**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**ExxonMobil Petroleum & Chemical BV**

**v.**

**Kingdom of the Netherlands**

**(ICSID Case No. ARB/24/44)**

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# PROCEDURAL ORDER NO. 6

# DECISION ON THE CLAIMANT'S REQUEST FOR BIFURCATION

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***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

4 February 2026

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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. 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]

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

5. On 17 September 2025, the Tribunal issued Procedural Order No. 1, in which Annex B sets out the Procedural Timetable. According to this timetable, the Claimant's Request for Bifurcation on Damages is to be submitted by 31 October 2025, and the Respondent's Response to the Request for Bifurcation on Damages (if any) by 15 December 2025.[4]

6. On 31 October 2025, in accordance with Section 14.1 and Annex B of Procedural Order No. 1, the Claimant submitted its Application for Bifurcation, together with Exhibits C-112bis, C-113bis, C-114bis, C-141, and C-142 and their translations; Legal Authorities CL-50 through CL-58; and a cumulative index of factual exhibits and legal authorities ("**Claimant's Request**").[5]

7. On 9 December 2025, further to the discussions between the Parties and the Tribunal during the hearing on the Claimant's Second Application for Provisional Measures held

[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] Procedural Order No. 1 dated 17 September 2025.
[5] Claimant's Request for Bifurcation dated 31 October 2025 ("**Claimant's Request**").

on 8 December 2025, the Tribunal informed the Parties that, with respect to the dates for the remaining steps in relation to the Claimant's Request for Bifurcation on Damages, the Parties are invited to revert to the Tribunal by Friday, 12 December 2025 with their joint proposal on the modified dates for the remaining steps in the bifurcation calendar.[6]

8. On 12 December 2025, the Respondent informed the Tribunal that the Parties have agreed to jointly propose a 9 January 2026 submission date for the Respondent's response to the Claimant's request for bifurcation.[7]

9. On 9 January 2026, the Respondent submitted its Response to the Claimant's Request for Bifurcation, together with Legal Authorities RL-59 through RL-62; and a cumulative index of legal authorities ("**Respondent's Response**").[8]

10. This Decision sets out the Tribunal's analysis and order on the Claimant's Request for Bifurcation. It addresses the procedural background, summarizes the Parties' respective submissions, outlines the applicable legal framework, and sets forth the Tribunal's reasoning and conclusions, culminating in the dispositive order. The Tribunal sets out the Parties' respective requests for relief in Section II and summarizes their positions in Section III of this Procedural Order. The Tribunal's analysis and decision are presented in Sections IV and V, respectively.

## II. THE PARTIES' REQUEST FOR RELIEF

11. EMPC's request for relief is as follows:

> "[…] *EMPC respectfully requests that the Tribunal ORDER that the proceedings will be bifurcated in two phases, one to address questions of liability and determination of the unlawful elements of the Netherlands' Payment Demands, together with guidance from the Tribunal where practicable on principles of quantum, and a separate phase to address questions of quantum.*"[9]

12. The Netherlands's request for relief is as follows:

[6] ICSID's Letter dated 9 December 2025.

[7] Respondent's E-mail dated 12 December 2025.

[8] Respondent's Response to the Claimant's Request for Bifurcation dated 9 January 2026 ("**Respondent's Response**").

[9] Claimant's Request, ¶ 69.

> "*In light of the foregoing, and without prejudice to the Netherlands' right to apply for a bifurcation on issues of admissibility and jurisdiction after review of EMPC's Memorial, the Netherlands requests the Tribunal to order that the proceedings will for the time being be bifurcated in two phases: one to address questions of liability, and a separate phase (if necessary) to address questions of quantum*."[10]

## III. THE PARTIES' POSITIONS

### A. THE CLAIMANT'S POSITION

13. Pursuant to ICSID Arbitration Rules 42(3) and Section 14.1 and Annex B of Procedural Order No 1, the Claimant has filed a request for bifurcation, submitting that such bifurcation constitutes an essential case management measure intended to reduce costs, shorten procedural timetables, and promote efficiency. The Claimant contends that separating liability from quantum is indispensable here, given the scale and complexity of the damages analysis. The Claimant argues that focusing first on liability will streamline the proceedings and reduce unnecessary expense.[11]

14. The Claimant contends that the scope of the Payment Demands is immense, noting that NAM has already paid €3.96 billion under protest in connection with more than forty Payment Demands. EMPC further argues that these demands reflect hundreds of thousands of individual decisions and operational costs incurred by State agencies. EMPC submits that the State has used the Payment Demands to finance its attempt to remedy historic neglect of the Groningen region, but asserts that such policy choices cannot legitimately be fulfilled at NAM's expense. Among other claims, EMPC asserts that the Payment Demands violate Article 10(1) of the Energy Charter Treaty in numerous ways and that assessing quantum across hundreds of thousands of decisions will create a vast constellation of liability findings, each requiring its own damages analysis.[12]

15. Furthermore, EMPC asserts that the complexity of the required damages findings is significant, as evaluating the quantum impact of each breach involves hundreds of thousands of decisions on physical damage, emotional distress, home value loss, and more than 27,000 addresses in the strengthening operation. The Claimant argues that undertaking this analysis without first determining liability would result in vast, superfluous submissions. EMPC further submits that many breaches do not yield a simple binary outcome but rather a range of possible results, making comprehensive damages positions

[10] Respondent's Response, ¶ 37.

[11] Claimant's Request, ¶¶ 2-3.

[12] Claimant's Request, ¶¶ 4-6.

impractical and unnecessarily costly until liability is narrowed by Tribunal guidance. Finally, EMPC contends that the interrelationship between breaches, with overlapping and knock-on effects, creates well over 1,000 potential liability scenarios—far more when ranges of outcomes are considered—such that calculating damages across all scenarios would overwhelm the Tribunal with largely unnecessary submissions.[13]

16. EMPC affirms that absent bifurcation, the Parties will be forced to present vast quantities of damages evidence without guidance on what constitutes unlawful conduct, leading to significant delays, generate needless costs, and lead to voluminous and irrelevant submissions to this Tribunal.[14]

17. EMPC asserts that it would be far more efficient—and result in more streamlined and digestible submissions on damages—if the Tribunal were to first rule on liability and, where practicable, deliver guidance on principles of quantum to significantly streamline the damages submissions in a subsequent quantum phase. The Claimant explains that this would include, for example, the Tribunal's guidance on the lawful assessment boundary on physical damages (within which causation can be presumed that physical damage was caused by NAM's gas production activities) and the correct methodologies for the strengthening operation and assessment of home value loss. EMPC asserts that, once such guidelines have been established, the Parties can then make quantum submissions, in a subsequent phase, focused on those elements of the Payment Demands found by the Tribunal to violate the ECT (and in light of guidance on principles of quantum that the Tribunal may provide).[15]

18. In its request, EMPC submitted: (1) background to the Request; (2) the applicable standard for bifurcation; and (3) the relevant circumstances supporting the bifurcation of quantum issues. This will be illustrated as follows.

