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Aan de Voorzitter van de Eerste Kamer der Staten-Generaal
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**DG Openbaar Bestuur &
Democr Rechtsstaat**
Directie Schadeherstel
Groningen

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Onze referentie
2026-0000022319

Bijlage(n)
4

Datum 20 januari 2026
Betreft Voortgang juridische procedures NAM, Shell en ExxonMobil

Met deze brief informeert het kabinet de Kamer over een aantal recente ontwikkelingen in de juridische procedures met NAM, Shell en ExxonMobil. Op 19 september 2025 heeft het kabinet de Kamer geïnformeerd over de stand van zaken van de verschillende juridische procedures en geschillen met de Nederlandse Aardolie Maatschappij (NAM) en haar aandeelhouders Shell Nederland B.V. (Shell) en ExxonMobil Holding Company Holland LLC (ExxonMobil) of daaraan gelieerde ondernemingen.¹ Voor een volledig overzicht van alle lopende procedures verwijst het kabinet naar deze brief. Daarnaast heeft het kabinet de Kamer op 27 november 2025 geïnformeerd over drie vonnissen inzake voorlopige voorzieningen in twee van deze juridische procedures.² Zoals eerder aangegeven vindt het kabinet het van groot belang de Kamer periodiek en zo veel als mogelijk openbaar te informeren over de voortgang van deze procedures en geschillen, met inachtneming van de procespositie van de Staat en de vertrouwelijkheid van de procedures.

Kort samengevat zijn de recente ontwikkelingen in de verschillende procedures als volgt te onderscheiden:

- Diverse bezwaar- en beroepszaken bij de rechtbank: In de toelichting in deze brief wordt nader uiteengezet dat NAM, Shell en ExxonMobil bezwaar hebben aangetekend tegen de heffingen over 2024 en dat de Rechtbank Noord-Nederland de door dezelfde partijen aangevraagde voorlopige voorziening tot schorsing van betaalverplichting uit deze heffingen heeft afgewezen.
- Internationale investeringsarbitrages onder het Energiehandvestverdrag (ECT): Er is een tussentijdse uitspraak gedaan in de door het Belgische ExxonMobil Petroleum & Chemical BV (EMPC) reeds aangespannen ECT-arbitrage, waarin haar verzoek tot voorlopige voorzieningen met betrekking tot de op te leggen heffingen is afgewezen. Daarnaast is het Britse Shell Public Limited Company (Shell plc) op 23 december 2025 een vergelijkbare arbitrage gestart.
- Nationale arbitragezaken: Dit betreft de schade-arbitrage, versterkingsarbitrage en de arbitrage over het Akkoord op Hoofdpijnen (AoH) bij het Nederlands Arbitrage Instituut (NAI). In de toelichting in deze brief volgt een update over de schade-arbitrage en AoH-arbitrage incl. een tussenvonnis inzake een voorlopige voorziening over de gasopslagen.

¹ Kamerstukken II 2024/25, 33529, nr. 1340

² Kamerstukken II 2024/25, 33529, nr. 1344

Toelichting

Zoals aangegeven in de Kamerbrief van 27 november 2025, heeft de Staat op 18 november 2025 tussentijdse heffingsbesluiten van in totaal 1,35 miljard euro aan NAM opgelegd voor de kosten die in 2024 zijn gemaakt voor de afhandeling van fysieke schade, immateriële schade, waardedalingsschade en de versterkingsoperatie. NAM heeft deze heffingen op 30 december 2025 tijdig en volledig voldaan. Deze ontvangsten zijn reeds in de BZK-begroting opgenomen en worden bij slotwet 2025 verantwoord.

1. Update bezwaarprocedures en beroepsprocedures bij de Rechtbank Noord-Nederland

Uitspraak voorzieningenrechter Rechtbank Noord-Nederland over opschorting heffingen

Voorafgaand aan de betaling heeft NAM, evenals Shell en ExxonMobil, tegen de opgelegde heffingsbesluiten van 18 november 2025 bezwaar gemaakt. Ook heeft NAM een verzoek tot opschorting van de betalingsverplichting van de heffingen over 2024 ingediend. Op 25 november 2025 heeft de Staat dat verzoek afgewezen. NAM, Shell en ExxonMobil hebben vervolgens een voorlopige voorziening gevraagd bij de rechtbank om de heffingsbesluiten, en daarmee de betalingsverplichting, te schorsen tot zes weken nadat de staatssecretaris op het bezwaar heeft beslist.

De voorzieningenrechter heeft op 8 december 2025 het verzoek om voorlopige voorziening als kennelijk ongegrond afgewezen.³ Ten eerste oordeelt de rechtbank dat er geen urgentie is om de heffingen op te schorten, omdat NAM niet betwist in staat te zijn deze te betalen. Ten tweede oordeelt de rechtbank dat er geen reden is om aan te nemen dat deze heffingen evident onrechtmatig zijn, omdat ze ook van een uitgebreide motivering zijn voorzien.

2. Update internationale arbitragezaken

Uitspraak voorlopige voorziening inzake opschorting heffingen

In de Kamerbrief van 27 november 2025 heeft het kabinet de Kamer geïnformeerd dat EMPC in de internationale ECT (Energy Charter Treaty)-arbitrage een voorlopige maatregel heeft aangevraagd tot opschorting van de betaling van de heffingen. EMPC stelt indirect aandeelhouder van NAM te zijn. Op 24 december 2025 heeft het scheidsgerecht alle verzoeken van EMPC afgewezen. Zo is onder meer het verzoek afgewezen tot opschorting van de betalingsverplichting van de heffingen over 2024 en opeenvolgende jaren gedurende de looptijd van deze arbitrageprocedure. Verder is ook het subsidiaire verzoek om 30% of een ander te bepalen percentage van het bedrag van de totale heffingen op een derdengeldrekening te plaatsen afgewezen. De uitspraak treft u bijgaand aan in bijlage 2.

Aanvraag ECT-arbitrage Shell plc

³ Rb Noord-Nederland, 8 december 2025, ECLI:NL:RBNNE:2025:5008 en ECLI:NL:RBNNE:2025:5009 (bijlagen 1a en 1b).

In navolging van de aangevraagde ECT-arbitrage door EMPC, heeft op 23 december 2025 ook Shell plc, als gesteld indirect aandeelhouder van NAM, een arbitrageaanvraag onder het ECT ingediend bij het International Centre for Settlement of Investment Disputes (ICSID). Shell plc is van mening dat de Nederlandse Staat het ECT-verdrag heeft geschonden. Shell plc eist volledige compensatie voor de vermeende geleden schade. Als noodzakelijk onderdeel van de investeringsgeschillenbeslechting heeft Shell plc eerst een brief gestuurd met een verzoek om consultaties. Hierover is bericht in de Kamerbrief van 20 januari 2025.⁴ Na twee gesprekken in het afgelopen jaar over de mogelijkheid van een minnelijke oplossing heeft Shell plc besloten de stap naar een internationale arbitrage te zetten. Het scheidsgerecht voor de behandeling van deze nieuwe arbitragezaak wordt nog gevormd.

3. Update nationale arbitragezaken

Uitstel vonnis schade-arbitrage

De drie arbitragezaken die bij het NAI aanhangig zijn gemaakt, betreffen (1) een 'arbitrage versterken' over de kosten van de versterkingsoperatie in de periode 1 januari 2020 tot 1 juli 2023, (2) een 'arbitrage schade' over de kosten voor de schadeafhandeling in de periode 2018 tot 1 juli 2020 en (3) een 'AoH-arbitrage' over het Akkoord op Hoofdlijnen uit 2018 en het daarna overeengekomen Interim Akkoord en Norg Akkoord.

In juli 2025 gaf het scheidsgerecht in de schade-arbitrage aan naar verwachting eind 2025 uitspraak te kunnen doen in de eerste fase. Het scheidsgerecht heeft in december 2025 laten weten dat de uitspraak vertraagd is naar verwachting tot uiterlijk 1 juli 2026. Deze uitspraak zal te zijner tijd met de Kamer worden gedeeld.

Uitstel vonnis versterkings-arbitrage

Een uitspraak in de eerste fase van de arbitrage versterken wordt vooralsnog verwacht voor het einde van het eerste kwartaal 2026. Hierover is de Kamer op 27 november 2025 geïnformeerd.⁵

Update Akkoord op Hoofdlijnen-arbitrage

De Kamer is op 13 februari 2024⁶, 9 oktober 2024⁷, 6 maart 2025⁸, 19 september 2025⁹ en 27 november 2025¹⁰ geïnformeerd over de stand van zaken in de AoH-arbitrage. De AoH-arbitrage betreft onder andere de afbouw van de gaswinning uit het Groningenveld en het niet gewonnen gas, de inzet van de gasopslagen Norg

⁴ Kamerstukken II 2024/25, 33529, nr. 1272

⁵ Zie brief van 27 november 2025, Kamerstukken II 2024/25, 33529, nr. 1344.

⁶ Kamerstukken II 2023/24, 33529, nr. 1212

⁷ Kamerstukken II 2024/25, 33529, nr. 1260

⁸ Kamerstukken II 2024/25, 33529, nr. 1277

⁹ Kamerstukken II 2024/25, 33529, nr. 1340

¹⁰ Kamerstukken II 2024/25, 33529, nr. 1344

en Grijpskerk, de afhandeling van schade en versterken en de financiële afwikkeling daarvan en de robuustheid van NAM.

Shell en ExxonMobil hebben hun Memorie van Eis ingediend en de Staat is op dit moment zijn Memorie van Antwoord aan het afronden. Deze zal op korte termijn worden ingediend bij het scheidsgerecht. Omwille van de procespositie van de Staat en vanwege de vertrouwelijkheid van deze arbitrageprocedure, kan in deze brief niet nader ingegaan worden op de argumenten die in deze procedure worden aangevoerd door partijen. Het eerste vonnis in de hoofdarbitrage wordt niet voor 2028 verwacht.

Eerder is de Kamer geïnformeerd over de vonnissen in de verzochte voorlopige voorzieningen in de AoH-arbitrage, alsmede ten aanzien van de nog lopende voorlopige voorzieningen. Op 8 december 2025 heeft de Staat een verzoek gedaan tot het treffen van een voorlopige voorziening binnen de AoH-arbitrage met als inzet toegang te verzekeren tot gasopslag UGS Norg dan wel UGS Grijpskerk. Het scheidsgerecht heeft zich per vonnis van 12 januari jl. bevoegd verklaard kennis te nemen van dit verzoek. Met deze procedure bewandelt het kabinet een parallel spoor, naast het overleg met Shell en ExxonMobil, om tijdig onderling tot afspraken te komen. Het vonnis treft u bijgaand aan in bijlage 3.

Zodra een nieuw vonnis verschijnt in de voorlopige voorzieningen die de Staat op dit moment nog aanhangig heeft gemaakt tegen Shell en ExxonMobil, wordt de Kamer hierover geïnformeerd.

Tot slot

Zoals het kabinet ook in eerdere brieven heeft aangegeven, hebben de uitkomsten van de lopende procedures met NAM, Shell en ExxonMobil geen enkel effect op de inwoners van Groningen. De afhandeling van de schade en het versterken van de gebouwen vinden onafhankelijk van deze procedures onverminderd doorgang. Daarnaast zal de staatssecretaris op grond van de Tijdelijke wet Groningen heffingen blijven opleggen aan NAM voor de kosten van de schadeafhandeling en versterkingsoperatie.

Het kabinet zal de Kamer op de hoogte blijven houden van de planning en het verloop van de verschillende juridische procedures. Daarbij zij nogmaals herhaalt dat de Staat in deze juridische procedures zich zal blijven verweren met alle (juridische) middelen die hij nodig acht.

Indien gewenst kan de Kamer in een vertrouwelijke briefing nader geïnformeerd worden.

**DG Openbaar Bestuur &
Democr Rechtsstaat**
Directie Schadeherstel
Groningen

Onze referentie
2026-0000022319

De staatssecretaris van Binnenlandse Zaken en Koninkrijksrelaties,
Herstel Groningen, Digitalisering en Koninkrijksrelaties

Eddie van Marum

De minister van Klimaat en Groene Groei,

Sophie Hermans

ECLI:NL:RBNNE:2025:5008

Instantie	Rechtbank Noord-Nederland
Datum uitspraak	08-12-2025
Datum publicatie	09-12-2025
Zaaknummer	LEE 25/4777
Rechtsgebieden	Bestuursrecht
Bijzondere kenmerken	Voorlopige voorziening
Inhoudsindicatie	De staatssecretaris heeft de NAM heffingsbesluiten opgelegd van 1,3 miljard euro. Hiertegen komt de NAM op. Het verzoek is kennelijk ongegrond verklaard omdat de NAM geen spoedeisend belang heeft en er geen sprake is van evidente onrechtmatige besluiten.
Vindplaatsen	Rechtspraak.nl

Uitspraak

RECHTBANK NOORD-NEDERLAND

Bestuursrecht

zaaknummer: LEE 25/4777

uitspraak van de voorzieningenrechter van 8 december 2025 in de zaak tussen

Nederlandse Aardolie Maatschappij B.V., uit Assen, verzoekster

(gemachtigden: mr. M.L. de Vries Lentsch en mr. J.E. van Uden),

en

de staatssecretaris van Binnenlandse Zaken en Koninkrijksrelaties

(gemachtigde: mr. M-L. Sluijter).

Inleiding

1. In deze uitspraak beslist de voorzieningenrechter op het verzoek om een voorlopige voorziening van verzoekster tegen de besluiten van de staatssecretaris waarin haar is opgedragen vóór 31 december 2025 een bedrag van ruim 1,3 miljard euro over te maken. Het oordeel van de voorzieningenrechter heeft een voorlopig karakter en bindt de rechtbank in een (eventueel) bodemgeding niet.

- 1.1. Omdat het verzoek kennelijk ongegrond is doet de voorzieningenrechter uitspraak zonder zitting. Artikel 8:83, derde lid, van de Algemene wet bestuursrecht (Awb) maakt dat mogelijk. De voorzieningenrechter legt hierna uit waarom het verzoek kennelijk ongegrond is.
- 1.2. Met de bestreden besluiten, alle gedateerd op 18 november 2025, heeft de staatssecretaris verzoekster tussentijdse heffingen opgelegd van in totaal circa 1,3 miljard euro. De staatssecretaris heeft verzoekster verzocht dit bedrag binnen zes weken na datum van de besluiten over te maken. Verzoekster heeft hiertegen bezwaar gemaakt. Op 20 november 2025 heeft zij de staatssecretaris om uitstel van betaling verzocht. De staatssecretaris heeft dit verzoek op 25 november 2025 afgewezen. Daarop heeft verzoekster op 26 november 2025 een verzoek om een voorlopige voorziening ingediend. Zij heeft de voorzieningenrechter verzocht de heffingsbesluiten van 18 november 2025, en daarmee de betalingsverplichting, te schorsen tot zes weken nadat de staatssecretaris op het bezwaar heeft beslist, waarbij verzoekster voor deze periode geen wettelijke rente is verschuldigd.

Beoordeling door de voorzieningenrechter

2. De voorzieningenrechter treft op grond van artikel 8:81, eerste lid, van de Awb alleen een voorlopige voorziening als "onverwijlde spoed" dat vereist. Bij een financieel geschil, zoals in deze zaak, is dat niet snel het geval. In beginsel kan namelijk na afloop van de bodemzaak het bedrag waarover het geschil gaat, alsnog worden (terug)betaald, zo nodig met vergoeding van de wettelijke rente. Als er geen sprake is van een onomkeerbare situatie, zoals een dreigend faillissement of dat de continuïteit van de onderneming niet meer kan worden gewaarborgd, neemt de voorzieningenrechter aan dat een spoedeisend belang ontbreekt.
3. In haar e-mail van 28 november 2025 heeft verzoekster aangegeven dat er geen sprake is van een financiële noodsituatie dan wel dat de continuïteit van de onderneming in het geding is. Zij is van mening dat het verzoek om een voorlopige voorziening desalniettemin kan worden toegewezen door de voorzieningenrechter omdat naar haar mening sprake is van evident onrechtmatige besluiten.
4. De voorzieningenrechter oordeelt als volgt. Bij het ontbreken van een spoedeisend belang kan alleen een voorlopige voorziening worden getroffen als het besluit evident onrechtmatig is. In het geval van het onderhavige verzoek, waarbij het belang louter van financiële aard is, is daarvan sprake als alleen al op basis van een eerste lezing van de meest essentiële stukken het buiten elke twijfel is dat aan de bestreden besluiten ernstige gebreken kleven waarvan vaststaat dat die niet meer kunnen worden hersteld in de bezwaarfase. Op grond van de inhoud van de bestreden besluiten, het verzoekschrift en de reactie van de staatssecretaris op dat verzoekschrift is de voorzieningenrechter van oordeel dat daar vooralsnog geen sprake van is. Hij ziet daarom geen aanleiding om een voorlopige voorziening te treffen.

Conclusie en gevolgen

5. Het verzoek is daarom kennelijk ongegrond. De voorzieningenrechter wijst het verzoek dus af. Voor een proceskostenveroordeling bestaat geen aanleiding.

Beslissing

De voorzieningenrechter wijst het verzoek om voorlopige voorziening af.

Deze uitspraak is gedaan door mr. C.H. de Groot, voorzieningenrechter, in aanwezigheid van mr. J.A. van Loo, griffier. Uitgesproken in het openbaar op 8 december 2025.

griffier	voorzieningenrechter
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Een afschrift van deze uitspraak is verzonden aan partijen op:

Tegen deze uitspraak staat geen hoger beroep of verzet open.

ECLI:NL:RBNNE:2025:5009

Instantie	Rechtbank Noord-Nederland
Datum uitspraak	08-12-2025
Datum publicatie	09-12-2025
Zaaknummer	LEE 25/5084
Rechtsgebieden	Bestuursrecht
Bijzondere kenmerken	Voorlopige voorziening
Inhoudsindicatie	De staatssecretaris heeft de NAM heffingsbesluiten opgelegd van 1,3 miljard euro. Hiertegen komen de aandeelhouders Exxon en Shell op. Het verzoek is kennelijk ongegrond verklaard omdat de aandeelhouders geen spoedeisend belang hebben en er geen sprake is van evidente onrechtmatige besluiten.
Vindplaatsen	Rechtspraak.nl

Uitspraak

RECHTBANK NOORD-NEDERLAND

Bestuursrecht

zaaknummer: LEE 25/5084

uitspraak van de voorzieningenrechter van 8 december 2025 in de zaak tussen

ExxonMobil Holding Company Holland LLC en Shell Nederland B.V., verzoekers

(gemachtigden: mr. V.M.Y. van t Lam en mr. R. van Tricht),

en

de staatssecretaris van Binnenlandse Zaken en Koninkrijksrelaties

(gemachtigde: mr. M-L. Sluijter).

