

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Klesch Group Holdings Limited and Raffinerie Heide GmbH

v.

Federal Republic of Germany

(ICSID Case No. ARB/23/49)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Mr. Cavinder Bull S.C., President of the Tribunal
Judge O. Thomas Johnson, Arbitrator
Prof. Jorge E. Viñuales, Arbitrator

Secretary of the Tribunal

Ms. Aurélie Antoniotti

June 14, 2024

Klesch Group Holdings Limited and Raffinerie Heide GmbH
v. Federal Republic of Germany
(ICSID Case No. ARB/23/49)

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Introduction

The first session of the Tribunal was held on May 28, 2024, at 8:30 a.m. in Washington, D.C., by video conference. The session was adjourned at 11.34 a.m. in Washington, D.C.

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:

Mr. Cavinder Bull S.C., President of the Tribunal
Judge O. Thomas Johnson, Arbitrator
Prof. Jorge E. Viñuales, Arbitrator

ICSID Secretariat:

Ms. Aurelia Antonietti, Secretary of the Tribunal
Ms. Ayong Lim, Legal Counsel
Mr. Shay Lakhter, Paralegal

Assistant to the President of the Tribunal

Ms. Elisabeth Liang

On behalf of the Claimants:

Mr. Jimmy Skjold Hansen, Plesner Advokatpartnerselskab
Ms. Mrinalini Singh, Plesner Advokatpartnerselskab
Ms Rikke Kjeldsen, Plesner Advokatpartnerselskab
Mr. Dany Khayat, Mayer Brown
Mr. Jawad Ahmad, Mayer Brown
Mr. José Caicedo, Mayer Brown
Ms. Isabela Lacrete, Mayer Brown
Mr. David Green, Klesch Group, General Counsel
Ms. Deborah Benyamine, Klesch Group, Legal Consultant

On behalf of the Respondent:

██████████ European Commission, Legal Service
██████████ European Commission, Legal Service
██████████ European Commission, Legal Service
██████████ European Commission, Legal Service
██████████, European Commission, Legal Service
██████████ European Commission, Legal Service
██████████, European Commission, Legal Service
██████████ European Commission, Directorate-General for Trade
██████████ European Commission, Directorate-General for Trade
██████████, European Commission, Directorate-General for Trade
██████████, European Commission, Directorate-General for Energy
██████████, European Commission, Directorate-General for Energy
██████████, European Commission, Directorate-General for Taxation
██████████, European Commission, Directorate-General for Taxation

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██████████, Federal Republic of Germany, Federal Ministry for Economic Affairs and Climate Action

██████████ Federal Republic of Germany, Federal Ministry for Economic Affairs and Climate Action

██████████ Advisor to the Federal Republic of Germany, Hanefeld Rechtsanwälte
██████████ Kingdom of Denmark, Ministry for Taxation

The Tribunal and the Parties considered the following:

- The Draft Procedural Order No. 1 and No. 2 circulated by the Tribunal Secretary on April 10, 2024; and
- The Parties' comments on the Draft Procedural Orders received on May 23, 2024, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

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. The timetable is attached as **Annex B**.

1. Applicable Arbitration Rules

Convention Article 44; Arbitration Rule 1

- 1.1. This proceeding is conducted in accordance with the ICSID Arbitration Rules in force as of July 1, 2022.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 21

- 2.1. The Tribunal was constituted on March 29, 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 January 17, 2024, January 19, 2024, and March 28, 2024.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 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 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 unless the Parties agree otherwise.

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, decisions and the Award may be signed electronically.

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 of the Tribunal 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 the ICSID Arbitration Rules. 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).

5.8. Any ruling of the Tribunal, including the certified copy of the Award, will be dispatched electronically to the Parties.

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

- 6.1. All deadlines and time limits fixed by the Tribunal shall specify the calendar date on which they end.
- 6.2. 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).
- 6.3. In exercising the power to fix time limits under Arbitration Rule 10(1), the President shall consult with the Parties as far as possible. If the matter is urgent, the President may fix time limits without consulting the Parties, subject to possible reconsideration of such decision by the full Tribunal.
- 6.4. Short extensions of time may be agreed between the Parties as long as (i) they do not materially affect the overall schedule of the procedure as set out in **Annex B** and (ii) the Tribunal is informed.