**(1) Background to the Request**

19. EMPC describes below the underlying facts from which the arbitration arises, illustrative examples of its allegations of breach, and the damages framework that will apply in this case.

20. ***First,*** EMPC contends that the scale of the claims procedure underlying this dispute is immense. EMPC argues that the State has, to date, imposed more than forty Payment Demands on NAM, across six different categories. EMPC asserts that each Payment Demand contains: (i) payouts made by the State to purportedly compensate for damage

[13] Claimant's Request, ¶ 7.

[14] Claimant's Request, ¶ 8.

[15] Claimant's Request, ¶ 9.

claims by individuals or to implement preventative strengthening of buildings ("**Payment Decisions**"); and (ii) the implementation, administrative, and operating costs incurred by the State agencies making the Payment Decisions ("**Costs Component**").[16]

21. EMPC asserts that that categories of Payment Demands relate to the State's administration of claims brought by property holders who allegedly suffered tremor-related damage (the "**Damage Handling Program**"). EMPC explains that these include physical damage claims administered by the Temporary Committee on Mining Damages Groningen ("**TCMG**"), physical damage claims administered by the Instituut Mijnbouwschade Groningen (the "**IMG**"), and emotional distress claims and claims for home value loss, both also administered by the IMG.[17]

22. EMPC submitted a table summarizing four categories of Payment Demands as follows: (1) Physical Damage Invoices administered by the TCMG from 2018 through June 2020, with 15 demands and over 270,000 decisions (combined with category 2); (2) Physical Damage Levies administered by the IMG from July 2020 onward, with 5 demands; (3) Emotional Distress Levies administered by the IMG from July 2020 onward, with 3 demands and more than 145,000 decisions; and (4) Home Value Loss Levies administered by the IMG from 2020 onward, with 4 demands and more than 120,000 decisions.[18]

23. The Claimant argues that, in addition to the Damage Handling Program, the State has also administered a program to identify certain buildings whose safety might be in question in the event of stronger tremors and thus required strengthening (the **"Strengthening Operation**"). EMPC asserts that this program has generated two categories of Payment Demands: (1) Strengthening Invoices administered by the NCG from 2020 to July 2023, with 14 demands covering 27,792 addresses; and (2) Strengthening Levies administered by the NCG from July 2023 onward.[19]

24. ***Second,*** EMPC maintains that the Netherlands imposed the Payment Demands in violation of Article 10(1) of the ECT. EMPC submits that while its claims will be set forth comprehensively in its forthcoming Memorial, for purposes of this Application it provides a non-exhaustive illustration of specific breaches to demonstrate why bifurcation between liability and damages is appropriate.[20]

25. EMPC argues that the Netherlands breached Article 10(1) through arbitrary and non-transparent Payment Demands. These include reliance on a principle of "*generosity*"

[16] Claimant's Request, ¶¶ 12-13.
[17] Claimant's Request, ¶ 14.
[18] Claimant's Request, pp. 5-6.
[19] Claimant's Request, ¶ 15.
[20] Claimant's Request, ¶¶ 16-17.

inflating NAM's liability, inadequate information preventing transparency and rebuttal, and Physical Damage Invoices and Levies that assume causation despite minimal statistical likelihood and even include subsidence claims contrary to IMG findings. EMPC further contends that Home Value Loss Levies award compensation without sales attempts, apply arbitrary thresholds and factors that inflate payments, and use flawed models. Emotional Distress Levies are granted automatically without assessment, while Strengthening Invoices and Levies rely on outdated methodology and provide compensation absent any safety justification.[21]

26. EMPC further submits that for several of its arguments there is a range of potential findings that the Tribunal may make that will determine the impact on the Payment Demands. For example: (i) The Tribunal's decision on the proper contour for presuming causation of damages from Groningen gas production will determine which geographic areas and properties lawfully fall within the Damage Handling Program. This ruling would significantly narrow the scope of quantum analysis by limiting assessment to properties inside the chosen contour; (ii) in assessing the Home Value Loss Levies, the Tribunal may rule on the lawfulness of factors such as the reference date, methodology, and eligible areas. Depending on its findings, the Tribunal could conclude that certain properties should not have received compensation, while for others the ruling will affect the extent of lawful compensation determined by the IMG; and (iii) in assessing the Strengthening Invoices and Levies, the Tribunal must consider both the pool of properties subject to strengthening and the methodology for evaluating safety standards. Its findings may establish that many properties should not have been included in the Strengthening Operation, thereby narrowing the quantum analysis of breaches affecting those properties.[22]

27. The Claimant asserts that, in assessing liability, EMPC will request the Tribunal to consider each of its arguments, among others, in order to determine the extent to which the Payment Demands were issued unlawfully in violation of Article 10(1) of the ECT. EMPC further contends that, where the Tribunal finds a breach, it should provide guidance on principles of quantum so as to narrow and focus the scope of the subsequent quantum phase.[23]

28. ***Third,*** EMPC explains that, since this Application seeks bifurcation of the quantum phase from the liability phase, it is necessary to outline the overarching legal principles governing damages for breach of Article 10(1) of the ECT. EMPC notes that the ECT itself does not specify remedies for such breaches, and therefore the applicable standard of compensation must be derived from customary international law. Under that law, a state found liable for an internationally wrongful act is required "*to make full reparation for the injury caused*",

[21] Claimant's Request, ¶ 18.

[22] Claimant's Request, ¶ 19.

[23] Claimant's Request, ¶ 20.

which means compensation sufficient "*to re-establish the situation which existed before the wrongful act was committed*."[24]

29. In this Arbitration, EMPC argues that each of the six categories of Payment Demands imposed on NAM by the Netherlands violates Article 10(1) in multiple respects. The Tribunal will thus be required to set compensation reflecting the situation that would, in all probability, have existed absent the unlawful elements of those Payment Demands. This may involve determining the lawful value of each demand once stripped of components found to breach the Treaty. EMPC emphasizes that, in order to present focused submissions and expert evidence on quantum, the parties should be guided by the Tribunal's liability findings and, where practicable, by its guidance on how those elements ought to be determined in accordance with international law.[25]

**(2) The Applicable Standard for Bifurcation**

30. EMPC submits that ICSID Arbitration Rule 42 governs this Application and gives the Tribunal authority to order that certain aspects of the case be bifurcated in a separate phase of the proceeding. The Claimant asserts that the overarching consideration in requests for bifurcation is procedural efficiency. The Claimant submits that this requires assessing whether bifurcation is likely to reduce time and costs or, as emphasized by the *Orazul* v *Argentina* tribunal, [26] whether bifurcation could significantly contribute to clarifying and simplifying the dispute before the Tribunal.[27]

31. The Claimant argues that tribunals have also considered the sheer volume of evidence required for quantum. In *Renco v Peru II*,[28] bifurcation was deemed efficient to circumscribe the amount of evidence at the initial stage and narrow it for any subsequent remedies phase. The Claimant submits that tribunals have highlighted key benefits of bifurcation: (i) avoids "*the cost of full presentations of quantum at this stage, which experience often shows to be a very expensive process*"; (ii) allows "*more precise debate on quantum in light of the findings in relation to liability*"; and (iii) "*reduc[es] the complexity and therefore the length of the deliberations and drafting of the Tribunal's more limited decision.*"[29]

[24] Claimant's Request, ¶¶ 21-23.

