

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. 4

**DECISION ON THE CLAIMANT'S REQUEST FOR INTERIM PROVISIONAL
RELIEF**

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

31 October 2025

TABLE OF CONTENTS

I.	PROCEDURAL HISTORY.....	1
II.	THE PARTIES' REQUEST FOR RELIEF	3
III.	THE PARTIES' POSITIONS.....	4
	A. The Claimant's Position	4
	(1) Applicable Legal Standard.....	5
	(2) Grounds for the Immediate Interim Relief.....	5
	B. The Respondent's position	8
	(1) Applicable Legal Standard.....	8
	(2) Grounds for Rejecting the Requested Provisional Measure	10
IV.	TRIBUNAL'S ANALYSIS	13
	A. Legal Framework	13
	B. Tribunal's Power to Grant Immediate Interim Relief	14
	C. Requirements for Granting Immediate Interim Relief	16
V.	ORDER.....	21

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**”)¹ arguing that the Respondent has breached its obligations under international law and Article 10(1) of the Energy Charter Treaty (**ECT**). 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**”).
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 July 1, 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 “**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 (“**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 actions that would deprive the request for immediate and provisional interim relief of its apparent object before Monday 1 September 2025.”

¹ Request for Arbitration dated 30 September 2024 (the “**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**”), ¶ 7.

7. On the same date, the Claimant proposed that “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 first session of the Tribunal and hearing on the Claimant’s first application for provisional measures, scheduled for 26 August 2025.
8. Also on the same date, the Tribunal informed the Parties that it “considers the Respondent’s request to revert with its position on briefing the second application by August 27, 2025 to be reasonable, and will not compel oral briefings on this matter unless the Respondent is in agreement to so proceed.”
9. By letter of 27 August 2025, further to the Tribunal’s invitation of 20 August 2025, the Respondent submitted its response to the Claimant’s Cover Letter to the Second Application for Provisional Measures of 19 August 2025.
10. On 28 August 2025, the Claimant requested leave to respond to the Respondent’s letter of 27 August 2025. On 29 August 2025, the Tribunal granted leave for the Claimant to respond by 5 September 2025 and for the Respondent to submit its reply by 12 September 2025 if it so wished.
11. On 5 September 2025, the Claimant submitted its response to the Respondent’s letter of 27 August 2025.
12. On 12 September 2025, the Respondent submitted its Response to Claimant’s Request for Interim Provisional Relief together with a Letter on the Second Application’s Briefing Schedule (the “**Respondent’s Response**”).⁵
13. On the same date the Claimant requested leave to submit a response addressing paragraphs 17 to 29 of the Respondent’s Response.
14. On 15 September 2025, the Tribunal granted leave for the Claimant to submit a response and invited the Claimant to specifically address the following:

“(a) the threshold for granting ‘interim provisional relief’, which Respondent argues to be higher in the context of interim provisional relief;

(b) the ‘status quo’ arguments raised by Respondent;

⁵ Respondent’s Response to Claimant’s Request for Interim Provisional Relief dated 12 September 2025 (hereinafter, the “**Respondent’s Response**”).

(c) the absence of ‘irreparable harm’ that cannot be adequately repaired by an award of damages as raised by Respondent; and

(d) Respondent's argument that it would be grossly disproportionate to grant Claimant's request for ‘interim provisional relief’.”

15. On the same date, the Respondent requested leave to respond to the Claimant's forthcoming submission. Also on the same date, the Tribunal granted the leave for the Respondent to submit a response.
16. On 17 September 2025, the Claimant submitted its Reply to the Respondent's Response together with Exhibit C-128 (the “**Claimant's Reply**”).⁶
17. On 22 September 2025, the Respondent submitted its Response to the Claimant's Reply together with Exhibits R-10 through R-12 and their translations (the “**Respondent's Reply**”).⁷
18. This Decision addresses only the Tribunal's analysis and order regarding EMPC's request for Interim Provisional Relief as included in its Second Application. No other aspects of the Second Application are discussed or decided here, and no inference should be made in respect of the merits of the Second Application. 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 relevant for its decision. The Tribunal's analysis and decision are set out in Sections IV and V.

II. THE PARTIES' REQUEST FOR RELIEF

19. In its Second Application, EMPC's Request for Relief includes:⁸

“90. EMPC further requests that the Tribunal IMMEDIATELY AND PROVISIONALLY ORDER the relief set out in paragraphs 89(a) above until such time as it has ruled on the present application.”

20. Paragraph 89 provides that:

⁶ Claimant's Reply to Respondent's Response dated 17 September 2025 (hereinafter, the “**Claimant's Reply**”).

⁷ Respondent's Response to the Claimant's Reply dated 22 September 2025 (hereinafter, the “**Respondent's Reply**”).

⁸ Claimant's Second Application, ¶¶ 89-90.

“89. EMPC respectfully requests that the Tribunal preserve its rights by granting provisional measures. Specifically, the Claimant requests that the Tribunal:

(a) ORDER the Netherlands to (i) 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, until the issuance of a final award in this arbitration, and (ii) 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;[...].”

