

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Smart Energy B.V. and PJSC Ukrgazvydobutok

v.

Ukraine

(ICSID Case No. ARB/25/38)

DECISION ON INTERIM RELIEF APPLICATION

Members of the Tribunal

Sir Christopher Greenwood, GBE, CMG, KC, President of the Tribunal
Prof. Zachary Douglas KC, Arbitrator
Prof. Dr. Stephan W. Schill, Arbitrator

Secretary of the Tribunal

Ms Jara Mínguez Almeida

16 February 2026

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I. BACKGROUND

1. On 6 August 2025 the Claimants, Smart Energy BV (“Smart Energy”), a company incorporated under the law of the Netherlands, and PJSC Ukrgezvydobutok (“UGV”), a company incorporated under the law of Ukraine all of whose shares are said to be owned by Smart Energy, filed a request for Arbitration with the Centre. Smart Energy is said by the Claimants to be wholly owned by Smart Energy (Cy) Limited which is in turn wholly owned by Smart Holding (Cyprus) Limited (“Smart Holding”), both of which are incorporated in Cyprus. According to the Claimants, until 1 December 2022 Smart Holding was wholly owned by Mr Vadym Novynskyi but on that date he transferred his entire shareholding to two Cyprus trusts (the “Trusts”).
2. The Claimants rely upon the Agreement on Promotion and Reciprocal Protection of Investments between the Kingdom of the Netherlands and Ukraine (the “Treaty”) as the basis for jurisdiction.¹
3. On 21 October 2025, the Claimants filed an application for provisional measures, together with exhibits C-47 to C-69, and legal authorities CL-1 to CL-22 (the “Application”) “to restrain Ukraine from ‘arresting’ and ‘transferring’ UGV’s assets to the Ukrainian National Agency of Ukraine for Detection, Search and Management of Assets Obtained from Corruption and Other Crimes (ARMA) pending the conclusion of the present arbitration”, arguing that since the Claimants filed their request for arbitration, “Ukraine has taken further actions that exacerbate the parties’ dispute and will inflict immediate, irreparable harm upon the Claimants’ procedural and substantive rights”.
4. In paragraph 91 of the Application, the Claimants requested that the Tribunal issue an interim order pending the Tribunal’s determination of the Application “directing Ukraine to take all measures necessary to prevent any interference with the Claimants’ rights in respect of UGV and/or its assets and, in particular, to prevent-

¹ Exhibit C-1.

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- (i) the transfer of control over UGV's assets to ARMA;
 - (ii) any declaration by the Ukrainian Courts that the 1 December 2022 transfer of shares in Smart Holding to the Trusts is invalid; and
 - (iii) the return and/or transfer of any shares in Smart Holding held by the Trusts to Mr Novynskyi.
- 5. Pursuant to ICSID Arbitration Rule 47(2)(c), as the Tribunal was not yet constituted, the Secretary-General fixed time limits for written submissions on the Application, which she revised on 4 November. The Parties further agreed to extensions to the briefing schedule on 11 December 2025, 16 January 2026 and 3 February 2026.
- 6. On 19 December 2025, the Respondent filed its Response on Provisional Measures, together with exhibits R-1 to R-53 and legal authorities RL-1 to RL-42 (the "Response"). In paragraph 179 the Respondent argued that the "Claimants' request for an interim order is unfounded and ought to be rejected because no such urgency exists that would warrant the granting of such an order."
- 7. On 21 January 2026, the Claimants filed their Reply on Provisional Measures together with exhibits C-70 to C-111 and legal authorities CL-6 (resubmitted), and CL-23 to CL-35 (the "Reply"). In paragraphs 111 *et seq* of the Reply, the Claimants rejected the Respondent's argument that no urgency exists and referred to previous cases in which tribunals had directed parties "to 'refrain from engaging in any conduct—including, without limitation, any act, resolution or decision—that may directly or indirectly affect or modify the legal situation existing as of [the date that the provisional measures applications were filed], pending the tribunal's decision on provisional measures'".
- 8. In paragraph 118 of the Reply the Claimants renewed their request for interim relief. They requested that the Tribunal order that "Ukraine take all measures necessary to prevent any interference, and cease and desist from interfering, with the Claimants' rights in respect of UGV and/or its assets and, in particular, to prevent-
 - (a) the transfer of control over UGV's assets to ARMA;

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(b) any declaration by the Ukrainian Courts that the 1 December 2022 transfer of shares in Smart Holding to the Trusts is invalid; and

(c) the return and/or transfer of any shares in Smart Holding held by the Trusts to Mr Novynskyi.

9. In accordance with the schedule, as amended, the Respondent's Rejoinder on the Application is due on 18 February 2026.
10. The Tribunal was constituted on 27 January 2026. Its members are Sir Christopher Greenwood, President, appointed by agreement of the Parties; Prof. Stephan Schill, appointed by the Claimants; and Prof. Zachary Douglas, appointed by the Respondent.
11. On 9 February 2026, the Claimants wrote to the Tribunal stating that the Respondent "is seeking to initiate additional proceedings aimed at seizing the Claimants' documents and assets" and referring to a letter² sent by the [REDACTED] on [REDACTED] to the [REDACTED] and [REDACTED] requesting information "in order to identify the assets of the person against whom the sanction has been applied, and to prepare a claim to the [REDACTED] on the application of the sanction in the form of recovery of assets to the state income." The Claimants argued that if the [REDACTED] application was successful "it will result in the full confiscation of the assets, meaning the complete, permanent and irrevocable deprivation of ownership title".
12. The Claimants requested that the Tribunal "consider this new event as it deliberates their pending Application". They also asked that "because a proceeding before the [REDACTED] could very well finish before the pending Application is decided", the Tribunal should order temporary relief as set forth in paragraph 118 of the Claimants' Reply.