[25] Claimant's Request, ¶ 24.

[26] *Orazul International España Holdings SL v Argentine Republic*, ICSID Case No ARB/19/25, Decision on the Respondent's Request for Bifurcation, 7 January 2021, ¶ 30 (**CL-55**).

[27] Claimant's Request, ¶ 26.

[28] *Renco Group Inc v Republic of Peru,* PCA Case No 2019-46, Procedural Order No 3, 17 September 2020, ¶ 2.3 (**CL-54**).

[29] Claimant's Request, ¶¶ 29-30.

**(3) The "relevant circumstances" support bifurcation of quantum issues**

32. EMPC submits that the considerations in ICSID Arbitration Rule 42(4) are easily satisfied here. EMPC shows that the "*relevant circumstances*" support bifurcating this arbitration into two phases: first, a phase dedicated to liability (i.e., assessment of whether the Payment Demands contain any components that violate the ECT) and second, a phase focused on damages (i.e., quantification of the unlawful components of the Payment Demands).[30] EMPC's position is based on the following reasons:

***a. Bifurcation would enhance efficiency, reduce the cost of the proceeding, and could result in a net time saving (Rule 42(4)(a))***

33. The Claimant submits that the bifurcation of quantum would materially (i) reduce the time and (ii) lower the cost of the proceeding, in accordance with ICSID Arbitration Rule 42(4)(a), as follows.[31]

(i) Cost and efficiency considerations

34. EMPC submits that, given the vast number of Payment Decisions underlying the Payment Demands and the multiple overlapping allegations of unlawfulness, addressing liability and damages in a single phase would be impractical and unreasonably costly.[32]

35. ***First,*** the Claimant contends that the complexity of applying multiple alleged breaches to hundreds of thousands of Payment Decisions makes this case a textbook candidate for bifurcation. Given the breadth of the Payment Demands, the number of alleged breaches, and the range of possible findings, the Claimant argues it would be inefficient and costly to brief damages for all scenarios. Instead, the Claimant submits that efficiency would be served by the Tribunal first determining which elements of the Payment Demands breach the ECT and then providing guidance for a focused quantum phase.[33]

36. The Claimant notes that, as observed by the tribunal in *Coropi v Serbia*,[34] absent bifurcation there is every likelihood that expert instructions would diverge, resulting in multiple rounds of written quantum evidence that, before liability is even addressed, would be less focused and useful than the Tribunal might otherwise wish. EMPC argues that the Tribunal's finding on the lawfulness of the IMG's contour line exemplifies the need for bifurcation, as the presumption of causation applied to a 72 km area has a substantial impact

[30] Claimant's Request, ¶ 31.

[31] Claimant's Request, ¶ 32.

[32] Claimant's Request, ¶ 33.

[33] Claimant's Request, ¶¶ 34-36.

[34] *Coropi Holdings Limited et al v Republic of Serbia*, ICSID Case No ARB/22/14, Procedural Order No 4, Bifurcation of Liability and Damages Phases, 21 August 2023, ¶ 23 (**CL-57**).

on damages. EMPC maintains that the contour should have been scientifically based rather than arbitrarily drawn, which would have excluded over 75% of the properties captured by the State's line. If the Tribunal adopts EMPC's position, damages would be owed for unlawful Payment Decisions outside the proper contour, thereby simplifying and narrowing the case to physical damage Payment Decisions within the acceptable contour. Given the multiple possible outcomes on the contour line and the large volume of Payment Decisions, EMPC contends that bifurcation is necessary to avoid the undue burden of calculating damages across all permutations.[35]

37. ***Second,*** EMPC submits that the overlap between the effects of the individual unlawful elements of the Payment Demands creates a wide range of outcomes that favors bifurcation. The Claimant contends that eliminating the ill effects of any one unlawful element would likely yield damages overlapping with those associated with other unlawful elements, requiring the parties to account for such overlap in their damages positions. The Claimant further asserts that, for example, if the Tribunal accepts EMPC's arguments on the Home Value Loss Levies, it may find breaches in Payment Demands for properties whose owners had not made a serious effort to sell, as well as for properties in areas where only 20% of residential addresses had recognized physical damage claims. The Claimant contends that these findings would overlap, covering properties both unsold and located in such areas, requiring careful calculation to avoid double counting.[36]

38. Accordingly, the Claimant asserts that the parties must not only address the standalone effects of each unlawful element but also account for overlaps between them, which can only be properly done in the damages phase once liability findings are made. Presenting such expert evidence now, without knowing which elements the Tribunal considers unlawful, would be impracticable given the high number of possible outcomes.[37]

39. The Claimant further submits that it has summarized ten illustrative aspects of the Payment Demands that violate the Netherlands' obligations under the ECT, which alone yield 1,024 possible combinations of breach decisions by the Tribunal, assuming binary outcomes and accounting for every permutation. Briefing damages at this stage would therefore require the parties to consider overlapping effects across all 1,024 scenarios, a burden that increases exponentially when accounting for the full range of potential findings on each breach, such as the contour line issue. By contrast, if the Tribunal first issues its liability decision, the parties can provide focused and tailored damages calculations addressing only

[35] Claimant's Request, ¶¶ 37-38.

[36] Claimant's Request, ¶¶ 40-42.

[37] Claimant's Request, ¶ 43.

the overlap of elements found unlawful, substantially limiting the scope of evidence required, reducing costs, and narrowing the quantum issues in dispute.[38]

40. ***Third,*** EMPC asserts that the interrelationship between the different categories of Payment Demands and between the Payment Decisions and the corresponding Costs Component of every Payment Demand favors bifurcation. Accordingly, EMPC's success or failure on alleged breaches in the Physical Damage Levies will have knock-on consequences on damages associated with the Emotional Distress Levies and the Home Value Loss Levies, making it far more efficient to await the Tribunal's liability decision before addressing those effects. Similarly, all Payment Demands across the six categories contain a Costs Component informed by work carried out by State agencies in making each Payment Decision, and if the Tribunal finds breaches of Article 10(1) of the ECT, it will need to determine what portion of the Costs Component reflected unlawful conduct and eliminate it, whereas if EMPC is unsuccessful on certain alleged breaches, no such computation would be required.[39]

41. ***Fourth,*** EMPC submits that the volume of documents EMPC will require the Netherlands to produce in connection with quantum issues also favors bifurcation. EMPC alleges that the Payment Demands contain insufficient information to make them transparent for NAM and its shareholders, and therefore a substantial number of documents will be required during this arbitration, many of which would only be relevant in the quantum phase depending on the Tribunal's liability findings. For instance, EMPC has minimal information on the Costs Component of each Payment Demand, which can comprise more than 50% of its value, and will require documents showing the relationship between each alleged breach and the Costs Component. However, such production and review would be superfluous for any breach not ultimately accepted by the Tribunal. Accordingly, the Claimant contends that the document production phase—and the costs of producing, reviewing, and briefing the Tribunal on vast swaths of documents—would be streamlined significantly if liability issues were addressed first and document production relevant to damages deferred to a second phase.[40]

(ii) Time considerations

42. The Claimant contends that time considerations also support bifurcation at this juncture for the following reasons.[41]

[38] Claimant's Request, ¶¶ 44-45.