21. In the Respondent’s Response, the Netherlands’ Request for Relief is as follows:⁹

“a. REJECT the request for ‘interim provisional relief’ made by EMPC in its Second PM Application, and in particular at paragraphs 82-84 and 90 thereof;

b. REJECT the request for an undertaking to the Tribunal, EMPC, and NAM; and

c. ORDER EMPC to bear the costs associated with determining its request for ‘interim provisional relief’.”

III. THE PARTIES’ POSITIONS

A. THE CLAIMANT’S POSITION

22. In its Second Application, EMPC argues that the Netherlands may issue new levies at any time. While this application is pending, EMPC is concerned that the Netherlands may seek to preempt the Tribunal’s decision by issuing new levies, thereby altering the *status quo* and *aggravating* the dispute. To ensure the effectiveness of both the award and any decision granting EMPC’s request for provisional measures, EMPC respectfully requests that the Tribunal make an interim decision suspending the issuance of any new levies under the Temporary Groningen Act that would be effective immediately, pending the Tribunal’s reasoned decision on this Application.¹⁰

23. In its submissions, the Claimant discussed the applicable legal standard and the grounds for granting the requested relief as follows.

⁹ Respondent’s Response, ¶ 33.

¹⁰ Claimant’s Second Application, ¶ 82.

(1) Applicable Legal Standard

24. EMPC argues that ICSID tribunals have frequently ordered such interim provisional relief to preserve the *status quo* while a party's application for provisional measures is pending. For example, in *City Oriente v. Ecuador*,¹¹ the tribunal issued an interim order pending its final decision that enjoined the State from, *inter alia*, demanding the payment or enforcing it through judicial proceedings.¹²
25. EMPC contends that, absent the interim order requested here, the Netherlands would likewise be free to preempt this Tribunal's final decision by quickly issuing new levies and attempting to compel EMPC to pay or face interest or other penalties. An interim order is thus needed to ensure that the Tribunal may properly consider this application without further aggravation of the dispute.¹³
26. EMPC further argues that the Respondent incorrectly asserts, without citing any authority, that the request for a Provisional Order requires a threshold higher than that for provisional measures. By invoking the five-part test applicable to provisional measures, the Respondent improperly invites the Tribunal to prejudge the merits of the Second Application.¹⁴ EMPC maintains that the correct inquiry is whether there is a cognizable risk that the object of the Second Application will be frustrated before the Tribunal can rule as stated by the ICSID tribunals.¹⁵

(2) Grounds for the Immediate Interim Relief

27. According to the Claimant, in its Second Application, it seeks provisional interim relief on three independent grounds: preserving the *status quo*, preventing further *aggravation* of the dispute, and safeguarding the *effectiveness* of the final award. Since filing the Request for Arbitration, the Claimant has learned that the 2025 Levy is expected to exceed €1.5 billion, being the largest to date, and the Respondent has not disputed that figure.¹⁶
28. EMPC argues that issuing the 2025 Levy would disrupt the current state of affairs and intensify the dispute. However, the Netherlands contends that the *status quo* supports the Levy's issuance, citing a course of conduct since the Temporary Groningen Act of 2020. However, the Parties' disagreement over the meaning of *status quo* goes to the merits of

¹¹ *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, ¶¶ 15-18 (CL-48).

¹² Claimant's Second Application, ¶ 83.

¹³ Claimant's Second Application, ¶ 84.

¹⁴ Claimant's Reply, p. 2.

¹⁵ Claimant's Reply, p. 2.

¹⁶ Claimant's Reply, p. 3.

this Second Application, which the Tribunal need not resolve at this stage. In any event, the *status quo* preservation is only one of three grounds advanced by the Claimant.¹⁷

29. The Claimant rebuts the Respondent's *status quo* argument on three fronts:¹⁸

- *First*, the Respondent distorts the concept of *status quo* by arguing that the *status quo* should be understood as a continued course of conduct. This position lacks support and is unreasonable, as it would allow the Respondent to persist in the very conduct challenged by the Claimant. The fact that the Respondent has previously issued and collected payment demands does not entitle it to continue aggravating the dispute. That is not preserving the *status quo*; it is disrupting it;
- *Second*, the Respondent's argument that past issuance of levies justifies future ones ignores the evolving and unclear nature of the framework. Continuing to issue levies under such conditions risks new breaches of the Energy Charter Treaty, not preservation of the *status quo*.
- *Third*, the Respondent frequently modifies the legislation to add new features to the damage handling program and strengthening operation in a manner that exacerbates the dispute. For example, in March 2024, the State adopted a new policy pursuant to which a claim holder purporting to have suffered damage as a result of gas-production induced tremors could opt to receive a payment of €60,000 and, in exchange, "*the [IMG] will not investigate the causal link between the physical damage to buildings and work reported by the applicant.*" The 2025 Levy is expected to seek to collect from NAM, for the first time, the IMG's claim payouts associated with this new "*no causation*" policy of 2024. Even on the Respondent's strained application of the concept, there is no *status quo* course of conduct associated with such new policies.