7. Secretary of the Tribunal
Administrative and Financial Regulation 28

- 7.1. The Tribunal Secretary is Ms. Aurélia Antonietti, Senior Legal Adviser, ICSID, or such other person as ICSID may notify the Tribunal and the Parties from time to time. Ms. Ayong Lim, ICSID Legal Counsel, will assist the Tribunal in addition to Ms. Antonietti.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Aurélia Antonietti
Ms. Ayong Lim
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.
Tel.: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]
Email: [REDACTED]
Paralegal name: Mr. Shay Lakhter
Paralegal email: [REDACTED]
ICSID case address: [REDACTED]

8. Assistant to the President of the Tribunal

8.1. By email of May 25, 2024, the President explained to the Parties that he considered that it would benefit the overall cost and time efficiency of the proceeding if the President had an assistant for specific tasks such as organizing, filing and retrieving of documents and possibly assist with the research of specific issues of law, at no cost to the Parties. The President proposed that Ms. Elisabeth Liang be appointed as Assistant to the President (“the Assistant”). Ms. Liang’s curriculum vitae was distributed to the Parties, and the Parties consented to her appointment by emails of May 27, 2024.

8.2. The Assistant is subject to the same confidentiality obligations as the Members of the Tribunal. Ms. Liang signed a declaration to that effect that was distributed to the Parties on May 29, 2024.

9. Representation of the Parties
Arbitration Rule 2

9.1. 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 Claimants

Mr. Jimmy Skjold Hansen
Mr. Jef Nymand Hounsgaard
Ms. Mrinalini Singh
Ms. Rikke Silke Kjeldsen
Ms. Sofie Stemann Beck
Mr. George Martsekis
Plesner Advokatpartnerselskab

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[REDACTED]
[REDACTED]
[REDACTED]

and

Mr. Jawad Ahmad
Mr. Jagpreet Sandhu
Mayer Brown International LLP
201 Bishopsgate
London EC2M 3AF

For the Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

European Commission
Legal Service
Trade/WTO Team
BERL 02/252
B-1049 Brussels
Belgium

Tel.: [REDACTED]
Email:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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United Kingdom

Tel.: [REDACTED]

Email:
[REDACTED]

[REDACTED]

and

Mr. Dany Khayat

Mr. José Caicedo

Ms. Isabela Lacreta

Ms. Joy Kreidi

Mayer Brown

10, Avenue Hoche

75008 Paris

France

Tel.: [REDACTED]

Email:
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In copy:

[REDACTED]

Federal Ministry for Economic Affairs and
Climate Action

Scharnhorststr. 34 – 37

0115 Berlin

Federal Republic of Germany

Email:

[REDACTED]

[REDACTED]

9.2. The Tribunal may refuse designation of additional agents, counsel, or advocates if the designation would create a non-waivable conflict of interest with one or more members of the Arbitral Tribunal.

9.3. The Parties have designated and hereby confirm their respective representatives in §9.1 above as being authorized to act on their behalf in this proceeding pursuant to Arbitration Rule 2(2). The Parties further irrevocably and unconditionally agree that they henceforth waive any right to assert now or in the future any allegation or claim that their legal representatives were not or have not been duly authorised or empowered to represent them in this arbitration.

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

10.1. 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.

10.2. Following registration of the Request for arbitration, by letter of October 24, 2023, ICSID informed the Parties that US\$400,000 will be necessary to cover the estimated costs of the initial phase of the proceeding through the first session of the Tribunal, as well as the subsequent phase, and requested that the Claimants pay US\$200,000. ICSID received the Claimants' payment on November 17, 2023. Upon the constitution of the Tribunal, by letter of March 29, 2024, ICSID requested that the Respondent pay US\$200,000. ICSID received the Respondent's payment on April 18, 2024.