[39] Claimant's Request, ¶¶ 46-50.

[40] Claimant's Request, ¶¶ 51-54.

[41] Claimant's Request, ¶ 55.

43. ***First,*** if bifurcation is not granted, EMPC will need to seek leave to modify the procedural calendar to set longer briefing periods for the parties' submissions, given the volume of work associated with briefing damages simultaneously with liability, as noted in its letter to the Tribunal of 2 September 2025 reserving the right to apply for additional time if unsuccessful in its bifurcation request.[42]

44. ***Second,*** by deciding to bifurcate damages now, the Tribunal will avoid extended delays that would result if bifurcation becomes necessary later, since in many complex ICSID cases tribunals have belatedly bifurcated damages only after full briefing, leading to inefficiencies and proceedings lasting more than ten years, as observed in *Coropi v. Serbia*.[43]

45. Accordingly, EMPC respectfully submits that the Tribunal should account for the risk of later bifurcation, which would involve duplicative submissions and prolong the case unnecessarily. While EMPC acknowledges that a separate quantum phase may lengthen the timetable compared to a single-phase proceeding, tribunals have noted that any extension will be offset by the added focus of evidence and argument on quantum, allowing both parties to save costs, and in the event of findings against EMPC, bifurcation would substantially truncate the proceedings, resulting in time and cost savings.[44]

***b. Bifurcation will narrow the quantum phase by disposing of the need for substantial submissions on the damages consequences of all possible liability outcomes (Rule 42(4)(b))***

46. The Claimant submits that the second criterion the Tribunal shall consider is whether bifurcation would dispose of a substantial portion of the dispute. Bifurcating quantum will eliminate the need for the Parties to make submissions on damages covering all possible permutations of the Tribunal's ruling on liability, a task that is substantial in scope as noted by the *ABH v Ukraine* tribunal.[45] EMPC argues that bifurcation would avoid the need to hear damages consequences of rejected breaches, allowing the Parties to focus their damages submissions only on the relevant liability scenario based on the Tribunal's findings.[46]

[42] Claimant's Request, ¶ 56.

[43] Claimant's Request, ¶¶ 57-58.

[44] Claimant's Request, ¶¶ 59-60.

[45] *ABH Holdings SA v Ukraine*, ICSID Case No ARB/24/1, Decision on Bifurcation, 12 May 2025, ¶ 39 (**CL-58**).

[46] Claimant's Request, ¶¶ 61-64.

***c. Damages issues are not intertwined with other phases of the proceeding in such a way as to make bifurcation inefficient (Rule 42(4)(c))***

47. The Claimant submits that ICSID Arbitration Rule 42(4)(c) requires the Tribunal to consider whether the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical. EMPC further explains that the purpose of this rule is to dissuade bifurcation where issues proposed to be deferred, such as damages, are inseparably linked to issues proposed to be heard first, such as liability, thereby undermining efficiency gains. The Claimant asserts that this criterion can be addressed summarily: the liability phase will be focused solely on identifying the unlawful elements of each Payment Demand, without considering the damages consequences of those findings, while the damages phase will address how the Payment Demands must be adjusted to unwind any unlawful elements. Accordingly, EMPC's proposed bifurcation would not result in intertwined issues being presented in both phases, and the efficiency gains would be substantial.[47]

48. In conclusion, EMPC affirms that the case law supports bifurcating the liability and damages phases where there are efficiencies to be gained and where doing so will allow the parties to present more streamlined arguments on quantum. The scope of the present dispute makes it an ideal case for bifurcation: there are a large number of alleged breaches, there are multiple possible quantum outcomes for many of the breaches, the quantum effects of the breaches are certain to overlap with each other in part, and there are hundreds of thousands of underlying Payment Decisions made by the State (and subsequently imposed on NAM) to which liability findings would have to be applied.[48]

## B. THE RESPONDENT'S POSITION

49. In its reply, the Respondent argues that EMPC seeks bifurcation of the proceedings into two phases, one to address liability and the alleged unlawful elements of the Netherlands' payment demands together with guidance from the Tribunal on principles of quantum, and a separate phase to address quantum. The Respondent asserts that EMPC describes such guidance as including, but not be limited to, "*the lawful assessment boundary of physical damage […] and the correct methodologies for the strengthening operation and assessment of home value loss*."[49]

50. The Netherlands contends that, in light of the relevant circumstances, bifurcation into liability and quantum phases would be appropriate. However, the Respondent maintains

[47] Claimant's Request, ¶¶ 65-67.

[48] Claimant's Request, ¶ 68.

[49] Respondent's Response, ¶ 2.

that EMPC's proposed approach would spread quantum issues across both phases. This is because the Request proposes a liability phase which would include "*guidance*" from the Tribunal on "*principles of quantum*" prior to a separate quantum phase. This is highly unusual and would, in the Netherlands' view, defeat the benefits of bifurcation, not least as regards procedural efficiency.[50]

51. The Respondent argues that EMPC's proposed approach to bifurcation would expose the Tribunal to a heightened risk of premature or incomplete determinations on quantum-related issues, made without the benefit of a full evidentiary record on quantum. The Netherlands asserts that the partial bifurcation on quantum issues suggested by EMPC would undermine the efficiency of the proceedings because it would result in both an unnecessarily lengthy and costly liability phase, including detailed argument and expert testimony on "*principles of quantum*" across a wide range of potential liability findings before any decision on liability, and uncertainty as to which quantum-related issues will be resolved only at the quantum stage. The Respondent further contends that such a partial bifurcation could also require the Tribunal to revisit at the quantum phase issues initially considered, on the basis of less information, during the liability phase.[51]

52. The Netherlands submits that the proceedings should be bifurcated on quantum, but that the scope of the two resulting phases should be more definitive and orthodox: namely, one phase to address questions of liability only and a second phase to address all quantum issues (including "*principles of quantum*"). This approach would retain the procedural efficiencies highlighted in the Request, while avoiding the inefficiencies and uncertainty that would follow from any decision to address "*principles of quantum*" in the liability phase. Such a bifurcation would also more clearly satisfy each of the remaining considerations set out in ICSID Rule 42(4), and incidentally, such a "*clean*" bifurcated structure would align with the sequencing adopted in other Groningen-related arbitration proceedings.[52]

53. In its response, the Netherlands addressed three main issues, these are: (1) Relevant Background; (2) The Applicable Standard for Bifurcation; and (3) The Relevant Circumstances Supporting the Bifurcation of All Quantum Issues under ICSID Arbitration Rule 42.

