibid, ¶ 45.

[350] Hearing Transcript, p. 160: 1-4.

Claimant is successful in its case on the merits, a final award would be deprived of any practical effect, thereby undermining the integrity of the arbitral process and diminishing the value of any relief ultimately granted.

306. Having undertaken this assessment, the Tribunal notes, on the one hand, that the Claimant's position rests on two principal grounds: (i) what the Claimant construes as indications by the Netherlands, in previous submissions, that it will not voluntarily comply with any adverse award rendered against it in this Arbitration and that enforcement efforts against it, wherever filed, will be futile;[351] and (ii) the ensuing risk to the effectiveness of its award because, according to the Claimant, the Respondent's assurances of compliance with an adverse award are subject to conditionality extraneous to the ICSID Convention and allow that compliance may be contingent upon EU processes.[352]

307. The Tribunal further notes the Respondent's clarification that, in the European Commission's amicus curiae briefs in the proceedings between *Spain v. Blasket Renewable Investments* before the Supreme Court of the United States, the Commission does not speak about compliance with intra-EU arbitral awards in absolute terms. Rather, it states that "*…in a significant proportion of cases, [EU] Member States [would not be able to] pay intra-EU arbitral awards, whether pursuant to the awards or a judgment from an enforcement court, unless and until the Commission has authorized payment*." In the Commission's view, as stated by the Respondent, first, there are cases in which payment can proceed immediately, since a "*significant proportion*" does not mean all cases. Second, in other cases, payment will only be possible following Commission authorization. Into which group an adverse award of this Tribunal might fall is, at this stage, impossible to determine and remains purely speculative.[353]

308. On the other hand, the Tribunal takes note of the Respondent's position, in its latest submissions, which:

(i) the Netherlands expressly stated that "…*for the avoidance of doubt, the Netherlands is herewith assuring that it will comply with its obligations under Articles 53 and 54 of the ICSID Convention, including that it will comply with any adverse award rendered by this Tribunal in this arbitration*;"[354]

(ii) the Netherlands' Response is co-signed by its Co-Agents and in that Response the Netherlands expressly confirmed that this assurance is "*unconditional and it is*

[351] Claimant's Second Application, ¶ 20.

[352] Claimant's Letter to the Tribunal dated 15 December 2025, p. 1. *See also*: Hearing Transcript, p. 128:4-10.

[353] Hearing Transcript, pp. 127: 17-25; 128:1-10.

[354] Respondent's Rejoinder, ¶ 25.

unequivocal",[355] that it would "*do whatever is needed to comply with the award*," even in the face of opposition by the European Commission,[356] and that, irrespective of the "*modalities and the means with which compliance will take place … compliance is going to happen*" and is "*guaranteed*;"[357]

(iii) the Netherlands referred to the ICJ's judgment in the Nuclear Tests case[358] to establish the legal significance of the assurance given: namely, that it is "*legally binding*" on the Netherlands as a matter of international law;[359]

(iv) the Netherlands submits that it demonstrated compliance with Procedural Orders Nos. 3 and 4 issued by the Tribunal;

(v) the Netherlands asserts that EMPC's relief, notably its Alternative Relief, continues to rest on the false premise that its requested measures are necessary as a result of perceived enforcement risk, and the Netherlands expressly confirms that, to the extent this risk existed (which it did not), it is wholly neutralised by the Netherlands' binding, unconditional and unequivocal assurance;[360]

(vi) the Netherlands asserts its strong creditworthiness (e.g., Standard & Poor's assigns it a AAA rating);[361] and

(vi) the Netherlands' clarification that its reference to intra-EU investor-State awards in the Antwerp Proceedings is "*not a matter of opinion on the part of the Netherlands, but simply a representation of a factual situation within the EU*,"[362] and its statement that, since June 2025, it has made "*a series of clear and repeated assurances in this proceeding that it will comply with its international obligations, including under Articles 53 and 54 of the ICSID Convention and including with respect to the Tribunal's final award*."[363]

309. Weighing the Parties' respective positions, and in assessing whether a *real* and *imminent* risk exists, the Tribunal, having no credible reasons to doubt the Netherlands' good faith, is satisfied with the assurances submitted by the Respondent. In particular, the Tribunal

[355] Hearing Transcript, p. 125:2-3.

[356] Ibid, p. 185:9-11.

[357] Respondent's Response to the Claimant's Alternative Request for Provisional Measures dated 18 December 2025, ¶ 9, citing Hearing Transcript, p. 194:6-20.

[358] Nuclear Tests CASE (Australia v. France), ICJ, Judgement of 20 December 1974, ¶ 43 (**RL-0056**).

[359] Hearing Transcript, pp. 123:7-25; 124: 1-4.