- 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

11. Place of Proceeding and Hearings

Convention Articles 62 and 63; Arbitration Rule 32

- 11.1. Washington, D.C., shall be the place of the proceeding.
- 11.2. The Tribunal may hold in-person hearings in Paris, France, The Hague, Netherlands, or at any other place that it considers appropriate after consultation with the Parties. The method of holding a hearing will be determined in accordance with §22.2.
- 11.3. The Tribunal members may deliberate at any place and by any appropriate means they consider convenient.

12. Procedural Language, Translation and Interpretation

Administrative and Financial Regulation 32; Arbitration Rule 7

- 12.1. English is the procedural language of the arbitration.

For Pleadings, Documents and Communications

- 12.2. The Tribunal and the Secretariat shall communicate with the Parties in the English language.
- 12.3. Documents filed in any other language must be accompanied by a translation into English.
- 12.4. It is sufficient to translate only relevant parts of supporting documents, provided that the Tribunal may order a Party to provide a fuller or a complete translation at the request of any Party or on the Tribunal's own initiative.
- 12.5. Translations need not be certified, unless the translation is disputed and the Tribunal orders a Party to provide a certified translation.
- 12.6. Documents exchanged between the Parties in a language other than English under §16 below (Production of Documents) need not be translated. In the event either Party decides to submit such documents into the record, then §§12.3 to 12.5 shall apply.

For Hearing

- 12.7. 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 (see Schedule **Annex B** below) and as soon as possible.
- 12.8. The testimony of a witness or expert called for examination who gives evidence in a language other than in English shall be interpreted simultaneously. If the witness or expert gives evidence in a language other than English, ICSID shall arrange on behalf of the

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Parties independent, professional interpreters to provide simultaneous interpretation. ICSID will consult with the Parties about the choice of interpreters.

- 12.9. 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.

13. Routing of Communications

Arbitration Rule 6

- 13.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.
- 13.2. 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.
- 13.3. 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, once the Tribunal Secretary has received both Parties' communications.
- 13.4. 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.

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

Arbitration Rules 4, 5 and 9

- 14.1. By the relevant filing date, the Parties shall:
- 14.1.1. 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
- 14.1.2. within five (5) business days of the electronic filing, upload the pleading with all the supporting documentation and updated index to the file sharing platform that has been created by ICSID for purposes of this case.
- 14.2. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word), to the extent possible.
- 14.3. All pleadings to be filed after the date of this Procedural Order No. 1 shall contain consecutively numbered paragraphs and shall be accompanied by a cumulative index of all the supporting documentation that the Party has submitted up to the date of the pleading.

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

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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**.

- 14.4. 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 may be requested to upload to the file sharing platform, 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.²
- 14.5. 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.
- 14.6. A filing shall be deemed timely if sent by a Party by midnight, Washington, D.C. time, on the relevant date. If a filing falls on a Saturday or Sunday, the relevant date is the subsequent business day.

15. Number and Sequence of Pleadings – Procedural Calendar

Arbitration Rule 30

- 15.1. The arbitration shall proceed in accordance with the Procedural Timetable attached hereto as **Annex B**, except if the Tribunal, upon a showing of good cause by either Party or on its own initiative, or by mutual agreement of the Parties, decides that this Procedural Timetable requires amendment.
- 15.2. In the first exchange of submissions on a given matter (in principle Memorial and Counter-Memorial), the Parties shall set forth the facts and legal arguments and submit the documentary and written witness and expert evidence on which they intend to rely in support of their respective cases. Allegations of fact and legal arguments shall be presented in a detailed, specified and comprehensive manner, and shall respond to all allegations of fact and legal arguments made by the other Party.
- 15.3. In the second exchange of submissions (in principle Reply and Rejoinder), if any, the Parties shall limit themselves to responding to fact allegations, legal arguments, and evidence put forward by the other Party in its preceding submission, subject to facts and documents resulting from the document production phase or new facts arisen or discovered after the filing of the Party's last submission.
- 15.4. All written submissions shall be divided into consecutively numbered paragraphs.
- 15.5. The Parties shall include in their submissions a list of abbreviations. Each Party shall strive to use the same abbreviations as the other Party and the Parties shall update their list of abbreviations in subsequent submissions.