30. EMPC further states that any prejudice to the Netherlands would be limited to the short period between the issuance of the Provisional Order and the Tribunal's decision on the Second Application.¹⁹

31. Further, EMPC's case for the Provisional Order has strengthened due to new developments: (i) the Respondent has confirmed the 2025 Levy will be issued around 18 November 2025; (ii) the adopted briefing calendar ensures the Tribunal will not rule on the Second Application before that date; (iii) Dutch law consequences will attach to the 2025 Levy from the moment it is issued. Accordingly, the relevant date is the date of issuance of the 2025 Levy (and not the date on which a third-party will be called upon to pay it); and (iv) the Respondent's briefing calendar will not allow the Tribunal to rule on the

¹⁷ Claimant's Reply, p. 3.

¹⁸ Claimant's Reply, p. 4.

¹⁹ Claimant's Reply, p. 2.

Second Application before 18 November 2025. Accordingly, the circumstances justify granting the Provisional Order.²⁰

32. Moreover, EMPC states that an award of damages will not adequately repair harm to the Claimant:
- The Claimant argues that while the question of whether harm “*cannot be adequately repaired by an award of damages*” goes to the merits of the Second Application, it need not be resolved to grant the Provisional Order. Nonetheless, based on the Respondent’s statements regarding enforcement, the Tribunal can reasonably conclude that any final award may fail to adequately remedy harm.²¹
 - The Netherlands informed the Antwerp Court that the Claimant lacks a legitimate interest in the ICSID proceedings, citing the Respondent’s view that any award would be unenforceable within the EU and meaningless outside it. This position signals the Respondent’s intent not to comply voluntarily with any award, contrary to its obligations under Article 53 of the ICSID Convention, strengthening the case for provisional relief.²²
 - If the Respondent genuinely intended to comply with any eventual award rendered in the Claimant’s favor, it would have provided “*a clear written assurance from an authorized representative that it will, subject only to the post-award remedies available under the ICSID Convention: (i) recognize as binding, promptly abide by and enforce the terms of any award rendered in this ICSID arbitration, including one that concludes in favour 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.*” The Claimant invited the Respondent to provide that very undertaking prior to filing the Second Application. The Respondent refused. All of the Respondent’s subsequent “*assurances*” including those in its Response, must be viewed in that context.²³
33. Finally, EMPC argues that granting the Provisional Order is not “*grossly disproportionate*”, as the Respondent’s arguments regarding proportionality pertain to the relief sought in the Second Application, not to the immediate provisional relief. Those submissions, once again, go to the substance of the Second Application and not to the Provisional Order. In any event, in weighing proportionality, the fact that the Respondent has effectively stated that it will refuse to comply with any adverse award should prevail over any of the Respondent’s concerns. For purposes of the Provisional Order, however, the question is whether it is “*grossly disproportionate*” for the Respondent to be ordered

²⁰ Claimant’s Reply, p. 2.

²¹ Claimant’s Reply, p. 4.

²² Claimant’s Reply, p. 4-5.

²³ Claimant’s Reply, p. 5.

to hold off on issuing the 2025 Levy until such time as the Tribunal can rule on the Second Application. On the timetable that has now been established, that would involve only a very short postponement, a matter of weeks or a few short months maximum, to the issuance of the 2025 Levy currently expected on or around 18 November 2025.²⁴

B. THE RESPONDENT’S POSITION

34. In response, the Netherlands argues that EMPC’s request for immediate and provisional relief pending a decision on its application is minimally justified and not elaborated upon. The relief sought lacks a clear basis in ICSID rules, exceeds the threshold for provisional measures, and is neither necessary nor urgent. Granting it would disrupt the *status quo*, interfere with Dutch regulatory functions, and impose disproportionate consequences, particularly regarding levies on NAM, a third party. The Tribunal is therefore urged to reject the request and award costs against EMPC.²⁵ The Respondent elaborates on its position as follows.

(1) Applicable Legal Standard

35. The Netherlands contends that an ICSID tribunal’s power to order provisional measures is found in Article 47 of the ICSID Convention and Rule 47 of the ICSID Arbitration Rules. However, neither Article 47 nor Rule 47 explicitly empower a tribunal to grant additional “interim provisional relief”, or any equivalent measure, pending its determination of a party’s request for provisional measures. In addition, provisional measures are already understood as an extraordinary remedy which should be granted only in very limited circumstances. Accordingly, any request for “*interim provisional relief*” should be subject to a higher threshold and granted only in the most highly exceptional circumstances.²⁶
36. The Netherlands further contends that the only investment case cited by EMPC in its Second Application to support its request for interim provisional relief is *City Oriente v. Ecuador and PetroEcuador*. However, the present circumstances are materially different. The Netherlands has neither ignored any tribunal request nor pursued or threatened “*criminal or other proceedings*” against NAM or EMPC executives. On the contrary, it has consistently affirmed its commitment to comply with its obligations under the ICSID Convention.²⁷

²⁴ Claimant’s Reply, p. 5.

²⁵ Respondent’s Response, ¶¶ 2-5.

²⁶ Respondent’s Response, ¶¶ 6-8.

²⁷ Respondent’s Response, ¶¶ 9-13.

