

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

KLESCH GROUP HOLDINGS LIMITED & OTHERS

v.

EUROPEAN UNION

ICSID Case No. ARB(AF)/23/1

**KLESCH GROUP HOLDINGS LIMITED, KLESCH REFINING DENMARK A/S AND
KALUNDBORG REFINERY A/S**

v.

KINGDOM OF DENMARK

ICSID Case No. ARB/23/48

KLESCH GROUP HOLDINGS LIMITED AND RAFFINERIE HEIDE GMBH

v.

FEDERAL REPUBLIC OF GERMANY

ICSID Case No. ARB/23/49

PROCEDURAL ORDER NO. 4

On Document Production

Members of the Tribunal

Mr. Cavinder Bull SC, President of the Tribunal

Judge O. Thomas Johnson, Jr., Arbitrator

Professor Jorge E. Viñuales, Arbitrator

Secretary of the Tribunal

Ms. Aurélia Antonietti

Assistant to the President of the Tribunal

Ms. Elisabeth Liang

10 December 2025

I. PROCEDURAL BACKGROUND

1. On 14 June 2024, the Tribunal issued Procedural Order No. 1 (“**PO1**”) which contained a procedural timetable in Annex B. On 8 April 2025, the Tribunal issued its Decision on Respondent’s Request for Bifurcation, ordering *inter alia* that “*the Parties shall follow the procedural timetable set out in Scenario 2 of Annex B to Procedural Order No. 1*”.
2. Pursuant to the procedural timetable in Scenario 2 of Annex B to PO1, on 8 August 2025, the Parties exchanged their requests for production of documents in the form of Stern Schedules (the “**Requests**”).
3. On 9 September 2025, the Parties jointly informed the Tribunal of their agreement to extend the deadline for the filing of each Party’s objections to the document production requests from 15 September to 29 September 2025, in accordance with §6.4 of PO1. On 29 September 2025, the Parties exchanged their objections to the requests contained in the Stern Schedules.
4. On 10 November 2025, the Parties submitted to the Tribunal the Schedules containing their respective responses to objections raised by the other Party. The Stern Schedules contained: (i) each Party’s Requests; (ii) responses and/or objections from the opposing Party; and (iii) replies from the requesting Party.¹
5. This Order addresses the Requests that have been objected to in the Stern Schedules by each Party in ICSID Cases Nos. ARB(AF)/23/1 (“**EU Arbitration**”), ARB/23/48 (“**Denmark Arbitration**”), and ARB/23/49 (“**Germany Arbitration**”) (collectively, the “**Three Arbitrations**”). Recalling that the Parties have agreed to coordinate the proceedings in the Three Arbitrations to the extent possible,² and noting that the same procedure and timeline have been observed in the Three Arbitrations with respect to document production, the Tribunal considers it reasonable and practical to issue a single Procedural order addressing the requests for production of documents in the Three Arbitrations.³

¹ The Claimants submitted three Stern Schedules in ICSID Case Nos. ARB(AF)/23/1, ARB/23/48, and ARB/23/49, noting that they are “*separate and distinct [...], each directed to one of the Respondents*”. The Respondents in these proceedings submitted their requests for document production in a single Stern Schedule requesting that “*the Claimants, each jointly and severally, produce copies of the documents and specific categories of documents identified*” in their Stern Schedule.

² PO1, §28.1.3.

³ PO1, §28.1.4.

II. APPLICABLE RULES

6. §16 of PO1 of each of the Three Arbitrations provides as follows:
 - 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.
 - 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.
7. Pursuant to §16.1 of PO1 of each of the Three Arbitrations, the Tribunal shall be guided but not bound by the 2020 IBA Rules on the Taking of Evidence in International Arbitration (the “**IBA Rules**”). Article 3 and 9 of the IBA Rules provides as follows:

Article 3 Documents

(...)

3. A Request to Produce shall contain:

- (a) (i) a description of each requested Document sufficient to identify it, or
(ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner;
- (b) a statement as to how the Documents requested are relevant to the case and material to its outcome; and
- (c) (i) a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Documents, and
(ii) a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party.

(...)