² To ensure the full operation of the hyperlinked index, the entire folder shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the Parties shall upload the organized folder to a designated sub-folder on to the BOX filesharing platform, in a sub-folder and including a consolidated (non-hyperlinked) index.

- 15.6. A hearing will take place in accordance with the terms of §22 below and Annex B (Procedural Timetable).

16. Production of Documents

Convention Article 43(a); Arbitration Rules 5 and 36-40

- 16.1. The Tribunal shall be guided but not bound by 2020 IBA Rules on the Taking of Evidence in International Arbitration.
- 16.2. Within the time limit set in the Procedural Timetable, each Party may request from the other Party the production of documents or categories of documents within the other Party's possession, custody or control. Such a request for production shall identify each document or narrow and specific category of documents sought with precision, in the form of a Stern Schedule (attached hereto as **Annex C**), in both Word and PDF format, as will be provided by the Tribunal in advance, specifying why the document sought is relevant to the dispute and material to the outcome of the case. Such a request shall not be copied to the Tribunal or the Tribunal Secretary. The Parties shall use the same format throughout their exchange of requests, objections, and responses.
- 16.3. Within the time limit set forth in the Procedural Timetable, the other Party shall either produce the requested documents or, using the Stern Schedule provided by the first Party, submit its reasons for its failure or refusal to produce responsive documents (objections). If a Party objects to only a certain aspect of a request, that Party shall produce the documents that are responsive to the non-objected portion of the request within the time limit set forth in the Procedural Timetable.
- 16.4. Within the time limit set forth in the Procedural Timetable, the requesting Party may seek an order for the production of the documents requested sought and not produced, in which case it shall reply to the other Party's objections in that same Stern Schedule. At the same time, it shall submit the Word and PDF copies of the Stern Schedule to the Tribunal.
- 16.5. The Parties shall make no submissions in respect of the steps set out in §§16.2 to 16.4 above other than those incorporated in the Stern Schedules, unless the Tribunal orders otherwise.
- 16.6. Documents which the Tribunal orders to be produced shall be communicated directly to the requesting Party, within the time limit set forth in the Procedural Timetable and without copying the Tribunal. Documents shall be made available to the requesting Party using a suitable means of electronic communications, including a secure share site, and shall not be sent to the Tribunal Secretary. Documents shall be produced in electronic file format (*e.g.*, PDF, MS Word, etc.) and in searchable form (OCR), whenever reasonably possible. Electronic documents shall be produced in the format in which they were found with any accompanying metadata unremoved. Documents so communicated shall not be considered to be on record unless and until a Party subsequently files them as exhibits in accordance with §17 below.

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- 16.7. When practical and not unduly burdensome, the producing Party shall group the documents produced by request and identify the relevant request.
- 16.8. The Tribunal may also, on its own motion, request the production of documents. In that case, the documents shall be submitted to the other Party and to the Tribunal in accordance with §17 below and shall be considered to be on the record.
- 16.9. If a Party fails to produce documents ordered by the Tribunal, the Tribunal may draw the inferences it deems appropriate in relation to the documents not produced.
- 16.10. If the Tribunal determines that a Party has failed to conduct itself in good faith or has in any way incurred in an abuse of process in the taking of evidence, the Tribunal may take such conduct into account in its assignment of the costs of the arbitration, including costs arising out of or in connection with the taking of evidence.

17. Submission of Documents

Convention Article 44; Arbitration Rule 5

- 17.1. 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.
- 17.2. The documents shall be submitted in the manner and form set forth in §14, above.
- 17.3. 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.
 - 17.3.1. 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.
 - 17.3.2. 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.
- 17.4. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 36(3).
- 17.5. Documents shall be submitted in the following form:
 - 17.5.1. 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.