Inleiding

1. In deze uitspraak beslist de voorzieningenrechter op het verzoek om een voorlopige voorziening van verzoekers tegen de besluiten van de staatssecretaris van 18 november 2025 gericht aan de Nederlandse Aardoliemaatschappij B.V. (NAM). Aan de NAM zijn in die besluiten tussentijdse heffingen opgelegd van in totaal circa 1,3 miljard euro die vóór 31 december 2025 betaald moeten zijn. Het oordeel van de voorzieningenrechter heeft een voorlopig karakter en bindt de rechtbank in een (eventueel) bodemgeding niet.

- 1.1. Omdat het verzoek kennelijk ongegrond is doet de voorzieningenrechter uitspraak zonder zitting. Artikel 8:83, derde lid, van de Algemene wet bestuursrecht (Awb) maakt dat mogelijk. De voorzieningenrechter legt hierna uit waarom het verzoek kennelijk ongegrond is.
- 1.2. De NAM heeft tegen de besluiten van 18 november 2025 bezwaar gemaakt. Op 20 november 2025 heeft de NAM de staatssecretaris om uitstel van betaling verzocht. De staatssecretaris heeft dit verzoek op 25 november 2025 afgewezen. Daarop heeft de NAM op 26 november 2025 een verzoek om een voorlopige voorziening ingediend. Zij heeft de voorzieningenrechter verzocht de heffingsbesluiten van 18 november 2025, en daarmee de betalingsverplichting, te schorsen tot zes weken nadat de staatssecretaris op het bezwaar heeft beslist, waarbij de NAM voor deze periode geen wettelijke rente is verschuldigd. Deze zaak is bij de rechtbank ingeschreven onder nummer LEE 25/4777.
- 1.3. Verzoekers hebben op 1 december 2025 ook bezwaar gemaakt tegen voornoemde besluiten van 18 november 2025 en een verzoek om een voorlopige voorziening ingediend. Zij hebben aangevoerd dat zij door de heffingsbesluiten die gericht zijn aan de NAM ook rechtstreeks in hun belangen worden geraakt.

Beoordeling door de voorzieningenrechter

2. Omdat het verzoek om een voorlopige voorziening van de NAM als eerste bij deze rechtbank is ingediend, en de verzoeken van verzoekers zich tegen dezelfde besluiten richten, acht de voorzieningenrechter zich voorshands bevoegd om ook op die verzoeken te beslissen.
3. Verzoekers zijn aandeelhouders van de NAM. Zij stellen een zelfstandig belang te hebben bij de heffingsbesluiten die aan de NAM zijn gericht primair op grond van de eigendomsbelangen die onder meer volgen uit de Overeenkomst voor Samenwerking van 27 maart 1963 en het Akkoord op Hoofdpijnen van 25 juni 2018 waar verzoekers zelfstandig contractspartij bij zijn. Subsidiair stellen verzoekers dat hun rechtspositie bij de heffingsbesluiten een zelfstandige aanspraak op rechtsbescherming rechtvaardigt. Hoewel het er alle schijn van heeft dat verzoekers geen rechtstreeks maar een afgeleid belang hebben bij de heffingsbesluiten, zal de voorzieningenrechter hieraan, gelet op hetgeen hierna wordt overwogen, geen consequentie verbinden.
4. De voorzieningenrechter treft op grond van artikel 8:81, eerste lid, van de Awb alleen een voorlopige voorziening als "onverwijlde spoed" dat vereist. Bij een financieel geschil, zoals in deze zaak, is dat niet snel het geval. In beginsel kan namelijk na afloop van de bodemzaak het bedrag waarover het geschil gaat, alsnog worden (terug)betaald, zo nodig met vergoeding van de wettelijke rente. Als er geen onomkeerbare situatie dreigt, bijvoorbeeld faillissement of dat anderszins de continuïteit van de onderneming niet meer kan worden gewaarborgd, neemt de voorzieningenrechter aan dat een spoedeisend belang ontbreekt.
5. De NAM heeft in een e-mail van 28 november 2025 aangegeven dat er geen sprake is van een financiële noodsituatie dan wel dat de continuïteit van de onderneming in het geding is als de heffingen vóór 31 december 2025 betaald moeten worden. Verzoekers hebben niet naar voren gebracht dat er voor hen een onomkeerbare situatie dreigt als de NAM tot betaling van de heffingen overgaat. Uit de stellingen van verzoekers blijkt niet dat er voor hen acute financiële nood of nog erger dreigt. Er is daarom geen sprake van een spoedeisend belang. Met verwijzing naar een uitspraak van de voorzieningenrechter van deze rechtbank van 23 december 2024 (ECLI:NL:RBNNE:2024:5053) hebben verzoekers verder gesteld dat spoedeisendheid ook kan worden aangenomen omdat aan de besluiten ernstige motiveringsgebreken kleven. Voor zover vanwege een ongemotiveerd besluit al sprake zou kunnen zijn van spoedeisendheid, is

de voorzieningenrechter van oordeel dat daarvan in het geval van de onderhavige heffingsbesluiten geen sprake is. De heffingsbesluiten zijn namelijk van een uitgebreide motivering voorzien. Verzoekers zijn verder van mening dat het verzoek om een voorlopige voorziening ook kan worden toegewezen omdat sprake is van evident onrechtmatige besluiten.

6. De voorzieningenrechter oordeelt als volgt. Bij het ontbreken van een spoedeisend belang kan alleen een voorlopige voorziening worden getroffen als het besluit evident onrechtmatig is. In het geval van het onderhavige verzoek, waarbij het belang louter van financiële aard is, is daarvan sprake als alleen al op basis van een eerste lezing van de meest essentiële stukken het buiten elke twijfel is dat aan de bestreden besluiten ernstige gebreken kleven waarvan vaststaat dat die niet meer kunnen worden hersteld in de bezwaarfase.

Op grond van de inhoud van de heffingsbesluiten, het verzoekschrift en de reactie van de staatssecretaris op het verzoekschrift van de NAM, dat nagenoeg dezelfde gronden bevat als het verzoekschrift van verzoekers, is de voorzieningenrechter van oordeel dat daar vooralsnog geen sprake van is. Hij ziet daarom geen aanleiding om een voorlopige voorziening te treffen.

Conclusie en gevolgen

7. Het verzoek is daarom kennelijk ongegrond. De voorzieningenrechter wijst het verzoek dus af. Voor een proceskostenveroordeling bestaat geen aanleiding.

Beslissing

De voorzieningenrechter wijst het verzoek om voorlopige voorziening af.

Deze uitspraak is gedaan door mr. C.H. de Groot, voorzieningenrechter, in aanwezigheid van mr. J.A. van Loo, griffier. Uitgesproken in het openbaar op 8 december 2025.

griffier	voorzieningenrechter
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Een afschrift van deze uitspraak is verzonden aan partijen op:

Tegen deze uitspraak staat geen hoger beroep of verzet open.

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**”).

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

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 prejudice 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 Court²⁰³ 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 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 *Erkosol 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 prejudice 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

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

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 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

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*:

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 case³⁵⁸ 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

NEDERLANDS ARBITRAGE INSTITUUT
NAI 5174

EXXONMOBIL HOLDING COMPANY HOLLAND LLC
EN
SHELL NEDERLAND B.V.

EISERESSEN

VS.

DE STAAT DER NEDERLANDEN

VERWEERDER

ARBITRAAL VONNIS

**BETREFFENDE DE BEVOEGDHEID VAN HET SCHEIDSGERECHT TEN AANZIEN VAN
HET VERZOEK VAN VERWEERDER TOT HET TREFFEN VAN VOORLOPIGE
VOORZIENINGEN INZAKE DE NORG UGS OF DE GRIJPSKERK UGS**

12 JANUARI 2026

SCHEIDSGERECHT

[REDACTED]

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LIJST VAN DEFINITIES

AoH	Akkoord op Hoofdpijnen van 25 juni 2018 tussen de Staat, Shell en ExxonMobil
Arbitrageaanvraag	Arbitrageaanvraag van ExxonMobil en Shell gedateerd 7 december 2023 met 57 producties
Bevoegdheidsverweer	Bevoegdheidsverweer van ExxonMobil van 22 december 2025 tegen het verzoek van de Staat tot het treffen van voorlopige voorzieningen
Dienstencontract Grijpskerk UGS	Grijpskerk UGS Service Agreement van 1 oktober 2014 tussen NAM en GasTerra
Dienstencontract Norg UGS	Norg UGS Service Agreement van 15 december 2017 tussen NAM en GasTerra
EBN	EBN B.V.
Eiseressen	Shell en ExxonMobil gezamenlijk
ExxonMobil	ExxonMobil Holding Company Holland LLC
ExxonMobil en Shell	ExxonMobil en Shell gezamenlijk
GasTerra	GasTerra B.V.
Grijpskerk UGS	Grijpskerk Underground Gas Storage
Groningenveld	Het gasveld nabij Slochteren in Groningen
GTS	Gasunie Transport Services B.V.
H-gas	Hoogcalorisch gas
Interim Akkoord	Interim Akkoord Afbouw Gaswinning Groningenveld van 9 september 2019 tussen de Staat, Shell en ExxonMobil
L-gas	Laagcalorisch gas
Minister	Minister van Economische Zaken en Klimaat, thans Minister van Klimaat en Groene Groei
Ministerie	Ministerie van Economische Zaken en Klimaat, thans Ministerie van Klimaat en Groene Groei
MvAB	Memorie van Antwoord zijdens de Staat der Nederlanden van 31 december 2025 in het Bevoegdheidsincident ter zake van het Verzoek zijdens de Staat van 8 december 2025
NAI	Nederlands Arbitrage Instituut
NAI Arbitragereglement	Arbitragereglement van het Nederlands Arbitrage Instituut geldend vanaf 1 januari 2015

NAM	Nederlandse Aardolie Maatschappij B.V.
Norg Akkoord	Norg Akkoord van 8 maart 2021 tussen de Staat, Shell, ExxonMobil en NAM
Norg UGS	Norg Underground Gas Storage
Partij	ExxonMobil, Shell of de Staat
Partijen	ExxonMobil, Shell en de Staat
pseudo G-gas	Pseudo-Groningengas, dat kan worden verkregen door hoogcalorisch gas in stikstofinstallaties te mengen met stikstof waardoor het verschil in energiewaarde tussen L-gas en H-gas wordt weggenomen.
Shell	Shell Nederland B.V.
SodM	Staatstoezicht op de Mijnen
Staat	De Staat der Nederlanden
TwG	Tijdelijke Wet Groningen
UGS Grijpskerk	Grijpskerk Underground Gas Storage
UGS Norg	Norg Underground Gas Storage
Verzoek VoVo-2	Verzoek van de Staat van 18 september 2025 tot het treffen van voorlopige voorzieningen met betrekking tot door ExxonMobil en Shell te verstrekken passende zekerheden
Verzoek VoVo-3	Verzoek van ExxonMobil en Shell van 2 oktober 2025 tot het treffen van voorlopige voorzieningen met betrekking tot het door de Staat opleggen van heffingen
Verzoek VoVo-4	Verzoek van de Staat van 8 december 2025 tot het treffen van voorlopige voorzieningen inzake de Norg UGS of de Grijpskerk UGS
Vonnis VoVo-1	Arbitraal vonnis van 20 februari 2025 betreffende VoVo-1.
Vonnis VoVo-1a	Arbitraal vonnis van 30 mei 2025 betreffende het verzoek van de Staat tot aanpassing van Vonnis VoVo-1
Vonnis VoVo-3	Arbitraal vonnis van 14 november 2025 betreffende VoVo-3

Het scheidsgerecht, bestaande uit

wijst het volgende arbitraal vonnis over zijn bevoegdheid ten aanzien van het verzoek tot het treffen van voorlopige voorzieningen inzake de Norg UGS of de Grijskerk UGS (“Verzoek VoVo-4”) in deze arbitrage volgens het arbitragereglement van het Nederlands Arbitrage Instituut (“NAI”) geldend vanaf 1 januari 2015 (“NAI Arbitragereglement”):

I. PARTIJEN

1. Eiseressen in deze arbitrage zijn:

- (1) ExxonMobil Holding Company Holland LLC (“ExxonMobil”)
Botlekweg 121
Havennummer 4060
3197 KA Botlek Rotterdam
Nederland
- (2) Shell Nederland B.V. (“Shell”)
Carel van Bylandtlaan 30
2596 HR Den Haag
Nederland

(ExxonMobil en Shell gezamenlijk: “Eiseressen” of “ExxonMobil en Shell”)

2. ExxonMobil wordt in deze arbitrage bijgestaan door:

Philippe Pinsolle
Thomas Voisin
Radu Giosan
Anton Shagalov
Zaid Sufi Wahidi

Quinn Emanuel Urquhart & Sullivan UK, LLP
6 rue Lamennais
75008 Parijs
Frankrijk

en

Bregje Korthals Altes
Van Doorne N.V.
Amstelveenseweg 638
1081 JJ Amsterdam
Nederland

3. Shell wordt in deze arbitrage bijgestaan door:

Marnix Leijten
Matthias Kuscher

René van Tricht
Tes Flapper
De Brauw Blackstone Westbroek N.V.
Burgerweeshuispad 201
1076 GR Amsterdam
Nederland

4. Verweerder in deze arbitrage is:

De Staat der Nederlanden (de “Staat”)
Ministerie van Klimaat en Groene Groei
Bezuidenhoutseweg 73
2594 AC Den Haag
Nederland

5. De Staat wordt in deze arbitrage bijgestaan door:

Peter van Kippersluis
Willem Heemskerk
Thijs Franssen
Raimond Dufour

Pels Rijcken & Droogleever Fortuijn N.V.
Bezuidenhoutseweg 57
2594 AC Den Haag
Nederland

(Shell, ExxonMobil en de Staat ieder een “Partij” en gezamenlijk “Partijen”)

II. DE KERN VAN HET VERZOEK VAN DE STAAT¹

6. ExxonMobil en Shell hebben bij arbitrageaanvraag van 7 december 2023 (“Arbitrageaanvraag”) deze arbitrage aanhangig gemaakt tegen de Staat ter zake van het door de Staat en Eiseressen gesloten Akkoord op Hoofdlijnen van 25 juni 2018 (het “AoH”) en het Interim Akkoord Afbouw Gaswinning Groningenveld van 9 september 2019 (het “Interim Akkoord”).
7. De directe aanleiding voor het verzoek om voorlopige voorzieningen te treffen is volgens de Staat de noodzaak om de seizoensgasopslag in Norg (de *Norg Underground Gas Storage*; de “Norg UGS” of “UGS Norg”), die een cruciale rol speelt bij de leveringszekerheid in de winter en het functioneren van de gasmarkt, tijdig gevuld te krijgen zodat in de winter van 2026/2027 daaruit gas kan worden geproduceerd.
8. GasTerra B.V. (“GasTerra”) heeft van oudsher als enige het recht op vulling van en productie uit de Norg UGS. Dit is geregeld in de *Norg UGS Service Agreement* tussen GasTerra en de Nederlandse Aardolie Maatschappij B.V. als eigenaar van Norg UGS (het “Dienstencontract

¹ Verzoek VoVo-4, ¶¶ 1.1-1.5.

Norg UGS” en “NAM”). Partijen zijn in het AoH overeengekomen dat het Dienstencontract Norg UGS in stand blijft tot 1 april 2027, met een verlengingsmogelijkheid tot 2035. In het Norg Akkoord van 8 maart 2021 (het “Norg Akkoord”) is afgesproken dat tot in ieder geval 30 september 2027 gebruik gemaakt zal worden van de Norg UGS, en dat NAM aan dit gebruik zal meewerken. Ten tijde van het Norg Akkoord was echter bekend dat GasTerra haar activiteiten zou beëindigen vóór 30 september 2027. In het Norg Akkoord is daarom bepaald dat de Staat, Shell en ExxonMobil zich zouden inspannen om te komen tot “*een passende oplossing*” voor het feit dat GasTerra haar taken niet zal kunnen uitoefenen tot en met 30 september 2027.

9. GasTerra zal op 1 april 2026 de Norg UGS ‘leeg’² opleveren en per die datum haar werkzaamheden met betrekking tot de gasopslagen neerleggen. Een andere partij zal dus de Norg UGS moeten gaan vullen zodat in de winter van 2026/2027 toch gas kan worden geproduceerd uit de Norg UGS. De Staat heeft Energie Beheer Nederland B.V. (“EBN”) in staat gesteld om de rol van GasTerra voor de winter 2026/2027 door een dochteronderneming te laten overnemen. De Staat stelt dat ExxonMobil en Shell echter weigeren mee te werken aan het bereiken van een passende oplossing voor de afbouw van GasTerra en daarmee de afspraken in het AoH en in het Norg Akkoord schenden en de leveringszekerheid in de winter van 2026/2027 op het spel zetten.
10. De Staat verzoekt om die redenen het scheidsgerecht om uiterlijk op maandag 16 februari 2026 voorlopige voorzieningen te treffen, te meer gezien de beperkte tijd die resteert tot april 2026 en de noodzakelijke voorbereidingen die hiervoor door NAM en EBN dienen te worden getroffen. De verzochte voorziening komt erop neer dat ExxonMobil en Shell worden veroordeeld om in het kader van een passende oplossing ervoor zorg te dragen dat NAM van 1 april 2026 tot, in eerste instantie, 1 april 2027 aan EBN Capital B.V. (“EBN Capital”) – een dochter van EBN – toegang verleent tot de Norg UGS, tegen redelijke voorwaarden zoals uiteengezet in VoVo-4. In het licht van de stelling van ExxonMobil en Shell dat de *Grijpskerk Underground Gas Storage* (de “Grijpskerk UGS” of “UGS Grijpskerk”) de functie van de Norg UGS heeft overgenomen, verzoekt de Staat subsidiair dergelijke toegang te verlenen tot de Grijpskerk UGS.
11. ExxonMobil stelt dat de door de Staat verzochte voorlopige maatregelen voortvloeien uit het Norg Akkoord en dat het scheidsgerecht bevoegdheid mist om te oordelen over geschillen ontstaan naar aanleiding van het Norg Akkoord. Partijen zijn vervolgens overeengekomen dat het scheidsgerecht in dit vonnis eerst een beslissing neemt over zijn bevoegdheid ten aanzien van de door de Staat verzochte voorlopige voorzieningen.

III. HET VERLOOP VAN DE PROCEDURE

12. Op 7 december 2023 ontving het NAI de Arbitrageaanvraag van ExxonMobil en Shell gedateerd 7 december 2023 met 57 producties. In de Arbitrageaanvraag hebben ExxonMobil en Shell gezamenlijk [REDACTED] als co-arbiter benoemd.

² Leeg opleveren behelst dat het in de gasopslag aanwezige werkgas wordt geproduceerd, maar het kussengas in de opslagen achterblijft blijft.