5. If the Party to whom the Request to Produce is addressed has an objection to some or all of the Documents requested, it shall state the objection in writing to the Arbitral Tribunal and the other Parties within the time ordered by the Arbitral Tribunal. The reasons for such objection shall be any of those set forth in Articles 9.2 or 9.3, or a failure to satisfy any of the requirements of Article 3.3.

(...)

7. Either Party may, within the time ordered by the Arbitral Tribunal, request the Arbitral Tribunal to rule on the objection. The Arbitral Tribunal shall then, in timely fashion, consider the Request to Produce, the objection and any response thereto. The Arbitral Tribunal may order the Party to whom such Request is addressed to produce any requested Document in its possession, custody or control as to which the Arbitral Tribunal determines that (i) the issues that the requesting Party wishes to prove are relevant to the case and material to its outcome; (ii) none of the reasons for objection set forth in Articles 9.2 or 9.3 applies; and (iii) the requirements of Article 3.3 have been satisfied. Any such Document shall be produced to the other Parties and, if the Arbitral Tribunal so orders, to it.

(...)

Article 9 Admissibility and Assessment of Evidence

(...)

2. The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection, in whole or in part, for any of the following reasons:
 - (a) lack of sufficient relevance to the case or materiality to its outcome;
 - (b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable (see Article 9.4 below);
 - (c) unreasonable burden to produce the requested evidence;
 - (d) loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;
 - (e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;
 - (f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling; or
 - (g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling.
3. The Arbitral Tribunal may, at the request of a Party or on its own motion, exclude evidence obtained illegally.
4. In considering issues of legal impediment or privilege under Article 9.2(b), and insofar as permitted by any mandatory legal or ethical rules that are determined by it to be applicable, the Arbitral Tribunal may take into account:
 - (a) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of providing or obtaining legal advice;
 - (b) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of settlement negotiations;

- (c) the expectations of the Parties and their advisors at the time the legal impediment or privilege is said to have arisen;
 - (d) any possible waiver of any applicable legal impediment or privilege by virtue of consent, earlier disclosure, affirmative use of the Document, statement, oral communication or advice contained therein, or otherwise; and
 - (e) the need to maintain fairness and equality as between the Parties, particularly if they are subject to different legal or ethical rules.
5. The Arbitral Tribunal may, where appropriate, make necessary arrangements to permit Documents to be produced, and evidence to be presented or considered subject to suitable confidentiality protection.
- (...)

III. DECISION OF THE ARBITRAL TRIBUNAL

8. The Tribunal has considered the Parties' positions in light of the principles set out in the IBA Rules. Having carefully reviewed each Party's Requests, objections from the opposing Party, and replies from the requesting Party set out in each of the Claimants' three Stern Schedules and the Respondents' Stern Schedule, and taking into account all relevant circumstances, including the fundamental principle of the integrity of the arbitral process, the Tribunal decides as indicated for each request in the Stern Schedules annexed as Annexes A through D to this Order.
9. The Tribunal's decisions in the Stern Schedules cannot be inferred in any way as an implied decision on any issue in dispute between the Parties. If a request is denied or granted in a modified fashion, that should not be taken as any indication as to the Tribunal's view on the merits, and the Parties should not hereafter plead or allege that the Tribunal's decision to uphold or deny a request was indicative of a position either in their favour or against them. If a request is denied, for example, that does not mean that the requested Party can consider that its own burden of proof has been discharged. Moreover, if a Party refuses to produce documents on an issue for which it bears the burden of proof, whether such production has been ordered or not, then such Party runs the risk of having the issue resolved in due course as not proven (see §16.9 of PO1). The Parties are expected to bear this in mind in facilitating the disclosure of relevant and material documents in compliance with the Tribunal's rulings.
10. The Tribunal also recalls that, pursuant to §16.6 of PO1 of each of the Three Arbitrations "*Documents which the Tribunal orders to be produced shall be communicated directly to the requesting Party ... without copying the Tribunal*" and that "*Documents so communicated*

shall not be considered to be on record unless and until a Party subsequently files them as exhibits”.

11. The Parties shall produce the documents ordered by the Tribunal in the manner directed under §16 of PO1 by 7 January 2026 (as fixed in the procedural timetable).
12. The costs of the document production phrase are reserved to be dealt with at a later stage.

On behalf of the Tribunal,

[signed]

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Mr. Cavinder Bull SC
President of the Tribunal
Date: 10 December 2025