**(1) Relevant Background**

54. The Respondent argues that EMPC's claims concern the annual issuance of statutory levies imposed on NAM for financing the Damage Handling Program since 2020 and the

[50] Respondent's Response, ¶ 3.

[51] Respondent's Response, ¶¶ 4-5.

[52] Respondent's Response, ¶ 6.

Strengthening Operations since 2024. While NAM had consistently paid these levies until EMPC's Request for Arbitration of 30 September 2024, EMPC asserts that the Netherlands' conduct breached its obligations under Article 10(1) of the ECT and that customary international law requires the Netherlands "*to make full reparation for the injury caused by the internationally wrongful act*." The Respondent disputes all of EMPC's claims and will submit detailed responses at the appropriate junctures. For present purposes, the Respondent notes that EMPC's claims, if successful, will require significant additional submissions and expert evidence on quantum-related issues with respect to each annual statutory levy, and contends that such submissions and evidence would most efficiently and coherently be presented as a whole only after the Tribunal has rendered its decision on liability.[53]

**(2) Applicable Legal Standard**

55. The Netherlands agrees with EMPC that ICSID Arbitration Rule 42 governs the Request and gives the Tribunal authority to order that certain aspects of the case be bifurcated in a separate phase of the proceeding. The Netherlands also agrees that the "*overarching consideration applicable to requests for bifurcation is procedural efficiency*."[54]

56. The Respondent acknowledges that, as EMPC states, the considerations set out in ICSID Arbitration Rule 42(4) have led numerous tribunals to order the bifurcation of quantum issues. The Respondent observes that EMPC refers to factors such as the range of outcomes on liability affecting the approach to quantum, the volume of evidence required to address quantum issues, avoiding the costs of full presentations of quantum at an early stage, allowing for more precise debate on quantum in light of liability findings, and reducing the complexity and length of deliberations.[55]

57. The Respondent further emphasizes that EMPC's proposal ignores that procedural efficiency must apply to *all* quantum-related issues, including "*principles of quantum*". The Respondent contends that none of the authorities cited support bifurcating only some quantum issues for efficiency purposes, as opposed to bifurcating all quantum issues. The Respondent points out that, for example, in *ABH Holdings SA v. Ukraine*,[56] the tribunal observed that "*when previous ICSID tribunals have bifurcated the quantum phase, they have done so without spelling out the specific issues that such a phase would involve*." [57]

[53] Respondent's Response, ¶¶ 8-9.

[54] Respondent's Response, ¶¶ 10-11.

[55] Respondent's Response, ¶ 12.

[56] *ABH Holdings SA v. Ukraine*, ICSID Case No. ARB/24/1, Decision on Bifurcation, 12 May 2025, ¶ 32 (**CL-58**).

[57] Respondent's Response, ¶ 13.

**(3) The "Relevant Circumstances" support the bifurcation of all quantum issues under ICSID Rule 42**

58. The Respondent acknowledges EMPC's argument that "*the considerations of ICSID Arbitration Rule 42(4) are easily satisfied here*," including that "*bifurcation would enhance efficiency, reduce the cost of the proceeding, and could result in a net time saving (Rule 42(4)(a))*," that it would "*narrow the quantum phase by disposing of the need for substantial submissions on the damages consequences of all possible liability outcomes (Rule 42(4)(b))*," and that "*damages issues are not intertwined with other phases of the proceeding in such a way as to make bifurcation inefficient (Rule 42(4)(c))*." The Netherlands, again, broadly agrees with all of the above, and with EMPC's view that the considerations set out in Rule 42(4) indicate in favour of bifurcation of quantum issues in this case.[58]

59. The Respondent, however, contends that EMPC fails to show how including "*guidance on principles of quantum*" in the liability phase would improve efficiency, and argues instead that it would have the opposite effect by requiring argument and evidence on "*principles of quantum*" across an infinite range of liability scenarios. The Respondent emphasizes that EMPC's Request is internally inconsistent, since it describes quantum as uncertain and contingent while simultaneously inviting the Tribunal to provide guidance on quantum principles at the merits stage.[59]

60. The Respondent argues that, EMPC's partial bifurcation of quantum issues would: unnecessarily require the Tribunal to prejudge quantum issues at the liability phase of the arbitration and later revisit the same issues at the quantum phase (Section A); and increase the complexity and cost of the liability phase (Section B). In contrast, a "*clean*" bifurcation in the terms proposed by the Netherlands would enhance the efficiency of both the liability phase and the quantum phase (if any) (Section C).

***a. The partial bifurcation proposed by EMPC would unnecessarily require the Tribunal to prejudge quantum issues at the liability phase of the arbitration and later revisit the same issues at the quantum phase***

61. The Respondent emphasizes that ICSID Rule 42(4)(c) allows bifurcation to be refused where "*the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical*," meaning bifurcation should not be ordered if it forces the Tribunal to consider matters in one phase that properly belong in another. The Respondent notes that tribunals have recognized this risk, citing *Continental Gold Inc.*

[58] Respondent's Response, ¶ 14.

[59] Respondent's Response, ¶ 15.

*v. Colombia*,[60] where the tribunal denied bifurcation because "*questions of quantum are sufficiently separate from issues to be assessed at the stages of jurisdiction and liability*" and warned that bifurcation "*may give rise to duplication of evidence*."[61]

62. The Respondent contends that EMPC's proposed approach would have precisely this effect, since analyzing "*principles of quantum*" during the liability phase would require the Parties to present their case on those principles across multiple potential liability scenarios, thereby pulling the Tribunal into issues that should be reserved for the quantum phase. The Respondent further maintains that proceeding with EMPC's proposal could lead to premature and partial determinations on quantum, complicating the Tribunal's decision-making and increasing the risk of inconsistency or duplication between phases. The Respondent concludes that a "*clean*" bifurcation would be consistent with that approach, whereas a partial bifurcation in the terms proposed by EMPC would depart from it.[62]

***b. The partial bifurcation proposed by EMPC would increase the complexity and cost of the liability phase***

63. The Respondent submits that EMPC has not demonstrated that the inclusion of guidance on "*principles of quantum*" in the liability phase would improve the efficiency of the proceeding. On the contrary, the Respondent argues that bifurcation on the terms suggested by EMPC would increase the complexity and cost of the liability phase, including with respect to issues that will be wholly irrelevant should the Netherlands prevail on liability, whether in whole or in part.[63]

64. The Respondent emphasizes that the Request lacks clarity as to what "*guidance on principles of quantum*" would be canvassed, how such guidance would be "*practicable*," or which "*questions of quantum*" would be reserved for a separate phase. The Respondent contends that providing "*guidance on principles of quantum*" at the liability phase would require submissions and evidence, potentially expert evidence, across "*well over 1,000 potential liability scenarios*," materially increasing time and cost.[64]

65. The Respondent submits that EMPC's proposed approach fails to indicate the legal status of any "*guidance on principles of quantum*" during the liability phase. If such "*guidance*" were non-binding, the Parties could seek to reopen it at the quantum phase, creating duplication. If binding, it would risk unduly constraining the Parties' arguments and the

[60] *Continental Gold Inc. v. Republic of Colombia*, ICSID Case No. ARB/24/25, Procedural Order No. 5, 18 August 2025, ¶¶ 61-62 (**RL-59**).