[360] Respondent's Response to the Claimant's Alternative Request for Provisional Measures dated 18 December 2025, ¶ 28.

[361] Ibid, ¶ 29.

[362] Respondent's Rejoinder, ¶ 17.

[363] Ibid, ¶ 9.

notes and understands the Netherlands' express and unqualified assurance to mean that it will comply with its obligations, including with a potential adverse award, and that such compliance is "*unconditional and unequivocal*", "*guaranteed*", "*legally binding*", and that it is not subject to any external factors or approvals beyond that of the Netherlands itself. The Tribunal also takes comfort in the fact that these assurances were given by the Respondent's authorized Co-Agents, and that they are reinforced by the Respondent's demonstrated compliance with prior procedural orders and its strong creditworthiness.

310. In light of these circumstances, the Tribunal concludes that, on the specific factual and legal matrix of this case, there does not appear to be sufficient basis to conclude that there is a *real* and *imminent* risk that justifies an extraordinary intervention through provisional measures requiring protection of the right to the effectiveness of the award. This conclusion applies equally to the Claimant's request for Primary and for Alternative Reliefs.

311. While the above is sufficient, in and of itself, to deny this Second Application, the Tribunal finds it relevant and important, for completeness, to also address the other premise of EMPC's Second Application as well as the remaining requirements for the grant of any interim relief.

b. Maintenance of the Status Quo and Non-Aggravation of the Dispute

312. The Tribunal recalls that provisional measures may be granted either to restore or maintain the *status quo*, and to prevent the aggravation of the dispute.[364] In the current case, the parties agree on this point; however, they disagree on the definition of *status quo*. The Tribunal further notes that EMPC relies on jurisprudence affirming that provisional measures may be granted to maintain the *status quo* and prevent aggravation of the dispute, including *Klesch* and *Biwater Gauff*.[365] The Netherlands, however, cites *Nova Group*, *Phoenix Action*, and *Occidental* to emphasize that provisional measures cannot be used to freeze all circumstances or to improve the Claimant's position.[366]

313. The Tribunal considers that the Parties' disagreement centers on the definition of the *status quo*: EMPC characterizes it as maintenance of the *status quo* that ensures that the parties do not aggravate the dispute or take action that will imperil the implementation of the award, while the Netherlands defines it as the continuation of levy payments under the HoA and TGA.

314. The Tribunal notes that in *Klesch v. Germany*, cited by the Claimant, the tribunal stated that a tribunal is empowered to recommend provisional measures to maintain the *status*

[364] PO 3, ¶¶ 246-248.

[365] Supra, ¶¶ 93-95.

[366] Supra, ¶¶ 212-214.

quo pending determination of the dispute and that "*this is based on the principle that once a dispute has been submitted to arbitration, the parties should not take steps that might aggravate or extend their dispute or prejudice the execution of the award*."[367] The Tribunal considers, however, that this statement cannot be read as establishing an entitlement to provisional measures in the abstract or as implying that any evolving situation during an arbitration proceeding would amount to an aggravation of the dispute. Rather, the maintenance of the *status quo* and the principle of non-aggravation require protection only when a change of circumstances threatens the ability of the Tribunal to grant the relief sought by a Party and to give effect to such relief.[368]

315. The Tribunal further observes that the Claimant has relied on *Nova Group v. Romania* for the proposition that provisional measures may "*freeze*" circumstances as they exist pending resolution of the dispute.[369] The Nova tribunal held that provisional measures may indeed freeze circumstances between the parties when necessary to ensure that the tribunal can fashion, and the claimant can obtain, meaningful relief. The Nova tribunal emphasized that only if continuing events threaten to interfere unduly with the parties' ability to present their positions in the arbitration, or with the tribunal's ability to grant meaningful relief at the close of the case, will such events constitute an impermissible infringement on rights to preserve the *status quo* and non-aggravation of the dispute.[370]

316. In the present proceedings, EMPC has not demonstrated how the levies would aggravate the dispute or prejudice the execution of the award. The Tribunal further observes that the Claimant has not explained how the issuance or payment of the levies would interfere with its ability to present its case or obtain meaningful relief. In any event, as noted above, the Tribunal is satisfied with the unqualified and unconditional assurances provided by the Netherlands, which are binding under international law, that it would comply with any adverse award, and that such compliance is guaranteed.

317. Accordingly, the Tribunal finds that the issuance or payment of the levies would not disturb the *status quo* or lead to an aggravation of the dispute. This is based on the following:

(i) while EMPC's concern that modifications to the TGA and IMG policies may alter the framework and expand NAM's liability is noted, the Tribunal also takes into account the Respondent's submission that the levies are part of an established legal framework and that

[367] *Klesch Group Holdings Limited & Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No ARB/23/49, Decision on Provisional Measures, 23 July 2024, ¶ 47 (**CL-26**).