13. Het korte antwoord van de Staat gedateerd 22 december 2023 met 6 producties werd door het NAI op diezelfde datum ontvangen. In het korte antwoord heeft de Staat [REDACTED] als co-arbiter benoemd.
14. Op gezamenlijk verzoek van Partijen schortte het NAI de arbitrage per 11 januari 2024 op.
15. De administrateur van het NAI verlengde de termijn voor benoeming van het scheidsgerecht: (i) op 5 maart 2024 tot 7 juni 2024; (ii) op 4 juni 2024 tot 7 september 2024; en (iii) op 2 september 2024 tot 7 december 2024.
16. Bij e-mailberichten van 24 en 26 september 2024 berichtten Partijen het NAI dat een akkoord was bereikt over de benoeming van [REDACTED] als co-arbiters en [REDACTED] tot voorzitter.
17. Op 14 oktober 2024 zond de administrateur van het NAI de door arbiters ondertekende verklaringen conform artikel 11(4) NAI Arbitragereglement met disclosures aan Partijen.
18. Op 20 en 21 oktober 2024 bevestigden Partijen aan de administrateur van het NAI dat zij in de disclosures geen beletsel voor bevestiging van de benoeming van arbiters zagen.
19. Bij brief van 22 oktober 2024 bevestigde de administrateur van het NAI de benoemingen van arbiters conform artikel 16(1) NAI Arbitragereglement.
20. Op 19 november 2024 dienden ExxonMobil en Shell een verzoek in tot het treffen van voorlopige voorzieningen ex artikel 35(1) NAI Arbitragereglement tot het verstrekken van nadere informatie en in overleg te treden over de aanstelling en reikwijdte van de door de aan te stellen externe accountant uit te voeren controle en de inhoud van periodieke rapportages van het IMG.
21. Op basis van een voorstel van ExxonMobil en Shell van 6 december 2024, een tegenvoorstel van de Staat van 11 december 2024 en een reactie van ExxonMobil en Shell van 15 december 2024 op het tegenvoorstel, zond het scheidsgerecht op 18 december 2024 een eerste concept van een procesorde in de hoofdzaak aan Partijen.
22. Na overleg met Partijen over de concept procesorde op 19 en – mede op basis van een op 20 december 2024 ontvangen mark-up van de Staat – 20 december 2024, zond het scheidsgerecht op 20 december 2024 Procedurele Order Nr. 1 aan Partijen, waarin het processchema voor de eerste fase van de arbitrage werd vastgelegd.
23. Op 8 januari 2025 benoemde de administrateur van het NAI conform artikel 20 NAI Reglement [REDACTED] tot secretaris van het scheidsgerecht.³
24. Op 24 februari 2025 ontvingen Partijen van het NAI het op 20 februari 2025 gedateerde arbitraal vonnis ten aanzien van het verzoek van ExxonMobil en Shell van 19 november 2024 tot het

³ Zie, mede ten aanzien van haar *disclosure*, Vonnis VoVo-1a, ¶ 12.

treffen van voorlopige voorzieningen (“Vonnis VoVo-1”), waarin het verzoek deels werden toegewezen.⁴

25. Op 4 april 2025 diende de Staat een verzoek in tot aanpassing van de in het Vonnis VoVo-1 getroffen voorlopige voorzieningen.
26. Op 2 juni 2025 ontvingen Partijen van het NAI het op, 30 mei 2025 gedateerde arbitraal vonnis ten aanzien van het verzoek van de Staat van 4 april 2025 tot aanpassing van de voorlopige voorzieningen die zijn getroffen in het Vonnis VoVo-1 (“Vonnis VoVo-1a”), waarin de verzoeken deels werden toegewezen.⁵
27. Op 5 juni 2025 dienden ExxonMobil en Shell een Memorie van Eis (“MvE”) in de hoofdzaak in, gevolgd op 11 juni 2025 door een hyperlinked versie, twee getuigenverklaringen, vier deskundigenrapporten en producties E-001 tot en met E-575 en ELA-01 tot en met ELA-33.
28. Op 18 september 2025 diende de Staat een verzoek in tot het treffen van voorlopige voorzieningen met betrekking tot door ExxonMobil en Shell te verstrekken passende zekerheden (“Verzoek VoVo-2”), gevolgd op 23 september 2025 door een – licht gewijzigde – hyperlinked versie en producties VV2-01 tot en met VV2-66.
29. Op 26 september 2025 gaven ExxonMobil en Shell aan voornemens te zijn op korte termijn eveneens een verzoek om voorlopige voorzieningen bij het scheidsgerecht in te dienen, dat ertoe strekt dat de Staat wordt geboden de door hem voorgenomen medio november 2025 uit te brengen heffingen over het jaar 2024 eerst uit te brengen als – onder meer – de Staat zijn verplichtingen onder het AoH is nagekomen om over het jaar 2024 een audit te doen en de resultaten daarvan heeft verwerkt in de heffingen. ExxonMobil en Shell gaven aan dat het in de rede ligt beide verzoeken om voorlopige voorzieningen gezamenlijk mondeling te behandelen.
30. Op 30 september 2025 bepaalde het scheidsgerecht dat de mondelinge behandeling van Verzoek VoVo-2 zal plaatsvinden op 20 oktober 2025 en dat, indien ExxonMobil en Shell hun aangekondigde verzoek tot het treffen van voorlopige voorzieningen in complete vorm uiterlijk 2 oktober 2025 indienen, dat verzoek tevens op 20 oktober 2025 zal worden behandeld.
31. Op 2 oktober 2025 dienden ExxonMobil en Shell het aangekondigde verzoek in tot het treffen van voorlopige voorzieningen met betrekking tot het door de Staat opleggen van heffingen met producties EV3-01 tot en met EV3-55 en EVLA3-01 tot en met EVLA3-04 (“Verzoek VoVo-3”).
32. Tijdens de mondelinge behandeling van Verzoek VoVo-2 en Verzoek VoVo-3 op 20 oktober 2025, werd een beslissing van het scheidsgerecht op Verzoek VoVo-2 aangehouden teneinde Partijen de gelegenheid te bieden tot nader overleg.

⁴ Voor het procesverloop met betrekking tot het verzoek van ExxonMobil en Shell van 19 november 2024 wordt verwezen naar Vonnis VoVo-1, ¶¶ 40-51.

⁵ Voor het procesverloop met betrekking tot het verzoek van de Staat van 4 april 2025 wordt verwezen naar Vonnis VoVo-1a, ¶¶ 13-21.

33. Op 14 november 2025 ontvingen Partijen van het NAI het op 14 november 2025 gedateerde arbitraal vonnis ten aanzien van het verzoek van ExxonMobil en Shell van 2 oktober 2025 tot het treffen van voorlopige voorzieningen (“Vonnis VoVo-3”), waarin de verzoeken werd afgewezen.⁶
34. Op 8 december 2025 diende de Staat een verzoek in tot het treffen van voorlopige voorzieningen inzake de Norg UGS of de Grijskerk UGS (“Verzoek VoVo-4”), gevolgd op 10 december 2025 door een hyperlinked versie met producties VV4-01 tot en met VV4-059 en juridische bronnen VVLA4-01 tot en met VVLA4-18.
35. Op 12 december 2025: (i) verzocht Shell om verlenging van de door het scheidsgerecht voorgestelde termijn voor antwoord; en (ii) plaatste ExxonMobil vraagtekens bij de urgentie van Verzoek VoVo-4 en betwistte de bevoegdheid van het scheidsgerecht te oordelen over de in Verzoek VoVo-4 verzochte voorzieningen.
36. Op 15 december 2025 stelde de Staat een tijdschema voor dat voorziet in een beslissing van het scheidsgerecht over zijn bevoegdheid op uiterlijk 12 januari 2026 en, indien het scheidsgerecht zich bevoegd verklaart, een beslissing op Verzoek VoVo-4 op uiterlijk 16 februari 2026.
37. Op 17 december 2025 verklaarden ExxonMobil en Shell zich akkoord met het door de Staat voorgestelde tijdschema, waarbij Shell aangaf zich te refereren aan het oordeel van het scheidsgerecht ten aanzien van zijn bevoegdheid voor Verzoek VoVo-4.
38. Op 18 december 2025 stelde het scheidsgerecht het tijdschema vast voor de behandeling van Verzoek VoVo-4, dat voorziet in een beslissing van het scheidsgerecht over zijn bevoegdheid op uiterlijk 12 januari 2026.
39. Op 19 december 2025 informeerde de Staat het scheidsgerecht, ExxonMobil en Shell dat gezien het urgente belang dat er uiterlijk op 16 februari 2026 een inhoudelijke beslissing ten aanzien van VoVo-4 ligt, welk perspectief uit beeld zou kunnen raken als het scheidsgerecht zich onbevoegd mocht verklaren, de Staat ervoor kiest om parallel aan Verzoek VoVo-4 een arbitraal kort geding in gang te zetten.
40. Op 22 december 2025 diende ExxonMobil een Bevoegdheidsverweer tegen het verzoek van de Staat tot het treffen van voorlopige voorzieningen (het “Bevoegdheidsverweer”) in.
41. Op 31 december 2025 diende de Staat zijn Memorie van Antwoord in het Bevoegdheidsincident in (“MvAB”) met producties VV4-60, VV4-61, VVLA4-19 en VVLA4-20.
42. Op 6 januari 2026 dienden ExxonMobil en de Staat hun kostenopgaven ten aanzien van het bevoegdheidsincident in, gevolgd door reacties op de kostenopgave van de wederpartij op 7 januari 2026.

⁶ Voor het procesverloop met betrekking tot het verzoek van ExxonMobil en Shell van 2 oktober 2025 wordt verwezen naar Vonnis VoVo-3, ¶¶ 31-45.

43. Het scheidsgerecht heeft over de stellingen van Partijen zoals die in de schriftelijke stukken⁷ naar voren zijn gebracht beraadslaagd en is tot het in dit vonnis weergegeven oordeel over zijn bevoegdheid gekomen.

IV. DE ACHTERGROND VAN HET VERZOEK

44. In dit onderdeel van het vonnis wordt de achtergrond van het verzoek geschetst door een weergave van de feiten die van belang zijn voor de beslissingen van het scheidsgerecht in dit vonnis.
45. ExxonMobil en Shell hebben deze arbitrage aanhangig gemaakt tegen de Staat ter zake van vorderingen gebaseerd op het door de Staat en Eiseressen gesloten AoH en het Interim Akkoord.
46. In de hoofdzaak stellen ExxonMobil en Shell ten aanzien van de Norg UGS dat de Staat artikel 3.15 AoH en artikel 5.1 Interim Akkoord schendt door het beëindigen van de UGS-functie van Norg UGS te vertragen of te verhinderen op grond van andere overwegingen dan die van L-gasleveringszekerheid. Daarnaast zou de Staat artikel 3.12 sub (a) AoH en zijn verplichting om rekening te houden met de redelijke belangen van zijn contractspartners schenden, door na te laten een positie in te nemen over de optie om de diensten van de relevante UGS (in de visie van ExxonMobil en Shell de Grijskerk UGS) te verlengen tegen redelijke voorwaarden met inachtneming van de economische gevolgen voor NAM.⁸
47. Ten aanzien van de Norg UGS vorderen ExxonMobil en Shell dat het scheidsgerecht:⁹
- 6. *met betrekking tot het leeg produceren van Norg UGS:*
 - (a) *voor recht verklaart dat vertraging of verhindering van het beëindigen van de UGS functie van Norg UGS op grond van andere overwegingen dan die van leveringszekerheid op de L-gasmarkt in strijd is met artikel 3.15 AoH en artikel 5.1 Interim Akkoord;*
 - (b) *voor recht verklaart dat de verwijzing naar "Norg UGS" in artikel 3.12 AoH moet worden gelezen als "Grijskerk UGS";*
 - (c) *voor recht verklaart dat de Staat, door na te laten een positie in te nemen over de optie om de diensten van de vordering onder 6(b) van dit petitum bedoelde relevante UGS te verlengen tegen redelijke voorwaarden met inachtneming van de economische gevolgen voor NAM, in strijd handelt en/of heeft gehandeld met artikel 3.12 sub a AoH evenals met zijn verplichting om rekening te houden met de redelijke belangen van zijn contractspartners;*

⁷ Het scheidsgerecht ontving het Bevoegdheidsverweer in een Engelstalige en een (vertaalde) Nederlandstalige versie. De overwegingen van het scheidsgerecht zijn gebaseerd op de Nederlandstalige versie.

⁸ MvE, ¶ 1096.

⁹ MvE, ¶ 1179.

(d) voor recht verklaart dat de Staat aansprakelijk is voor de door NAM geleden schade als gevolg van de hiervoor bedoelde schendingen van artikelen 3.12 en 3.15 AoH en artikel 5.1 Interim Akkoord.

A. Afspraken over het gebruik van de Norg UGS en de Grijpskerk UGS

48. In maart 2018 is vanwege de veiligheidsrisico's besloten de gaswinning uit het Groningenveld te beëindigen. Het besluit schiep echter risico's voor de leveringszekerheid van gas, omdat Nederland en andere landen in Noordwest-Europa voor hun leveringszekerheid afhankelijk waren van het laagcalorische gas ("L-gas") uit het Groningenveld.

Akkoord op Hoofdpijnen

49. De gevolgen voor de leveringszekerheid van de afbouw van de winning uit het Groningenveld zijn bij het aangaan van het AoH in juni 2018 onderkend. Partijen spraken in het AoH af dat de Staat – en niet langer NAM – op grond van voorgenomen wetgeving het winningsniveau en de noodzakelijke capaciteit op het Groningenveld zou bepalen.¹⁰ Zowel de jaarlijkse besluitvorming rond de gaswinning, als de daaraan ten grondslag te leggen ramingen van Gasunie Transport Services B.V. ("GTS"), de eigenaar en beheerder van het landelijk gastransportnet in Nederland, werden wettelijk verankerd in de Wet minimalisering gaswinning Groningenveld.¹¹ Daarbij gold als uitgangspunt dat de Staat het Groningenveld slechts als sluitstuk voor de leveringszekerheid kon inzetten, dus pas nadat de in de artikelen 3.6 en 3.7 AoH genoemde andere capaciteitsmiddelen binnen het systeem voor L-gas volledig zouden zijn benut.¹²

50. Ten aanzien van de Norg UGS bepaalt artikel 3.12 AoH:

Partijen komen overeen dat het Norg UGS dienstencontract in stand blijft tot 1 april 2027 tegen onder dit Akkoord overeengekomen tarieven. Op verzoek van de Minister zal het Norg UGS dienstencontract, met inachtneming van de economische gevolgen voor NAM:

- a. worden verlengd tot uiterlijk 1 april 2035 tegen redelijke voorwaarden, ofwel*
- b. worden deze diensten door NAM aangeboden tot uiterlijk 1 april 2035 tegen redelijke voorwaarden.*

51. Ten aanzien van de Grijpskerk UGS bepaalt artikel 3.14 AoH:

Partijen streven ernaar om het Grijpskerk UGS dienstencontract niet later dan 1 oktober 2021 te beëindigen op voorwaarde dat het kussengas vanaf die datum geproduceerd zal worden.

¹⁰ Art. 3.3-3.5 en 3.9 AoH.

¹¹ Wet van 17 oktober 2018 tot wijziging van de Gaswet en van de Mijnbouwwet betreffende het minimaliseren van de gaswinning uit het Groningenveld, *Stb.* 2018, nr. 371 (Productie VVLA4-001).

¹² *Kamerstukken II* 2017/18, 34 957, nr. 3, p. 8 (Productie VV4-008).

52. Voorts bepaalt artikel 3.15 AoH:

Op grond van de ramingen van GTS zullen Partijen jaarlijks overleggen over de wijze waarop de bestaande middelen Norg, Alkmaar en het Groningenveld¹³ zo efficiënt mogelijk benut worden, met als doel te voorkomen dat deze middelen langer worden aangehouden dan noodzakelijk is voor het garanderen van de leveringszekerheid op de laagcalorische markt.

53. Op 22 mei 2019 vond in de Groningse plaats Westerwijtwerd een aardbeving plaats met een magnitude van 3,4 op de schaal van Richter. Het Staatstoezicht op de Mijnen (“SodM”) adviseerde daarop de afbouw van de gasproductie uit het Groningenveld te versnellen. Een mogelijkheid daartoe was de Norg UGS niet langer te vullen met L-gas uit het Groningenveld, maar met zogenoemd pseudo-Groningengas (“pseudo G-gas”), dat kan worden verkregen door hoogcalorisch gas (“H-gas”) in stikstofinstallaties te mengen met stikstof waardoor het verschil in energiewaarde tussen L-gas en H-gas wordt weggenomen. L-gas bevat minder energie per kubieke meter dan H-gas. GTS adviseerde de Minister op 25 juli 2019 dat het vullen van Norg met pseudo G-gas een sluiting van het Groningenveld ver voor 2030 mogelijk maakt. Volgens GTS zou de Norg UGS na het sluiten van het Groningenveld zeker tot 2030 noodzakelijk zijn als back-up voor de stikstofinstallaties van GTS.¹⁴

Interim Akkoord

54. Ter uitvoering van de gewijzigde inzet van de Norg UGS kwamen Partijen in het Interim Akkoord overeen:¹⁵

2.1 Voor het 2019/2020 Gasjaar zal op andere wijze gebruik worden gemaakt van Norg, waardoor de gaswinning uit het Groningenveld eerder kan worden beëindigd met inachtneming van de leveringszekerheid. Het vullen van Norg met pseudo Groningen-gas (“pseudo G-gas”) in plaats van gas uit het Groningenveld, leidt tot verdere reductie van winning uit het Groningenveld. Naar verwachting leidt deze maatregel, in combinatie met de andere maatregelen zoals genoemd in het advies van Gasunie Transport Services B.V. (“GTS”) van 25 juli 2019 (het “GTS Advies”), tot de in Bijlage 1 opgenomen bijgestelde verwachting voor de afbouw van de gaswinning uit het Groningenveld.

2.2 Shell en ExxonMobil zullen ervoor zorgdragen dat Nederlandse Aardolie Maatschappij B.V. (“NAM”) als eigenaar van Norg haar volledige medewerking zal verlenen aan de gebruikmaking van Norg voor de in artikel 2.1 genoemde doeleinden en geen onomkeerbare stappen zal zetten

¹³ Met de bestaande middelen Norg, Alkmaar en Groningenveld wordt geduid op de volgens art. 3.6 AoH ter beschikking van NAM en GasTerra staande capaciteitsmiddelen: (i) de productiecapaciteit op het Groningenveld binnen de kaders van het winningsplan en het instemmingsbesluit; (ii) de berging Norg en het bijbehorende dienstencontract tussen NAM en GasTerra; en (iii) het dienstencontract tussen GasTerra en de Bergen Partners over de beschikbaarheid van de piekgasinstallatie (PGI) Alkmaar.

¹⁴ GTS, ‘Finaal advies over maatregelen om de Groningenproductie te reduceren’, 25 juli 2019, p. 11 (Productie VV4-12).

¹⁵ Productie VV4-07.

ten aanzien van de sluiting van de ondergrondse gasopslag Grijpskerk (“Grijpskerk”). Beslissingen over het leegproduceren van Grijpskerk zullen tenminste worden uitgesteld tot na de vaststelling van het capaciteitsafbouwplan voor het Groningenveld.