37. The other cases cited by EMPC in support of its request follow a similar, highly exceptional²⁸ pattern including *Pezold and others v. Zimbabwe*,²⁹ *Perenco v. Ecuador and PetroEcuador*,³⁰ *Nasib Hasanov v. Georgia*,³¹ *Sergei Paushok and others v. Mongolia*,³² and *Burlington v. Ecuador and PetroEcuador*.³³
38. The Netherlands further affirms that, as is broadly common ground between the Parties, the cumulative requirements to be met for an order of provisional measures are: (i) whether the tribunal has *prima facie* jurisdiction; (ii) whether the application engages rights requiring protection; (iii) whether the requested measure is necessary to avoid irreparable harm; (iv) whether there is urgency; and (v) whether the requested measure is appropriate.³⁴ Moreover, the Respondent argues that the threshold for granting “*interim provisional relief*” by an ICSID tribunal is significantly higher than that for ordinary provisional measures, given the exceptional circumstances required.³⁵
39. Moreover, the Netherlands states that EMPC dismisses the relevance of the “*five-part test*” for provisional measures without substantiation, arguing that the Tribunal need not consider the *status quo*, reparability of harm through damages, or proportionality of the relief. This position implies a substantially lower threshold for “*interim provisional relief*” than for regular provisional measures, which the Netherlands rejects. The Netherlands maintains that any such relief must meet an exceptionally high standard of proof and consider all factors relevant to provisional measures.³⁶
40. The Netherlands further contends that, in the absence of identifying an explicit power to grant “*interim provisional relief*”, EMPC’s request relies entirely on a handful of investment cases, the circumstances of which were highly exceptional and clearly distinguishable from the present situation. EMPC does not engage with the Netherlands’ examination of those cases and instead advances an incomplete and misleading appreciation of the jurisprudence by showing that the “*relevant question*” for the grant of “*interim provisional relief*” is “*whether there is a cognizable risk that the object of the*

²⁸ Respondent’s Response, ¶ 14.

²⁹ *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, and *Border Timbers Limited and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Directions Concerning Claimants’ Application for Provisional Measures of 12 June 2012, 13 June 2012, ¶¶ 3 and 6-7 (CL-16).

³⁰ *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, ¶ 25 (CL-11).

³¹ *Nasib Hasanov v. Georgia*, ICSID Case No. ARB/20/44, Procedural Order No. 3, 15 April 2021, ¶ 4 (CL-21).

³² *Sergei Paushok, CJSC Golden East Company, and CJSC Vostokneftegaz Company v. Government of Mongolia*, UNCITRAL, Order on Interim Measures, 2 September 2008, ¶¶ 12, 14 (CL-10).

³³ *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, ¶ 22 (CL-12).

³⁴ Respondent’s Response, ¶ 15.

³⁵ Respondent’s Reply, p. 2.

³⁶ Respondent’s Reply, p. 2.

Second PM Application will be frustrated before the Tribunal can rule on the application". The tribunals in the cases cited by EMPC were concerned by the severity of the State action and the imminence of the threatened State action. While the briefing schedule was being decided in the present case, the Netherlands, for its part, provided an assurance that it would not issue the 2025 Levy until 18 November 2025.³⁷

41. In sum, the Netherlands affirms that EMPC's claim that the Tribunal's briefing calendar justifies "*interim provisional relief*" is unfounded. If the Levy is issued on 18 November 2025, payment is due within six weeks, with interest accruing only thereafter. Enforcement is not automatic; NAM must first receive a notice and be given two weeks to pay. Therefore, EMPC suffers no prejudice from the Tribunal's timeline.³⁸

(2) Grounds for Rejecting the Requested Provisional Measure

42. The Netherlands contends that EMPC's request does not meet these requirements:
- *First*, the Tribunal does not have *prima facie* jurisdiction. The Netherlands maintains its jurisdictional objections as previously raised in EMPC's First Provisional Measures Application.³⁹
 - *Second*, there is no right requiring protection. The Netherlands has assured it will not issue any levies before 18 November 2025, with payment not due until 31 December 2025. This timeline allows the Tribunal to decide on EMPC's application well in advance, and EMPC's concerns do not threaten the effectiveness of any future award.⁴⁰
 - *Third*, EMPC has not identified any "*irreparable harm*" that makes the grant of "*interim provisional relief*" necessary. EMPC has not demonstrated any "*irreparable harm*" justifying interim relief. The alleged harm, payment of a statutory levy, is financial and reparable through damages. There is no imminent threat to EMPC's investment, and the Netherlands has not initiated or threatened any enforcement or criminal proceedings. For instance, in the case of *Burlington v. Ecuador and PetroEcuador*, the tribunal granted the claimant's request for immediate interim relief (or a temporary restraining order as it was called in that case), because an administrative tribunal in Ecuador had ordered the immediate seizure of the claimant's assets, and the respondents in the arbitration had confirmed that steps had been, or would shortly be taken, to effect such seizure.⁴¹

³⁷ Respondent's Reply, pp. 2-3.

³⁸ Respondent's Reply, p. 3.

³⁹ Respondent's Response, ¶ 17.

⁴⁰ Respondent's Response, ¶ 18.

⁴¹ Respondent's Response, ¶¶ 19-22.

