

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Azienda Elettrica Ticinese

v.

Federal Republic of Germany

(ICSID Case No. ARB/23/47)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Sir Christopher Greenwood GBE, CMG, KC, President of the Tribunal

Mr. John Beechey CBE, Arbitrator

Prof. Campbell McLachlan KC, Arbitrator

Secretary of the Tribunal

Ms. Anna Holloway

10 May 2024

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Introduction

The first session of the Tribunal was held on 19 April 2024, at 8a.m. (BST), by video conference via Zoom. The session was adjourned at 9.52a.m. (BST).

A recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the parties.

Participating in the conference were:

Members of the Tribunal:

Sir Christopher Greenwood GBE, CMG, KC, President of the Tribunal
Mr. John Beechey CBE, Arbitrator
Prof. Campbell McLachlan KC, Arbitrator

ICSID Secretariat:

Ms. Patricia Rodriguez Martin, Legal Counsel
Mr. Anton Tugushev, Paralegal

On behalf of the Claimants:

Dr. Richard Happ, Luther Rechtsanwaltsgesellschaft mbH
Mr. Tim Rauschning, Luther Rechtsanwaltsgesellschaft mbH
Ms. Nele Wachholz, Luther Rechtsanwaltsgesellschaft mbH
Mr. Quirin Graf von Wedel-Gödens, Luther Rechtsanwaltsgesellschaft mbH
[REDACTED], Azienda Elettrica Ticinese
[REDACTED] Rule 66(f), Azienda Elettrica Ticinese

On behalf of the Respondent:

Dr. Sabine Konrad, Aurelius Cotta
Dr. Maximilian Pika, Aurelius Cotta
Mr. Pierre Trippel, Aurelius Cotta
Ms. Rebecca Leinen, Federal Ministry of Economic Affairs and Climate Action
Mr. Tim Drunkenmölle, Federal Ministry of Economic Affairs and Climate Action

The Tribunal and the parties considered the following:

- The Draft Procedural Orders No. 1 and No. 2 circulated by the Tribunal Secretary on 4 April 2024; and

- The parties' comments on the Draft Procedural Orders received on 17 April 2024, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

On 24 April 2024, the Tribunal conveyed to the parties the drafts of Procedural Orders Nos. 1 and 2, which it had updated following the first session, and invited any further observations from the parties. The parties provided these comments on 3 May 2024.

Having considered the above documents and the parties' views, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 27 and 29, this Procedural Order sets out the Procedural Rules that govern this arbitration.

1. Applicable Arbitration Rules

Convention Article 44; Arbitration Rule 1

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of 1 July 2022.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 21

- 2.1. The Tribunal was constituted on 13 March 2024 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 19(3)(b). Copies of these declarations were distributed to the parties by the ICSID Secretariat upon acceptance of each arbitrator's appointment on 15 December 2023, 2 January 2024, and 13 March 2024.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 36 months to dedicate to this case and that they will use best efforts to meet all time limits for orders, decisions and the Award, in accordance with ICSID Arbitration Rule 12(1).

3. Fees and Expenses of Tribunal Members
Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees; Memorandum on Fees and Expenses
 - 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses in force at the time the fees and expenses are incurred.

4. Presence and Quorum
Arbitration Rule 33
 - 4.1. The participation of all of the members of the Tribunal by any appropriate means of communications is required at the first session, case management conferences, hearings and deliberations, except as otherwise provided in the Arbitration Rules or if the parties otherwise agree.

5. Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 10, 11(4), 12, 27 and 35
 - 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
 - 5.2. Orders decisions and the Award may be made by any appropriate means of communication.
 - 5.3. Orders and decisions may be signed electronically. The Award must be signed in hard copy unless the Tribunal and the Parties agree otherwise.
 - 5.4. The President is authorized to sign procedural orders and decisions on behalf of the Tribunal.
 - 5.5. When the matter is urgent, the President may decide procedural matters without consulting the other Members, provided that every effort is made to consult the other Members and subject to possible reconsideration of such decision by the full Tribunal.
 - 5.6. The Tribunal's orders and decisions shall indicate the reasons upon which they are made. The reasons may be minimal for non-controversial or minor procedural, administrative and organizational matters, e.g., extensions of time.
 - 5.7. The Tribunal will use best efforts to issue all rulings, including the Award, within the time limits prescribed by ICSID Arbitration Rule 58 and the Procedural calendar to be adopted by the Tribunal (see paragraph 14.1 below). If the Tribunal

cannot comply with an applicable time limit, it will advise the parties of the special circumstances justifying the delay and the date when it anticipates rendering the ruling, in accordance with ICSID Arbitration Rule 12(2). In any event, the Tribunal will provide the Parties with a status update every month if it becomes clear that it will be unable to comply with the applicable time limit. In case of rulings for which the procedural calendar, the ICSID Arbitration Rules or ICSID Convention do not set a time limit, the Tribunal will provide the parties with status updates every month if a ruling has not been issued within a month after the final submission on a particular matter.

- 5.8. Any ruling of the Tribunal, with the exception, subject to paragraph 5.3 above, of the certified copy of the Award, will be dispatched electronically to the parties. Each Party undertakes to acknowledge receipt of any ruling within one working day. The ruling will be deemed to have been issued on the date on which it is dispatched electronically. The same rule will apply to the certified copy of the Award if a decision is taken, in accordance with paragraph 5.3, above, to sign and dispatch the Award electronically. In such case, hard copies of the certified copy of the Award will be sent following the electronic communication and the Award will be deemed to have been issued on the date on which it was dispatched electronically.

6. Power to Fix Time Limits
Arbitration Rules 10 and 11

- 6.1. The President may exercise the Tribunal's power to fix and extend time limits for the completion of each procedural step in the proceeding under Arbitration Rules 10(1) and 11(3), in accordance with Arbitration Rules 10(3) and 11(4).
- 6.2. In exercising the power to fix time limits under Arbitration Rule 10(1), the President shall consult the parties as far as possible. If the matter is urgent, the President may fix time limits without consulting the other members of the Tribunal, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal
Administrative and Financial Regulation 28

- 7.1. The Tribunal Secretary is Ms. Anna Holloway, Senior Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Anna Holloway
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.
Tel.: + 1 (202) 473 7762
Fax: + 1 (202) 522-2615
Email: aholloway1@worldbank.org
Paralegal name: Ms. Colleen Ferguson (and Ms. Ekaterina Minina, during Ms. Ferguson's parental leave).
Paralegal email: cferguson2@worldbank.org and eminina@worldbank.org

(Parties should copy all three email addresses, all of which have been enabled for S/MIME encryption, in email correspondence).

- 7.3. For local messenger deliveries, the contact details are:

Ms. Anna Holloway
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
U.S.A.
Tel.: +1 (202) 458-1534

- 7.4. All communications between the Parties and the Tribunal shall be directed through the Secretary.

8. Representation of the Parties
Arbitration Rule 2

- 8.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For the Claimant

Dr. Richard Happ
Mr. Tim Rauschning
Ms. Vanessa Zimmermann de Meireles
Luther Rechtsanwaltsgesellschaft mbH

For the Respondent

Dr. Sabine Konrad
Dr. Maximilian Pika
Aurelius Cotta – Konrad Pika Trippel
Partnerschaft von Rechtsanwälten mbB

Rule 66(f)

Rule 66(f)

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pierre.trippel@aurelius.law

9. Apportionment of Costs and Advance Payments to ICSID – Division of Advances
Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 50

- 9.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. Following registration of the Request for arbitration, by letter of 23 August 2023, ICSID informed the Parties that US\$300,000 will be necessary to cover the estimated costs of the initial phase of the proceeding through the first session of the Tribunal, and requested that the Claimants pay US\$150,000. ICSID received the Claimants' payment on 10 November 2023. Upon the constitution of the Tribunal, by letter of 13 March 2024, ICSID requested that the Respondent also pay US\$150,000. ICSID received the Respondent's payment on 16 April 2024.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

10. Place of Proceeding and Hearings
Convention Articles 62 and 63; Arbitration Rule 32

- 10.1. Washington DC shall be the place of the proceeding.