55. In artikel 2.3 Interim Akkoord is bepaald dat GasTerra het H-gas zou inkopen dat nodig is voor de productie van het pseudo G-gas waarmee Norg gevuld zou worden en dat GasTerra gebruik zou maken van Norg op een wijze die de Minister in staat stelt de winning uit het Groningenveld te minimaliseren met inachtneming van de leveringszekerheid.

56. Artikel 5.1 Interim Akkoord bepaalt:¹⁶

Dit Interim Akkoord bevat de gehele overeenstemming tussen Partijen met betrekking tot de onderwerpen daarvan en vervangt de afspraken die over deze onderwerpen zijn overeengekomen in het AoH, de Gerelateerde Overeenkomsten (zoals hieronder gedefinieerd) alsmede eventuele (mondelinge of schriftelijke) afspraken die in het kader van de onderhandelingen over dit Interim Akkoord zijn gemaakt. Ter voorkoming van onduidelijkheden, indien en voorzover het AoH niet wordt gewijzigd door dit Interim Akkoord, zullen de bepalingen van het AoH ongewijzigd blijven en onverminderd van kracht blijven. Dit Interim Akkoord wordt dan ook geacht een aanvulling te zijn op het AoH.

Norg Akkoord

57. In het Norg Akkoord van 8 maart 2021 zijn tussen de Staat, Shell, ExxonMobil en NAM nadere afspraken vastgelegd over het gebruik van de Norg UGS, waaronder:¹⁷

2.1 Met ingang van gasjaar 2019/2020 zal tot en met 30 september 2027 op andere wijze gebruik worden gemaakt van Norg UGS, waardoor de gaswinning uit het Groningenveld eerder definitief kan worden beëindigd met inachtneming van de leveringszekerheid. Het vullen van Norg UGS met pseudo Groningen-gas (“pseudo G-gas”) in plaats van gas uit het Groningenveld leidt tot verdere reductie van de winning uit het Groningenveld.

[...]

2.3 De Staat, Shell en ExxonMobil zullen ervoor zorg dragen dat tot de beëindiging van de onderneming van GasTerra B.V. (“GasTerra”) overeenkomstig het besluit van de aandeelhouders van GasTerra van 4 oktober 2019 (dat wil zeggen tot de datum waarop GasTerra ophoudt haar onderstaande taken te vervullen in verband met de afbouw van de onderneming van GasTerra), GasTerra voor de in artikel 2.1 genoemde doeleinden:

¹⁶ Productie VV4-07.

¹⁷ Productie VV4-02.

- a) *het hoogcalorisch gas zal inkopen om het benodigde pseudo G-gas te doen produceren;*
- b) *gebruik zal maken van Norg UGS op een zodanige wijze die de Minister van Economische Zaken en Klimaat (de “Minister”) in staat stelt via de operationele strategie, dan wel met een tijdelijke maatregel voor het betreffende gasjaar, de winning uit het Groningenveld te minimaliseren met inachtneming van de leveringszekerheid. Dit heeft tot gevolg dat GasTerra Norg UGS niet meer kan gebruiken voor de doeleinden waarvoor zij de Norg UGS capaciteit oorspronkelijk inzette. Op het moment dat er geen operationele strategie meer is zal GasTerra gebruik maken van Norg UGS op zodanige wijze die de Minister in staat stelt, met inachtneming van de leveringszekerheid en het functioneren van de kwaliteitsloze gasmarkt, het Groningenveld blijvend gesloten te houden. De Staat zal hiervoor jaarlijks voor aanvang van het gasjaar de vereisten formuleren;*

[...]

- 2.4 *Gelet op het besluit van de aandeelhouders van GasTerra van 4 oktober 2019 dat de onderneming van GasTerra zal worden afgebouwd, zullen de Staat, Shell en ExxonMobil zich naar beste vermogen inspannen om tot een passende oplossing te komen voor het feit dat GasTerra de taken als genoemd onder artikel 2.3 niet zal kunnen uitoefenen tot en met 30 september 2027.*
- 2.5 *De Staat, Shell en ExxonMobil zullen ook te goeder trouw overleggen om te komen tot nadere finale afspraken ten aanzien van het AoH, waaronder de wijze waarop de functie van Norg UGS voor de leveringszekerheid door Grijpskerk UGS kan worden ingevuld zodat de UGS-functie van Norg UGS zo snel mogelijk kan worden beëindigd.*

58. De artikelen 4 en 6.2 Norg Akkoord bepalen voorts:

- 4 *Verhouding tot AoH, Interim Akkoord en Gerelateerde Overeenkomsten*
- 4.1 *Dit Norg Akkoord is een aanvulling op het AoH, het Interim Akkoord en de Gerelateerde Overeenkomsten (zoals hieronder gedefinieerd). Indien en voor zover het AoH, het Interim Akkoord en de Gerelateerde Overeenkomsten niet worden gewijzigd door dit Norg Akkoord, zullen de bepalingen van het AoH, het Interim Akkoord en de Gerelateerde Overeenkomsten ongewijzigd blijven en onverminderd van kracht blijven.*

[...]

- 6.1 *Alle geschillen tussen Partijen welke mochten ontstaan naar aanleiding van dit Norg Akkoord zullen uitsluitend worden verwezen naar, en beslecht worden door, arbitrage volgens het arbitragereglement van het Nederlands Arbitrage Instituut. Het arbitragetribunaal zal uit drie arbiters*

bestaan. De plaats van arbitrage is 's-Gravenhage. Het arbitragetribunaal zal oordelen op basis van de regelen des rechts. De arbitrage wordt gevoerd in het Nederlands. Partijen komen overeen dat het vonnis openbaar zal worden gemaakt behoudens bedrijfsvertrouwelijke informatie.

B. Een ‘passende oplossing’ voor het wegvallen van GasTerra

59. Op 20 september 2024 schreven ExxonMobil en Shell aan de Staat:¹⁸

Zoals u weet, voorziet artikel 3.14 AoH erin dat het kussengas van UGS Grijpskerk na 1 oktober 2021 geproduceerd zal worden. Artikel 2.5 NA bepaalt dat de functie van UGS Grijpskerk in de plaats van UGS Norg kan worden ingezet, zodat de bergingsfunctie van UGS Norg kan worden beëindigd. De Minister heeft deze vervanging aangekondigd in het vaststellingsbesluit Groningen gasveld 2021-2022. Partijen hebben daaraan concreet gevolg gegeven door in 2022 UGS Grijpskerk te converteren van een H-gas naar een L-gas faciliteit en NAM heeft een winningsplan voor de productie van het kussengas van UGS Norg ingediend. Ten slotte hebben de aandeelhouders van GasTerra B.V. besloten de onderneming van GasTerra B.V. af te bouwen en artikel 2.4 NA voorziet daarom dat de Staat der Nederlanden en ondergetekenden overleggen om tot een passende oplossing te komen voor de invulling van de taken van GasTerra B.V. met betrekking tot UGS Grijpskerk onder het NA na haar afbouw. Middels deze brief doen we het verzoek hierover in gesprek te treden.

60. Naar aanleiding van dit verzoek hebben verkennende gesprekken plaatsgevonden. Op 13 februari 2025 schreven ExxonMobil en Shell aan de Staat dat in de gesprekken concrete resultaten vooralsnog zijn uitgebleven. Zij verzochten de Staat conform artikel 2.3.b Norg Akkoord de vereisten voor de inzet van de UGS Grijpskerk kenbaar te maken en benadrukten de urgentie duidelijkheid te scheppen over de toekomst van het dienstencontract voor de UGS Grijpskerk:¹⁹

Concreet vergt deze urgentie dat de Staat der Nederlanden spoedig uitsluitsel geeft over de optie van artikel 3.12 van het Akkoord op Hoofdpijnen om de diensten van UGS Grijpskerk (inmiddels in plaats gekomen van UGS Norg ingevolge artikel 2.5 van het Norg Akkoord) te verlengen tegen redelijke voorwaarden met inachtneming van de economische gevolgen voor NAM.

61. De Staat reageerde op 19 juni 2025. Ten aanzien van de optie van artikel 3.12 AoH en de vereisten voor de inzet van de UGS Grijpskerk schreef de Staat aan Shell en ExxonMobil:²⁰

Uw verzoeken hebben betrekking op de UGS Grijpskerk en veronderstellen dat de afspraken in de door u genoemde artikelen voor de UGS Grijpskerk zijn gaan

¹⁸ Productie VV4-44 (NA staat voor Norg Akkoord).

¹⁹ Productie VV4-45.

²⁰ Productie VV4-46.

gelden in plaats van voor de UGS Norg. De staat is dit niet met u eens. Een afspraak als door u verondersteld, is tot op heden niet gemaakt. De omzetting van Grijpskerk van H- naar L-gas doet daar niets aan af. Het NA geeft expliciet aan dat de staat en Shell en ExxonMobil nog met elkaar in overleg zullen treden om deze afspraken te maken. Tot op dit moment is niet afgesproken dat de optie van artikel 3.12 van het AoH (de mogelijkheid voor de staat om het dienstencontract na 1 april 2027 tegen redelijke voorwaarden te verlengen tot 1 april 2035) niet langer voor UGS Norg maar voor UGS Grijpskerk zou gelden.

Overleg

De staat is bereid om tot concrete afspraken te komen over de toekomst van zowel UGS Grijpskerk als UGS Norg en de manier waarop de UGS Grijpskerk de rol van UGS Norg over kan nemen vooruitlopend op finale afspraken over het AoH zoals door partijen is afgesproken in artikel 2.5 van het NA. Zoals u bekend, volgt uit verschillende analyses die gemaakt zijn over leveringszekerheid dat tenminste één van de twee bergingen, UGS Norg of UGS Grijpskerk, ook na 2027 nog nodig is. Ingevolge artikel 15, elfde lid, van verordening (EU) 2024/1789 is het evenwel aan de Autoriteit Consument en Markt (ACM) om, rekening houdend met een advies van het Europees netwerk van transmissiesysteem-beheerders voor gas, te beoordelen of de opslagactiviteiten in een ondergrondse opslaginstallatie beëindigd kunnen worden zonder dat een dergelijke stopzetting de aardgasleveringszekerheid op Unie- of nationaal niveau vermindert.

De Staat stelde vervolgens voor dat: (i) NAM de volledige capaciteit van de Grijpskerk UGS tot uiterlijk 1 april 2035 in stand zou moeten houden, waarbij vanuit de optiek van leveringszekerheid in overleg zou worden bezien hoe deze capaciteit het beste kan worden benut; en (ii) zolang de vereiste instemming van de ACM, de instemming met het winningsplan voor het kussengas en de omgevingsvergunningen voor de productie van het kussengas uit de UGS Norg nog niet rond zijn, de Staat gebruik kan blijven maken van de UGS Norg.

62. Bij brief van 15 september 2025 antwoordden ExxonMobil en Shell:²¹

U stelt zich in uw brief op het standpunt dat de omwisseling van UGS Norg en UGS Grijpskerk niet zou gelden voor de optie op UGS Norg van artikel 3.12 van het Akkoord op Hoofdlijnen omdat deze niet schriftelijk is vastgelegd. Dit bestrijden wij: artikel 2.5 van het Norg Akkoord schrijft voor dat partijen te goeder trouw overleggen over de omwisseling van UGS Norg en UGS Grijpskerk voor de functie onder het Norg Akkoord en Akkoord op Hoofdlijnen. Dit overleg heeft plaatsgevonden en ingevolge de afspraken in dit overleg heeft NAM dan ook de conversie van UGS Grijpskerk ingezet, zodat deze de functie van UGS Norg kan overnemen. De Staat was destijds niet bereid deze afspraken schriftelijk vast te leggen, maar de afspraken zijn wel degelijk gemaakt en ook

²¹

Productie VV4-47.

gereflekteerd in het Vaststellingsbesluit Groningen gasveld 2021-2022 en het handelen van partijen. Deze omwisseling is daarom uitgangspunt voor onze gesprekken over de toekomst van UGS Grijskerk en UGS Norg.

Wij herhalen hierbij tevens het verzoek ons te informeren (i) of de Staat van genoemde optie gebruik wenst te maken onder de bijbehorende voorwaarden en (ii) wat de vereisten zijn als bedoeld in artikel 2.3.b van het Norg Akkoord (benodigd volume en capaciteit).

63. Op 16 september 2025 schreef de Staat aan ExxonMobil, Shell en NAM dat het van groot belang is dat een geschikte partij of partijen per 1 april 2026 de rol van GasTerra bij de gasopslagen in Norg en Grijskerk overneemt of voortzet, omdat deze gasopslagen een essentiële rol spelen bij het waarborgen van de leveringszekerheid. De Staat sommeerde ExxonMobil, Shell en NAM te bevestigen dat: (i) NAM de gasopslagen ten behoeve van de leveringszekerheid zelf zal (laten) vullen; en (ii) als NAM dit niet doet, NAM dan vanaf 1 april 2026 haar medewerking zal blijven verlenen aan marktpartijen of een door de Staat aan te wijzen partij voor toegang tot de gasopslagen, tot in ieder geval 30 september 2027.²²

64. ExxonMobil en Shell reageerden op 19 september 2025:²³

Wij herkennen ons niet in de gang van zaken zoals geschetst in uw brief: het Akkoord op Hoofdlijnen en het Norg Akkoord bevatten een aantal afspraken over de gasbergingen om de leveringszekerheid op de L-gasmarkt te borgen en er voor te zorgen dat het Groningenveld zo spoedig mogelijk gesloten wordt en gesloten kan blijven. De Staat dient na sluiting van het Groningenveld het benodigde L-gas volume en capaciteit uit de gasberging om het Groningenveld gesloten te houden te formuleren en kenbaar te maken, opdat Shell, ExxonMobil en NAM hun verplichtingen onder het Norg Akkoord kunnen uitvoeren. Tot dusver heeft de Staat nagelaten deze vereisten kenbaar te maken hetgeen verhindert dat Shell, ExxonMobil en NAM deze verplichtingen uit kunnen voeren. We verwijzen daarvoor ook naar onze eerdere brieven van 20 september 2024 en 13 februari 2025.

De Staat geeft in zijn brief van 16 september 2025 aan dat er behoefte is tot toegang tot de gasbergingen van NAM in het bredere kader van algemene gasleveringszekerheid en Europese regelgeving. Dit gaat het hierboven genoemde contractuele kader van de leveringszekerheid op de L-gasmarkt te buiten en vereist daarom nadere afspraken tussen de Staat, Shell en ExxonMobil.

U geeft aan zonodig uw publiekrechtelijke bevoegdheden in te zetten om het door u gewenste resultaat af te dwingen. Dit staat haaks op de redelijkheid en billijkheid die wij als contractspartijen en partners in het Gasgebouw aan elkaar verschuldigd zijn en die u aan investeerders in de energiesector

²² Productie VV4-48.

²³ Productie VV4-49.

verschuldigd bent. Bovendien laat een dergelijke inbreuk de gemaakte afspraken onverlet.

65. Omdat het op dat moment onduidelijk was of de overleggen die Shell, ExxonMobil en de Staat met elkaar voeren tijdig tot een uitkomst leiden die EBN in staat stelt om uiterlijk per 1 april 2026 te starten met het opslaan van gas in Norg UGS voor het opslagjaar 2026/27, liet de Staat op 5 december 2025 aan ExxonMobil en Shell weten zich genoodzaakt te zien, parallel aan het lopende overleg, zich tot het scheidsgerecht te wenden met het verzoek een voorlopige voorziening op dit punt te treffen.²⁴

C. De door de Staat verzochte voorlopige voorziening

66. De Staat licht de door hem primair gevraagde voorziening in Verzoek VoVo-4 als volgt toe:²⁵

7.1.1 De Staat heeft in het voorgaande toegelicht dat hij recht heeft op een passende oplossing als bedoeld in art. 2.4 Norg Akkoord voor het feit dat GasTerra de Norg UGS niet tot en met 30 september 2027 zal kunnen inzetten voor de in het Norg Akkoord opgenomen doeleinden. Voorts heeft de Staat toegelicht dat deze passende oplossing op korte termijn noodzakelijk is. De passende oplossing dient er slechts toe te strekken dat een ander dan GasTerra de taken als bedoeld in art. 2.1 en 2.3 Norg Akkoord uitvoert; de Partijen hebben met art. 2.4 Norg Akkoord immers uitsluitend willen voorzien in een oplossing voor het wegvallen van GasTerra, terwijl is afgesproken dat de taken van GasTerra tot en met 30 september 2027 uitgevoerd blijven worden. [...]

7.1.2 De verzochte voorziening komt er, kort gezegd, op neer dat EBN Capital in de periode van 1 april 2026 tot 1 april 2027 de taken van GasTerra onder het Norg Akkoord overneemt tegen voorwaarden die in dit geval redelijk zijn. Deze voorwaarden leiden in het bijzonder niet tot een onredelijke last bij NAM, Shell en/of ExxonMobil, welke partijen – anders dan de Staat – hoe dan ook een louter financieel belang bij de onderhavige kwestie hebben. De voorziening is erop gericht voor de korte termijn – de winter 2026/2027 – de toegang tot de Norg UGS zeker te stellen zodat de leveringszekerheid kan worden geborgd. [...]

67. De Staat betoogt dat NAM – die eveneens partij is bij het Norg Akkoord – ook aan de passende oplossing die Partijen in artikel 2.4 Norg Akkoord zijn overeengekomen, haar medewerking zal moeten verlenen, en dat Shell en ExxonMobil bevolen kunnen worden om te bewerkstelligen dat NAM dit doet.²⁶ In paragraaf 7.3 van Verzoek VoVo-4 beschrijft de Staat vervolgens in detail de voorwaarden waaronder de passende oplossing moet worden bereikt.

²⁴ Producties VV4-50 en VV4-51.

²⁵ Verzoek VoVo-4, ¶ 7.1.1-7.1.2.

²⁶ Verzoek VoVo-4, ¶ 7.2.

68. Het subsidiaire verzoek van de Staat, dat beoogt zoveel mogelijk aan te sluiten bij de wijze waarop de Grijpskerk UGS in het verleden door GasTerra is ingezet, wordt als volgt toegelicht:²⁷

Voor het geval uw Scheidsgerecht ondanks al het voorgaande tot het oordeel zou komen dat art. 2.4 AoH thans op de Grijpskerk UGS is gaan zien, verzoekt de Staat uw Scheidsgerecht te bepalen dat NAM, tegen dezelfde voorwaarden als in paragraaf 7.3 beschreven, toegang zal verlenen tot de Grijpskerk UGS, met dien verstande dat waar Norg UGS vermeld staat Grijpskerk UGS moet worden gelezen.