- *Fourth*, there is no urgency to EMPC’s request. The levy schedule is known and predictable, and EMPC’s delay in filing its application undermines its claim of urgency.⁴²
 - *Fifth*, it would be grossly disproportionate to grant EMPC’s request for “*interim provisional relief*”.⁴³
43. The Netherlands argues that EMPC’s request to pause future levies would disrupt the *status quo* established since the adoption of the Temporary Groningen Act in 2020, under which NAM makes annual payments to compensate for incurred costs. Such relief would require the Tribunal to pre-judge the merits and interfere with the Netherlands’ ability to raise a substantial levy against NAM, a third party to this arbitration, on an undisputed legal basis, potentially resulting in significant legal and budgetary consequences and a windfall to Shell Nederland BV.⁴⁴
44. Accordingly, the Netherlands states that EMPC’s request does not meet any of the cumulative requirements for the order of ordinary provisional measures, let alone the higher standard that should apply to a request for “*interim provisional relief*”, and should be dismissed.⁴⁵
45. The Netherlands further argues that EMPC’s assertion that the briefing calendar which has been issued by the Tribunal justifies the grant of such a relief is misguided for the following reasons.⁴⁶
- *First*, in the event that the 2025 levy is issued on 18 November 2025, the legal consequence is that it must be paid within six weeks of that date.
 - *Second*, it is only after the lapse of those six weeks that interest will accrue over the amount of the levy.
 - *Third*, further, any collection action is not automatic. If Nederlandse Aardolie Maatschappij BV (“NAM”) does not pay the amount of the levy within the prescribed period (i.e., before 31 December 2025), the Netherlands must first give NAM a notice to pay the amount within two weeks of said notice, before pursuing any enforcement of the debt.
 - *Fourth*, thus, the fact that the Tribunal will not have decided upon the Second Application before 18 November 2025 does not cause EMPC any prejudice,

⁴² Respondent’s Response, ¶¶ 23-25.

⁴³ Respondent’s Response, ¶ 26.

⁴⁴ Respondent’s Response, ¶¶ 27-28.

⁴⁵ Respondent’s Response, ¶ 29.

⁴⁶ Respondent’s Reply, p. 3.

because neither will interest start accruing nor can the Netherlands pursue any collection action at that point.

46. In sum, EMPC's request for "*interim provisional relief*" does not meet any of the cumulative requirements for the order of ordinary provisional measures, let alone the higher standard that should apply to a request for "*interim provisional relief*", and should be dismissed.⁴⁷
47. Finally, the Netherlands states that EMPC's request for a written undertaking from the Netherlands affirming its commitment to comply with any provisional measures is inappropriate. The Netherlands, as a party to the ICSID Convention, has consistently fulfilled its international obligations and already provided repeated assurances of compliance. Moreover, requiring such an undertaking to NAM, a third party, would improperly extend obligations to Shell Nederland BV, another non-party, making the request entirely unwarranted.⁴⁸
48. EMPC attempts to sidestep the "*irreparable harm*" standard by claiming it pertains to the merits of its Second Application. However, the five-part test for provisional measures, including "*necessity*", applies with even greater rigor to requests for "*interim provisional relief*". EMPC's late filing creates artificial urgency, undermining the standard requirements.⁴⁹
49. There is no genuine risk of irreparable harm in the absence of the relief sought. EMPC cites only potential financial effects and vague "*Dutch law consequences*" tied to the 2025 Levy. The Netherlands reiterates its commitment to Articles 53 and 54 of the ICSID Convention and refutes EMPC's claim that EU law overrides its ICSID obligations. EMPC's harm argument is speculative and cannot justify interim relief.⁵⁰
50. Finally, the Netherlands argues that granting "*interim provisional relief*" would be grossly disproportionate as EMPC claims that proportionality arguments pertain only to the merits of the Second Application, which is incorrect. EMPC offers minimal response to the Netherlands' proportionality analysis, suggesting a brief delay to the 2025 levy would cause no harm, while ignoring that such delay would disrupt the *status quo* and shift the levy into 2026, triggering budgetary and operational issues for the Netherlands.⁵¹
51. By contrast, issuance of the 2025 Levy would not prejudice EMPC, as NAM's annual balance sheet typically includes a debt reserve for a levy until 31 December of a given

⁴⁷ Respondent's Response, ¶ 29.

⁴⁸ Respondent's Response, ¶¶ 30-32.

⁴⁹ Respondent's Reply, pp. 4-5.

⁵⁰ Respondent's Reply, pp. 4-5.

⁵¹ Respondent's Reply, p. 5.

year.⁵² NAM bears 27% of Groningen Field costs, with the Dutch State covering 73%,⁵³ meaning EMPC indirectly bears only 13.5%. Thus, interim relief would unfairly burden the Netherlands for the benefit of third parties.⁵⁴

IV. TRIBUNAL'S ANALYSIS

A. LEGAL FRAMEWORK

52. 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.”

53. 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;

(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

⁵² See, e.g., Annual Report 2024 for Nederlandse Aardolie Maatschappij B.V., 26 June 2025 (Extract), p. 38 (**R-11**).

⁵³ Observations of the Respondent on Claimant’s Application for Provisional Measures, 4 July 2025, ¶ 14; See also Letter from the State Secretary for Economic Affairs and Climate Policy, 21 May 2024, (Extract), p. 1 (**R-12**).

⁵⁴ Respondent’s Reply, p. 5.

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."