[61] Respondent's Response, ¶¶ 16-17.

[62] Respondent's Response, ¶¶ 18-20.

[63] Respondent's Response, ¶ 21.

[64] Respondent's Response, ¶¶ 22-23.

Tribunal's discretion at the quantum stage. The Respondent further argues that EMPC fails to explain the scope of submissions and evidence that would, on its partial bifurcation scheme, be expected at the liability and quantum phases, saying simply that the Tribunal "*may […] be tasked with determining the lawful value*" of each disputed payment demand issued by the Netherlands, such that: "*to present focused submissions and expert evidence on quantum, the parties should be guided by the Tribunal's findings on which elements of the Payment Demands breach the ECT and, to the extent practicable, guidance on how those elements ought to be determined in accordance with international law*."[65]

66. The Respondent submits that in the rare instances in which tribunals have addressed "*principles of quantum*" alongside questions of liability, they have done so only after already having received the parties' submissions on quantum. The Respondent submits that in *VM Solar v. Spain*,[66] the tribunal provided guidance on "*principles of quantum*" during the liability phase, with the parties' agreement and having had the opportunity to review their submissions and expert evidence on quantum. The Respondent further notes that as part of its decision on liability, the tribunal ruled *inter alia* on the valuation method to be applied, ordered the parties to prepare a revised damages calculation based on both an ex-ante valuation date and an ex-post valuation date in the light of its findings on liability, and ruled that the claimants were entitled to pre-award interest.[67]

67. The Respondent submits that in *Saint-Gobain v. Venezuela*,[68] the tribunal first ruled on liability and established principles of quantum applicable to the determination of the amount of compensation, including the appropriate valuation date and criteria for the calculation of damages, inviting the parties to attempt to agree on the final amount of compensation. The Respondent notes that once more, the tribunal did so having received the parties' submissions and expert evidence on the compensation standard, valuation date and calculation of damages.[69]

68. The Respondent submits that by contrast, tribunals have been reluctant to provide detailed guidance on "*principles of quantum*" without receiving prior submissions from the parties on quantum issues. The Respondent notes that in *Myers v. Canada*,[70] an ad hoc NAFTA arbitration under the 1976 UNCITRAL Arbitration Rules, the tribunal bifurcated the

[65] Respondent's Response, ¶¶ 24-25.

[66] *VM Solar and others v. Kingdom of Spain*, ICSID Case No. ARB/19/30, Decision on Jurisdiction, Liability and Principles of Quantum, 14 May 2025, ¶¶ 535-555 (**CL-45**).

[67] Respondent's Response, ¶¶ 26-27.

[68] *Saint-Gobain Performance Plastics Europe v. Bolivarian Republic of Venezuela,* ICSID Case No. ARB/12/13, Decision on Liability and the Principles of Quantum, 30 December 2016, ¶¶ 907, 333-351 (**RL-60**).

[69] Respondent's Response, ¶ 28.

[70] *S.D. Myers, Inc. v. Canada*, Partial Award, 13 November 2000, ¶¶ 302-303 (**RL-61**). See also, *S.D. Myers, Inc. v. Canada*, Procedural Order No. 1, 28 May 1999, ¶¶ 1, 315 (**RL-62**).

proceedings in one phase on liability and "*principles of quantum*" and a second phase on quantum based on procedural order No. 1. The Respondent submits that after hearing the parties, the tribunal only set out limited overarching principles on compensation for expropriation. The Respondent notes that the tribunal stated that "*it would be premature at this stage to attempt to set out detailed, exclusive, principles for calculating the compensation payable. The disputing parties should have the opportunity to make further factual and legal submissions on the question of the precise methodology to be used*."[71]

69. The Respondent submits that any submissions, evidence and (potentially) document production related to "*principles on quantum*" would undoubtedly generate additional costs and extend the liability phase, and notes that EMPC's own concerns that the procedural calendar may need to be modified in order to set longer periods for the parties' submissions could materialise; the Respondent further submits that addressing "*principles on quantum*" along with questions of liability would, in all probability, extend the Tribunal's deliberation and drafting time, and above all, the Respondent asserts that partial bifurcation of quantum issues in the way anticipated in the Request would, without doubt, increase the complexity and cost of the liability phase by requiring the Parties to address in the liability phase issues which will be entirely irrelevant should the Tribunal dismiss EMPC's claims whether in whole or in part.[72]

***c. A "clean" bifurcation of quantum issues would enhance the efficiency of both the liability phase and the quantum phase (if any)***

70. The Respondent submits that at various instances in its Request, and using different formulae, EMPC mentions that guidance on "*principles of quantum*" is required in order to "*narrow the scope of the damages analyses to be provided by the parties*," "*streamline the damages submissions in a subsequent quantum phase*," and "*present focused submissions and expert evidence on quantum*."[73]

71. The Respondent submits that EMPC does not provide an explanation as to how the inclusion of "*principles of quantum*" in the liability phase would enhance the efficiency of any subsequent quantum phase, beyond the efficiencies that will already be associated with detailed findings on liability. The Respondent asserts that most tribunals opt for a "*clean*" bifurcation between liability and quantum, in line with the efficiency requirements of ICSID Arbitration Rule 42(4) and the need to avoid intertwining related questions across different phases of the proceeding. The Respondent notes that none of the legal authorities submitted by EMPC have adopted its proposed partial bifurcation approach so early in an arbitral proceeding. The Respondent submits that when tribunals decided to bifurcate

[71] Respondent's Response, ¶ 29.

[72] Respondent's Response, ¶¶ 30-31.