- 10.2. The Tribunal may hold any in-person hearings in London, United Kingdom. The method of holding a hearing will be determined in accordance with para. 21.2.
- 10.3. The Tribunal members may deliberate at any place and by any appropriate means they consider convenient.

11. Procedural Language, Translation and Interpretation

Administrative and Financial Regulation 32; Arbitration Rule 7

- 11.1. English is the procedural language of the arbitration.
- 11.2. The Tribunal and the Secretariat shall communicate with the parties in English.
- 11.3. Documents filed in any other language must be accompanied by a translation into English.
 - 11.3.1. It is sufficient to translate only the relevant part of a supporting document, unless the Tribunal orders a party to provide a fuller or a complete translation. For the avoidance of doubt, the relevant part is not only that part specifically relied on by a party but also its context, i.e., in particular, the paragraphs or pages (as appropriate) before and/or after the referenced statement. The fact that only a partial translation of a document has been placed on the record by a party shall not limit the right of the other party to rely on other parts of that document at the oral hearing, in particular when cross-examining a witness or expert. If a party wishes to rely upon parts of a document which have not been translated it shall screen, and then provide in electronic copy and hard copy, a translation of those parts into English.
 - 11.3.2. Translations need not be certified, unless the translation is disputed and the Tribunal orders a party to provide a certified translation.
- 11.4. Documents in a language other than English exchanged between the parties pursuant to the Tribunal's directions on production of documents, which will be the subject of a separate Procedural Order, need not be translated unless and until they are filed as part of the record in the proceedings.
- 11.5. The parties will notify the Tribunal which witnesses or experts require interpretation, no later than when notifying which witnesses and experts are called for examination at the hearing and as soon as possible.
- 11.6. The testimony of a witness called for examination who needs to give evidence in a language other than English shall be subject to simultaneous interpretation.

- 11.7. The costs of interpretation will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

12. Routing of Communications

Arbitration Rule 6

- 12.1. The ICSID Secretariat shall be the only channel of written communications between the parties and the Tribunal.
- 12.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Tribunal Secretary, who shall send them to the Tribunal.
- 12.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal.
- 12.4. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.

13. Number of Copies and Method of Filing of Parties' Pleadings

Arbitration Rules 4, 5 and 9

- 13.1. The parties shall:
- 13.1.1. By the relevant filing date submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and an index of all supporting documentation;¹ and
- 13.1.2. On the second business day following the relevant filing date, upload the pleading with all the supporting documentation and updated index to BOX.² Translations of exhibits and legal authorities into English shall be uploaded within ten business days following the relevant filing date.
- 13.2. Electronic files of pleadings, witness statements, expert reports and, to the extent feasible, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word).

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

² Supporting documentation shall be uploaded as individual files, not in .zip format.

- 13.3. All pleadings shall contain consecutively numbered paragraphs and shall be accompanied by a cumulative index in PDF format of all the supporting documentation that the party has submitted up to the date of the pleading. The index shall indicate the document number and the pleading with which it was submitted, and shall follow the naming conventions contained in **Annex A**).
- 13.4. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the parties shall upload to ICSID BOX in a format that can be readily downloaded, an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.³ They shall also provide a copy of this electronic bundle on USB to each arbitrator. The bundle shall be compatible with both Mac and PC.
- 13.5. The official date of receipt of a pleading or written communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 13.6. A filing shall be deemed timely if sent by a party by 23:59:59, Washington, D.C. time, on the relevant date. If a filing date falls on a Saturday or Sunday, the relevant date is the subsequent business day. If a filing date falls on a statutory holiday in Germany or Switzerland, the relevant date is the subsequent business day. A list of those statutory holidays for the years 2024 to 2027 is attached as **Annex B**, which will be updated if and when necessary.