[368] *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No ARB/03/24, Order on Provisional Measures, 6 September 2005, ¶ 45 (**CL-0007**).

[369] Claimant's Reply, ¶ 53.

[370] *Nova Group Investments, BV v. Romania*, ICSID Case No ARB/16/19, Procedural Order No 7, Decision on Claimant's Request for Provisional Measures, 29 March 2017, ¶ 236 (**RL-9**).

the dispute concerns their calculation under the principle of "*generosity*" rather than their legality;

(ii) the Tribunal further considers that the alleged instability of the TGA framework, including amendments and policy changes, does not materially affect the definition of the *status quo* for purposes of provisional measures, as NAM has consistently been subject to levy obligations since 2020; and

(iii) the Tribunal recalls that jurisprudence, including *Nova Group* v. *Romania* and *Phoenix Action v. Czech Republic*, cautions against using provisional measures to freeze circumstances or to improve the claimant's position, and finds that EMPC's request would effectively suspend ongoing obligations and thereby alter, rather than preserve, the *status quo*.

318. Likewise, as to the Alternative Relief, the Tribunal has also observed that EMPC's Alternative Request could disrupt the *status quo* because MIKR could no longer be reimbursed for, and would thus have to pay out of its own pocket, a significant portion, representing EMPC's indirect share of the levies, of the costs it has pre-financed in connection with the Damage Handling Program and the Strengthening Operation. The Tribunal is also concerned that EMPC's Alternative Request would require it to prejudge the merits and quantum of EMPC's claims, as it forms a central part of, and overlaps with, the relief sought in EMPC's Request for Arbitration. In order to determine which percentage of the levies should be paid into escrow as envisioned in the Alternative Request, the Tribunal would need to determine which portion of the levies relates to "lawful payments", which requires the Tribunal to determine which portion of the levies is considered by EMPC to breach the ECT – a determination that the Tribunal cannot make without being sufficiently briefed and without ruling on the merits.

319. Accordingly, the Tribunal is persuaded that the *status quo* in the present case is properly defined as the continuation of levy payments under the HoA and TGA framework, which has been ongoing even before the commencement of the present proceedings. The Tribunal finds that EMPC's request for provisional measures would not preserve this *status quo* but would alter it. Also, the continuation of the levy payments would not lead to an aggravation of the dispute in a manner that undermines the integrity of the present proceedings or deprive the Claimant from obtaining meaningful relief.

320. In sum, the Tribunal therefore determines that EMPC has not demonstrated that, in the existing circumstances, its rights to maintenance of the *status quo* or non-aggravation of the dispute require protection through provisional measures. This conclusion applies equally to EMPC's requests for Primary and Alternative Relief.

(3) Necessity

321. In considering whether the provisional measures sought by EMPC satisfy the necessity requirement, the Tribunal must assess whether such measures are required to avoid material harm to EMPC that cannot be adequately compensated by an award of damages.[371] This principle is well established in ICSID arbitration, with tribunals traditionally applying one of two standards: either the "*material risk of serious or grave harm*" standard, or the "*irreparable harm*" standard, where harm is deemed irreparable if it cannot be adequately repaired by a subsequent award of damages.[372]

322. EMPC argues that its requested provisional measures meet both of these tests, and the Tribunal must therefore examine the merits of these claims in light of the Parties' respective submissions. EMPC submits that, absent such measures, it will continue to incur substantial losses which the Netherlands has explicitly stated it will not remedy, regardless of the outcome of this Arbitration.[373] On the other hand, the Netherlands responds that provisional measures are not necessary, pointing to its assurances of compliance with Articles 53 and 54 of the ICSID Convention. The Netherlands argues that EMPC's claim of substantial loss is speculative and unsupported by concrete evidence.[374]

323. Having considered the Parties' positions, the Tribunal is not satisfied that the necessity requirement is met in this Second Application, because: (i) EMPC has not demonstrated that the issuance or payment of the levies would cause irreparable harm, since purely pecuniary harm is generally reparable by an award of damages, and EMPC has not shown that its investment faces destruction or that its ability to participate in this Arbitration would be impaired; rather, EMPC has argued that provisional measures are required to protect the effectiveness of the award and avoid irrecoverable loss of billions of euros in unlawful levy payments, but it has not established that such a real and imminent risk exists; (ii) the Tribunal considers that any risk associated with the levies can be adequately addressed by an award of damages, and EMPC has not established otherwise; (iii) EMPC's concerns as to irrecoverable harm have been addressed by the *legally binding*, *unconditional*, *unequivocal*, and *guaranteed* assurances submitted by the Respondent that the Respondent will comply with an adverse award; (iv) the Netherlands' creditworthiness (e.g., Standard & Poor's assigns it a AAA rating); and (v) the fact that the Claimant does not argue that NAM is in a state of financial distress or emergency because of the levies.