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- 17.5.2. Exhibits and legal authorities shall be numbered consecutively throughout this proceeding, 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 §17.5.4.
- 17.5.3. A Party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 17.5.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 17.6. 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.
- 17.7. The Parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 17.8. The Parties may use PowerPoint slides and demonstrative exhibits (such as charts, tabulations, etc. compiling information which is on record but not 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.
- 17.9. An electronic copy of each demonstrative exhibit (including specific PowerPoint slides containing demonstrative exhibits), shall be distributed by the Party intending to use it via an electronic mail sent to the entire case email distribution for each Party, the Members of the Tribunals, the Tribunal Secretary, to the court reporter and to the interpreters 24 hours prior to the intended or scheduled use of such demonstrative exhibit.
- 17.10. 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.
18. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 38
- 18.1. Witness statements and expert reports shall be filed together with the Parties’ pleadings. The witness statements and expert reports shall be numbered independently from other documents and properly identified. If a Party submits two witness statements by the same witness, the subsequent witness statement shall be identified as “Second”, and so forth.
- 18.2. 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 §17.3).

- 18.3. Each witness statement and expert report shall be submitted in a searchable PDF format with consecutive numbering of pages, headings and paragraphs, and shall include a table of contents. Each witness statement and expert report shall also be signed and dated by the respective witness or expert, and shall include all information referred to in Articles 4(5) and 5(2), respectively, of the 2020 IBA Rules on the Taking of Evidence in International Arbitration.
- 18.4. Expert reports shall include a statement of independence and disclose any relationship with Members of the Tribunal or the Parties.
- 18.5. Experts and witnesses shall disclose in their reports or witness statements, or in annexes to their reports or witness statements, the documents, data and other information on which they relied to support their opinions or evidence, unless such documents or information have already been submitted as exhibits with the Parties' submissions, in which case reference to such exhibits shall be sufficient. Such documents or information shall be subject to the rules on language set forth in §12 above.
- 18.6. For each witness, a written, signed and dated witness statement, which shall stand as direct testimony, shall be submitted to the Tribunal.
- 18.7. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements and the examinations.

19. Examination of Witnesses and Experts

Arbitration Rule 38

- 19.1. As provided in the Procedural Timetable, each Party shall identify the witnesses and experts of its opponent whom it intends to cross-examine no later than two (2) months before the hearing. Shortly after the Parties' notifications, and no later than within one (1) week, the Tribunal shall indicate which witnesses or experts, if any, it wishes to examine who have not been called by the Parties.
- 19.2. Each Party shall be responsible for summoning its own witnesses and experts to the hearing, except when the other Party has waived cross-examination of a witness or expert and the Tribunal does not direct his or her appearance.
- 19.3. Failure to cross-examine a witness or expert or partial cross-examination of a witness or expert shall not imply acceptance of the content of the corresponding witness statement or expert report. Each Party is free to refute the content of the witness statement or expert report by all available means of evidence and the Tribunal has the power to assess the probative value of the witness statement or expert report.
- 19.4. Each Party shall be responsible for the practical arrangements, cost and availability of any witness or expert it offers. The Tribunal will decide upon the appropriate allocation of any related costs in the final award.

