

Stratius Investments Limited

v.

Hungary

ICSID Case No. ARB/24/6

PROCEDURAL ORDER No. 2
On Transparency and Confidentiality

Members of the Tribunal

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal
Ms. Juliet Blanch, Arbitrator
Prof. Philippe Sands KC, Arbitrator

Secretary of the Tribunal

Ms. Aïssatou Diop

Assistant to the Tribunal

Dr. Magnus Jesko Langer

16 October 2024

I. PROCEDURAL BACKGROUND

1. The Tribunal held its first session with the Parties on 6 September 2024 and issued Procedural Order No. 1 (“PO1”) on 11 September 2024. Paragraph 24.1 of PO1 provides that transparency and confidentiality would be addressed in Procedural Order No. 2.
2. Accordingly, on 26 September 2024, the Tribunal submitted a draft of this Order to the Parties and invited their comments, preferably jointly.
3. On 5 October 2024, the Respondent proposed changes to the draft Order and, on 7 October 2024, the Claimant stated that it had no comments, thereby agreeing with the Tribunal’s proposals.
4. Taking into account the Parties’ positions, the Tribunal issues this Order setting out the transparency/confidentiality regime governing these proceedings.

II. LEGAL FRAMEWORK

5. The legal framework applicable to these proceedings is determined by the Energy Charter Treaty (the “ECT”), the ICSID Convention, and the 2022 ICSID Arbitration Rules (the “ICSID Arbitration Rules”).
6. Part V of the ECT, which regards dispute settlement, is silent with respect to transparency/confidentiality. Therefore, one must look for applicable rules in the ICSID texts.
7. Article 48(5) of the ICSID Convention provides that ICSID shall not publish the award without the disputing Parties’ consent.
8. ICSID Arbitration Rules 62-66 contain provisions on the publication of the award, orders and decisions, documents filed in the proceedings, transcripts and recordings of hearings, access to hearings, and on the definition of confidential or protected information. Some of these rules expressly require the disputing Parties’ consent or allow the Parties to depart from the rules by agreement or by raising an objection to the application of the rules.
9. In addition, pursuant to ICSID Arbitration Rule 1(2), the Tribunal is bound by an agreement reached by the disputing Parties on a procedural matter, provided the agreement is consistent with the ICSID Convention and the ICSID Administrative and Financial Regulations.

III. TRANSPARENCY RULES

10. In application of the legal framework set out in Section II above and in implementation of the Parties’ agreements, the Tribunal adopts the rules set out in the following subsections.

A. AWARDS, AWARD-RELATED DECISIONS, AND DECISIONS ON ANNULMENT (ICSID ARBITRATION RULE 62)

11. In accordance with Article 48(5) of the ICSID Convention and ICSID Arbitration Rule 62(1), and with the consent of the Parties, ICSID shall publish on its website the award, any supplementary decision on the award, decisions on rectification, interpretation and

revision of the award, and decisions on annulment, and with any redactions agreed by the Parties pursuant to ICSID Arbitration Rule 62(2).¹

12. In accordance with ICSID Arbitration Rule 62(3), the Parties' consent to the publication of the award and of the decisions listed in paragraph 11 above shall be deemed to have been given if no Party objects to such publication in writing within 60 days after the dispatch of the relevant document.
13. If the Parties consent to the publication of a redacted version of the award or a decision listed in paragraph 11 above, they shall provide ICSID with their jointly redacted text within 60 days after the dispatch of the relevant document. If the Parties do not agree on a jointly redacted text, they shall inform ICSID and provide their proposals for redaction of confidential or protected information as defined in ICSID Arbitration Rule 66 within 60 days of dispatch. ICSID will then determine the applicable procedure to resolve the Parties' disagreement.
14. In the event that the Parties do not consent to publication nor are deemed to have consented pursuant to paragraph 12 above, ICSID shall publish excerpts of the documents listed in paragraph 11 above in accordance with the procedure set forth in ICSID Arbitration Rule 62(4).

B. ORDERS AND DECISIONS (ICSID ARBITRATION RULE 63)

15. ICSID shall publish the orders and decisions of the Tribunal, subject to the redaction process provided in Section E below.