[371] PO 3, ¶ 255.

[372] Claimant's Second Application, ¶ 51. *See also*: Respondent's Response, ¶¶ 70-71.

[373] Supra, ¶ 107.

[374] Supra, ¶¶ 236, 237.

324. In addition, the Tribunal has reviewed the legal authorities submitted by the Claimant in support of its position and finds that they do not support the necessity of the provisional measures requested in the present Application. The Tribunal is not persuaded that the levies fundamentally alter EMPC's position or create circumstances comparable to those addressed in the authorities cited. Rather, the Tribunal considers that the factual and legal matrix of this Second Application is materially distinct from the facts established in authorities invoked by the Claimant.

325. For example, the Tribunal notes that the Claimant cited *Klesch v. Germany* to establish that necessity exists where "…*there is a reasonable basis for the Tribunal's view that the enforcement of any award in the Claimants' favour may not be a straightforward matter and the satisfaction of such an award may be delayed*."[375] However, the Tribunal observes that in *Klesch*: (i) necessity was found to preserve the *status quo* in circumstances where the claimants seek declaratory relief in the first instance in circumstances where the legality of the disputed solidarity contribution was at stake, (ii) the enforcement of such measure while the proceedings concerning its legality are pending were deemed capable of fundamentally altering the claimants' position, (iii) the respondent "*ha*[d] *not stated affirmatively that it* [would] *repay the solidarity contribution if a final award is rendered in the Claimants' favour*" [376] and (iv) the very identity of the proper respondent was at stake in that case.[377] By contrast, in the present case, EMPC has not established that the levies would alter the *status quo*, and thus the situation is materially different. Moreover, the Netherlands, which is the undisputed Respondent, has provided legally binding, unconditional, unequivocal and guaranteed assurance that it will comply with any adverse award issued by this Tribunal, which the Tribunal accepts as a legally binding obligation of a sovereign state.

326. The same applies with respect to *Perenco v. Ecuador*. In that case, the tribunal found that provisional measures were necessary to safeguard the claimant's rights and claims in the arbitration, emphasizing that while the legality of Ecuador's application of Law No. 2006-42 was a matter for the merits, the principle that neither party may aggravate or extend the dispute or take justice into its own hands prevailed. Consequently, *Ecuador* and *Petroecuador* were ordered to continue to comply with the contractual obligations they had voluntarily undertaken and to refrain from declaring termination or otherwise modifying

[375] *Klesch Group Holdings Limited & Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No ARB/23/49, Decision on Provisional Measures, 23 July 2024, ¶ 61 (**CL-26**).

[376] *Klesch Group Holdings Limited & Raffinerie Heide GmbH v. Federal Republic of Germany,* ICSID Case No ARB/23/49, Decision on Provisional Measures, 23 July 2024, ¶ 60 (**CL-26**).

[377] *Klesch Group Holdings Limited & Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No ARB/23/49, Decision on Provisional Measures, 23 July 2024, ¶ 60 (**CL-26**).

the contract's content.[378] Thus, the circumstances in *Perenco* are materially different. In *Perenco*, the measures were required to prevent unilateral alteration of contractual obligations and imminent aggravation of the dispute, whereas in the present case EMPC has not established that the levies alter the contractual or statutory framework or that the Respondent has taken steps to aggravate the dispute beyond what is already at issue.

327. Accordingly, the Tribunal does not consider that the necessity requirement is satisfied, as EMPC has not demonstrated that the continuation of the levies, or any alleged risk to the effectiveness of the award, would cause harm beyond what can be remedied by an award of damages. The Tribunal further observes that EMPC has not met either of the established tests applied in ICSID arbitration, whether the "*irreparable harm*" standard or the "*material risk of serious or grave harm*" standard. The risk of such harm might exist if the Respondent fails to comply with a potential adverse award, but such risk must be established by the Claimant. However, in the circumstances of this case, such risk is not established because the Netherlands has provided sovereign legally binding assurances of unconditional compliance, which disposes of the issue. This conclusion applies irrespective of the form of relief requested, whether Primary or Alternative.

(4) Urgency

328. In assessing whether EMPC's requested provisional measures meet the urgency requirement, the Tribunal must evaluate whether a question cannot await the outcome of the award on the merits.[379] While both Parties agree on the general test for urgency, they disagree on whether the facts of this case justify provisional relief. The Tribunal must therefore assess the situation to determine if there is an immediate risk to EMPC's rights that warrants urgent measures.

329. The Tribunal is of the view that the power to grant provisional measures is to be exercised where there is urgency, meaning a real and imminent risk that irreparable prejudice may be caused to the rights claimed before the Tribunal renders its final decision. The condition of urgency is satisfied when acts capable of causing such irreparable prejudice may occur at any time prior to the Tribunal's final determination of the issues in dispute.