69. Het meer subsidiaire verzoek van de Staat behelst:²⁸

Voor zover uw Scheidsgerecht het om hem moverende redenen niet opportuun zou achten om thans voorwaarden te formuleren voor de aan EBN Capital te verlenen toegang tot de Norg UGS, verzoekt de Staat uw Scheidsgerecht Shell en ExxonMobil – kort gezegd – te gebieden:

- I. ervoor te zorgen dat NAM aan EBN Capital toegang verleent tot de relevante gasopslag (de Norg UGS, respectievelijk de Grijpskerk UGS),*
- II. ondertussen in overleg te treden met de Staat over de voorwaarden waaronder NAM die toegang zal verlenen en daartoe uiterlijk zeven kalenderdagen na het door uw Scheidsgerecht te wijzen vonnis een concreet voorstel te doen aan de Staat over (i) een redelijk tarief voor toegang (in EUR/MWh), (ii) het maximale door NAM ter beschikking te stellen werkvolume, (iii) de wijze waarop NAM het reguliere onderhoud zal plannen en uitvoeren op zodanige wijze dat de toegang van EBN Capital tot de gasopslag zo min mogelijk wordt belemmerd, (iv) de wijze waarop EBN Capital de eigendom zal behouden over het gas dat in de relevante gasopslag zal worden geïnjecteerd en (v) de wijze waarop NAM in zal staan voor de kosten die EBN Capital maakt ingeval NAM enige door EBN Capital afgeroepen hoeveelheid gas niet injecteert of produceert, en*
- III. het Scheidsgerecht uiterlijk zeven kalenderdagen na het voorstel, tezamen met de Staat, te berichten over de uitkomsten van het gevoerde overleg, onder de gelijktijdige vermelding van de (eventuele) onderwerpen waarover geen overeenstemming is bereikt.*

Het meer subsidiaire verzoek beoogt volgens de Staat: (i) zeker te stellen dat EBN Capital toegang krijgt tot de relevante gasopslag en de daarvoor vereiste maatregelen met NAM kan treffen, zonder dat overeenstemming tussen de Partijen over de concrete voorwaarden daarvoor hoeft te worden afgewacht; en (ii) het tussen de Partijen te voeren overleg te beperken tot de passende oplossing, en daarvan losstaande geschilpunten (zoals het kussengas) buiten dat overleg te houden.

²⁷ Verzoek VoVo-4, ¶ 7.4.1.

²⁸ Verzoek VoVo-4, ¶ 7.5.

V. DE STANDPUNTEN VAN PARTIJEN

70. In dit hoofdstuk van het vonnis geeft het scheidsgerecht een overzicht van de voornaamste standpunten van Partijen ten aanzien van de bevoegdheid van het scheidsgerecht. Het scheidsgerecht zal eerst het standpunt en de conclusie van ExxonMobil weergeven (onderdelen A en B), waarna het standpunt en conclusie van de Staat zullen worden weergegeven (onderdelen C en D).
71. Shell heeft bij e-mail van haar raadslieden van 17 december 2025 aangegeven dat zij zich refereert aan het oordeel van het scheidsgerecht ten aanzien van zijn bevoegdheid voor dit verzoek om voorlopige voorzieningen.

A. Het standpunt van ExxonMobil

72. ExxonMobil betoogt dat het verzoek van de Staat uitsluitend is gebaseerd op artikel 2.4 Norg Akkoord. De daarin genoemde, uitsluitend in het Norg Akkoord voorkomende, verbintenis tot een ‘passende oplossing’ te komen is overeengekomen omdat GasTerra de Norg UGS niet tot 30 september 2027 met pseudo G-Gas zal vullen. Het door de Staat ingeroepen artikel 3.12 AoH betreft alleen de verlenging van het Norg UGS dienstencontract, dat betrekking heeft op de gasopslag-diensten in verband met de exploitatie van de Norg UGS. Het zijn verschillende bepalingen, in verschillende overeenkomsten, tussen verschillende partijen, op verschillende momenten overeengekomen en met andere verbintenissen.²⁹
73. Het doel van het Norg Akkoord tussen de Staat, ExxonMobil, Shell en NAM was volgens ExxonMobil het vullen en het gebruik van de opslagfaciliteiten tot 30 september 2027 vast te leggen. In artikel 2.1 Norg Akkoord zijn partijen overeengekomen om ‘tot 30 september 2027 op andere wijze gebruik te maken’ van de Norg UGS. In artikel 2.3 is vervolgens vastgelegd hoe het in artikel 2.1 bepaalde zal worden uitgevoerd ‘tot de beëindiging van de onderneming van GasTerra’. Nadat GasTerra ophoudt de taken als genoemd onder artikel 2.3 uit te oefenen, zullen de Staat, Shell en ExxonMobil zich volgens artikel 2.4 “*naar beste vermogen inspannen om tot een passende oplossing te komen*” voor het gebruik van de Norg UGS. Tegelijkertijd kwamen partijen ook overeen dat de rol van de Norg UGS zou worden overgenomen door de UGS Grijpskerk, “*zodat de UGS-functie van Norg UGS zo snel mogelijk kan worden beëindigd.*”³⁰ Dit betekent dat, vooralsnog, het Norg Akkoord de overeenkomst tussen partijen inhoudt met betrekking tot het vullen en het toekomstige gebruik van de UGSen.³¹
74. ExxonMobil stelt dat omdat deze arbitrage gebaseerd is op het AoH en het Interim Akkoord en het scheidsgerecht op grond daarvan is samengesteld, het scheidsgerecht alleen bevoegd is ten aanzien van geschillen op grond van die overeenkomsten. Het scheidsgerecht kan geen uitspraak doen over kwesties die voortvloeien uit het Norg Akkoord. De vorderingen van de Staat op grond van het Norg Akkoord hadden moeten worden ingesteld in een afzonderlijke arbitrage op basis van de overeenkomst tot arbitrage in artikel 6.2 van het Norg Akkoord. Bovendien is

²⁹ Bevoegdheidsverweer, ¶¶ 6-7.

³⁰ Art. 2.5 Norg Akkoord.

³¹ Bevoegdheidsverweer, ¶¶ 16-21.

volgens ExxonMobil de overeenkomst tot arbitrage in het Norg Akkoord niet verenigbaar met die in het AoH omdat de partijen bij de overeenkomst tot arbitrage verschillend zijn. NAM is partij bij het Norg Akkoord, maar geen partij bij het AoH. Geschillen die voortvloeien uit het Norg Akkoord kunnen daarom niet zonder toestemming van partijen en het scheidsrecht worden behandeld in een arbitrage die is begonnen onder het AoH of het Interim Akkoord.³²

75. De pogingen van de Staat om zijn verzoek te baseren op artikel 3.12 AoH kunnen volgens ExxonMobil de bevoegdheid van het scheidsrecht niet uitbreiden tot het Norg Akkoord. Partijen zijn in onderhandeling over de ‘passende oplossing’ uit artikel 2.4 Norg Akkoord, die de Staat nu aan het scheidsrecht vraagt – op basis van eenzijdige door de Staat gedicteerde voorwaarden – op te leggen. De stelling van de Staat dat zijn verzoek zowel artikel 3.12 AoH als artikel 2.4 Norg Akkoord betreft faalt, omdat het twee wezenlijk verschillende bepalingen betreft. De motivering en het petitum in het verzoek van de Staat maakt duidelijk dat het begin- en eindpunt van het verzoek van de Staat – met inbegrip van de primaire, subsidiaire en meer subsidiaire verzoeken – het Norg Akkoord is.³³
76. De slotsom is dat het scheidsrecht geen bevoegdheid kan aannemen ten aanzien van het Norg Akkoord, dat een andere overeenkomst tot arbitrage bevat en andere partijen kent, zodat het verzoek van de Staat niet kan worden behandeld in deze arbitrage.³⁴

B. De verzoeken van ExxonMobil

77. ExxonMobil verzoekt het scheidsrecht:³⁵
- a) *Te verklaren dat het Scheidsrecht niet bevoegd is;*
 - b) *Het verzoek van de Staat volledig af te wijzen;*
 - c) *De Staat te veroordelen tot betaling van alle kosten van dit verzoek, inclusief de kosten van juridische bijstand, vermeerderd met rente.*

C. Het standpunt van de Staat

78. De Staat stelt daar in de eerste plaats tegenover dat aan de procedurele vereisten voor indiening van het Verzoek VoVo-4 is voldaan, zowel wat betreft de arbitrabiliteit van het verzochte, als wat betreft de voldoende samenhang met de aan het scheidsrecht in de hoofdzaak voorgelegde vorderingen. Uit deze voldoende samenhang volgt dat het Verzoek VoVo-4 per definitie binnen de opdracht van het scheidsrecht valt. In de tweede plaats probeert ExxonMobil een artificieel onderscheid te creëren tussen de afspraken rond de Norg UGS en Grijpskerk UGS op grond van het AoH en het Interim Akkoord enerzijds en de relevante afspraken op grond van het Norg Akkoord anderzijds. Dat onderscheid is er volgens de Staat niet. Ten derde stelt de Staat dat het Verzoek VoVo-4 net zo goed een grondslag heeft in het AoH.³⁶

³² Bevoegdheidsverweer, §§ 3 en 22-25.

³³ Bevoegdheidsverweer, §§ 26-34.

³⁴ Bevoegdheidsverweer, § 35.

³⁵ Bevoegdheidsverweer, § 36.

³⁶ MvAB, §§ 1.5-1.7.

Bevoegdheid gegeven omdat Verzoek voldoet aan artikel 35 lid 1 NAI Arbitragereglement

79. De Staat betoogt dat het Verzoek VoVo-4 beantwoordt aan de drie vereisten die artikel 35 lid 1 NAI Arbitragereglement stelt voor inwilliging van een verzoek tot het treffen van een voorlopige voorziening: (i) voldoende verband van de voorlopige voorziening met de vordering of tegenvordering die is ingesteld in de arbitrage; (ii) de beslissing over de voorlopige voorziening mag op geen enkele wijze vooruitlopen op het uiteindelijke oordeel van het scheidsgerecht in het arbitraal geding ten gronde; en (iii) de partij die een voorlopige voorziening vraagt, moet voldoende belang hebben.
80. In de hoofdzaak stellen ExxonMobil en Shell zich op het standpunt dat de rol van de Norg UGS zou zijn overgenomen door de Grijskerk UGS en dat de UGS functie van de Norg UGS kan worden beëindigd.³⁷ De gevraagde voorziening strekt er volgens de Staat toe het gebruik van de Norg UGS, of althans de relevante UGS, daarentegen, ook in lijn met artikel 3.12 AoH, tot 1 april 2027 te verzekeren, waarmee is voldaan aan het vereiste van voldoende samenhang tussen de gevraagde voorziening en de vorderingen 6a en 6b van Shell en ExxonMobil in de hoofdzaak. Toewijzing van het verzoek zal niet in de weg staan aan een eventuele latere toewijzing van voornoemde vorderingen in de hoofdzaak. Het belang van de Staat is met het urgente belang van gasleveringszekerheid gegeven.³⁸
81. ExxonMobil's standpunt dat het scheidsgerecht onbevoegd zou zijn omdat het Verzoek VoVo-4 gebaseerd zou zijn op het Norg Akkoord en de opdracht aan het scheidsgerecht zich niet uitstrekt tot beslechting van geschillen die naar aanleiding van het Norg Akkoord zijn ontstaan is volgens de Staat onjuist. Het introduceert immers een voorwaarde die noch het Arbitragereglement noch de wet stelt. Met de voldoende samenhang met de vordering of tegenvordering in de aanhangige hoofdzaak is de bevoegdheid van het scheidsgerecht (al) gegeven.³⁹

Norg Akkoord is onlosmakelijk verbonden met AoH en Interim Akkoord

82. Het standpunt van ExxonMobil komt er volgens de Staat op neer dat de hoofdzaak geen betrekking heeft op het Norg Akkoord en dat het scheidsgerecht daarom niet bevoegd zou zijn om over het Verzoek VoVo-4 te oordelen. De hoofdzaak heeft echter wel degelijk (mede) betrekking op het Norg Akkoord. Daartoe voert de Staat het volgende aan.
83. Uit de chronologische totstandkomingsgeschiedenis blijkt dat het Norg Akkoord onlosmakelijk met het AoH en het Interim Akkoord is verbonden. De gewijzigde inzet van de Norg UGS, die in het Interim Akkoord voor de duur van één gasjaar overeen was gekomen, is immers in het Norg Akkoord verlengd. Daarmee werd invulling gegeven aan de intentie die in artikel 3.1 onder c Interim Akkoord al was neergelegd. In het Norg Akkoord is ook invulling gegeven aan de in het Interim Akkoord gemaakte afspraak dat de Staat voor die gewijzigde inzet van de Norg UGS een vergoeding zou betalen.⁴⁰

³⁷ MvE, ¶¶ 26 en 1089.

³⁸ MvAB, ¶¶ 2.3-2.5.

³⁹ MvAB, ¶¶ 2.6-2.7.

⁴⁰ MvAB, ¶¶ 3.3-3.15.

84. Dat onlosmakelijke verband is in het Norg Akkoord zelf in artikel 4.1 tot uitdrukking gebracht. Daaruit blijkt dat het Norg Akkoord hetzij het AoH en het Interim Akkoord heeft gewijzigd hetzij het er een aanvulling op is. In beide gevallen is het Norg Akkoord dus onderdeel van het AoH en/of het Interim Akkoord en valt daarmee volgens de Staat onder de reikwijdte van de arbitrageclausule in het AoH.⁴¹
85. In de Arbitrageaanvraag is het Norg Akkoord nadrukkelijk benoemd. In paragraaf 4 van de aanvraag wordt het Norg Akkoord ook gezamenlijk met het AoH en het Interim Akkoord besproken. Een afschrift van het Norg Akkoord is ook bij de arbitrage aanvraag gevoegd. Dat ExxonMobil en Shell hun vorderingen wellicht niet expliciet op het Norg Akkoord hebben gebaseerd – kennelijk omdat ExxonMobil en Shell van mening zijn dat van een schending van het Norg Akkoord door de Staat geen sprake is – brengt niet mee dat de arbitrage niet op het Norg Akkoord betrekking heeft. De stelling van ExxonMobil dat het Norg Akkoord een “separate overeenkomst” is – die los gezien zou moeten worden van het AoH en het Interim Akkoord – is ook niet te verenigen met het voorbehoud in de Arbitrageaanvraag van het recht “de nakoming van hun verplichtingen uit hoofde van het AoH, het Interim Akkoord en het Norg Akkoord op te schorten” vanwege “de in deze arbitrageaanvraag toegelichte tekortkomingen van de Staat in de nakoming van zijn contractuele verplichtingen”.⁴²
86. Ook in de Memorie van Eis in de hoofdzaak worden de drie akkoorden regelmatig in één adem genoemd.⁴³ Partijen hebben in het AoH afspraken gemaakt over de afbouw van de gaswinning uit het Groningenveld. Vervolgens hebben zij afspraken gemaakt over de gewijzigde inzet van de Norg UGS teneinde de gaswinning sneller te reduceren. Die afspraken verliepen stapsgewijs. Het Interim Akkoord gaf slechts “een tussentijdse oplossing”⁴⁴ die betrekking had op het gasjaar 2019/2020. Verdere afspraken over de gewijzigde inzet zijn gemaakt in het Norg Akkoord. Met ingang van gasjaar 2019/2020 – de in het Norg Akkoord gemaakte afspraak heeft mede betrekking op het tijdvak ten aanzien waarvan in het Interim Akkoord een “tussentijdse oplossing” was geformuleerd – zal tot en met 30 september 2027 op andere wijze gebruik worden gemaakt van de Norg UGS. Tegenover de gewijzigde inzet van de Norg UGS stond de Norgvergoeding. ExxonMobil en Shell stellen zich in de hoofdzaak op het standpunt dat de Staat ten onrechte een deel van die Norgvergoeding zou terugvorderen, welke Norgvergoeding “het directe gevolg [is] van het onderhandelingsresultaat tussen partijen bij het Norg Akkoord en de in arbitrage bevestigde berekeningswijze van de marktconforme vergoeding voor de gewijzigde inzet van Norg.”⁴⁵ ExxonMobil en Shell beroepen zich er voorts onder meer op dat “het AoH, Interim Akkoord én Norg Akkoord bepalen dat – door de conversie van Grijskerk UGS naar L-gas – het gebruik van Norg UGS eerder zou kunnen worden beëindigd.”⁴⁶ Hoewel het Norg Akkoord niet genoemd wordt in onderdeel 6a van het petitum in de Memorie van Eis is het volgens de Staat evident dat het Norg Akkoord wel mede aan de daar geformuleerde

⁴¹ MvAB, ¶ 3.16.

⁴² MvAB, ¶¶ 3.17-3.19, verwijzend naar Arbitrageaanvraag, ¶ 233.

⁴³ MvE, ¶¶ 175, 187, 1004, 1005 (vergelijkbaar in 1038, 1041, 1054, 1077, 1079, 1081 en 1096), 1062, 1073 en 1082.

⁴⁴ MvE, ¶ 244.

⁴⁵ MvE, ¶ 1170.

⁴⁶ MvE, ¶ 1062.

vordering ten grondslag ligt. Onderdeel 6b van het petitum steunt naar zeggen van ExxonMobil op het Norg Akkoord, omdat Partijen in het Norg Akkoord overeenkwamen dat “de rol van de Norg UGS zou worden overgenomen door de Grijskerk UGS.”⁴⁷

87. ExxonMobil’s standpunt berust op de redenering dat het Norg Akkoord een eigen arbitrageclausule kent en dat NAM ook partij is bij het Norg Akkoord en niet bij de arbitrage in de hoofdzaak.
88. Het beroep op de in het Norg Akkoord opgenomen arbitrageclausule komt neer op de stelling dat de hoofdzaak niet op het Norg Akkoord betrekking kan hebben omdat in de arbitrageaanvraag niet naar die clausule verwezen is. Het verband tussen het Norg Akkoord en het AoH en het Interim Akkoord is echter in artikel 4.1 Norg Akkoord expliciet bevestigd en ook ExxonMobil en Shell geven van dat verband nadrukkelijk blijk in hun Arbitrageaanvraag en Memorie van Eis. Het ligt volgens de Staat niet in de rede dat de aanwezigheid van een arbitrageclausule in het Norg Akkoord dat verband zou hebben doorbroken en dat die clausule zou derogeren aan artikel 4.1 Norg Akkoord. Van belang daarbij is bovendien dat de clausules in de verschillende overeenkomsten allen verwijzen naar het arbitragereglement van het NAI en tevens alle bepalen (i) dat het arbitragetribunaal uit drie arbiters zal bestaan, (ii) dat de plaats van arbitrage ’s-Gravenhage is, (iii) dat het arbitragetribunaal zal oordelen op basis van de regelen des rechts en (iv) dat de arbitrage in het Nederlands wordt gevoerd.⁴⁸
89. De Staat meent dat het feit dat NAM partij is bij het Norg Akkoord en niet in de hoofdzaak niet van belang is. Dat brengt niet mee dat de samenhang tussen de overeenkomsten is verbroken. De Staat heeft bovendien geen vordering geformuleerd jegens NAM, maar enkel jegens ExxonMobil en Shell. Niet valt in te zien dat en waarom de Staat NAM dan in rechte had moeten betrekken, voor zover ExxonMobil dat al bedoeld heeft te stellen.⁴⁹
90. Tot slot meent de Staat dat het “afknippen” van het Norg Akkoord van het geheel in de hoofdzaak tot afgrenzingsproblemen gaat leiden of aanleiding geven tot het voeren van een afzonderlijke arbitrageprocedure met het risico van mogelijk strijdige beslissingen. Het onderscheid dat ExxonMobil wil maken is in allerlei opzichten heilloos, want niet alleen ongegrond, kunstmatig en inefficiënt, maar ook niet zonder risico’s.⁵⁰

Verzoek VoVo-4 is (mede) gebaseerd op het AoH

91. De Staat stelt dat het Verzoek VoVo-4 ook rechtstreeks op het AoH steunt. Om te waarborgen dat de Norg UGS als capaciteitsmiddel beschikbaar zou blijven, kwamen de Partijen bij het AoH overeen dat het Dienstencontract Norg UGS in stand zou blijven tot in ieder geval 1 april 2027. De Partijen bij het AoH hebben aldus afgesproken dat Shell en ExxonMobil (via NAM) tegen betaling toegang tot de Norg UGS zullen verlenen tot die datum (art. 3.12 AoH). Ook spraken zij af dat het contract daarna op verzoek van de Minister kon worden verlengd tot uiterlijk 1 april 2035 (art. 3.12 sub a AoH) dan wel dat NAM de betreffende diensten tot uiterlijk 1 april

⁴⁷ Bevoegdheidsverweer, ¶ 19.

