

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Enwell Energy plc

v.

Ukraine

(ICSID Case No. ARB/25/41)

DECISION ON TEMPORARY MEASURES

Members of the Tribunal

Ms. Lucinda Low, President of the Tribunal

Prof. Dr. Stephan W. Schill, Arbitrator

Professor Jorge E. Viñuales, Arbitrator

Secretary of the Tribunal

Mr. Govert Coppens

10 April 2026

I. INTRODUCTION

1. The Claimant is Enwell Energy plc (“Enwell” or the “Claimant”), a company organized under the laws of the United Kingdom.
2. The Respondent is Ukraine (the “**Respondent**”).
3. The Claimant and the Respondent are collectively referred to as the “**Parties.**”

II. PROCEDURAL BACKGROUND

4. On September 6, 2023, the Claimants submitted the Request for Arbitration (the “**RfA**”), to the International Centre for Settlement of Investment Disputes (“**ICSID**” or the “**Centre**”). The RfA was based on the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Ukraine for the Promotion and Reciprocal Protection of Investments, entered into force on February 10, 1993 (the “**BIT**” or “**Treaty**”).
5. On August 22, 2025, the Acting Secretary-General registered a request for the institution of arbitration proceedings.
6. On October 21, 2025, the Claimant filed a request for provisional measures (“**Provisional Measures Request**” or “**Request**”) and, in accordance with ICSID Arbitration Rule 47(2)(c), requested that the ICSID Secretary-General fix time limits for written submissions, so that the request could be considered by the Tribunal promptly upon its constitution.
7. By letter of October 31, 2025, the Respondent requested an extension for filing of its response to the Provisional Measures Request and proposed further changes to the briefing schedule. The Claimant filed its observations on the Respondent’s request on November 4, 2025. On the same day, ICSID reminded the Parties that they may agree on a different briefing schedule. Once the Tribunal is constituted, the Tribunal may adjust the schedule as necessary. On December 11, 2025, the Parties notified ICSID of the agreed modified briefing schedule.
8. On December 19, 2025, the Respondent filed its Response to the Claimant’s Provisional Measures Request (“**Response**”).

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9. On January 21, 2026, the Claimant filed a response to the Respondent's observations "**Reply**").
10. On February 3, 2026, the Respondent notified ICSID of the Parties' agreement to extend the Respondent's date for filing of its submission.
11. On February 18, 2026, the Respondent filed its rejoinder on the Provisional Measures Request ("**Rejoinder**").
12. On March 12, 2026, a Tribunal composed of Lucinda Low, a national of the United States, President, appointed by agreement of the parties; Stephan Schill, a national of Germany, appointed by the Claimant; and Jorge E. Viñuales, a national of Switzerland and Argentina, appointed by the Respondent, was constituted. Mr. Govert Coppens, ICSID Legal Counsel, was designated to serve as Secretary of the Tribunal.
13. The Request seeks two categories of what are collectively termed provisional measures. The first and principal, part of the Request seeks provisional measures that would apply during the course of the present proceedings. The Tribunal will refer to these as the requested "**Interim Measures**" (and generically to measures of this character as "interim measures"). The second part of the Request seeks temporary measures pending the Tribunal's decision on the Interim Measures. The Tribunal will refer to these as the "**Temporary Measures**" (and generically to measures of this character as "temporary measures").
14. A hearing on the Request for Interim Measures is in the process of being scheduled.
15. This Decision addresses only that portion of the Request pertaining to Temporary Measures. Given its purpose and temporary nature, the Tribunal considers that a detailed recitation of the facts and the Parties' positions is not necessary in this Decision, and it will therefore focus on the key elements governing its decision on this part of the Request.

III. PARTIES' POSITIONS

A. CLAIMANT'S POSITION

16. In its Request, as confirmed in its Reply, the Claimant has requested the following Temporary Measures:

(i) IMMEDIATELY ORDERING that Ukraine take all measures necessary to prevent any interference, and cease and desist from interfering, with the Claimant's rights in respect of the Ukrainian Subsidiaries and/or their assets and, in particular, to prevent-

(a) the transfer of control over the Ukrainian Subsidiaries' assets to ARMA;

(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[.]*¹

17. It argues that such measures are justified when the urgency of the matter may outstrip the speed at which an arbitral tribunal can respond to a change in circumstances,² and questions the adequacy of the undertakings provided by the Respondent's Security Service ("SSU") to address the risks of such developments pending a determination on the Interim Measures.³

B. RESPONDENT'S POSITION

18. The Respondent, for its part, opposes the requested Temporary Measures, arguing that they are not urgent,⁴ and that there has been no change to the *status quo* or aggravation of the dispute that would justify those Temporary Measures.⁵

¹ Reply, para. 123; Request, para. 104.