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- 19.5. The Tribunal may allow a witness or expert to appear and be examined by videoconference, provided there exist valid and exceptional reasons that prevent the witness or expert from appearing in person. In such an event, the Tribunal will issue appropriate directions for the witness' or expert's examination by videoconference, subject to the Parties being first afforded the opportunity to provide comments on any such directions in advance.
- 19.6. The Tribunal shall not consider the written statement of a witness or expert evidence of an expert witness who fails to appear when summoned to a hearing, unless a valid reason is provided (e.g., circumstances beyond the witness' or expert's control or the control of the Party presenting the witness or expert).
- 19.7. At the hearing, the examination of each witness shall proceed as follows:
- 19.7.1. The Party who has presented the witness may briefly examine the witness for purposes of asking introductory questions, including about any corrections to be made to their written statement(s), and of addressing matters which have arisen after the last opportunity for the Party who presented the witness to file witness statements (direct examination).
- 19.7.2. Any expert giving oral evidence may give a presentation summarizing her or his expert report(s), unless the Tribunal orders otherwise. Such a presentation shall adhere to a time limit to be determined by the Tribunal at or following the pre-hearing organizational meeting.
- 19.7.3. The other Party may then cross-examine the witness about relevant facts within the witness' knowledge but not necessarily limited to facts addressed in the witness statement.
- 19.7.4. The Party who has presented the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination (if it so chooses).
- 19.7.5. Re-cross examination may exceptionally be allowed in the Tribunal's discretion; and
- 19.7.6. Any member of the Tribunal may put questions to the witness at any time.
- 19.8. Subject to other arrangements during the pre-hearing organizational meeting, fact witnesses shall be examined prior to expert witnesses, the Claimants' fact (and expert) witnesses being examined prior to the Respondent's fact (and expert) witnesses and each Party determining the order of the fact witnesses whom it presents.
- 19.9. Subject to a different agreement by the Parties, a fact witness shall not be present in the hearing room during oral testimony and arguments, or read the transcript of oral testimony or argument, or listen to or view any audio or video recording of oral argument or oral testimony or be informed of its contents prior to his or her examination. This limitation does not apply to expert witnesses. Party representatives who are fact witnesses may be present during opening submissions.

Procedural Order No. 1

19.10. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness or an expert. In particular, but without limiting the foregoing, the Tribunal may in its discretion:

19.10.1. Limit or refuse the right of a Party to examine a witness or an expert when it appears that a question has been addressed by other evidence or is irrelevant; or

19.10.2. Direct that a witness or an expert be recalled for further examination at any time.

19.11. The rules set forth above with respect to the examination of witnesses shall apply *mutatis mutandis* to the examination of party-appointed experts.

20. Pre-Hearing Organizational Meetings

Arbitration Rule 31

20.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after consultation with the Parties, but in any event, no later than five (5) weeks before the start of the hearing. 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 modality of interpretation and transcription) in preparation for the hearing.

20.2. At 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.

21. Case Management Conferences

Arbitration Rule 31

21.1. The Tribunal may 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 appointment of a Tribunal-appointed expert, or the production of evidence).

22. Hearings

Arbitration Rule 32

22.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.

22.2. The hearing may be held in-person or by any other means of communication as determined by the Tribunal after consultation with the Parties. If extraordinary circumstances make an in-person hearing impossible or impracticable, the hearing may be held virtually.

- 22.3. The hearing shall take place on dates to be determined by the Tribunal in due course after consultation with the Parties.
- 22.4. The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 22.5. Subject to the Tribunal's discretion, in all hearings the principle of equality of parties shall be observed. The allocation of time and other procedural issues related to the hearing will be discussed by the Parties and the Tribunal during the pre-hearing organizational meeting so as to afford all Parties appropriate time to address their respective cases.

23. Recordings of Hearings and Sessions

Arbitration Rule 29(4)(i)

- 23.1. Recordings shall be made of all hearings and sessions. The recordings shall be provided to the Parties and the Tribunal Members.
- 23.2. Verbatim transcript(s) 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.
- 23.3. The Parties shall agree on any corrections to the transcripts within 30 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.

24. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rule 51

- 24.1. In consultation with the Parties, the Tribunal will determine at the end of the hearing whether there shall be post-hearing briefs. If so, the Tribunal will address the time limits for, and the length, format, and content of the post-hearing briefs. No new evidence may be produced together with the post-hearing briefs, except with leave or on request of the Tribunal.
- 24.2. The Tribunal will issue directions on the Parties' statements of costs at the end of the hearing.

25. Transparency matters

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

- 25.1. The Parties agree that the transparency regime governing this proceeding is dealt with in Procedural Order No. 2.

26. Data Privacy and Cybersecurity

- 26.1. The Members of the Tribunal, the Assistant, the Parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this arbitration proceeding.
- 26.2. The Members of the Tribunal, the Assistant, 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.
- 26.3. 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.