14. Number and Sequence of Pleadings – Procedural Calendar
Arbitration Rule 30

- 14.1. Since the parties made clear at the first session that they were still in discussion regarding the schedule, the Tribunal will issue the schedule in a separate Procedural Order. The parties will report to the Tribunal the status of their discussions within five working days of the issue of Procedural Order No. 1.

15. Production of Documents
Convention Article 43(a); Arbitration Rules 5 and 36-40

- 15.1. Since the parties made clear at the first session that they were still in discussion regarding the question of document production, the Tribunal will issue directions

³ To ensure the full operation of the hyperlinked index, the entire folder shall be housed within one folder and then uploaded to ICSID BOX as a single zip file. Should the size of the zip file make the upload to ICSID BOX impossible, the parties shall upload the organized folder to a designated sub-folder on to the ICSID BOX, in a sub-folder and including a consolidated (non-hyperlinked) index.

on that matter in a separate Procedural Order. The parties will report to the Tribunal the status of their discussions within five working days of the issue of Procedural Order No. 1.

16. Submission of Documents

Convention Article 44; Arbitration Rule 5

- 16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 16.2. The documents shall be submitted in the manner and form set forth in para. 13, above. With each factual allegation, whenever possible, the parties are to identify the evidence adduced in support of that allegation (with a specific page or paragraph reference). With each legal argument, whenever possible, the parties are to identify the legal authority adduced in support of that argument (with a specific page or paragraph reference).
- 16.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that special circumstances exist based on a timely and reasoned written application followed by observations from the other party.
 - 16.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.
 - 16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such document.
- 16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 36(3).
- 16.5. Documents shall be submitted in the following form:
 - 16.5.1. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.
 - 16.5.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-001” and

“RL-001” respectively. The number of the exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the file name in accordance with para. 16.5.4.

- 16.5.3. A party may produce several documents relating to the same subject matter (such as a chain of email or hard copy correspondence) within one Exhibit, numbering each page of such Exhibit separately and consecutively, provided that the Exhibit is not thereby of unreasonable length.
- 16.5.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 16.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.7. The parties shall file all documents only once by submitting them with their pleadings. Documents should not be resubmitted with witness statements. If a witness statement refers to a document, that document should be submitted as a “C” or “R” document (in accordance with para. 16.5 above) and references in the witness statement should identify the document accordingly.
- 16.8. The parties and experts may use PowerPoint slides and demonstrative exhibits (such as charts, tabulations, etc., compiling information which is on record but not necessarily presented in such form), provided that they (i) identify the source in the record from which the information is derived, (ii) do not contain information not in the record. Experts may use power point slides for their direct presentation containing a summary of their reports and documents, or extracts from documents, on the record.
- 16.9. Hard copies and electronic copies of demonstrative exhibits and powerpoint slides shall be provided for the opposing party, the Members of the Tribunal, the Tribunal Secretary, the court reporter and interpreters. The modalities for provision of these copies will be determined by the Tribunal following the pre-hearing conference..
- 16.10. In addition, promptly after the conclusion of the hearing day on which the corresponding demonstrative exhibit is used, the parties shall upload such demonstrative to the case folder in the BOX files sharing platform, designating each with the corresponding CD-__ or RD-__ number.

17. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 38

- 17.1. If a party wishes to adduce evidence by a witness, it shall file a witness statement by that witness. If a party wishes to rely on the opinion of an expert, it shall file an expert report by that expert.
- 17.2. Witness statements and expert reports shall be filed together with the parties' pleadings.
- 17.3. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in para. 16.3).
- 17.4. Each witness statement and expert report shall be signed and dated by the witness or expert and shall indicate the language in which the statement or report was drafted, as well as whether any interpretation will be required for the relevant witness/expert if called for examination at the hearing. In addition, each witness statement and expert report shall contain the elements set out in Articles 4(5) and 5(2), respectively, of the IBA Rules.

