

**IN THE MATTER OF AN ARBITRATION UNDER
THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BELARUS
AND THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA ON THE PROMOTION AND
PROTECTION OF INVESTMENTS**

- and -

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL
TRADE LAW 1976**

- between -

OPEN JOINT STOCK COMPANY “BELARUSKALI”

(the “Claimant”)

and

THE REPUBLIC OF LITHUANIA

(the “Respondent” and, together with the Claimant, the “Parties”)

(PCA Case No. 2024-03)

PROCEDURAL ORDER NO. 7

Privilege

Tribunal

Professor Gabrielle Kaufmann-Kohler (Presiding Arbitrator)

Professor Azzedine Kettani (Arbitrator)

Professor Zachary Douglas KC (Arbitrator)

Tribunal Secretary: Dr Johannes Fahner

Registry: Permanent Court of Arbitration

5 March 2026

I. PROCEDURAL BACKGROUND

1. On 13 January 2026, the Tribunal issued Procedural Order No. 6 (PO6), containing its rulings on the Parties' contested document production requests.
2. In PO6, the Tribunal stated that, if a Party were to redact or withhold responsive documents on grounds of confidentiality, it was to provide a privilege log describing the documents that were redacted or withheld. The Tribunal further directed that the other Party could comment on such privilege log, after which both Parties were to make genuine efforts to resolve disputed confidentiality claims before submitting any outstanding disputes to the Tribunal by 11 February 2026.
3. On 20 February 2026, each Party filed a submission seeking a ruling from the Tribunal on some of the other Party's claims of confidentiality.
4. This Procedural Order rules on the Parties' requests of 20 February 2026.

II. LEGAL FRAMEWORK

5. Procedural Order No. 1 contains the following provisions on document production:

(...)

4.6 The Tribunal will, in its discretion, rule upon the production of the documents or categories of documents having regard to the legitimate interests of the other Party, and all of the surrounding circumstances. In deciding document production requests, the Tribunal may take guidance from the 2020 IBA Rules on the Taking of Evidence in International Arbitration.

4.7 When ruling on production, the Tribunal will in particular take into account that a Party shall not be entitled to the production of a document:

(...)

4.7.4 that is privileged and/or otherwise protected, provided the legal basis for such claim of privilege or protection is set out in sufficient detail for the Tribunal to make an informed decision in case of objection.

(...)

6. Pursuant to paragraph 4.6 of Procedural Order No. 1, quoted above, the Tribunal may take guidance from the 2020 IBA Rules on the Taking of Evidence in International Arbitration (the **IBA Rules**), which contain the following provisions:

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:

- (b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable (see Article 9.4 below);

[...]

- (e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;

[...]

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;

(...)

- (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.

7. The Tribunal has assessed the Parties' disputed privilege claims in light of the principles set out above.

III. THE CLAIMANT'S REQUESTS

8. The Claimant seeks a ruling from the Tribunal ordering the disclosure of three responsive documents, to which the Respondent's privilege log refers to as A-5, A-11, and D-2.

Document A-5

9. In its privilege log, Lithuania has described Document A-5 as a [REDACTED], noting that it is an attachment to a letter [REDACTED] (Document A-2).¹

10. The document is responsive to the Claimant's document production Request No. 1, which sought the production of the following documents:

Letters, emails, memoranda, notes, reports, minutes of meetings and sessions, audio and video recordings of the meetings and sessions, preparatory materials to the meetings and sessions within the Ministry of Transport and Communications of Lithuania ("Ministry of Transport"), (...) and/or LTG/LTG Cargo (including its Board of Directors, Management Board and shareholders) and/or exchanged between the referred bodies relating to discussion of issue of transit of the Claimant's cargoes, the assessment of risks posed by such transit, the possible alternatives for eliminating such risks, possible invalidation, termination or refusal of the [REDACTED], [REDACTED], initiation of the procedure of transaction screening within Commission

¹ Respondent's privilege log in respect of Request No. 1 (Attachment 2 (Annex A) to the Claimant's submission of 20 February 2026) p. 5.

for the Protection of Objects Critical for National Security of the Republic of Lithuania ("Commission") for the period from 24 June 2021 to 12 January 2022.