² Request, para. 102, citing Exhibit CL-23, *Perenco Ecuador Limited v Republic of Ecuador*, ICSID Case No ARB/08/6, Decision on Provisional Measures, 8 May 2009, para. 28.

³ Reply, para. 122.

⁴ Response, para. 188; Rejoinder, para. 132.

⁵ Rejoinder, para. 132.

IV. TRIBUNAL'S ANALYSIS

19. Neither Party has questioned the power and authority of the Tribunal to issue temporary measures in the nature of the Temporary Measures requested here. It is common cause that Article 47 of the ICSID Convention and Arbitration Rule 47(1) authorize and govern the Tribunal's decision as to both the requested Temporary Measures and the requested Interim Measures.
20. The Parties have addressed in detail in their submissions the standards for provisional measures established by these provisions, and the various elements that have been identified both in the Arbitration Rules, particularly Rule 47(3), and the decisions of arbitral tribunals applying these provisions, or their predecessors.
21. Neither Party has given detailed attention to the question of how the standards may vary depending on how temporary the requested provisional measures should be.
22. However, the Parties appear to coincide that urgency is a relevant factor. The Tribunal also considers that necessity and proportionality come into play, and must be measured, as Arbitration Rule 47(3) mandates, against the relevant circumstances. In particular, when looking at temporary measures of the type requested here, which will be in place only for a limited time until the Tribunal issues its decision on the Interim Measures part of the Request, it considers that any temporary measures should be drawn so as to address identified risks that could aggravate the dispute or render ineffective the ultimate decision on Interim Measures. The purpose of temporary emergency relief, in other words, is to ensure that any request for provisional measures is not rendered moot by conduct attributable to the party against whom the provisional measures are requested before the Tribunal can take a decision on the request for provisional measures. Furthermore, the Tribunal notes that Arbitration Rule 47(4) gives the Tribunal the power to grant different interim relief from that requested by a Party.
23. The Temporary Measures requested by the Claimant are of two types: First, they seek to preserve its control of the assets of its operating subsidiaries, the so-called "Ukrainian Subsidiaries", and to prevent the transfer of such control to an agency of the Respondent, ARMA (the acronym for the National Agency of Ukraine for Detection,

Search and Management of Assets obtained from Corruption and Other Crimes).⁶ Second, they seek to prevent any declaration by the courts of Ukraine that certain transfers of shares by the then ultimate beneficial owner of the Claimant, Mr. Vadym Novynskyi, to the so-called “Cypriot Trustees” (hereinafter, the “Upstream Transfers”), are invalid or unenforceable as a matter of public policy, and a requirement that the Upstream Transfers be undone. The Tribunal will address each of these directly.

24. First, as to the issue of control of the assets of the Ukrainian Subsidiaries, the Tribunal observes that the *ex parte* motion filed by the Prosecutor General of Ukraine on 5 September 2025 in Pechersk District Court seeking to transfer to ARMA the assets of the Ukrainian Subsidiaries⁷ was withdrawn on 11 September 2025.⁸ At that time, the Prosecutor expressed his intention to resubmit the motion, something that – on the information available to this Tribunal – has not occurred in the six months that have elapsed since that date.
25. The Parties disagree sharply on the harm that might be done to the business operations of the Claimant were such a transfer to occur. The Tribunal need not decide this issue at this time, but reserves the matter for its decision on the Interim Measures. The Tribunal considers that the possibility of such an application of the type made on 5 September 2025 being made *ex parte* creates a risk that a transfer of control might be requested and occur during the period prior to the Tribunal’s decision regarding the Interim Measures. Such a request would potentially aggravate the dispute and create a risk that the Tribunal’s decision on those Interim Measures would be impaired or not fully effective.
26. In the absence of a renewed motion, the Tribunal considers that the requested Temporary Measure regarding ARMA, which would prevent any transfer of control, is unnecessary and disproportionate under the circumstances. However, given the risks identified above, it considers that a requirement that the Respondent provide reasonable

⁶ Request, para. 1.