C. OTHER DOCUMENTS FILED IN THE PROCEEDINGS (ICSID ARBITRATION RULE 64)

16. With consent of the Parties, ICSID shall publish the Parties' written submissions simultaneously after the completion of the hearing to which the submissions relate, subject to the redaction process provided in Section E below.
17. Supporting documents accompanying the Parties' written submissions, namely exhibits, legal authorities, witness statements and expert reports (including annexes, appendices, or exhibits thereto), correspondence between the Parties and ICSID or the Tribunal, and PowerPoint or other presentations made at a hearing, shall not be made public, unless otherwise agreed by the Parties and subject to the redaction process provided in Section E below.

D. HEARINGS (ICSID ARBITRATION RULE 65)

18. The Tribunal shall allow persons in addition to the Parties, their representatives, witnesses and experts during their testimony, and persons assisting the Tribunal, to observe hearings, unless either party provides a reasoned objection no later than one month before the relevant hearing.
19. With consent of the Parties, ICSID shall publish recordings or transcripts of hearings.

¹ Pursuant to ICSID Arbitration Rule 72(2), this Order shall continue to apply to an interpretation, revision or annulment proceeding with necessary modifications, unless the Parties agree or the Tribunal or Committee orders otherwise.

20. If applicable, the Tribunal will give appropriate directions to implement the transparency of hearings, including preventing the disclosure of confidential or protected information.

E. REDACTION PROCESS FOR CONFIDENTIAL AND PROTECTED INFORMATION

21. Publication of information and documents pursuant to this Order shall be subject to the redaction of confidential and protected information as defined in ICSID Arbitration Rule 66.
22. The Tribunal will discuss with the Parties at the end of any hearing whether they consent to the publication of the documents mentioned in Sections C and D (paragraph 19) above.
23. Within 30 days from the date of any document mentioned in Section B above, and within 30 days from the date of the Parties' consent to the publication of any document mentioned in Sections C and D above, a Party shall give written notice to the Tribunal and the other Party that it opposes the publication of certain information that it considers confidential or protected under ICSID Arbitration Rule 66. The notice shall identify the part(s) of the document sought not to be published in the form of proposed redactions, with reasons, to be included in the Transparency Schedule set out in Annex A to this Order (in both .docs and .pdf formats).
24. Absent such a notice, ICSID will publish the document without redactions.
25. Within 30 days of receipt of the notice referred to in paragraph 23, the other Party may raise reasoned objections to the requested redactions.
26. If no objections are raised within the time limit set in paragraph 25, the Tribunal will consider the requested redactions to be agreed and ICSID will publish the document with the agreed redactions.
27. If objections are raised within the time limit set in paragraph 25, the Parties shall confer and seek to resolve their disagreement within 15 days of receipt of the objections. If the Parties reach an agreement, ICSID will publish the document at issue with the agreed redactions. The Parties shall cooperate in good faith in resolving any objections and it is the Tribunal's expectation that disputes will only be referred to it in exceptional circumstances.
28. If objections remain unresolved at the expiration of the 15-day time limit, the disputed redaction requests and the objections thereto shall be submitted to the Tribunal in the form of the Transparency Schedule set out in Annex A to this Order (in both .docs and .pdf formats).
29. The Tribunal will then decide over the disputed redactions and ICSID will publish the document at issue with any redactions as directed by the Tribunal.
30. If information is to be redacted from a document under paragraphs 26, 27 and 29 above, the Parties shall provide a redacted version of the document at issue within 10 days from being requested to do so. ICSID will then publish the redacted document upon receipt.
31. If the Parties agree to publish supporting documents and correspondence, the Tribunal will give appropriate directions on the process to determine whether information contained in those materials must be protected from disclosure.

32. ICSID will determine the redaction process concerning documents listed in Section A above.

On behalf of the Tribunal,

/signed/

Prof. Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: 16 October 2024

ANNEX A – TRANSPARENCY SCHEDULE

Claimant/Respondent [Party seeking protection against publication]	
Identification of document and part(s) sought to be protected	[use one sheet per document/category of documents]
Legal basis for protection	
Comments	
Reply by opposing Party	
Decision	