18. Examination of Witnesses and Experts

Arbitration Rule 38

- 18.1. By a deadline to be determined by the Tribunal, each party must notify the Tribunal and the other party of the names of the witnesses and experts presented by the other party which it wishes to cross-examine, if any.
- 18.2. By a deadline to be determined by the Tribunal, the Tribunal may notify the parties of any witness or expert not called for cross-examination whom it wishes to attend the hearing for examination.
- 18.3. If a witness has not been called under either paragraph 18.1 or 18.2 above, they may not attend the hearing to testify unless the Tribunal, on application by the party calling that witness and after hearing from the other party, decides that they should be allowed to do so.
- 18.4. A party may call its own experts to testify at the hearing whether or not they have been called for cross-examination. In such circumstances, the other party is entitled to cross-examine those experts.
- 18.5. Subject to the provisions of this Order and any future Order or directions by the Tribunal, each witness whose statement, and each expert whose report, has been

submitted shall be available for examination at the oral hearing if called upon to attend. If a witness or expert called to attend does not attend the hearing in person or by videoconference for a valid reason, the Tribunal will hear the parties on this issue and decide what weight, if any, should be given to the written testimony of said witness or expert taking into account all relevant circumstances.

- 18.6. Each side is responsible for summoning to the hearing those of its witnesses and experts whom the other side has called for cross-examination or whom the Tribunal has directed to appear. Each side is to bear the costs of its witnesses' and experts' appearance at the hearing, subject to the Tribunal's final decision on allocation of costs.
- 18.7. The fact that a party does not cross-examine a witness or expert, either at all or in relation to a particular portion of that witness's statement or expert's report, shall not constitute acceptance of that statement or report or portion thereof.
- 18.8. The Tribunal will determine the modalities for examination, cross-examination and re-examination of witnesses and experts after hearing the parties at the pre-hearing conference.
- 18.9. Witnesses will not be permitted to attend, view or read the transcript of any portion of the hearing before they give their evidence unless the Tribunal determines, after consulting the parties at the pre-hearing conference, that a particular witness constitutes a party representative whose presence at the hearing before they give evidence is necessary. Experts may attend any part of the hearing. Once a witness or expert has started to testify, they may not have contact with anyone connected with the case during any break until they have finished their testimony.
- 18.10. The Tribunal will have full control at all times over witness and expert examination, including the right to limit or exclude questions to a witness or expert.

19. Pre-Hearing Organizational Meetings

Arbitration Rule 31

- 19.1. A pre-hearing organizational meeting shall be held at least four weeks prior to the hearing at a date determined by the Tribunal after consultation with the parties. It shall comprise a teleconference or videoconference between the Tribunal, or its President, and the parties and should address any outstanding procedural, administrative, and logistical matters (including modalities of interpretation, transparency and transcription) in preparation for the hearing.
- 19.2. On a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing conference, the parties shall submit to the Tribunal jointly – or,

where they are unable to agree, separately – a proposal regarding a daily schedule for the hearing.

- 19.3. At the pre-hearing organizational meeting, the Tribunal shall determine a date or dates, well in advance of the Hearing, by which the parties shall submit a joint consolidated chronological list of fact exhibits, as well as a joint consolidated Bundle with a hyperlinked index compatible with Mac and PC. The joint consolidated chronological list of fact exhibits will be prepared by Claimant who will receive Respondent's list in Word and Excel formats.

20. Case Management Conferences

Arbitration Rule 31

- 20.1. The Tribunal shall convene case management conferences with the parties in accordance with ICSID Arbitration Rule 31 in order to (i) put in place a process to identify uncontested facts (e.g., through the submission of a joint chronology of facts); (ii) clarify and narrow the issues in dispute (e.g., by addressing tribunal questions, or submitting a decision tree, road map, matrix(es) and/or skeleton arguments); or (iii) address any other procedural or substantive issue related to the resolution of the dispute (e.g., the production of evidence). It is expected that a case management conference will be held after the first round of written submissions as well as prior to the hearing.

21. Hearings

Arbitration Rule 32

- 21.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 21.2. The hearing may be held in-person or by any other means of communication as determined by the Tribunal after consultation with the parties. An in-person hearing shall be held at a place to be determined in accordance with para. 10.2 above.
- 21.3. Having due regard to the views of the parties and the specific circumstances of the case, including any relevant travel or public health/security restrictions, the Tribunal may decide to hold a hearing remotely or in a hybrid form.
- 21.4. The date of the hearing shall be determined at a later stage.
- 21.5. The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.