[73] Respondent's Response, ¶ 32.

quantum issues, they did so without providing for consideration of "*principles of quantum*" in the liability phase, but rather opted for a "*clean*" bifurcation between liability and quantum.[74]

72. The Respondent contends that this approach, consistent with the sequencing of liability and quantum issues in the ongoing parallel NAI arbitrations, would be more practical and straightforward for the Tribunal also in the present case. The Respondent submits that it would be more efficient, and in line with existing jurisprudence, for the Tribunal to consider "*principles of quantum*" only after having ruled on issues of liability. The Respondent notes that EMPC itself puts it in its Request that among the benefits of bifurcating quantum issues, tribunals have noted that bifurcation (i) avoids "*the cost of full presentations of quantum at this stage, which experience often shows to be a very expensive process*", (ii) allows "*more precise debate on quantum in light of the findings in relation to liability*"; and (iii) "*reduc[es] the complexity and therefore the length of the deliberations and drafting of the Tribunal's more limited decision*".[75]

73. The Respondent submits that each of these "*benefits*" will more readily be achieved by the Netherlands' alternative proposal of a "*clean*" bifurcation between issues of liability and issues of quantum. The Respondent submits that a "*clean*" bifurcation represents the lowest-risk procedural option: it preserves efficiency, avoids premature quantum engagement (including on "*principles of quantum*"), and maintains full flexibility for any subsequent quantum phase.[76]

## IV. TRIBUNAL'S ANALYSIS

### A. LEGAL FRAMEWORK

74. Rule 42 of the ICSID Arbitration Rules provides that:

> "*(1) A party may request that a question be addressed in a separate phase of the proceeding ("request for bifurcation").*
>
> *(2) If a request for bifurcation relates to a preliminary objection, Rule 44 shall apply.*
>
> *(3) The following procedure shall apply to a request for bifurcation other than a request referred to in Rule 44:*

[74] Respondent's Response, ¶¶ 33-34.

[75] Respondent's Response, ¶ 35.

[76] Respondent's Response, ¶ 36.

> *(a) the request for bifurcation shall be filed as soon as possible;*
>
> *(b) the request for bifurcation shall state the questions to be bifurcated;*
>
> *(c) the Tribunal shall fix time limits for submissions on the request for bifurcation;*
>
> *(d) the Tribunal shall issue its decision on the request for bifurcation within 30 days after the last submission on the request; and*
>
> *(e) the Tribunal shall fix any time limit necessary for the further conduct of the proceeding.*
>
> *(4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:*
>
> *(a) bifurcation would materially reduce the time and cost of the proceeding;*
>
> *(b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and*
>
> *(c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical.*
>
> *(5) If the Tribunal orders bifurcation pursuant to this Rule, it shall suspend the proceeding with respect to any questions to be addressed at a later phase, unless the parties agree otherwise.*
>
> *(6) The Tribunal may at any time on its own initiative decide whether a question should be addressed in a separate phase of the proceeding.*"

## B. TRIBUNAL'S DISCUSSION

75. The Tribunal has carefully reviewed and considered the Parties' submissions on the Claimant's Request for Bifurcation, together with the accompanying factual exhibits and legal authorities relied upon. At this juncture, the Tribunal addresses solely the Claimant's Request. In doing so, the Tribunal emphasizes that its determination is confined strictly to procedural matters. The Tribunal's determination does not involve, nor should it be

understood as involving, any findings on the merits of the dispute or on the substantive issues raised by the Parties.

76. The Tribunal further observes that the Parties, and in particular the Claimant, have submitted an extensive factual background in support of their positions. While the Tribunal acknowledges the relevance of such background to the broader dispute, it reiterates that, for the purposes of the present Request, it will only consider those aspects that are directly pertinent to the procedural question of bifurcation. The Tribunal stresses that this approach avoids any premature assessment of contested facts and ensures that its analysis remains within the proper scope of the Request.

77. In its discussion, the Tribunal will therefore focus on the submissions that are material to its analysis of bifurcation under ICSID Arbitration Rule 42. The fact that certain arguments or factual details are not expressly or specifically addressed in this section does not mean that they have been disregarded. Rather, the Tribunal confirms that all submissions have been considered, but only those relevant to the procedural determination are discussed in detail.

78. As a starting point, the Tribunal notes that the Parties are in agreement on certain issues, while they diverge on others. The Tribunal considers it useful to highlight these areas of convergence and divergence, as they frame the scope of the procedural determination. The Tribunal will therefore begin by identifying the points of common ground before turning to the contested issues, which require closer examination in light of the criteria set out in ICSID Arbitration Rule 42(4).

79. ***On the one hand,*** the Parties agree, *inter alia*, that: (i) the applicable legal standard is Rule 42 of the ICSID Arbitration Rules; (ii) the Tribunal has authority to order that certain aspects of the case be bifurcated into a separate phase of the proceeding; (iii) the overarching consideration applicable to requests for bifurcation is procedural efficiency; (iv) that damages issues are not specifically intertwined with other phases of the proceeding in such a way as to make bifurcation inefficient (Rule 42(4)(c)); (v) the relevant factors considered by tribunals when ordering bifurcation include the range of liability outcomes affecting the approach to quantum, the volume of evidence required to address quantum issues, the avoidance of costs associated with full presentations of quantum at an early stage, the ability to allow for more precise debate on quantum in light of liability findings, and the reduction of complexity and length of deliberations; and (vi) most importantly, that the considerations set out in Rule 42(4) weigh in favour of bifurcation of quantum issues in this case.

80. **On the other hand,** the Parties diverge on the approach (the scope of bifurcation) that should be followed. EMPC proposes that "[…] *the Tribunal were to first rule on liability*

*and, where practicable, deliver guidance on principles of quantum to significantly streamline the damages submissions in a subsequent quantum phase. That would include, for example, the Tribunal's guidance on the lawful assessment boundary on physical damages (within which causation can be presumed that physical damage was caused by NAM's gas production activities) and the correct methodologies for the strengthening operation and assessment of home value loss. Once such guidelines have been established, the parties can then make quantum submissions, in a subsequent phase, focused on those elements of the Payment Demands found by the Tribunal to violate the ECT (and in light of guidance on principles of quantum that the Tribunal may provide)*."[77] By contrast, the Netherlands requests a "***clean***" bifurcation, under which "[…] *the proceedings should be bifurcated on quantum, but that the scope of the two resulting phases should be more definitive and orthodox: namely, one phase to address questions of liability only and a second phase to address all quantum issues (including "principles of quantum")*."[78]

81. Accordingly, the principal disagreement between the Parties and the central question before the Tribunal in this Request, is whether the "*guiding principles of quantum*" should be addressed at the liability phase or deferred to the damages phase.

82. In resolving this divergence, the Tribunal shall apply the considerations set out in Rule 42(4) of the ICSID Arbitration Rules and take into account all relevant circumstances. Specifically, the Tribunal must consider: (i) whether bifurcation would materially reduce the time and cost of the proceeding; (ii) whether the determination of the questions proposed for bifurcation would dispose of all or a substantial portion of the dispute; and (iii) whether the questions to be addressed in separate phases of the proceeding are so intertwined as to render bifurcation impractical.