330. The Tribunal notes that it gives due consideration to, but is not bound by, the analysis and determinations given in other international or domestic proceedings. The Respondent submits that EMHCH commenced two parallel proceedings before the North Netherlands District Court seeking provisional measures in connection with its pending objections to levies, and that both of EMHCH's requests were dismissed on the grounds of "*lack of*

[378] *Perenco Ecuador Ltd v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (PetroEcuador)*, ICSID Case No ARB/08/6, Decision on Provisional Measures, 8 May 2009, ¶ 57, 59 (**CL-11**).

[379] PO 3, ¶ 263.

urgency" and because EMHCH could not demonstrate that it "*would face irreversible financial difficulties*" if NAM paid the levies,[380] noting that the Parties have confirmed that the other proceedings did not involve the Claimant's Alternative Relief.[381]

331. The Tribunal observes that the assessment by the preliminary relief judge was conducted pursuant to Article 8:81, paragraph 1, of the General Administrative Law Act (Awb), under which interim relief may only be granted if there is "*immediate urgency*."[382] In addition, the preliminary relief judge explained that in principle, the amount in dispute can still be repaid after the main proceedings have concluded, if necessary with statutory interest. If there is no threat of an irreversible situation, such as bankruptcy or acute financial hardship, the interim relief judge assumes that there is no urgency and therefore, for that reason alone, will not grant interim relief. The Tribunal notes that the preliminary relief judge thus recognized the potential for urgency in circumstances where a levy is imposed without adequate explanation. Nevertheless, the judge concluded that, in the case before it, the levy decisions were accompanied by extensive reasoning, and therefore the threshold of "*immediate urgency*" was not met.[383]

332. The Tribunal also notes the Respondent's reference to the North Netherlands District Court, which rejected NAM's parallel request for provisional measures. The Court recorded NAM's statement that "*there is no financial emergency and that the continuity of the company is not at risk if the levies are paid before December 31, 2025*," and further observed that the petitioners had not argued that they would face an irreversible situation if NAM proceeded with payment of the levies. The Court therefore concluded that "[t]*here is therefore no urgent interest*" to protect.[384]

333. For the avoidance of doubt, the Tribunal reiterates that the above findings by the North Netherlands District Court are not binding on this Tribunal constituted under the ICSID Convention, but the judgment is useful to give some context. In this Second Application, EMPC is not relying on NAM being at risk should the levies continue; it contends that its request for provisional measures is urgent because the risk to its rights is serious and cannot await the outcome of the final award as the integrity of the final award and the maintenance of the *status quo* are threatened. EMPC argues that harm need not be certain; it suffices

[380] Respondent's Reply, ¶ 44.

[381] Hearing Transcript, p. 215:13-23.

[382] Judgment of North Netherlands District Court in EMHCH v. State Secretary for Interior and Kingdom Relations (Case No. LEE 24/4839), dated 23 December 2024, ¶ 2 (**R-0017**); and Judgment of North Netherlands District Court in EMHCH v. State Secretary for Economic Affairs and Climate Policy (Case Nos. LEE 24/2115, LEE 24/2116, and LEE 24/2117), dated 13 May 2024, ¶¶ 2-3 (**R-0016**).

[383] Ibid, ¶ 3.3.

[384] Judgment of North Netherlands District Court in *ExxonMobil Holding Company Holland LLC and Shell Nederland B.V. v. State Secretary for the Interior and Kingdom Relations* (Case No. LEE 25/5084), 8 December 2025, ¶ 5 (**R-0030**).

that there is a significant risk that its rights will be jeopardized. EMPC further stresses the urgency of its request by highlighting the imminent risk of additional levies. If the levies are later found unlawful, EMPC would have no recourse for recovery. This, according to EMPC, demonstrates the need for provisional relief before the Tribunal issues its final award to ensure that any relief granted is effective.[385]

334. In response, the Netherlands argues that EMPC's request for provisional measures is not urgent. It contends that provisional measures are warranted only if the harm to be avoided is immediate and cannot await the outcome of the final award. The Netherlands further asserts that any urgency in this case is self-inflicted by EMPC, as NAM has been involved in the levy process since 2020, and EMPC has long known the levy schedule. The Netherlands also argues that the urgency claimed by EMPC is not rooted in any immediate threat to the integrity of the final award or the *status quo*. It further argues that the mere risk of future levies, even if ultimately deemed unlawful, does not justify granting provisional measures. The Netherlands claims that EMPC's reliance on precedents such as *City Oriente* and *Burlington* is misplaced, as those cases involved imminent threats to the *status quo*, such as potential asset seizures or termination of contractual relations, which are not present here.[386]