27. Amicable Dispute Settlement

- 27.1. 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. If the Parties settle the dispute in full, they may request that the Tribunal embody their settlement in its Award, pursuant to ICSID Arbitration Rule 55(2).

28. Other Matters

28.1. Coordination of Proceedings
Arbitration Rule 46

- 28.1.1. The Claimants filed this ICSID Convention case against the Federal Republic of Germany. One of the Claimants (Klesch Group Holdings Limited) filed an ICSID Convention case against the Kingdom of Denmark (ICSID Case No. ARB/23/48) with Klesch Refining Denmark A/S and Kalundborg Refinery A/S. The four Claimants in both cases filed an ICSID Additional Facility case against the European Union (ICSID Case No. ARB(AF)/23/1). The three cases were filed under the Energy Charter Treaty.
- 28.1.2. A Tribunal with the same composition was constituted in each case.
- 28.1.3. Although this proceeding, ICSID Case No. ARB(AF)/23/1 and ICSID Case No. ARB/23/48 are separate proceedings, they will be heard together to the extent possible by the same Tribunal, and, to the extent possible, will share a common procedural timetable and the same evidentiary record in order to minimize duplication of work and to avoid unnecessary costs.

Procedural Order No. 1

- 28.1.4. Whenever reasonable to do so and practical, the Tribunal may issue single procedural Orders, Decisions or communications referencing the three proceedings in the cover page or cover email.
- 28.1.5. A party may file single submissions referencing the three proceedings in the cover page or cover email when applicable and unless the Tribunal directs otherwise.
- 28.1.6. The Tribunal shall render three separate Awards.
- 28.1.7. ICSID will maintain and administer three case accounts and issue separate requests for costs. ICSID will charge three separate annual administrative fees.
- 28.1.8. The Tribunal Members will submit three separate claims for their fees and expenses to ICSID, accompanied with a breakdown of their fees and expenses for each case. They can allocate their work equally between the three cases when the work provided relates to the three cases, and they will allocate specific work to each of the cases as relevant.

On behalf of the Tribunal,

[signed]

Cavinder Bull S.C.
President of the Tribunal
Date: June 14, 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>

*Klesch Group Holdings Limited and Raffinerie Heide GmbH
v. Federal Republic of Germany
(ICSID Case No. ARB/23/49)*

Procedural Order No. 1 – Annex A

	<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 Statements, Expert Reports, Legal Opinions	WITNESS/EXPERT INITIALS -###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<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 – Schedule

Scenario 2 (Bifurcation/Trifurcation Denied)			
The following timetable shall apply in the event that the Respondent REQUESTS that its objections to jurisdiction and/or its arguments regarding damages are bifurcated or trifurcated and the Tribunal DENIES such request			
Description	By	Date	PO1 §
First Session	All	Tuesday, 28 May 2024	Introduction
Memorial	Claimant	Friday, 25 October 2024	§17.1
Request for Bifurcation	Respondent	Monday, 9 December 2024	N/A
Answer to Request for Bifurcation	Claimant	Thursday, 23 January 2025	N/A
Hearing on Bifurcation	All	Wednesday, 19 March 2025	
Decision on Bifurcation	Tribunal	Wednesday, 9 April 2025	N/A
Counter-Memorial on the Merits and Memorial on Jurisdiction	Respondent	Friday, 18 July 2025	§17.1
Production of Documents Phase			
Requests for Production of Documents	Claimant and Respondent	Friday, 8 August 2025	§16
Objections to Requests	Claimant and Respondent	Monday, 15 September 2025	§16
Production of Non-Objected Documents		Monday, 20 October 2025	
Responses to Objections - Sent to Tribunal	Claimant and Respondent	Monday, 10 November 2025	§16
Decision on Requests	Tribunal	Wednesday, 10 December 2025	§16
Production as Ordered	Claimant and Respondent	Wednesday, 7 January 2026	§16