54. Article 31(1) of the Vienna Convention on the Law of Treaties (the "VCLT") provides that:

"1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

B. TRIBUNAL'S POWER TO GRANT IMMEDIATE INTERIM RELIEF

55. The Parties are in disagreement as to the Tribunal's power and authority to grant immediate interim relief. The Claimant argues, relying *inter alia* on *City Oriente v. Ecuador*,⁵⁵ that

⁵⁵ *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, ¶¶ 15-18 (CL-48).

ICSID tribunals have frequently ordered such interim provisional relief to preserve the *status quo* while a party's application for provisional measures is pending. The Respondent argues that a tribunal's power to grant "*interim provisional relief*" is not explicitly provided for in either the ICSID Convention or the ICSID Arbitration Rules.⁵⁶ The Netherlands is of the view that neither Article 47 nor Rule 47 explicitly empower a tribunal to grant additional "*interim provisional relief*", or any equivalent measure, pending its determination of a party's request for provisional measures. It also contends that provisional measures are an extraordinary remedy which should be granted only in very limited circumstances, and request for "*interim provisional relief*" should be subject to a higher threshold and granted only in the most highly exceptional circumstances.⁵⁷

56. In the view of the Tribunal, a careful review of Article 47 of the ICSID Convention and Rule 47 of the ICSID Rules reveals that:
- (a) the wording of Article 47 is sufficiently broad and clear, such that 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. The use of the word "*any*" and the reference to "*circumstances*" and "*preserv[ation]* [of] *the respective rights of [the] part[ies]*" make it abundantly clear that an arbitral tribunal is empowered to grant interim relief where appropriate under the circumstances;
 - (b) the wording of Rule 47 is also demonstrative of a broad and clear power to grant interim relief at any time to preserve rights if the circumstances so require, and a tribunal may even recommend provisional measures on its own initiative and different from those requested by a party, which supports the view that there are no rigid temporal constraints and no basis to exclude temporary and immediate interim relief from the scope of the relief that the tribunal can grant; and
 - (c) even if Article 47 of the ICSID Convention requires interpretation to confirm that it includes the authority to grant temporary or immediate interim relief, then Article 31(1) of the VCLT is useful in this respect. The general rule of treaty interpretation is that a treaty shall be interpreted in good faith in accordance with the ordinary meaning of its terms, in their context, and in light of its object and purpose. The ordinary meaning of the text of Article 47 and the context and purpose of the authority conferred on an arbitral tribunal to grant interim relief all lead to a finding that Article 47 of the ICSID Convention cannot be read in a manner that would allow the very object of a request for provisional measures to be defeated while the application is being considered. Article 47 does not exclude certain types of relief and does not restrict the Tribunal's authority in this respect, unless the parties expressly agree otherwise. The basic premise is that an arbitral tribunal will need to consider the prevailing

⁵⁶ Respondent's Response, ¶¶ 6-8.

⁵⁷ Respondent's Response, ¶¶ 6-8.

circumstances and assess the conditions for granting the type of relief requested in accordance with the parameters set out in Rule 47 of the ICSID Rules.

57. By and large, in the Tribunal's view, the ordinary meaning of Article 47 and the specific and express use of the words "*any provisional measures*" are clearly indicative of a broad discretionary power to act in order to preserve the rights of either party, which necessarily includes immediate protective measures, if the circumstances so warrant. Thus, a mechanism that allows the Tribunal to act promptly in urgent situations is essential to fulfilling the purpose of the ICSID Convention and is aligned with the underlying rationale for interim relief and provisional measures. Without the ability to recommend timely provisional measures, the ICSID Convention's protective and remedial functions would be undermined and compromised, and the rights of parties could be rendered meaningless before a final award is issued.
58. Accordingly, the Tribunal determines that it possesses the requisite power and authority to grant, as and when appropriate, "*interim provisional relief*", but it agrees with the Netherlands that provisional measures are generally extraordinary remedies that should be granted only when the circumstances so warrant, though there is no basis to subject "*immediate or interim provisional relief*" to a higher threshold than that which applies to provisional measures in general.
59. By and large, the Tribunal concludes that Article 47 of the ICSID Convention and Rule 47 of the ICSID Arbitration Rules must be read and understood as granting arbitral tribunals the power to issue immediate interim relief where necessary to preserve the respective rights of the parties. This interpretation aligns with the ordinary meaning of the text, its context within the Convention, and the Convention's object and purpose.

C. REQUIREMENTS FOR GRANTING IMMEDIATE INTERIM RELIEF

60. The Tribunal has carefully considered the positions advanced by the Parties regarding the requirements and threshold for granting immediate interim relief. The Netherlands advocates for a heightened threshold, proposing a five-part test that emphasizes the exceptional nature of such measures.⁵⁸ EMPC, by contrast, focuses on preserving the *status quo*, preventing further aggravation of the dispute, and safeguarding the effectiveness of the final award.⁵⁹
61. The Tribunal has already determined that there is no basis to subject "*immediate or interim provisional relief*" to a higher threshold than that which applies to provisional measures in general. With respect to the proposed five-part test, the Tribunal does not consider that an

⁵⁸ Respondent's Response, ¶¶ 15-28.