335. Having considered the Parties' positions, the Tribunal finds that the urgency element is not satisfied in this Application, as: (i) EMPC has not demonstrated the existence of a real and imminent risk of irreparable prejudice to its rights, since the continuation of the levies is strictly pecuniary in nature and any harm can be adequately compensated by damages in the event of a favorable award, especially that the Respondent has provided legally binding, unconditional, unequivocal and guaranteed assurances of compliance with Articles 53 and 54 of the ICSID Convention, including compliance with a potential adverse award, which dispel concerns that the effectiveness of any award would be compromised; (ii) the levy schedule appears to be predictable and has been in place since 2020, with assessments typically issued in November each year; and (iii) EMPC and its subsidiary NAM remain going concerns, with no arguments or evidence that they are, or will be, in a state of financial distress because of the levy obligations, and there is also no evidence that their operations or EMPC's investment will be destroyed or fundamentally impaired in the interim because of the levies.

336. Accordingly, the Tribunal finds that the urgency element is not satisfied in this Second Application. The circumstances invoked by EMPC do not present a real and imminent risk

[385] Supra, ¶¶ 121-122.

[386] Supra, ¶¶ 248, 250, 251.

that cannot await the outcome of the final award. Thus, the urgency requirement is not met in respect of either the Primary or the Alternative Request.

(5) Proportionality

337. The Tribunal recalls that provisional measures must be assessed in light of the principle of proportionality. This requires consideration of the effect that imposing such measures may have on each Party. The Tribunal must therefore assess not only the potential harm to the Claimant but also the potential prejudice to the Respondent that may arise if the requested provisional measures are granted.[387]

338. The Tribunal emphasizes that proportionality is essential in evaluating the requested relief, requiring a comparison between the harm that may result to the Claimant if relief is not granted and the harm that such measures would cause to the Respondent. Accordingly, in this section, the Tribunal will separately address the proportionality of the Primary Relief and, thereafter, that of the Alternative Relief.

a. Primary Relief

339. EMPC submits that the Tribunal should order the Netherlands to refrain from requiring any further levy payments under the TGA and from making any other payment demands related to the subject matter of the Arbitration. EMPC argues that the requested provisional measures are proportionate as: (i) they protect EMPC against further unrecoverable losses beyond the €3.96 billion already paid by NAM under protest, while the Netherlands' claim of "*significant legal, budgetary and other consequences* " is unsupported given that NAM's 27% share of the levies represented only 0.062637% of the Netherlands' 2023 budget; (ii) the Netherlands' assertion that EMPC's loss is reparable by damages is contradicted by its own statements that it will resist enforcement of any adverse award, rendering damages illusory; (iii) the claim that EMPC suffers no undue hardship because NAM has historically satisfied levies misunderstands proportionality, as past payments under protest do not justify future unlawful demands; (iv) the suggestion that suspension would grant EMPC a "*windfall*" is meritless, since a temporary pause merely preserves the *status quo* and effectiveness of the award, consistent with precedents such as *Klesch v. Germany*; and (v) the argument that suspension would breach EMPC's contractual obligations is irrelevant, as EMPC is not a party to any such contracts and the dispute before this Tribunal concerns violations of international law.[388]

340. The Netherlands contends that the requested suspension is grossly disproportionate as: (i) it would impose severe budgetary consequences on MIKR, where the levy constitutes more

[387] PO 3, ¶ 267.

[388] Supra, ¶¶ 127-134.

than 85% of its 2025 revenues, thereby creating a substantial deficit that cannot be offset under the Dutch government's cash-based accounting system; (ii) it would compel the Netherlands to pre-finance multi-billion euro damage and strengthening costs without reimbursement, shifting the burden entirely onto Dutch taxpayers and absolving NAM, Shell, and ExxonMobil of their financial responsibilities; (iii) it would risk leaving NAM owing billions in backdated levies by the conclusion of the arbitration, despite NAM's existing default of over EUR 550 million and the lapse of prior shareholder guarantees, thereby aggravating the risk of non-payment; and (iv) it would amount to pre-award security in excess of any conceivable damages award, given that the projected levies over a five-year arbitration total EUR 8.77 billion, of which up to EUR 2.631 billion would be placed into escrow.[389]

341. The Tribunal has carefully weighed the competing considerations. While acknowledging that EMPC bears a financial burden from the continuation of levy payments, the Tribunal nevertheless concludes that the Primary Relief fails to meet the proportionality requirement because: (i) the suspension of levies appears to lead to severe and immediate budgetary consequences on MIKR, where the levy constitutes more than 85% of its 2025 revenues, thereby creating a deficit that cannot be offset under the Dutch government's cash-based accounting system; (ii) it would compel the Netherlands to pre-finance multi-billion euro damage and strengthening costs without reimbursement, shifting the burden entirely onto Dutch taxpayers while absolving NAM and its shareholders of their financial responsibilities; (iii) the requested suspension would go beyond preserving the *status quo* and effectively alter the statutory regime established under the HOA and TGA, which is not the function of provisional measures; (iv) granting such relief would risk creating uncertainty in the administration of the Damage Handling and Strengthening Programs, thereby affecting third parties and interests not represented in this Arbitration; and (v) the scope and duration of the requested suspension would amount to a far-reaching remedy that exceeds what is necessary to safeguard EMPC's rights pending the final award.