83. Upon careful reflection on these considerations, the Tribunal finds that the proper and efficient course for the present proceedings is to address liability as a distinct matter in the first phase and reserve issues of quantum for a subsequent phase. Only once liability has been determined shall the proceedings proceed to a subsequent phase devoted to damages, in which the principles of quantum can be examined together with the calculations of damages, as necessary. This approach aligns with the considerations set out in Rule 42(4) of the ICSID Arbitration Rules, for the following reasons.

84. ***As to the first consideration,*** the Tribunal agrees with the Parties that the prime directive for bifurcation is to achieve efficiency to the extent possible, such that bifurcation would reduce the time and cost of the proceeding. That said, the Tribunal notes that EMPC has not clearly defined or clarified what constitutes "*principles of quantum*" and how they

[77] Claimant's Request, ¶ 9.

[78] Respondent's Response, ¶ 6.

relate more to the liability phase than to the quantum phase. Although EMPC has provided helpful examples, such as the lawful assessment boundary on physical damages (within which causation can, from EMPC's perspective, be presumed that physical damage was caused by NAM's gas production activities) and the correct methodologies for the strengthening operation and assessment of home value loss,[79] these remain examples and are not exhaustive principles, and their limits or parameters are not defined.

85. It is also not clear to the Tribunal (i) whether and to what extent these examples overlap with other quantum-related issues, and (ii) why the Tribunal should single out a few principles relating to quantum and address them in the liability phase, noting that the Tribunal has not received sufficient briefing on quantum issues and related expert evidence, including on the compensation standard, valuation date and calculation of damages. Thus, the scope of quantum principles and dividing line between those principles and other quantum-related issues remains unclear. This lack of clarity creates an unwelcomed risk for either Party to cross the dividing line between issues of liability and quantum, and this would raise concerns about fairness and due process. This would also create practical challenges as to which exact aspects of quantum are to be pleaded and in which phase, thereby creating inefficiency and risking overlapping submissions and procedural disputes, which would increase time and cost.

86. ***With respect to the second consideration,*** whether the proposed scope of bifurcation would dispose of all or a substantial portion of the dispute, the Tribunal takes note of EMPC's submission that the Payment Demands encompass hundreds of thousands of individual decisions, resulting in a vast constellation of potential liability findings, each requiring its own quantum analysis, together with EMPC's concern that the interrelationship among alleged breaches could produce well over 1,000 liability scenarios, and exponentially more when factoring in ranges of possible outcomes.[80] The Tribunal also observes that this complexity demonstrates that a potential determination of liability at the preliminary stage could dispose of a reasonable portion of the dispute, with quantum issues (including principles of quantum) reserved for the subsequent phase. The Tribunal considers that this approach aligns more with the tribunal's finding in *Orazul v. Argentina* in which it was stated that "*whether bifurcating* […] *could significantly contribute to clarifying and simplifying the dispute before the Tribunal*."[81]

87. ***Finally, as to the third consideration,*** whether the questions to be addressed in separate phases are so intertwined as to render bifurcation impractical, the Tribunal is persuaded

[79] Claimant's Request, ¶ 9.

[80] Supra, ¶¶ 14-15.

[81] *Orazul International España Holdings SL v Argentine Republic*, ICSID Case No ARB/19/25, Decision on the Respondent's Request for Bifurcation, 7 January 2021, ¶ 30 (**CL-55**).

that a proposed partial bifurcation that spreads quantum issues across the two phases of liability and quantum would expose the proceedings to a heightened risk of premature or incomplete determinations on quantum-related issues, made without the benefit of a full evidentiary record. Such determinations could later require revisiting during the quantum phase, which undermines efficiency and fairness. By contrast, a clean bifurcation ensures that the phases remain distinct and non-overlapping. This approach avoids cross-phase challenges, safeguards due process, and ensures that expert evidence on quantum, whether principles or calculations, will be more targeted, coherent, and ultimately more useful if liability is established.

88. This approach is also aligned with the tribunal decision in Grand Colombia v. Colombia, cited by the Claimant, where it was observed that "[I]*n some cases there may be considerable burdens and costs associated with preparing quantum submissions, including the need to develop damages models to address multiple possible scenarios, and that this burden may be exacerbated in cases where challenges are brought to multiple different government acts, and the quantum analysis may differ depending on which (if any) acts eventually are found to violate which (if any) treaty articles. In such cases, a decision to defer quantum submissions may enable the parties to accelerate the liability briefing schedule, while later focusing any quantum submissions on the relevant liability scenario which applies*".[82]

89. The Tribunal also notes the Claimant's reliance on *Coropi v. Serbia*, where it was observed that "[A]*bsent damages bifurcation, there is every likelihood that the Claimants' instructions to their quantum expert would be matched by different instructions to the Respondent's expert/s and that in due course, following two rounds of written expert evidence on quantum, there is an elevated likelihood that the expert evidence presented to the Tribunal, before liability has even been addressed, will be less focused and useful than the Tribunal might otherwise wish*".[83] The Tribunal finds this reasoning persuasive and applies equally to principles of quantum. Addressing liability first ensures that subsequent expert evidence on quantum, whether in respect of principles or calculations, will be more targeted, coherent, and ultimately more useful, with a much lower risk of concerns over due process and premature determinations.

90. Given the absence of a clear articulation as to what exactly and exhaustively constitutes "*principles of quantum*", together with the risks of overlap, inefficiency, and premature determinations, the Tribunal concludes that such matters are better reserved for a potential

[82] *Gran Colombia Gold Corp v Republic of Colombia*, ICSID Case No ARB/18/23, Procedural Order No 3, Decision on the Respondent's Request for Bifurcation, 17 January 2020, ¶ 35 (**CL-52**).

[83] *Coropi Holdings Limited et al v Republic of Serbia*, ICSID Case No ARB/22/14, Procedural Order No 4, Bifurcation of Liability and Damages Phases, 21 August 2023, ¶ 23 (**CL-57**).

damages phase, where they can be examined in conjunction with the full evidentiary record and the calculation of damages, if necessary and if liability is established. This approach ensures procedural clarity, fairness, and efficiency, avoids the risk of fragmented or duplicative determinations, and aligns with the criteria set forth in Rule 42(4) of the ICSID Arbitration Rules as well as with the prudent reasoning and determinations made in other ICSID cases.

## V. ORDER

91. For the foregoing reasons, the Tribunal orders that the proceedings shall be bifurcated in two phases; the first phase shall address questions of liability, including the determination of any unlawful elements of the Netherlands' Payment Demands, and – depending on the outcome of the first phase – a subsequent phase shall encompass all damages issues including principles, assessment and calculation of quantum.

92. This Order is issued without prejudice to any jurisdictional and admissibility objections that are yet to be briefed and considered.

93. The Procedural Timetable originally adopted as Annex B to Procedural Order No. 1 is hereby revised as set out in Annex A to this Order and shall govern the subsequent phase of the proceeding.

For and on behalf of the Tribunal,

[signed]

_____
Prof. Dr. Mohamed Abdel Wahab
President of the Tribunal

4 February 2026