⁵⁹ Claimant's Reply, p. 3.

analysis of such test, which is indeed relevant and important for considering and determining the requested measures under the Second Application, is necessary at this preliminary stage of considering the immediate interim relief for three principal reasons.

62. **First**, applying such a threshold at this preliminary stage would require the Tribunal to engage with matters that are properly reserved for determination under the Second Application, thereby risking prejudgment and compromising the procedural integrity of the briefing process for the Second Application.
63. **Second**, the Respondent has not provided authoritative case law or doctrinal support for the application of such a framework in the context of immediate and temporary interim relief, and the Tribunal is not informed of any ICSID tribunal that has endorsed such proposed approach.
64. **Third**, the nature of the interim provisional relief is necessarily very limited in time, given that it can only operate while an application for provisional measures is being considered, which is a matter that itself requires an expedited procedure.
65. This is not to say that the ability to grant interim provisional relief, while an application for provisional measures is pending, may be a basis to entirely disregard or circumvent the requirements for the granting of such provisional measures. The Tribunal has reviewed the legal authorities submitted by the Parties and makes the following observations:
- In *City Oriente v. Ecuador*, when the tribunal granted the requested interim relief, it expressed significant concern regarding the impact of the State's actions on the effectiveness of that relief. It stated that: "*It is the Tribunal's view that said actions may undermine the effectiveness of the provisional relief requested by Claimant, thereby depriving Claimant of its lawful right to have its interests effectively protected [...]*."⁶⁰
 - In *Nasib Hasanov v. Georgia*, the tribunal granted interim measures to prevent the aggravation of the dispute between the parties. It clarified that it issued this relief: "*[...] with a view to preventing the aggravation of the parties' dispute, and without forming any judgment whatsoever on the merits of the Application and the jurisdiction of this Tribunal.*"⁶¹
 - Similarly, in *Burlington v. Ecuador and PetroEcuador*, the tribunal granted interim relief with the aim of preventing the aggravation of the dispute and preserving the *status quo*. It ordered: "*[...] 'the Respondents [to] refrain from engaging in any conduct that aggravates the dispute between the Parties and/or alters the status quo*

⁶⁰ *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, ¶ 19 (CL-48).

⁶¹ *Nasib Hasanov v. Georgia*, ICSID Case No. ARB/20/44, Procedural Order No. 3, 15 April 2021, ¶ 19 (CL-21).

*until it decides on the Claimants' Request for Provisional Measures or it reconsiders the present recommendation, whichever is first'. In issuing such recommendation, the tribunal considered that the requirements of urgency and of necessity were met.”*⁶²

- In *Sergei Paushok and others v. Mongolia*, the tribunal issued a “temporary restraining order” in response to the claimants’ request, which was based on the alleged intention of the respondent to pursue the forced collection of taxes and fees that were disputed in the arbitration. The Tribunal stated that: “[...] Pending its decision on interim measures, the Tribunal urges the Parties to refrain from any action which could lead to further injury and aggravation of the dispute between the Parties.”⁶³
- In *Perenco v. Ecuador and PetroEcuador*, the tribunal held the following “[...] The Tribunal believes it is necessary nonetheless, to request the parties to refrain from initiating or continuing any action or adopting any measure which may, directly or indirectly, modify the status quo between the parties vis-à-vis the participation contracts, including any attempt to seize any asset of [Perenco], until it has had an opportunity to further hear from the parties on the question of provisional measures”.⁶⁴

66. Applying the principles established in the referenced cases, the Tribunal finds that immediate interim relief may be warranted where there is a serious and credible risk that a party’s conduct could undermine the effectiveness of the arbitral process, aggravate the dispute, or alter the *status quo*. Such relief is neither contingent upon a determination of jurisdiction or the merits, nor is it conditioned upon a likely specific outcome of a provisional measure application. The whole purpose of the temporary and immediate interim relief is not to render the requested provisional measure moot before it is decided and to preserve the integrity of the proceedings and the parties’ rights from imminent serious harm. Tribunals have consistently recognized that measures of this nature may be appropriate in circumstances involving urgency and necessity, particularly where the requested relief is narrowly tailored to prevent procedural prejudice or further escalation of the dispute.
67. In the present case, the Tribunal finds that both Parties have provided reasonable grounds to support their respective positions.

⁶² *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, ¶ 24 (CL-12).

⁶³ *Sergei Paushok, CJSC Golden East Company, and CJSC Vostokneftegaz Company v. Government of Mongolia*, UNCITRAL, Order on Interim Measures, 2 September 2008, ¶¶ 14-16 (CL-10).

⁶⁴ *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, ¶ 28 (CL-11).