342. The situation could have been different if the Respondent, through its conduct, had clearly signaled its intention not to comply with the award. In that case, the concerns of the Respondent might not have outweighed the risk of the Claimant having to make further payments without any guarantee that it would be able to recover them if ordered by the Tribunal. But as already discussed, such risk is not established in the present circumstances, and any doubts have in any event been dispelled by the sovereign legally binding assurances given by the Netherlands that this will not be the case. Accordingly, the Tribunal finds that the balance of harm weighs decisively against granting the Primary Relief.

[389] Supra, ¶¶ 255-256.

343. For the foregoing reasons, the Tribunal concludes that the Primary Relief sought by the Claimant does not satisfy the requirement of proportionality. The potential harm to the Claimant if relief is not granted is significantly outweighed by the prejudice that such measure would cause to the Respondent.

b. Alternative Relief

344. EMPC's Alternative relief is that "[…] *the Netherlands be ordered by the Tribunal to place 30% of the received amount of levy payments, corresponding to the interest of EMPC, or such other percentage considered by the Tribunal to be just and fair, into an escrow account administered by the Tribunal until the end of this arbitration, on terms to be agreed by the parties*."[390]

345. EMPC argues the Alternative Relief can be proportionate as: (i) it permits NAM to continue paying the levies in full, thereby avoiding disruption to the State's fiscal framework, while ensuring that only EMPC's *pro rata* share (30% or such other percentage deemed appropriate) is placed in escrow; (ii) it safeguards the effectiveness of any eventual award by securing the Claimant's indirect interest without extending relief to third parties such as Shell Nederland BV; (iii) it reflects interim solutions adopted in other arbitrations, including Burlington and Perenco, where escrow arrangements were used to balance competing interests; (iv) it responds to the Tribunal's concern that EMPC's share of the levies is limited, by tailoring the measure exclusively to that proportion; and (v) it addresses the Respondent's objections regarding NAM's ability to pay, since the State would first collect the levies in full before placing EMPC's share in escrow, thereby eliminating any risk of non-payment. Accordingly, the Tribunal considers that the Alternative Relief, unlike the Primary Relief, may satisfy the proportionality requirement.[391]

346. The Netherlands argues the Alternative Relief cannot be proportionate as: (i) it would require the Netherlands to finance, without reimbursement, a significant portion of the multi-billion euro Damage Handling Program and Strengthening Operation for years to come, with levies projected over a five-year arbitration to total EUR 8.77 billion, of which up to EUR 2.631 billion would be placed into escrow; (ii) it would generate the same budgetary consequences as the Primary Relief, since MIKR would be unable to access EMPC's indirect share of the levies to reimburse pre-financed costs, thereby creating serious fiscal disruption; and (iii) it would expose the Netherlands to the risk of double recovery, given EMHCH and NAM's parallel proceedings in other fora seeking repayment

[390] Supra, ¶¶ 37.

[391] Supra, ¶¶ 135-140.

of the same levies, which could result in the Netherlands repaying levies elsewhere while escrow ordered in this Arbitration remains undiminished.[392]

347. Upon careful consideration of both Parties' positions, the Tribunal concludes that the Alternative Relief is also disproportionate as: (i) although tailored to EMPC's *pro rata* share, it would still require the Netherlands to divert and immobilize substantial sums into escrow, thereby impairing the State's ability to reimburse pre-financed costs and manage its fiscal framework; (ii) it would replicate many of the budgetary consequences of the Primary Relief, since MIKR would be deprived of immediate access to funds essential for financing the Damage Handling and Strengthening Programs; (iii) EMPC's concerns as to irrecoverable harm have been addressed by the *legally binding*, *unconditional*, *unequivocal*, and *guaranteed* assurances submitted by the Netherlands; and (iv) in any event, the Tribunal is persuaded that EMPC's share is not decisive and cannot be determined at the provisional measures stage, noting that the Claimant does not challenge the legality of the levies *per se*; it rather challenges their calculation. In simple terms, the Tribunal cannot resolve at this level and stage whether EMPC's indirect liability is 30% or 13.5%, nor can it determine what portion of that liability may ultimately be unlawful. Even if such a percentage were fixed, the Tribunal could not at this stage decide how much of it is recoverable or irrecoverable. Accordingly, the uncertainty surrounding EMPC's precise share undermines the proportionality of the requested Alternative Relief.