² Exhibit C-112.

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13. On 10 February 2026, the Respondent requested leave to respond to the Claimants' letter and suggested that it do so in its Rejoinder on Provisional Measures due on 18 February 2026.
14. On 11 February 2026, the Tribunal granted the Respondent leave to respond to the Claimants' letter of 9 February 2026 but directed that it be done by 13 February 2026 to permit the Tribunal to give a timely ruling on the request for temporary relief. The Tribunal also reminded both Parties "that they must do nothing which would extend or aggravate the dispute pending the ruling of the Tribunal."
15. On 13 February 2026, the Respondent responded to the Claimants' letter of 9 February 2026. In the response it argued that immediate interim relief was warranted only where there was a serious and credible risk that the conduct of a party could undermine the effectiveness of the arbitral process, aggravate the dispute or alter the status quo. The Respondent contested any connection between the letter referred to by the Claimants and the Claimants' Application for provisional measures. It argued that the letter "concerns neither Smart Energy nor UGV" but entities which are not parties to the present proceedings nor owned by the Claimants.
16. The Respondent further argued that there is no urgency or necessity that would justify an order for interim relief as the one sought by the Claimants. The letter was a request for information. It did not institute legal proceedings and was an instance of the proper and lawful exercise of the Ministry's statutory powers.

II. TRIBUNAL'S DECISION

17. The Tribunal agrees with the decision of the tribunal in *ExxonMobil v. Netherlands*³ that Article 47 of the ICSID Convention and Rule 47 of the 2022 Arbitration Rules

³ *ExxonMobil Petroleum and Chemical BV v. Kingdom of the Netherlands* (ICSID Case No. ARB/24/44), Procedural Order No. 4, 31 October 2025 (RL-43).

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give it the power to grant interim provisional relief in an appropriate case. It also agrees with the *ExxonMobil* tribunal that:

The whole purpose of the temporary and immediate interim relief is not to render the requested provisional measure moot before it is decided and to preserve the integrity of the proceedings and the parties' rights from imminent serious harm. Tribunals have consistently recognized that measures of this nature may be appropriate in circumstances involving urgency and necessity, particularly where the requested relief is narrowly tailored to prevent procedural prejudice or further escalation of the dispute.⁴

18. The Tribunal notes that Arbitration Rule 47(4) gives it the power to grant different interim relief from that requested by a Party.
19. The Tribunal notes that the Respondent is due to submit its Rejoinder on the Provisional Measures Application on 18 February 2026. In addition, the Tribunal has fixed 2 March 2026 as the date for the initial session in the present case and has asked the Parties provisionally to reserve 9 March 2026 for a hearing on the Application should the Tribunal consider that to be necessary once it has considered the Rejoinder. The Tribunal also recalls that Rule 47(2)(d) of the 2022 ICSID Arbitration Rules requires the Tribunal to rule on the Application within thirty days of the last submission on that Application. The application of that Rule in the present case means that the Tribunal must rule on the Application by 20 March 2026 if it decides not to hold a hearing and by 8 April 2026 if a hearing is held on 9 March and there are no subsequent submissions.
20. The Tribunal will, as the Claimants have requested, consider the new development referred to in the Claimants' letter of 9 February 2026 and the Respondent's comments thereon when it deliberates on the Application. It does not, however, believe that the matters set out in that letter or in the Claimants' pleadings on the Application currently warrant the grant of the temporary relief sought before the Tribunal has had the chance

⁴ Loc. cit. para 66.

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to consider the Rejoinder along with all of the other written submissions and to determine whether or not a hearing is needed.

21. Nevertheless, the Tribunal considers that, in addition to reminding both Parties of their duty not to take any steps which would aggravate the dispute, it is appropriate to require each Party immediately to notify the Tribunal and the other Party of any steps it takes which might alter the ownership, or the ultimate beneficial ownership, of any of the assets with which the proceedings are concerned or affect the access of a Party to evidence which it might reasonably require to make out its case.
22. For the avoidance of doubt the Tribunal makes clear that this Decision is without prejudice to the possibility of the Tribunal granting provisional measures or interim relief following the conclusion of the written pleadings on the Application and any hearing which the Tribunal might decide to hold. Nothing in the present Decision should be taken as an expression of the Tribunal's view regarding matters of fact, the Application for Provisional Measures or the merits of the case. Nor is it an indication of whether or not the Tribunal will decide to hold a hearing on the Application.

III. ORDER

23. FOR THE REASONS STATED ABOVE:

- (a) both Parties are reminded of their duty not to take any steps which might aggravate the dispute;
- (b) each Party shall immediately inform the Tribunal and the other Party of any steps it takes which might alter the ownership, or the ultimate beneficial ownership, of any of the assets with which the proceedings are concerned or affect the access of a Party to evidence which it might reasonably require to make out its case;
- (c) no further measures are considered necessary at the present stage of the proceedings.

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On behalf of the Tribunal,

[signed]

Sir Christopher Greenwood, GBE, CMG, KC
President of the Tribunal
Date: 16 February 2026