⁴⁸ MvAB, ¶¶ 3.27-3.29.

⁴⁹ MvAB, ¶ 3.30.

⁵⁰ MvAB, ¶ 3.24.

2035 zelf zal aanbieden (art. 3.12 sub b AoH). De Staat kan die optie nog steeds invoeren. Shell en ExxonMobil betogen in de hoofdzaak ten onrechte dat de optie op de Grijpskerk UGS is gaan zien.⁵¹

92. De Staat heeft op grond van het AoH dus ook recht op toegang tot en inzet van de Norg UGS teneinde de leveringszekerheid te garanderen. En wanneer die toegang niet meer aan GasTerra wordt geboden of wanneer GasTerra de haar op grond van het Dienstencontract Norg UGS toekomende capaciteit niet meer inzet ten behoeve van het garanderen van de leveringszekerheid – omdat zij in praktische zin ophoudt te bestaan – zal voor een passende oplossing zorg gedragen moeten worden en daar is het Verzoek VoVo-4 op gericht. Bij gebreke van die oplossing zou het optierecht dat de Staat op grond van art. 3.12 AoH kan uitoefenen bovendien ook worden uitgehouden vanwege het “gat” tot 1 april 2027.⁵²
93. Op bovenstaande gronden stelt de Staat dat de opdracht van het scheidsgerecht zich wel degelijk tot het Norg Akkoord uitstrekt en het scheidsgerecht bevoegd is te oordelen over Verzoek VoVo-4.

Ten slotte

94. De Staat herhaalt aan een minnelijke oplossing de voorkeur te geven, maar in de gesprekken met ExxonMobil en Shell wordt echter onvoldoende voortgang geboekt. Het belang van de gasleveringszekerheid dreigt daardoor in het geding te komen. Tegen die achtergrond heeft de Staat het Verzoek ingediend. Tegen diezelfde achtergrond heeft de Staat inmiddels ook een arbitraal kort geding aangevraagd. Dat is niet omdat de Staat geen vertrouwen heeft in de uitkomst van dit bevoegdheidsincident, maar omdat de Staat het zich, gezien het immense (algemeen) belang dat hier op het spel staat, niet kan veroorloven om het oordeel van het scheidsgerecht op dit bevoegdheidsincident af te wachten alvorens eventueel andere stappen te zetten.⁵³

D. De conclusie van de Staat

95. De Staat concludeert tot afwijzing van het bevoegdheidsverweer van ExxonMobil en tot de verdere behandeling van het Verzoek VoVo-4 conform het door het scheidsgerecht vastgestelde tijdschema.

⁵¹ MvAB, ¶ 4.1.

⁵² MvAB, ¶ 4.2.

⁵³ MvAB, ¶ 5.1-5.4.

VI. DE OVERWEGINGEN VAN HET SCHEIDSGERECHT

A. Inleiding

Bevoegdheid

96. Deze arbitrage is volgens de Arbitrageaanvraag gebaseerd op artikel 7.4 AoH en artikel 5.8 van het Interim Akkoord.⁵⁴
97. Artikel 7.4 AoH bepaalt:⁵⁵
- Alle geschillen tussen Partijen welke mochten ontstaan naar aanleiding van dit Akkoord zullen uitsluitend worden verwezen naar, en beslecht worden door, arbitrage volgens het arbitragereglement van het Nederlands Arbitrage Instituut ('NAI-Reglement'). Het arbitragetribunaal zal uit drie arbiters bestaan. De plaats van arbitrage is 's-Gravenhage. Het arbitragetribunaal zal oordelen op basis van de regelen des rechts. Deze arbitrageclausule zal de arbitrageclausule in enige bestaande overeenkomst niet vervangen of terzijde stellen. De arbitrage wordt gevoerd in het Nederlands. Partijen komen overeen dat het vonnis openbaar kan worden gemaakt behoudens de informatie die door een Partij als bedrijfsvertrouwelijk wordt beschouwd.*
98. Artikel 5.8 van het Interim Akkoord bepaalt:⁵⁶
- Alle geschillen tussen Partijen welke mochten ontstaan naar aanleiding van dit Interim Akkoord zullen uitsluitend worden verwezen naar, en beslecht worden door, arbitrage volgens het arbitragereglement van het Nederlands Arbitrage Instituut. Het arbitragetribunaal zal uit drie arbiters bestaan. De plaats van arbitrage is 's-Gravenhage. Het arbitragetribunaal zal oordelen op basis van de regelen des rechts. Deze arbitrageclausule zal de arbitrageclausule in enige bestaande overeenkomst niet vervangen of terzijde stellen. De arbitrage wordt gevoerd in het Nederlands. Partijen komen overeen dat het vonnis openbaar kan worden gemaakt behoudens de informatie die door een Partij als bedrijfsvertrouwelijk wordt beschouwd.*
99. Uit deze bepalingen vloeit voort dat de overeengekomen plaats van arbitrage 's-Gravenhage, Nederland is, de arbitrage wordt gevoerd in het Nederlands en dat het scheidsgerecht zal oordelen op basis van de regelen des rechts. Op het AoH en het Interim Akkoord is Nederlands recht van toepassing.⁵⁷
100. ExxonMobil en Shell hebben deze arbitrage aanhangig gemaakt door het indienen van de Arbitrageaanvraag op 7 december 2023. Het NAI Arbitragereglement geldend vanaf 1 januari 2015 is daarmee van toepassing.

⁵⁴ Arbitrageaanvraag, ¶ 213.

⁵⁵ Productie VV4-01.

⁵⁶ Productie VV4-07.

⁵⁷ Art. 7.2 AoH; art. 5.6 Interim Akkoord.

101. Artikel 35(1) NAI Arbitragereglement bepaalt dat tijdens een aanhangig arbitraal geding ten gronde het scheidsgerecht op verzoek van een der partijen met inachtneming van de bepalingen van dit artikel een met de ingestelde vordering of tegenvordering samenhangende voorlopige voorziening kan treffen.
102. ExxonMobil betwist de bevoegdheid van het scheidsgerecht te oordelen over de door de Staat in het Verzoek VoVo-4 verzochte voorlopige voorzieningen.

Indeling analyse

103. Het scheidsgerecht zal hierna in onderdeel B eerst bespreken in hoeverre zijn bevoegdheid gegeven is indien wordt voldaan aan de vereisten van artikel 35 lid 1 NAI Arbitragereglement. In onderdeel C komt de bevoegdheid van het scheidsgerecht, voorzover gebaseerd op het AoH aan de orde, gevolgd door een analyse in onderdeel D in hoeverre de arbitrageovereenkomst in artikel 7.4 AoH zich uitstrekt tot het Norg Akkoord. In onderdeel E wordt besproken in welke mate de uitspraken van ExxonMobil en Shell in de Arbitrageaanvraag en de Memorie van Eis ertoe leiden dat de opdracht van het scheidsgerecht zich mede uitstrekt tot het Norg Akkoord. Onderdeel F behandelt de positie van NAM onder het Norg Akkoord in relatie tot VoVo-4, gevolgd door een conclusie in onderdeel G.

B. Bevoegdheid gegeven op grond van artikel 35 lid 1 NAI Arbitragereglement?

104. Het meest verstrekkende standpunt van de Staat is dat het argument van ExxonMobil, dat het scheidsgerecht niet bevoegd is omdat Verzoek VoVo-4 zou zijn gebaseerd op het Norg Akkoord en dat de opdracht aan het scheidsgerecht zich niet uitstrekt tot beslechting van geschillen die naar aanleiding van het Norg Akkoord zijn ontstaan, onjuist is omdat Verzoek VoVo-4 voldoet aan de vereisten van artikel 35 lid 1 NAI Arbitragereglement. Daarmee valt het verzoek volgens de Staat per definitie binnen de opdracht van het scheidsgerecht en is bevoegdheid van het scheidsgerecht gegeven.
105. Het scheidsgerecht verwerpt dit betoog van de Staat om de navolgende redenen.
106. Artikel 35 lid 1 NAI Arbitragereglement bepaalt dat tijdens een aanhangig arbitraal geding ten gronde het scheidsgerecht, op verzoek van een der partijen, een met de ingestelde vordering of tegenvordering samenhangende voorlopige voorziening kan treffen. Deze bepaling is gebaseerd op en komt grotendeels overeen met het per 1 januari 2015 ingevoerde artikel 1043b lid 1 Rv.⁵⁸ Het voordien geldende NAI Arbitragereglement 2010 voorzag dat het scheidsgerecht ten gronde hangende een arbitraal bodemgeding bevoegd is “in gevallen waarin uit hoofde van onverwijlde spoed, gelet op de belangen van partijen, een onmiddellijke voorziening bij voorraad wordt vereist, op verzoek van een der partijen, in elke stand van het geding in arbitraal kort geding vonnis te wijzen”⁵⁹ en daarnaast op verzoek van één der partijen in elke stand van het

⁵⁸ Art. 1043b lid 1 Rv luidt: “Tijdens een aanhangig arbitraal geding ten gronde kan het scheidsgerecht, op verzoek van een der partijen, een voorlopige voorziening, met uitzondering van bewarende maatregelen als bedoeld in de vierde titel van het Derde Boek, treffen. De voorlopige voorziening moet samenhangen met de vordering of tegenvordering in het aanhangige arbitraal geding.”

⁵⁹ Artikel 37 lid 1 NAI Arbitragereglement 2010.

bodemgeding bij wege van opdracht voorlopig een beslissing of maatregel treffen die het nodig of nuttig voorkomt.⁶⁰ In beide gevallen gaat het om processuele bevoegdheden van het scheidsgerecht op grond van en binnen de reikwijdte van de arbitrageovereenkomst die aan het arbitraal geding ten grondslag ligt. De Arbitragewet 1986 kende geen wettelijke grondslag voor het treffen van voorlopige voorzieningen in een arbitrale bodemprocedure.⁶¹

107. Die wettelijke grondslag werd bij de Arbitragewet 2015 ingevoerd in de vorm van artikel 1043b lid 1 Rv. De bepaling geeft volgens de wetsgeschiedenis invulling aan artikel 17 van de UNCITRAL Model Law uit 1985.⁶² Aan het treffen van voorlopige voorzieningen is de – dwingendrechtelijke – voorwaarde verbonden dat de verzochte voorzieningen moeten samenhangen met de (tegen)vordering in het aanhangige arbitraal geding.⁶³ Een soortgelijk vereiste komt voor in artikel 223 Rv, dat voorlopige voorzieningen in het kader van een civiele bodemprocedure regelt.⁶⁴
108. Vereisten voor de bevoegdheid van het scheidsgerecht ten aanzien van een in een arbitrage ingestelde vordering zijn – ten minste – de aanwezigheid van een geldige overeenkomst tot arbitrage en dat de ingestelde vordering onder de reikwijdte van de overeenkomst tot arbitrage valt. Tussen Partijen is niet in geschil dat de arbitrageovereenkomsten in het AoH, het Interim Akkoord en het Norg Akkoord geldig zijn. Het standpunt van de Staat komt erop neer dat de reikwijdte van de arbitrageovereenkomsten in het AoH en het Interim Akkoord, op grond waarvan ExxonMobil en Shell deze arbitrage zijn begonnen, wordt uitgebreid tot alle verzoeken die voldoen aan de vereisten van artikel 35 lid 1 NAI Arbitragereglement, ongeacht of die verzoeken gebaseerd zijn op een andere rechtsgrondslag, zoals een andere overeenkomst die al dan niet in een andere methode van geschillenbeslechting voorziet.
109. Uit de wetsgeschiedenis van artikel 1043b lid 1 Rv, noch anderszins, blijkt dat de wetgever beoogd heeft de reikwijdte van een overeenkomst tot arbitrage uit te breiden tot vorderingen op grond van overeenkomsten waarin partijen hebben voorzien in geschilbeslechting door een ander (scheids)gerecht. In tegendeel, de Arbitragewet 2015 stelt in het nieuw ingevoerde artikel 1038c Rv juist de eis dat een tegenvordering alleen toelaatbaar is indien daarop dezelfde arbitrageovereenkomst als waarop de vordering is gebaseerd van toepassing is dan wel diezelfde arbitrageovereenkomst door de partijen uitdrukkelijk of stilzwijgend van toepassing is verklaard. Het valt voor het scheidsgerecht niet in te zien waarom de verzoeken van de Staat in VoVo-4 – in de visie van de Staat – via artikel 1043b Rv tot *uitbreiding* van de reikwijdte van de arbitrageovereenkomst waarop de vorderingen van ExxonMobil en Shell zijn gebaseerd

⁶⁰ Artikel 38 lid 1 NAI Arbitragereglement 2010.

⁶¹ H.J. Snijders, Nederlands Arbitragerecht (2018), ¶ 5.16.2.1.

⁶² Art. 17 UNCITRAL Model Law on International Commercial Arbitration 1985 luidt: “*Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subjectmatter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.*”

⁶³ G.J. Meijer e.a., *Parlementaire Geschiedenis Arbitragewet 2015*/I.39.3.

⁶⁴ In Verzoek VoVo-4, voetnoot 60, over de aan de vereiste samenhang tussen het verzoek en de vordering in de hoofdzaak gestelde eisen in het kader van art. 223 Rv legt de Staat overigens ten onrechte H.J. (‘Henk’) Snijders woorden in de mond van G. (‘Gerbrant’) Snijders in *GS Burgerlijke Rechtsvordering*, artikel 223 Rv, aant. 4.

zouden leiden, als uit een andere overeenkomst volgt dat partijen de beoordeling van die verzoeken aan een andere vorm van geschilbeslechting door een ander (scheidsgerecht) hebben willen onderwerpen.

110. Het NAI Arbitragereglement biedt evenmin aanknopingspunten voor het standpunt van de Staat. Het NAI Arbitragereglement 2010 voorzag met het arbitraal kort geding en voorlopige beslissingen of maatregelen in processuele bevoegdheden van het scheidsgerecht ten gronde op grond van en binnen de reikwijdte van de arbitrageovereenkomst die aan het arbitraal geding ten grondslag ligt. Artikel 35 lid 1 NAI Arbitragereglement is gebaseerd op artikel 1043b Rv. Artikel 24 lid 1 NAI Arbitragereglement herhaalt woordelijk artikel 1038c Rv ten aanzien van de toelaatbaarheid van tegenvorderingen. Uit niets blijkt dat het NAI Arbitragereglement beoogt artikel 35 lid 1 een ruimere strekking te geven dan artikel 1043b Rv.
111. Overigens volgt ook de overheidsrechter ten aanzien van artikel 223 Rv niet de strekking die de Staat aan artikel 35 lid 1 NAI Arbitragereglement geeft. Zo achtte de Rechtbank Midden-Nederland zich niet bevoegd ten aanzien van een incidentele vordering ex art. 223 Rv, omdat de aanspraak van eiseres in het incident aan arbitrage was onderworpen.⁶⁵
112. Het scheidsgerecht oordeelt daarom dat het enkele feit dat het Verzoek VoVo-4 zou voldoen aan de vereisten van artikel 35 lid 1 NAI Arbitragereglement niet inhoudt dat de opdracht aan het scheidsgerecht zich daardoor uitstrekt tot beslechting van geschillen die naar aanleiding van het Norg Akkoord zijn ontstaan. Daarmee faalt het meest verstrekkende argument van de Staat.
113. Het scheidsgerecht zal vervolgens bespreken in hoeverre bevoegdheid ten aanzien van VoVo-4 kan worden ontleend aan het AoH.

C. Scheidsgerecht bevoegd voor zover Verzoek VoVo-4 is gebaseerd op het AoH

114. De Staat stelt dat naast artikel 2.4 Norg Akkoord het Verzoek VoVo-4 mede gedragen wordt door het AoH, meer in het bijzonder artikel 3.12 daarvan. De Staat heeft op grond van het AoH recht op toegang tot en inzet van de Norg UGS teneinde de leveringszekerheid te garanderen.⁶⁶ Wanneer die toegang niet meer aan GasTerra wordt geboden of wanneer GasTerra de haar toekomstige capaciteit niet meer inzet ten behoeve van het garanderen van de leveringszekerheid, omdat zij in praktische zin ophoudt te bestaan, zal – naar het scheidsgerecht begrijpt ook op grond van het AoH – voor een passende oplossing zorg gedragen moeten worden.⁶⁷ Daar is volgens de Staat het Verzoek VoVo-4 op gericht.
115. Uitgangspunt bij de beoordeling van bevoegdheid is dat het scheidsgerecht gerechtigd is over zijn bevoegdheid te oordelen en dat het scheidsgerecht de zaak onderzoekt en beslist op de grondslag van hetgeen partijen aan hun vordering of verzoek ten grondslag hebben gelegd.⁶⁸ De bevoegdheid van het scheidsgerecht zal daarom worden beoordeeld aan de hand van bovenstaande stelling van de Staat. Denkbaar is dat een uitzondering kan worden gemaakt in

⁶⁵ Rb. Midden-Nederland, 10 februari 2021, ECLI:NL:RBMNE:2021:356.

⁶⁶ Zie tevens Verzoek VoVo-4, ¶¶ 2.5.1 en 5.2.3.

⁶⁷ Zie tevens Verzoek VoVo-4, ¶ 4.1.

⁶⁸ Art. 1052 lid 1 jo. (analoog) 24 lid 1 Rv.

evidente gevallen, waarbij op het eerste gezicht reeds duidelijk is dat van een geschil als bedoeld in artikel 7.4 AoH geen sprake is. Dat is hier niet het geval.