68. On one hand, EMPC argues that there is a cognizable risk that the object of the Second Application will be frustrated before the Tribunal can decide. It argues that the Netherlands would be free to preempt this Tribunal's decision on provisional measures by issuing new levies and attempting to compel EMPC to pay or face interest or other penalties. EMPC invokes the need to preserve the *status quo* and prevent further aggravation of the dispute while the Second Application for provisional measures is pending. EMPC also submits that the 2025 Levy is expected to seek to collect from NAM, a third party to this Arbitration in which EMPC claims to indirectly hold a 50% interest, for the first time, the IMG's claim payouts associated with the so-called "*new no causation*" policy of 2024.
69. On the other hand, the Netherlands argues that granting the requested immediate interim relief would (a) disrupt the *status quo* established since the adoption of the Temporary Groningen Act in 2020, under which NAM makes annual payments to compensate for incurred costs; (b) interfere with Dutch regulatory functions, and impose disproportionate consequences, particularly regarding levies on NAM, a third party to this arbitration, on an undisputed legal basis, potentially resulting in significant legal and budgetary consequences and a windfall to Shell Nederland BV, the other shareholder of NAM; and (c) prejudice the Netherlands but not EMPC, to the extent that (i) the issuance of the 2025 Levy is accounted for in NAM's annual balance sheet, which typically includes a debt reserve for a levy until 31 December of a given year,⁶⁵ and, in any event, (ii) NAM bears 27% of Groningen Field costs, with the Dutch State covering 73%,⁶⁶ meaning EMPC indirectly bears only 13.5%. Thus, an immediate interim relief would unfairly burden the Netherlands for the benefit of third parties.⁶⁷ The Netherlands adds that in the event that the 2025 Levy is issued on 18 November 2025, the legal consequences that follow will not lead to automatic collection, because if NAM does not pay the amount of the levy within the prescribed period (i.e., by 31 December 2025 assuming the 2025 Levy is issued on 18 November 2025), the Netherlands must first give NAM a notice to pay the amount within two weeks of said notice, before pursuing any enforcement proceedings.
70. Having considered the Parties' positions and after having weighed their competing interests and the prejudices that may result from granting or denying the request for an immediate interim relief, the Tribunal is not persuaded that the present circumstances warrant an order along the lines requested by EMPC.
71. It is indeed important to maintain the *status quo*, avoid aggravation of the present dispute, and avoid pre-empting the outcome of the Second Application for provisional measures, but when assessing whether to grant or not immediate interim relief, the Tribunal needs to

⁶⁵ See, e.g., Annual Report 2024 for Nederlandse Aardolie Maatschappij BV, 26 June 2025 (Extract), p. 38 (R-11).

⁶⁶ Observations of the Respondent on Claimant's Application for Provisional Measures, 4 July 2025, ¶ 14; See also Letter from the State Secretary of Economic Affairs and Climate, 21 May 2024, (Extract), p. 1 (R-12).

⁶⁷ Respondent's Reply, p. 5.

consider all relevant circumstances. The Tribunal finds that these circumstances support the Netherlands' position. Specifically, when EMPC filed its Request for Arbitration, there was no imminent concern or a request for a provisional measure requiring immediate interim relief to block the issuance of levies payable under the Temporary Groningen Act in place since 2020. Also, the Tribunal is mindful of the fact that it is NAM (and not EMPC) that is required to make these annual payments, and that EMPC's indirect share of the payable amounts represents a limited percentage. The Netherlands submits this percentage to be 13.5% at most, and EMPC has not offered evidence rebutting this contention.

72. Moreover, the Tribunal also gives due consideration to the argument that the requested immediate interim relief may interfere with Dutch regulatory functions and may well result in legal and budgetary consequences and a windfall to Shell Nederland BV (a shareholder of NAM). Moreover, granting the "*immediate interim provisional relief*" would mean that the issuance of the 2025 Levy could not happen before 2026, which may well trigger budgetary and operational issues for the Netherlands, though the Tribunal cannot presently verify the nature, extent and impact of these issues, given its present limited knowledge of the facts underlying the Second Application.
73. Furthermore, in terms of the potential prejudice to EMPC, which the Tribunal also takes under serious consideration, it is not clear to the Tribunal why and how the mere issuance of the 2025 Levy (which is not a direct liability on EMPC) would imminently prejudice EMPC, even when enforcement of the 2025 Levy is not automatic against NAM. However, the Tribunal appreciates and accepts that the 2025 Levy appears to be a significant sum possibly in excess of €1.5 billion, but, again, only a percentage of this may be indirectly relevant to EMPC.
74. Accordingly, on balance and without any prejudgment or inference as to the merits of the Second Application, the Tribunal is unable to grant the requested immediate interim relief and does not consider that there is necessity, urgency and proportionality to order the requested relief at this stage. However, the Tribunal calls upon the Netherlands to reconsider the need to issue the 2025 Levy before the Tribunal has determined the Second Application. It would be good practice, aligned with the Parties' duty not to aggravate the dispute, to voluntarily avoid the issuance of the 2025 Levy before the Tribunal renders its decision on the Second Application.
75. The Tribunal also calls upon the Parties to refrain from any action which could lead to altering the *status quo*, aggravating the present dispute and/or compromising the efficiency and integrity of the present proceedings.
76. For the avoidance of doubt, if the 2025 Levy is issued – which the Tribunal urges the Netherlands to reconsider – and thereafter the Respondent seeks to compel and/or enforce

its payment before the Tribunal has determined the Second Application, then EMPC would be free to apply to the Tribunal seeking the immediate suspension of the enforcement actions regarding the 2025 Levy, or steps taken or to be taken in respect of such enforcement, as this would meet the aggravation threshold.

V. ORDER

77. 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 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.

For and on behalf of the Tribunal,

[signed]

Prof. Dr. Mohamed Abdel Wahab
President of the Tribunal

31 October 2025