⁷ Exhibit C-93.

⁸ Exhibit C-95.

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advance notice to the Tribunal and to the Claimant of any renewed request by the Prosecutor General to transfer assets, is appropriate to protect against those risks.

27. As to the issue of the effectiveness of the Upstream Transfers, the Tribunal observes that the SSU has initiated four cases seeking to invalidate those Transfers (the “**Four SSU Cases**”).⁹ The Tribunal has encountered some difficulty from the submissions in securing a clear picture of the current status of those claims, but suffice it to say for present purposes that of the two cases where the SSU acts as claimant, one had an initial hearing scheduled for 21 May 2026 and currently appears to be suspended and the other appears to have an initial hearing scheduled for 2 June 2026.¹⁰ Even if the hearings were to take place, it seems highly unlikely that the timeline for decision making by the Kyiv Commercial Court, which acts in first instance and whose decisions therefore appear to be subject to appeal,¹¹ would be such as to preempt the decision of this Tribunal on the Interim Measures.
28. Therefore, the Tribunal does not consider that the Temporary Measures requested by the Claimant with respect to the Upstream Transfers are necessary, urgent, or proportionate. However, the Tribunal’s understanding of the nature of these proceedings is not sufficient to exclude that there may be a risk of further proceedings in relation to at least some of the Four SSU Cases that implicate these Upstream Transfers during the relevant period, *i.e.*, prior to the Tribunal’s decision on the requested Interim Measures.
29. The Tribunal understands that the SSU has stated that it does not plan to institute any new actions,¹² but given that the SSU appears to be legally obligated to proceed under certain circumstances, and given the pendency of some of the Four SSU Cases, it deems it appropriate for the Tribunal to be apprised of any such developments, for similar reasons to those articulated above regarding the implications of a renewed application

⁹ In two pre-existing cases, the SSU acts as a third-party intervenor (Exhibits C-97 (Case 910/16974/23), C-102 (Case 910/16975/23)). In two other cases, the SSU acts as the claimant (Exhibits C-99 and C-101 (Case 910/12001/25) and C-103 (Case 910/12907/25)).

¹⁰ See Exhibit R-34. The Claimant does not seem to take issue with this information, see Reply, para. 96.

¹¹ See Exhibits C-97 and R-43 concerning Case 910/16974/23.

¹² See Exhibit R-34, according to which “Currently, the SSU does not plan to file other lawsuits that directly or indirectly relate to the circumstances of these two cases.”

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by the Prosecutor General to transfer control of any of the Claimant's rights or assets to ARMA.

30. Therefore the Tribunal has decided that, pending a decision by the Tribunal on the Interim Measures, reasonable advance written notice should be given by the Respondent to the Tribunal and the Claimant of any new SSU application or request made as part of the Four SSU Cases, or any new proceedings initiated on the part of the Respondent, its agencies, or instrumentalities, that would seek to invalidate or render ineffective the Upstream Transfers.
31. This decision on the requested Temporary Measures in no way represents a prejudgment of the Tribunal's decision on Interim Measures.

V. DECISION AND ORDER

32. For the foregoing reasons, the Tribunal decides:
- (a) The Respondent shall provide at least 4 days' prior written notice of (i) any request by the Prosecutor General of Ukraine to transfer control of the Claimant's Ukrainian Subsidiaries to ARMA; and (ii) any new SSU application or request made as part of the Four SSU Cases, or any new proceedings initiated on the part of the Respondent, its agencies, or instrumentalities, that would seek to invalidate or render ineffective the Upstream Transfers.
 - (b) The notice obligations set forth in the foregoing paragraph shall be effective upon the issuance of this decision, and shall remain in effect until the Tribunal's decision on Interim Measures.
 - (c) No further measures are necessary at this stage of the proceedings.

It is so ordered.

On behalf of the Tribunal,

[signed]

Ms. Lucinda Low
President of the Tribunal
Date: 10 April 2026