Scenario 2 (Bifurcation/Trifurcation Denied)			
The following timetable shall apply in the event that the Respondent REQUESTS that its objections to jurisdiction and/or its arguments regarding damages are bifurcated or trifurcated and the Tribunal DENIES such request			
Reply on the Merits and Counter-Memorial on Jurisdiction	Claimant	Thursday, 16 April 2026	§17.1
Rejoinder on the Merits and Reply on Jurisdiction	Respondent	Friday, 24 July 2026	§17.1
Rejoinder on Jurisdiction	Claimant	Tuesday, 8 September 2026	§17.1
Notification of Witnesses and Experts	Claimant and Respondent	Wednesday, 18 November 2026	§19.1
Tribunal's Notification of Witnesses and Experts	Tribunal	Wednesday, 25 November 2026	§19.1
CMC on Hearing Organization	All	Monday, 7 December 2026	§20
Provision of Common (Core) Hearing Bundle	Claimant and Respondent	TBD	§21
Hearing Commencement	All	Monday, 18 January 2027	§22.3
Hearing Ends	All	Friday, 29 January 2027	§22.3
Corrections to Hearing Transcripts	Claimant and Respondent	30 days following receipt of transcripts and recordings	§23.3
Simultaneous Costs Submissions	Claimant and Respondent	TBD	§24.2
Award	Tribunal	TBD	§5.3

Scenario 3 (Bifurcation / Trifurcation granted)			
The following timetable shall apply in the event that Respondent REQUESTS that its objections to jurisdiction and/or its arguments regarding damages are bifurcated and/or trifurcated, and the Tribunal GRANTS the bifurcation of the jurisdictional issues			
Description	By	Date	PO1 §
First Session	All	Tuesday, 28 May 2024	Introduction
Memorial	Claimant	Friday, 25 October 2024	§17.1
Request for Bifurcation	Respondent	Monday, 9 December 2024	§§17.1 and 15.1
Answer to Request for Bifurcation	Claimant	Thursday, 23 January 2025	§§17.1 and 15.1
Hearing on Bifurcation	All	Wednesday, 19 March 2025	
Decision on Bifurcation	Tribunal	Wednesday, 9 April 2025	§§17.1 and 5.3
Memorial on Jurisdiction	Respondent	Tuesday, 1 July 2025	§§17.1 and 15.1
Counter-Memorial on Jurisdiction	Claimant	Monday, 22 September 2025	§§17.1 and 15.1
Reply on Jurisdiction	Respondent	Friday, 7 November 2025	§§17.1 and 15.1
Rejoinder on Jurisdiction	Claimant	Tuesday, 23 December 2025	§§17.1 and 15.1
Notification of Witnesses and Experts	Claimant and Respondent	Monday, 5 January 2026	§19.1
CMC on Hearing Organization	All	Monday, 5 January 2026	§20
Provision of Common (Core) Hearing Bundle	Claimant and Respondent	TBD	§21
Hearing Commencement	All	Monday, 26 January 2026	§22.3
Hearing Ends	All	Friday, 30 January 2026	§22.3
Corrections to Hearing Transcripts	Claimant and Respondent	30 days following receipt of transcripts and recordings	§23.3

Scenario 3 (Bifurcation / Trifurcation granted)			
The following timetable shall apply in the event that Respondent REQUESTS that its objections to jurisdiction and/or its arguments regarding damages are bifurcated and/or trifurcated, and the Tribunal GRANTS the bifurcation of the jurisdictional issues			
Simultaneous Costs Submissions	Claimant and Respondent	TBD	§24.2
Decision on Jurisdiction or Award	Tribunal	TBD	§5.3
<i>If the Tribunal decides that it has jurisdiction, the remainder of the Procedural Timetable will be determined at that stage.</i>			

Annex C – Stern Schedule template

Document Request No.	
A. Documents or category of documents requested (requesting party)	
B. Relevance and materiality, including references to submissions (requesting party)	
C. Objections to document request (objecting party)	
D. Response to objections and request for resolution (requesting party)	
E. Decision of the Tribunal	