348. As with the Primary Relief, the situation could have been different if the Respondent, through its conduct, had clearly signaled its intention not to comply with the award. Yet, any such risk is dispelled by the Respondent's unconditional and legally binding assurances that it would comply with an adverse award. The prospect of an ineffective award may have changed the proportionality analysis in favor of the Claimant. However, the Respondent has provided such assurances and so any reverse analysis is not necessary. The Tribunal therefore concludes that the Alternative Relief, like the Primary Relief, fails to satisfy the proportionality requirement. In addition, the Tribunal considers that granting the Alternative Relief sought is generally exceptional in nature and has only been ordered in limited circumstances. The Claimant has referred to *Perenco v. Ecuador* and *Burlington v. Ecuador* as examples where escrow arrangements were fashioned.[393] However, both cases are distinguished.

349. ***First,*** with respect to *Perenco v. Ecuador*, the Tribunal notes that the provisional measures were granted in a fundamentally different context. The dispute concerned the legality of Law 42 and Ecuador's coercive enforcement actions against the investor, including threats

[392] Respondent's Response to the Claimant's Alternative Request for Provisional Measures dated 18 December 2025, ¶¶ 32-35.

[393] Supra, ¶ 135.

of judicial proceedings and unilateral alteration of participation contracts. In this case, the tribunal restrained Ecuador from pursuing such measures and required disputed sums to be paid into escrow as a safeguard. The relief was thus narrowly tailored to prevent aggravation of the dispute and to preserve the contractual framework pending a jurisdictional determination.[394] By contrast, EMPC's claim does not challenge the legality of the levies themselves but rather their calculation, and there is no evidence of coercive enforcement measures comparable to those in *Perenco*. The factual and legal circumstances are therefore materially distinct.

350. ***Second,*** with respect to *Burlington v. Ecuador*, the Tribunal observes that the escrow account ordered there was designed to balance the parties' rights in relation to disputed production-sharing revenues under Law 42 and Decree 662. The tribunal required Burlington to pay both past and future amounts into an escrow account, with clear terms governing release, interest, costs, and reporting obligations. Importantly, the tribunal also ordered Ecuador to discontinue coercive collection proceedings (the coactiva process) and both parties to refrain from aggravating the dispute.[395] The escrow arrangement was thus part of a broader package of measures aimed at stabilizing the contractual relationship and preventing disruption of ongoing operations. In the present case, however, EMPC's request would immobilize multi-billion euro sums over several years, without comparable evidence of coercive enforcement or contractual destabilization. Moreover, EMPC's claim concerns the calculation of levies rather than their legality, and, as stated above, the Tribunal cannot at this stage determine either the precise percentage of EMPC's share or the extent to which any portion may ultimately be unlawful. Accordingly, the circumstances in Burlington do not justify the exceptional relief sought here.

351. Accordingly, the Tribunal concludes that the proportionality test is not satisfied in respect of this Second Application.

V. ORDER

352. For the foregoing reasons, the Arbitral Tribunal recommends as follows:

> (a) The Claimant's request that the Netherlands be ordered to refrain from imposing any future levy under the Temporary Groningen Act and from making

[394] *Perenco Ecuador Ltd v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (PetroEcuador)*, ICSID Case No ARB/08/6, Decision on Provisional Measures, 8 May 2009, ¶¶ 79-80 (**CL-11**).

[395] *Burlington Resources Inc and others v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (PetroEcuador)*, ICSID Case No ARB/08/5, Procedural Order No 1 on Burlington Oriente's Request for Provisional Measures, 29 June 2009, ¶ 86-87 (**CL-12**).

any other payment demand in connection with the subject matter of the present Arbitration, **is denied**;

(b) The Claimant's request that the Netherlands provide a written undertaking to the Tribunal, EMPC, and NAM acknowledging its commitment to abide by a final award in this Arbitration, and its request that the Tribunal order the Netherlands to comply with Articles 53 and 54 of the ICSID Convention, **are moot given that the Respondent has already provided sovereign, legally binding, unconditional, unequivocal, and guaranteed assurances which the Tribunal considers to be sufficient and satisfactory**; and

(c) The Claimant's alternative request that the Tribunal order the Netherlands to place into an escrow account thirty percent (30%) of the received amount of levy payments corresponding to EMPC's indirect interest, or such other percentage as the Tribunal may later determine to be just and fair, **is denied**.

353. The Tribunal reserves its decision on costs to a later stage of the proceedings.

For and on behalf of the Tribunal,

[signed]

Prof. Dr. Mohamed Abdel Wahab
President of the Tribunal

24 December 2025