116. De grondslag van de verzoeken van de Staat is (mede) schending van het AoH door ExxonMobil en Shell. Het oordeel over die schending is krachtens artikel 7.4 AoH onderworpen aan het oordeel van het scheidsgerecht.
117. Het scheidsgerecht acht zich daarom bevoegd om te oordelen over Verzoek VoVo-4, voorzover gebaseerd op niet-nakoming van verbintenissen van ExxonMobil en Shell uit hoofde van het AoH. Het verzoek van ExxonMobil te verklaren dat het scheidsgerecht niet bevoegd is zal dan ook reeds daarom worden afgewezen.
118. Het scheidsgerecht bespreekt hierna in hoeverre de arbitrageovereenkomst in artikel 7.4 AoH (en die in artikel 5.8 Interim Akkoord) zich mede uitstrekt tot geschillen naar aanleiding van het Norg Akkoord.

D. Arbitrageovereenkomst AoH omvat het Norg Akkoord

119. Artikel 7.4 AoH bepaalt dat “alle geschillen tussen Partijen welke mochten ontstaan naar aanleiding van dit Akkoord zullen uitsluitend worden verwezen naar, en beslecht worden door, arbitrage volgens het arbitragereglement van het Nederlands Arbitrage Instituut.” De reikwijdte van de arbitrageovereenkomst is daarmee “alle geschillen tussen Partijen welke mochten ontstaan *naar aanleiding van*” het AoH.
120. Voor de uitleg van een overeenkomst tot arbitrage geldt in beginsel hetzelfde als voor uitleg van overeenkomsten in het algemeen.⁶⁹ Gezien de tussen Partijen overeengekomen plaats van arbitrage in Nederland en toepasselijkheid van Nederlands recht op het AoH, oordeelt het scheidsgerecht dat Nederlands recht van toepassing is op de arbitrageovereenkomst in het AoH.⁷⁰ Voor de arbitrageovereenkomsten in het Interim Akkoord en het Norg Akkoord geldt *mutatis mutandis* hetzelfde. Bij de uitleg van een beding in de betreffende overeenkomsten tot arbitrage komt het daarmee aan op de zin die partijen over en weer redelijkerwijs aan het beding mochten toekennen en op hetgeen zij te dien aanzien redelijkerwijs van elkaar mochten verwachten in het licht van de omstandigheden van het geval.⁷¹
121. Voor de uitleg acht het scheidsgerecht relevant dat de arbitrageovereenkomsten in het AoH, het Interim Akkoord en het Norg Akkoord gelijkkluidend zijn, in de zin dat alle verwijzen naar het arbitragereglement van het NAI en tevens allen bepalen dat: (i) het scheidsgerecht uit drie arbiters zal bestaan; (ii) de plaats van arbitrage 's-Gravenhage is; (iii) het scheidsgerecht zal oordelen op basis van de regelen des rechts; en (iv) de arbitrage in het Nederlands wordt gevoerd. In het verlengde hiervan geldt dat de begrenzing van uitleg die volgt uit artikel 6 lid 1 EVRM en artikel 17 Grondwet, die het recht op toegang door bij de wet ingestelde gerechten

⁶⁹ Asser Procesrecht/Sanders, Meijer & Ernste 8 2023/77.

⁷⁰ Vgl. art. 10:166 BW.

⁷¹ Vgl. HR 13 maart 1981, NJ 1981/635 (*Haviltex*); HR 20 februari 2004, NJ 2005/493 (*DSM-Chemie/Fox*); HR 5 maart 2004, NJ 2005/494 (*B/S*); HR 19 januari 2007, NJ 2007/575 (*Meyer/Pontmeyer*); HR 29 juni 2007, NJ 2007/576 (*Derksen/Homburg*); HR 5 april 2013, NJ 2013/214 (*Lundiform/Mexx*).

waarborgen, in dit geval niet speelt aangezien alle relevante overeenkomsten onbetwist in NAI-arbitrage voorzien. Tevens acht het scheidsrecht het van belang dat uit artikel 5.1 Interim Akkoord en artikel 4.1 Norg Akkoord uitdrukkelijk blijkt dat die overeenkomsten aanvullingen en wijzigingen van het AoH behelzen.

122. Het scheidsrecht neemt verder in aanmerking dat professionele partijen als ExxonMobil, Shell en de Staat voor ogen moeten hebben gehad dat het “afknippen” van wijzigingen van en aanvullingen op het AoH in het Interim Akkoord en het Norg Akkoord door losstaande geschillenbeslechting Clausules aanleiding zou geven tot afgrenzingsproblemen en mogelijk het risico met zich zou meebrengen van tegenstrijdige beslissingen van bevoegde scheidsrechten. Het uitgangspunt dat partijen geen splitsing hebben beoogd en dat zij alle uit een bepaalde (hoofd)overeenkomst voortvloeiende geschillen in één arbitrage beslecht willen zien, in het buitenland wel aangeduid als de “*presumption in favour of one-stop arbitration*”,⁷² brengt naar het oordeel van het scheidsrecht met zich mee dat tussen professionele partijen aangenomen moet worden dat, als op een gegeven moment geschillen aangaande een bepaalde rechtsbetrekking rijzen, partijen hebben gewild dat deze in (één en dezelfde) arbitrage worden beslecht. Het “alles-in-één-vermoeden” brengt naar het oordeel van het scheidsrecht met zich mee dat partijen ook geschillen betreffende de rechtsbetrekking waarop het arbitraal beding van toepassing is buiten de letterlijke omschrijving in het arbitraal beding aan arbitrage hebben willen onderwerpen.⁷³
123. In aanmerking nemend de hierboven geschetste omstandigheden, oordeelt het scheidsrecht dat de strekking van het beding ‘geschillen tussen Partijen welke mochten ontstaan naar aanleiding van het AoH’ met zich meebrengt dat Partijen voor ogen moeten hebben gehad dat ook geschillen naar aanleiding van nadere overeenkomsten naar aanleiding van het AoH, zoals het Interim Akkoord en het Norg Akkoord, onder artikel 7.4 AoH zouden vallen. Daarbij is van belang dat het AoH op tal van plaatsen voorziet in nadere afspraken en overeenkomsten tussen partijen (zie bijvoorbeeld de artikelen 1.2, 1.4, 2, en 3.2). Het scheidsrecht vindt steun voor dat oordeel in Meijers opvatting dat het op grond van uitleg van de overeenkomst geenszins uitgesloten is dat wordt aangenomen dat een arbitraal beding, ofschoon dit letterlijk slechts op één bepaalde overeenkomst ziet, zich ook uitstrekt tot samenhangende overeenkomsten of vervolgovereenkomsten.⁷⁴ In een internationale context komt ook Born tot de conclusie dat de reikwijdte van een arbitrageclausule in de eerste van opeenvolgende overeenkomsten met voldoende onderlinge samenhang zich uitstrekt tot die latere overeenkomsten.⁷⁵

⁷² Conform het uitgangspunt van het Engelse House of Lords in *Fiona Trust & Holding Corp v. Privalov*, [2007] UKHL 40: “*In my opinion the construction of an arbitration clause should start from the assumption that the parties, as rational business-men, are likely to have intended any dispute arising out of the relationship into which they have entered or purported to enter to be decided by the same tribunal. The clause should be construed in accordance with this presumption unless the language makes it clear that certain questions were intended to be excluded from the arbitrator's jurisdiction. As Longmore LJ remarked, at para 17: “if any businessman did want to exclude disputes about the validity of a contract, it would be comparatively easy to say so.”*”

⁷³ Vgl. G.J. Meijer, *Overeenkomst tot arbitrage* (2011), ¶ 10.2.2.1.

⁷⁴ G.J. Meijer, *Overeenkomst tot arbitrage* (2011), ¶ 10.2.2.3.

⁷⁵ G. Born, *International Commercial Arbitration* (3rd. Ed, 2020), ¶ 9.02[F][6], onder verwijzing naar arbitrale vonnissen en rechtspraak in Frankrijk, de Verenigde Staten, Engeland, Duitsland en Zwitserland.

124. Het feit dat het Interim Akkoord en het Norg Akkoord voorzien in afzonderlijke arbitrageovereenkomsten staat niet in de weg aan de bovenstaande uitleg. Om zeker te maken dat dezelfde arbitrageovereenkomst van toepassing zal zijn op nadere overeenkomsten kunnen partijen immers òf terugverwijzen naar de arbitrageclausule in de hoofdovereenkomst òf de arbitrageclausule herhalen in de nadere overeenkomst. Partijen hebben hier verkozen de arbitrageclausule in het AoH te herhalen. Herhaling van de arbitrageclausule in het Norg Akkoord brengt met zich mee dat NAM voor zover het haar verbintenissen onder het Norg Akkoord betreft tevens onder de reikwijdte van de arbitrageovereenkomst valt.
125. De slotsom is dat het scheidsgerecht zich op basis van bovenstaande uitleg van artikel 7.4 AoH ook bevoegd acht te oordelen over Verzoek VoVo-4 voor zover daar mede bepalingen van het Norg Akkoord aan ten grondslag zijn gelegd.
126. In het volgende onderdeel bespreekt het scheidsgerecht dat, zelfs indien zou worden uitgegaan van een beperktere reikwijdte van artikel 7.4 AoH, in de zin dat die zich niet zou uitstrekken tot het Norg Akkoord, het scheidsgerecht zich bevoegd acht over het Norg Akkoord te oordelen op grond van de stellingen van ExxonMobil en Shell in de Arbitrageaanvraag en de Memorie van Eis. Die stellingen hebben tot gevolg dat de bevoegdheid van het scheidsgerecht zich mede uitstrekt, althans is gaan uitstrekken tot geschillen naar aanleiding van het Norg Akkoord.

E. De opdracht van het scheidsgerecht omvat het Norg Akkoord

Arbitrageaanvraag

127. De Arbitrageaanvraag is volgens ExxonMobil en Shell ingediend op grond van artikel 7.4 AoH, artikel 5.8 Interim Akkoord en artikel 7 NAI Arbitragereglement.⁷⁶ De aanleiding voor deze arbitrage is volgens de aanvraag de niet-nakoming door de Staat van de door Partijen zorgvuldig afgewogen overeenkomsten met betrekking tot de geleidelijke afbouw van de gaswinning uit het Groningenveld. ExxonMobil en Shell beogen naar eigen zeggen met deze arbitrage te bewerkstelligen dat de Staat zijn afspraken nakomt en de schade vergoedt die hij veroorzaakt door de schending van die afspraken.⁷⁷
128. De in dit verband relevante afspraken worden door ExxonMobil en Shell besproken in hoofdstuk 4 van de Arbitrageaanvraag, in welk kader afspraken worden beschreven die door Partijen zijn gemaakt in het AoH, het Interim Akkoord en het Norg Akkoord. Ten aanzien van het Norg Akkoord wordt specifiek gerefereerd aan: (i) de afspraak over verlenging van het gewijzigde gebruik van de Norg UGS tot en met 30 september 2027; (ii) de afspraak dat Partijen in overleg zouden treden over het gebruik van de Grijpskerk UGS voor de leveringszekerheid in plaats van de Norg UGS; en (iii) de afspraak dat de Staat een marktconforme vergoeding zal betalen voor de gewijzigde inzet van de Norg UGS.⁷⁸ Vervolgens kondigen ExxonMobil en Shell aan een vordering in te stellen met betrekking tot het voornemen van de Staat te verlangen dat de Norg UGS open blijft voor andere doeleinden dan de leveringszekerheid op de L-gasmarkt.⁷⁹

⁷⁶ Arbitrageaanvraag, ¶ 1.

⁷⁷ Arbitrageaanvraag, ¶ 2.

⁷⁸ Arbitrageaanvraag, ¶¶ 119-122.

⁷⁹ Arbitrageaanvraag, ¶ 123.

129. Uit de nadere omschrijving van die vordering blijkt dat de Minister het in 2023 door NAM ingediende winningsplan, gericht op het leegblazen van de Norg UGS, zal toetsen aan de (veiligheids)criteria uit de Mijnbouwwet en aan EU-wetgeving met betrekking tot de leveringszekerheid van gas, mede op de H-gasmarkt. Dit is volgens ExxonMobil en Shell in strijd met het AoH en latere overeenkomsten, die enkel voorzien in het gebruik van de Norg UGS voor een beperkte periode en om de leveringszekerheid van L-gas te ondersteunen, en dus niet die van H-gas. ExxonMobil en Shell willen de Minister niet beperken in de uitoefening van diens bevoegdheden, maar menen dat dat niet afdoet aan het feit dat die uitoefening een schending van de gemaakte afspraken oplevert.⁸⁰ Die afspraken in het AoH, het Interim Akkoord en het Norg Akkoord worden vervolgens in detail beschreven.⁸¹ Ten aanzien van het Norg Akkoord stellen ExxonMobil en Shell onder verwijzing naar artikel 2.1 Norg Akkoord:⁸²

De afspraak over de gewijzigde inzet van de Norg UGS om de sluiting van het Groningenveld te faciliteren en de leveringszekerheid van L-gas te waarborgen, werd bevestigd in het Norg Akkoord. Hierin is afgesproken dat de maatregelen uit het Interim Akkoord worden verlengd, zodat “de gaswinning uit het Groningenveld eerder definitief kan worden beëindigd met inachtneming van de leveringszekerheid”.

ExxonMobil en Shell concluderen dat uit het AoH en het Interim Akkoord volgt dat de gewijzigde inzet van de Norg UGS waarmee zij hebben ingestemd uitsluitend betrekking heeft op de leveringszekerheid op de L-gasmarkt. Zij baseren hun vorderingen vervolgens op schending van het AoH en het Interim Akkoord.⁸³

130. Uit de Arbitrageaanvraag blijkt echter dat de rechtsbetrekking in geschil zich mede uitstrekt tot het Norg Akkoord. De verklaring van de Minister over de toetsing van het winningsplan is volgens ExxonMobil en Shell in strijd met het AoH en latere overeenkomsten, die enkel voorzien in het gebruik van de Norg UGS om de leveringszekerheid van L-gas te ondersteunen, en dus niet die van H-gas.⁸⁴ Ook zouden een weigering om met het winningsplan in te stemmen en/of uitstel van het leegblazen van de Norg UGS wegens vermeende leveringszekerheidsrisico's op de H-gas markt leiden tot een schending van het AoH en latere overeenkomsten.⁸⁵ Ook behouden ExxonMobil en Shell zich al hun rechten onder het AoH en latere overeenkomsten voor ten aanzien van mogelijke verliezen door uitstel van het leegblazen van de Norg UGS.⁸⁶ Het Norg Akkoord is naast het Interim Akkoord de enige andere latere overeenkomst waaraan door ExxonMobil en Shell wordt gerefereerd. Ten slotte behouden ExxonMobil en Shell zich in de Arbitrageaanvraag uitdrukkelijk het recht voor om de nakoming van hun verplichtingen uit hoofde van het AoH, het Interim Akkoord en het Norg Akkoord op te schorten.⁸⁷

⁸⁰ Arbitrageaanvraag, ¶¶ 197-199.

⁸¹ Arbitrageaanvraag, ¶¶ 200-205.

⁸² Arbitrageaanvraag, ¶ 205.

⁸³ Arbitrageaanvraag, ¶ 206.

⁸⁴ Arbitrageaanvraag, ¶ 199.

⁸⁵ Arbitrageaanvraag, ¶ 206.

⁸⁶ Arbitrageaanvraag, ¶ 206.

⁸⁷ Arbitrageaanvraag, ¶ 233.

131. Het scheidsgerecht concludeert dat uit de Arbitrageaanvraag volgt dat de rechtsbetrekking in geschil tussen enerzijds ExxonMobil en Shell en anderzijds de Staat die aan arbitrage wordt onderworpen zich mede uitstrekt tot het Norg Akkoord. Dat betekent naar het oordeel van het scheidsgerecht dat de Staat er al op basis van de Arbitrageaanvraag gerechtvaardigd op mocht vertrouwen dat òf: (i) ook ExxonMobil en Shell ervan uitgingen dat geschillen naar aanleiding van het Norg Akkoord mede onder de reikwijdte van artikel 7.4 AoH en/of artikel 5.8 Interim Akkoord vallen; òf (ii) de Arbitrageaanvraag stilzwijgend mede was gebaseerd op artikel 6.2 Norg Akkoord.

Memorie van Eis

132. Het scheidsgerecht vindt bevestiging van zijn voorgaande analyse in de Memorie van Eis. Ook daarin wordt bij herhaling gesproken over “het AoH en latere overeenkomsten.”⁸⁸ In de Memorie van Eis worden de drie Akkoorden ook regelmatig in één adem genoemd:
- (a) “De Staat bleef echter in afwijking van het AoH, Interim Akkoord en Norg Akkoord beroep doen op de capaciteitsmiddelen van ExxonMobil, Shell en NAM.”⁸⁹
 - (b) “In lijn met de afspraken uit het AoH, Interim Akkoord en Norg Akkoord diende NAM op 1 september 2023 een winningsplan in voor Norg UGS.”⁹⁰
 - (c) “Naar aanleiding van de afspraken uit het AoH, Interim Akkoord en Norg Akkoord heeft NAM op 27 september 2021 een opslagplan ingediend [...]”⁹¹
 - (d) “(...) op grond van andere overwegingen dan die in het AoH, Interim Akkoord en Norg Akkoord bedoelde leveringszekerheid op de L-gasmarkt.”⁹²
 - (e) “De staatssecretaris noemt hierbij niet dat het AoH, Interim Akkoord én Norg Akkoord bepalen dat – door de conversie van Grijpskerk UGS naar L-gas – het gebruik van Norg UGS eerder zou kunnen worden beëindigd (...)”⁹³
 - (f) “In de brief stelden ExxonMobil en Shell vast dat het WBE indruist tegen de afspraken in het AoH, Interim Akkoord en Norg Akkoord.”⁹⁴
 - (g) “Zoals hiervoor uitgelegd, lijkt het er daarnaast op alsof de Staat als wetgever maatregelen neemt die de gemaakte afspraken in het AoH, Interim Akkoord en Norg Akkoord niet eerbiedigen en het leeg produceren van de gasopslagen dienen te voorkomen.”⁹⁵
133. In het Norg Akkoord is vastgelegd dat tegenover de gewijzigde inzet van de Norg UGS een zgn. Norgvergoeding stond. ExxonMobil en Shell stellen zich in de hoofdzaak op het standpunt dat

⁸⁸ MvE, deel B (koptekst), par. 44 (koptekst), par. 44.4 (koptekst), en par. 45.6 (koptekst).

⁸⁹ MvE, ¶ 175.

⁹⁰ MvE, ¶ 187.

⁹¹ MvE, ¶ 1004.

⁹² MvE, ¶ 1005, zie voor vergelijkbare stellingen ook ¶¶ 1038, 1041, 1054, 1077, 1079, 1081 en 1096.

⁹³ MvE, ¶ 1062.

⁹⁴ MvE, ¶ 1073.