- 21.6. The issue of allocation of time shall be determined by the Tribunal following discussion with the parties at the pre-hearing conference. In principle, each party will be afforded equal time.

22. Recordings of Hearings and Sessions

Arbitration Rule 29(4)(i)

- 22.1. Recordings shall be made of all hearings and sessions. The recordings shall be provided only to the parties, the Tribunal Members, the Secretary and, to the extent permitted by the Tribunal following consultation with the parties, to experts, witnesses, the court reporter and interpreters.
- 22.2. Verbatim transcripts in the procedural language shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, be available in real-time and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.
- 22.3. The parties shall agree on any corrections to the transcripts within 45 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

23. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rules 51

- 23.1. The Tribunal will consult with the Parties at the close of the hearing regarding the scope, form and deadline for any post-hearing submissions and submissions on costs.
- 23.2. No new evidence may be submitted in any post-hearing submissions without the consent of the Tribunal in accordance with para. 16.3 or 17.3 as applicable.

24. Transparency matters

Convention Article 48(5), Arbitration Rules 62-66

- 24.1. The transparency regime governing these proceedings is dealt with in Procedural Order No. 2.

25. Data Privacy and Cybersecurity

- 25.1. The Members of the Tribunal, the parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this arbitration proceeding.
- 25.2. The Members of the Tribunal, the parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the arbitration proceeding, where necessary. Should compliance with applicable law require action from another participant in the arbitration proceeding, the parties are invited to bring that to the attention of that other participant and/or to apply to the Tribunal for specific data protection measures to be put in place.
- 25.3. The parties and their representatives shall ensure that the storage and exchange of the personal data processed in this arbitration is protected by way of appropriate technical and organizational safeguards.

26. Amicable Dispute Settlement

- 26.1. The Tribunal notes that the parties may seek to reach an amicable settlement of all or part of the dispute, including through mediation under the ICSID Mediation Rules, at any time in the proceeding.

27. Third Party Funding

- 27.1. As of the date of the initial session, neither party had filed a note to the Secretary-General regarding third party funding. Should either party receive, whether directly or indirectly, funding from a source which is not a party to the proceeding it shall immediately file a notice as required by ICSID Arbitration Rule 14.1.

On behalf of the Tribunal,

[signed]

President of the Tribunal
Date: 10 May 2024

Annex A – Electronic File Naming Guidelines

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-FR</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Quantum-ENG</i>
SUPPORTING DOCUMENTATION Exhibits	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-FR</i>
	<i>R-0002-SPA</i>
	Legal Authorities
RL-####–LANGUAGE	
To be produced sequentially throughout the case.	
CLAIMANT’S LEGAL AUTHORITIES	
<i>CL-0001-ENG</i>	
<i>CL-0002-FR</i>	
RESPONDENT’S LEGAL AUTHORITIES	
<i>RL-0001-SPA</i>	
<i>RL-0002-ENG</i>	
Witness Statements	Witness Statement-Name of Witness-Name of Submission-LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	Legal Opinion-Name of Expert-Name of Submission-LANGUAGE
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to	WITNESS/EXPERT INITIALS–###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>

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Witness Statements, Expert Reports, Legal Opinions	<i>MJ-0001</i>
	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
	<i>LS-0002</i>
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application–[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
<i>Observations to Request for [XX]-[Claimant]-SPA</i>	

Annex B – Statutory Holidays in Germany and the Canton of Ticino

2024:

Name	Date	Day	Germany	Canton of Ticino
New Year's Day	1 January	Monday	x	x
Epiphany	6 January	Saturday		x
Int. Women's Day	8 March	Friday	x	
St Joseph's Day	19 March	Tuesday		x
Good Friday	29 March	Friday	x	
Easter Monday	1 April	Monday	x	x
Labour Day	1 May	Wednesday	x	x
Ascension Day	9 May	Thursday	x	x
Whit Monday	20 May	Monday	x	x
Corpus Christi	30 May	Thursday	x	x
St. Peter and Paul's Day	29 June	Saturday		x
National Holiday Switzerland	1 August	Thursday		x
Assumption Day	15 August	Thursday		x
German Unity Day	3 October	Thursday	x	
Reformation Day	31. October	Thursday	x	
All Saints' Day	1 November	Friday		x
Immaculate Conception	8 December	Sunday		x
Christmas' Eve	24 December	Tuesday	x	
Christmas Day	25 December	Wednesday	x	x
Boxing Day	26 December	Thursday	x	x
New Year's Eve	31 December	Tuesday	x	

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2025:

Name	Date	Day	Germany	Canton of Ticino
New Year's Day	1 January	Wednesday	x	x
Epiphany	6 January	Monday		x
Int. Women's Day	8 March	Saturday	x	
St Joseph's Day	19 March	Wednesday		x
Good Friday	18 April	Friday	x	
Easter Monday	21 April	Monday	x	x
Labour Day	1 May	Thursday	x	x
Ascension Day	29 May	Thursday	x	x
Whit Monday	9 June	Monday	x	x
Corpus Christi	19 June	Thursday	x	x
St. Peter and Paul's Day	29 June	Sunday		x
National Day Switzerland	1 August	Friday		x
Assumption Day	15 August	Friday		x
German Unity Day	3 October	Friday	x	
Reformation Day	31 October	Friday	x	
All Saints' Day	1 November	Saturday		x
Immaculate Conception	8 December	Monday		x
Christmas' Eve	24 December	Wednesday	x	
Christmas Day	25 December	Thursday	x	x
Boxing Day	26 December	Friday	x	x
New Year's Eve	31 December	Wednesday	x	

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2026:

Name	Date	Day	Germany	Canton of Ticino
New Year's Day	1 January	Thursday	x	x
Epiphany	6 January	Tuesday		x
Int. Women's Day	8 March	Sunday	x	
St Joseph's Day	19 March	Thursday		x
Good Friday	3 April	Friday	x	
Easter Monday	6 April	Monday	x	x
Labour Day	1 May	Friday	x	x
Ascension Day	14 May	Thursday	x	x
Whit Monday	25 May	Monday	x	x
Corpus Christi	4 June	Thursday	x	x
St. Peter and Paul's Day	29 June	Monday		x
National Day Switzerland	1 August	Saturday		x
Assumption Day	15 August	Saturday		x
German Unity Day	3 October	Saturday	x	
Reformation Day	31. October	Saturday	x	
All Saints' Day	1 November	Sunday		x
Immaculate Conception	8 December	Tuesday		x
Christmas' Eve	24 December	Thursday	x	
Christmas Day	25 December	Friday	x	x
Boxing Day	26 December	Saturday	x	x
New Year's Eve	31 December	Thursday	x	

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2027:

Name	Date	Day	Germany	Canton of Ticino
New Year's Day	1 January	Friday	x	x
Epiphany	6 January	Wednesday		x
Int. Women's Day	8 March	Monday	x	
St Joseph's Day	19 March	Friday		x
Good Friday	26 March	Friday	x	
Easter Monday	29 March	Monday	x	x
Labour Day	1 May	Saturday	x	x
Ascension Day	6 May	Thursday	x	x
Whit Monday	17 May	Monday	x	x
Corpus Christi	27 May	Thursday	x	x
St. Peter and Paul's Day	29 June	Tuesday		x
National Day Switzerland	1 August	Sunday		x
Assumption Day	15 August	Sunday		x
German Unity Day	3 October	Sunday	x	
Reformation Day	31. October	Sunday	x	
All Saints' Day	1 November	Monday		x
Immaculate Conception	8 December	Wednesday		x
Christmas' Eve	24 December	Friday	x	
Christmas Day	25 December	Saturday	x	x
Boxing Day	26 December	Sunday	x	x
New Year's Eve	31 December	Friday	x	