⁹⁵ MvE, ¶ 1082.

de Staat ten onrechte een deel van die Norgvergoeding zou terugvorderen,⁹⁶ welke vergoeding “het directe gevolg [is] van het onderhandelingsresultaat tussen partijen bij het Norg Akkoord en de in arbitrage bevestigde berekeningswijze van de marktconforme vergoeding voor de gewijzigde inzet van Norg.”⁹⁷ Teneinde die stelling te beoordelen zal het scheidsgerecht zich bij betwisting van de Staat moeten buigen over de uitleg van het Norg Akkoord.

134. ExxonMobil en Shell beroepen zich er voorts op dat “het AoH, Interim Akkoord én Norg Akkoord bepalen dat – door de conversie van Grijpskerk UGS naar L-gas – het gebruik van Norg UGS eerder zou kunnen worden beëindigd.”⁹⁸ ExxonMobil en Shell leggen zelf de nadruk op het woord “én” vóór “Norg Akkoord”. In onderdeel 6a van het petitum in de Memorie van Eis wordt het Norg Akkoord weliswaar niet genoemd, maar uit de Memorie van Eis blijkt dat het Norg Akkoord wel mede aan de daarin geformuleerde vordering ten grondslag is gelegd. Onderdeel 6b van het petitum kan evenmin los gezien worden van de stelling van ExxonMobil en Shell – onder verwijzing naar het Norg Akkoord – dat er een “direct verband [is] tussen de gewijzigde inzet van Norg UGS en het effect daarvan op Grijpskerk.”⁹⁹ ExxonMobil stelt zelfs met zoveel woorden dat Partijen in het Norg Akkoord overeen zouden zijn gekomen dat de rol van de Norg UGS zou worden overgenomen door de Grijpskerk UGS.¹⁰⁰
135. Het scheidsgerecht oordeelt dat zijn bevoegdheid ten aanzien van de verzoeken van de Staat evenzeer volgt uit de hiervoor besproken uitingen van ExxonMobil en Shell.

Slotsom

136. In alle gevallen geldt – linksom of rechtsom – dat de opdracht van het scheidsgerecht zich uitstrekt tot Verzoek VoVo-4, ook voor zover dat verzoek gebaseerd is op het Norg Akkoord.

F. Positie NAM onder het Norg Akkoord

137. ExxonMobil betoogt dat de verzoeken van de Staat niet tot de bevoegdheid van het scheidsgerecht behoren omdat de partijen bij het AoH en het Interim Akkoord enerzijds en het Norg Akkoord anderzijds verschillend zijn. De partijen bij het Norg Akkoord zijn de Staat, Shell, ExxonMobil, en NAM, terwijl het AoH en het Interim Akkoord zijn ondertekend door de Staat, Shell en ExxonMobil. ExxonMobil verbindt daar de conclusie aan dat geschillen die voortvloeien uit het Norg Akkoord niet kunnen worden behandeld in een arbitrage die is begonnen onder het AoH of het Interim Akkoord, zonder toestemming van partijen en het scheidsgerecht.¹⁰¹
138. Het scheidsgerecht verwerpt dit verweer. Het feit dat NAM partij is bij het Norg Akkoord brengt niet mee dat de samenhang tussen het AoH, het Interim Akkoord en het Norg Akkoord is verbroken. De vorderingen van de Staat richten zich tot ExxonMobil en Shell en toestemming

⁹⁶ MvE, par. 51.4.

⁹⁷ MvE, ¶ 1170.

⁹⁸ MvE, ¶ 1062.

⁹⁹ MvE, voetnoot 385.

¹⁰⁰ Bevoegdheidsverweer, ¶ 19.

¹⁰¹ Bevoegdheidsverweer, ¶¶ 24-25.

van NAM (of het betrekken van NAM in deze arbitrage) is niet vereist voor het instellen van deze vorderingen. Bovendien volgt uit artikel 1.6 AoH, artikel 2.2 Interim Akkoord en artikel 2.2 Norg Akkoord dat NAM, als gezamenlijke dochtervennootschap van ExxonMobil en Shell, voorzover relevant ook gebonden is aan de instemming van ExxonMobil en Shell met het uitbreiden van de reikwijdte van deze arbitrage tot het Norg Akkoord. Indien NAM meent dat zij belang heeft bij het arbitraal geding, staat het haar vrij op de voet van artikel 37 NAI Arbitragereglement voeging of tussenkomst te verzoeken. Ten slotte ligt de toestemming van het scheidsgerecht, voorzover al vereist, besloten in dit vonnis.

139. Bovenstaande overwegingen leiden het scheidsgerecht tot de volgende conclusie.

G. Conclusie

140. Het scheidsgerecht concludeert dat het zich bevoegd acht te oordelen over Verzoek VoVo-4, voorzover daar bepalingen van het AoH, het Interim Akkoord en/of het Norg Akkoord aan ten grondslag zijn gelegd.
141. Het verzoek van ExxonMobil te verklaren dat het scheidsgerecht niet bevoegd is zal daarom worden afgewezen.
142. Het scheidsgerecht zal het verzoek van ExxonMobil Verzoek VoVo-4 af te wijzen aanhouden tot na de inhoudelijke behandeling van Verzoek VoVo-4.
143. Als laatste zal het scheidsgerecht zich buigen over de kosten van de procedure.

VII. KOSTEN

144. ExxonMobil en de Staat hebben met betrekking tot dit verzoek tot het treffen van voorlopige voorzieningen het scheidsgerecht verzocht de wederpartij te veroordelen in de kosten als bedoeld in artikel 52 NAI Arbitragereglement, met inbegrip van de kosten van juridische bijstand.¹⁰² Shell heeft zich gerefereerd aan het oordeel van het scheidsgerecht en geen kostenopgave gedaan.
145. Volgens artikel 57 lid 1 NAI Arbitragereglement stelt het scheidsgerecht met inachtneming van het bepaalde in artikel 54 de kosten van de arbitrage vast. Artikel 57 lid 2 NAI Arbitragereglement bepaalt dat de partij die in het ongelijk is gesteld wordt veroordeeld tot betaling van de kosten van de arbitrage, behoudens bijzondere gevallen ter beoordeling van het scheidsgerecht. Indien de partijen ieder voor een deel in het ongelijk zijn gesteld, kan het scheidsgerecht de kosten van de arbitrage geheel of gedeeltelijk verdelen.
146. Het scheidsgerecht acht een beslissing over de kosten van dit bevoegdheidsincident thans geroepen, omdat het een eenzijdig door ExxonMobil gevoerd bevoegdheidsverweer betreft, waarbij Shell zich aan het oordeel van het scheidsgerecht heeft gerefereerd.

¹⁰² Artikel 57 lid 4 NAI Arbitragereglement staat veroordeling tot betaling van de kosten van de arbitrage toe ook zonder dat dit door een partij uitdrukkelijk is gevorderd.

147. De arbitragekosten van het bevoegdheidsincident, bestaande uit honoraria en verschotten van arbiters (als vastgesteld door de administrateur) worden door het scheidsgerecht als volgt vastgesteld:

Honorarium arbiters	EUR 72.373,36 (incl. EUR 10.572,06 btw)
Verschotten arbiters	EUR 3.804,07 (incl. EUR 660,21 btw)
Totaal	EUR 76.177,43

148. Aangezien het scheidsgerecht tot het oordeel komt dat het bevoegd is over Verzoek VoVo-4 te oordelen, geldt ExxonMobil als de in het ongelijk gestelde partij als bedoeld in artikel 57 lid 2 NAI Arbitragereglement. Voornoemde arbitragekosten ten belope van EUR 76.177,43 zullen betaald worden uit het door ExxonMobil gestorte depot.
149. Beide partijen hebben opgave gedaan van de door hen gemaakte juridische kosten ter zake van het bevoegdheidsincident.¹⁰³ Artikel 56 NAI Arbitragereglement bepaalt dat het scheidsgerecht de partij die in het ongelijk is gesteld, kan veroordelen tot betaling van een redelijke vergoeding voor juridische bijstand van de partij die in het gelijk is gesteld, indien en voor zover deze kosten naar het oordeel van het scheidsgerecht noodzakelijk waren. Artikel 52 NAI Arbitragereglement bepaalt dat onder de kosten van de arbitrage worden verstaan de kosten genoemd in de artikelen 53, 54 en 56 en de overige kosten welke de arbitrage naar het oordeel van het scheidsgerecht noodzakelijkerwijs meebracht.
150. ExxonMobil verzoekt de Staat te veroordelen tot volledige vergoeding van haar kosten van het bevoegdheidsincident, zijnde de kosten van juridische bijstand en overige kosten, in totaal gekwantificeerd op EUR 105.033,00 (exclusief btw).¹⁰⁴
151. De Staat verzoekt het scheidsgerecht ExxonMobil te veroordelen in de door de Staat ingediende kosten, zijnde EUR 57.922,40 (inclusief btw) aan kosten van juridische bijstand.
152. ExxonMobil voert aan dat de legitimiteit van de bevoegdheidsbetwisting van ExxonMobil wordt bevestigd door het instellen van een parallel kort geding op basis van identieke feiten, met identieke verzoeken. Voorts moet de kostenbeslissing moet worden aangehouden totdat het scheidsgerecht een inhoudelijke beslissing heeft genomen over de door de Staat verzochte maatregelen in het kader van VoVo-4. Indien Verzoek VoVo-4 om inhoudelijke redenen wordt afgewezen, hebben ExxonMobil (en Shell) recht op volledige vergoeding van de door hen gemaakte kosten voor VoVo-4. Ten slotte betwist ExxonMobil dat het mogelijk is voor de Staat om vergoeding van btw over de door hem gemaakte kosten te vorderen. ExxonMobil meent dat het inhoudelijke debat over de btw dient te worden aangehouden tot een later stadium van de procedure, ook ten aanzien van de in de voorlopige voorzieningen gevorderde btw-kosten.¹⁰⁵

¹⁰³ Zie hierboven, ¶ 42.

¹⁰⁴ Bestaande uit kosten van juridische bijstand (EUR 103.683,00) en overige kosten van vertaaldiensten (EUR 1.350,00); alle kosten exclusief btw. Dit betreft het totaalbedrag exclusief het honorarium en de verschotten van het scheidsgerecht.

¹⁰⁵ ExxonMobil verwijst in dit verband naar de reactie van ExxonMobil en Shell op de kostenopgave van de Staat in VoVo-3 van 7 november 2025, ¶ 4, waarin Eiseressen verkozen “in dit stadium” geen uitgebreid debat te voeren over de btw, maar zich “uitdrukkelijk het recht voor[behouden] om de (juridische)

153. Het scheidsgerecht beschouwt de legitimiteit van de bevoegdheidsbetwisting door ExxonMobil niet als een bijzonder geval als bedoeld in artikel 57 lid 2 NAI Reglement, dat afdoet aan de hoofdregel dat de partij die in het ongelijk is gesteld in de kosten wordt veroordeeld. Het instellen van een parallel kort geding door de Staat was in het licht van de door de Staat aangevoerde spoedeisendheid van een beslissing niet onbegrijpelijk.¹⁰⁶ Indien Verzoek VoVo-4 alsnog om inhoudelijke redenen zou worden afgewezen, doet dat naar het oordeel van het scheidsgerecht niet af aan het feit dat ExxonMobil in dit bevoegdheidsincident in het ongelijk is gesteld en de Staat uit dien hoofde aanspraak kan maken op vergoeding van zijn kosten.
154. Ten aanzien van de vergoeding van btw over de door de Staat opgegeven kosten van juridische bijstand, is naar het voorlopig oordeel van het scheidsgerecht de Staat gerechtigd op vergoeding van de opgevoerde kosten inclusief btw. Aan de Staat worden kosten van juridische bijstand in rekening gebracht inclusief btw. De Staat treedt in deze niet op als belaste ondernemer en kan de door hem aan de juridische dienstverlener betaalde btw niet aftrekken. De kostprijs van die dienstverlening wordt niet gedrukt door de toevallige omstandigheid dat het bedrag van de omzetbelasting in het vermogen van de Staat terugkeert langs de omweg van de belastingdienst.¹⁰⁷ Het scheidsgerecht passeert vooralsnog het verweer van ExxonMobil, maar laat de mogelijkheid open voor ExxonMobil (en Shell) de (juridische) juistheid van de stellingen van de Staat ten aanzien van de btw in een later stadium van de procedure (nader) te betwisten, voor zover van toepassing ook ten aanzien van de nu toegewezen btw-kosten.
155. Het scheidsgerecht acht, gezien het feit dat VoVo-4 een onderdeel vormt van een veelomvattend geschil waarbij de betrokken partijen zich allen van juridische bijstand hebben voorzien, de door de Staat gemaakte kosten voor juridische bijstand noodzakelijk. Het acht de door de Staat opgevoerde kosten tevens redelijk, mede in het licht van de door ExxonMobil opgevoerde kosten en de noodzaak voor de Staat uitgebreid in te gaan op het Bevoegdheidsverweer.
156. Het scheidsgerecht zal ExxonMobil, als de in dit bevoegdheidsincident in het ongelijk gestelde partij, dan ook, met de hierboven geformuleerde kanttekening ten aanzien van btw-kosten, ter zake van vergoeding van kosten van juridische bijstand veroordelen tot betaling van EUR 57.922,40 aan de Staat.

VIII. BESLISSING

157. Het scheidsgerecht, beslissend volgens de regelen des rechts:
- (1) wijst het verzoek van ExxonMobil te verklaren dat het scheidsgerecht niet bevoegd is te oordelen over Verzoek VoVo-4 af;
 - (2) houdt een beslissing over het verzoek Verzoek VoVo-04 volledig af te wijzen aan tot een volgend arbitraal vonnis inzake VoVo-4;

juistheid van de stellingen van de Staat ten aanzien van de btw in een later stadium van de procedure (nader) te betwisten, voor zover van toepassing ook ten aanzien van de nu gevorderde btw-kosten”.

¹⁰⁶ Zie hierboven, ¶ 39.

¹⁰⁷ HR 9 november 1973, ECLI:NL:HR:1973:AB429, NJ 1974, 352 m.nt. A.R. Bloembergen.

- (3) veroordeelt ExxonMobil in de kosten van dit bevoegdheidsincident, vastgesteld op EUR 76.177,43 voor het honorarium en de verschotten van arbiters;
- (4) verstaat dat deze kosten zullen worden verrekend met het door ExxonMobil bij het Nederlands Arbitrage Instituut gestorte depot;
- (5) veroordeelt ExxonMobil om aan de Staat ter zake van haar kosten van juridische bijstand een bedrag van EUR 57.922,40 te voldoen; en
- (6) wijst het meer of anders verzochte af.

Dit arbitraal vonnis is gewezen te 's-Gravenhage op 12 januari 2026.





TER BESLUITVORMING

Nota actief openbaar
Ja

Onze referentie
2026-0000022317

Datum
7 januari 2026

Opgesteld door



Samengewerkt met



Bijlage(n)
2

Aan

De Staatssecretaris van Binnenlandse Zaken en
Koninkrijksrelaties en
de Minister van Klimaat en Groene Groei

nota

Beslisnota Kamerbrief tussentijdse vonnissen juridische
procedures NAM, Shell en ExxonMobil

Aanleiding

Er is een aantal nieuwe ontwikkelingen in de juridische procedures tussen de Staat en NAM, Shell en ExxonMobil over de afwikkeling van de gaswinning uit het Groningenveld waarover u de Kamers kunt informeren.

Geadviseerd besluit

U wordt geadviseerd de brieven aan de Tweede Kamer en Eerste Kamer te ondertekenen en zo snel mogelijk te verzenden, parallel aan publicatie van de door Shell gestarte ECT-arbitrage op de website van het ICSID.

Kern

- U informeert beide Kamers over de volgende zaken:
 - De volledige betaling van de opgelegde heffingen over 2024 door NAM.
 - Het aangetekende bezwaar tegen deze heffingen door NAM, Shell en ExxonMobil en de door hen aangevraagde voorlopige voorziening tot opschorten van de betaling van deze heffingen bij de rechtbank Noord-Nederland.
 - Het ongegrond verklaren van dit verzoek door de rechtbank Noord-Nederland.
 - De afwijzing van het scheidsgerecht van het verzoek tot opschorten van de heffingen door ExxonMobil België (EMPC) in de ECT-arbitrage.
 - De aanvraag van een ECT-arbitrage door Shell VK (Shell plc).
 - Het uitstel door het scheidsgerecht van het vonnis in fase 1 van de schade-arbitrage tot naar verwachting uiterlijk 1 juli 2026.
 - Een algemene update over de AoH-arbitrage en als bijlage het vonnis van de voorlopige voorziening gasopslagen.
- U doet met de Tweede Kamer brief de motie van de leden Köse, Bikker en Bushoff van 11 december 2025 af die oproept om te borgen dat schadeherstel en versterking op geen enkele wijze vertragen door de lopende juridische geschillen.

Toelichting

- U informeert de Kamers periodiek over de voortgang van de diverse procedures tussen de Staat enerzijds en NAM, Shell en/of ExxonMobil anderzijds.
- Met het oog op de nieuwe Tweede Kamer bevat deze brief waar nodig achtergrondinformatie om de tekst toegankelijker te maken.

- Het vonnis in de ECT-arbitrage met EMPC en informatie over de nieuwe arbitrageaanvraag door Shell plc zullen halverwege januari openbaar gemaakt worden. Het uitsturen van deze Kamerbrieven gebeurt (waar mogelijk) gelijktijdig. De uitspraak van de rechtbank Noord-Nederland is reeds openbaar gemaakt.
- De Kamerbrieven bevatten slechts deze openbare procedurele informatie, vanwege de vertrouwelijke aard van de procedures en om de procespositie van de Staat niet te ondermijnen.
- U biedt beide Kamers wel aan om hen desgewenst vertrouwelijk (nader) te informeren.
- U doet met de Tweede Kamer brief de motie van Köse, Bikker en Bushoff van 11 december 2025 af. U heeft deze motie oordeel Kamer gegeven omdat voor schade en versterken koste-wat-kost geldt en de uitvoering van de schadeafhandeling en versterking dus onverminderd en onafhankelijk van deze procedures doorgang vinden. Daarnaast zal de Staat op grond van de Tijdelijke wet Groningen heffingen blijven opleggen aan NAM voor de kosten van schade en versterken, waar NAM aansprakelijk voor is. Dit wordt in de brief nogmaals bevestigd.
- De brief en beslisnota zijn door BZK en KGG gezamenlijk voorbereid. De Landsadvocaat en de andere betrokken ministeries (BZ en FIN) hebben meegelezen met de Kamerbrief.

Onze referentie

2026-0000022317

Datum

7 januari 2026

Motivering

In de openbaar gemaakte versie van deze nota zijn alle persoonsgegevens van ambtenaren geanonimiseerd.

Bijlagen

Volgnummer	Naam	Informatie
1	Kamerbrief tussentijdse vonnissen juridische procedures NAM, Shell en ExxonMobil - Tweede Kamer	
2	Kamerbrief tussentijdse vonnissen juridische procedures NAM, Shell en ExxonMobil - Eerste Kamer	