11. In its privilege log, the Respondent notes that "[t]he entire document is subject to privilege and is withheld by LTG on that basis". According to Lithuania, [REDACTED]
[REDACTED]
[REDACTED].²
12. As to the legal basis of the asserted privilege, the Respondent invokes Article 45(2) and 46(5) of the Law on the Bar of Lithuania. In addition, it refers to a "[l]ist of confidential information and commercial (trade) secrets of LTG and LTG Cargo". Lithuania asserts that Document A-5 "constitutes LTG's confidential information in accordance with its confidentiality policy".³
13. In its submission of 20 February 2026, Belaruskali argued that "internal documents, even those which were prepared on the basis of legal opinion of outside counsel, may not be entirely covered by attorney-client privilege".⁴
14. The Tribunal considers that legal privilege extends to any document that forwards, summarises or discusses advice that is itself covered by attorney-client privilege. Absent such protection, the scope and practical effect of attorney-client privilege would be severely curtailed, especially in case of advice given by counsel to a legal entity such as a corporation or a government.
15. Considering the Respondent's representations that the letter [REDACTED]
[REDACTED] and that "[t]he entire document is subject to privilege",⁵ which the Tribunal has no reason to doubt, the latter finds that the Respondent is entitled to withhold this document from production. The Claimant's request for disclosure of Document A-5 is therefore denied.

² Respondent's privilege log in respect of Request No. 1 (Attachment 2 (Annex A) to the Claimant's submission of 20 February 2026) p. 5.

³ Respondent's privilege log in respect of Request No. 1 (Attachment 2 (Annex A) to the Claimant's submission of 20 February 2026) p. 5.

⁴ Claimant's submission of 20 February 2026, para. 4. See also the Claimant's comment on the Respondent's privilege log in respect of Request No. 1 (Attachment 2 (Annex A) to the Claimant's submission of 20 February 2026) p. 5: [REDACTED]

⁵ Respondent's privilege log in respect of Request No. 1 (Attachment 2 (Annex A) to the Claimant's submission of 20 February 2026) p. 5.

Document A-11

16. In its privilege log, Lithuania described Document A-11 as an [REDACTED].
[REDACTED].
The Respondent further noted that the [REDACTED] is an attachment to [REDACTED].
[REDACTED].
[REDACTED]⁶
17. Like Document A-5, Document A-11 is responsive to the Claimant's document production Request No. 1.
18. The Respondent noted in its privilege log that according to LTG, [REDACTED].
[REDACTED].
[REDACTED]. For that reason, Lithuania invoked attorney-client privilege. In addition, it argued in its privilege log that the document "constitutes LTG's and LTG Cargo's confidential information in accordance with its confidentiality policy".⁷
19. In its comments on the Respondent's privilege log, the Claimant objects to the withholding of Document A-11, arguing that an internal document of LTG is not covered by attorney-client privilege and that "it is unclear how LTG's internal document [REDACTED] may be deemed confidential".⁸
20. The Tribunal refers to the considerations set out above in respect of document A-5. For the same reasons, taking into account the Respondent's assertion that [REDACTED],⁹ a representation on which the record does not cast doubt, the Tribunal concludes that the Respondent is entitled to withhold this document from production. Accordingly, it denies the Claimant's request for disclosure of Document A-11.

⁶ Respondent's privilege log in respect of Request No. 1 (Attachment 2 (Annex A) to the Claimant's submission of 20 February 2026) p. 11.

⁷ Respondent's privilege log in respect of Request No. 1 (Attachment 2 (Annex A) to the Claimant's submission of 20 February 2026) p. 11.

⁸ Respondent's privilege log in respect of Request No. 1 (Attachment 2 (Annex A) to the Claimant's submission of 20 February 2026) p. 12.

⁹ Respondent's privilege log in respect of Request No. 1 (Attachment 2 (Annex A) to the Claimant's submission of 20 February 2026) p. 11.

Document D-2

21. In its privilege log, the Respondent described Document D-2 as [REDACTED]
[REDACTED]
[REDACTED].¹⁰

22. The document is responsive to the Claimant's document production Request No. 10, which sought disclosure of:

The documents attached to [REDACTED]
[REDACTED] (R-121) (...), together with all attachments, including but not limited to:

(...)

(ii) Documents listed in para. 2 of R-121:

(...)

12. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

23. In its comments on the Claimant's Redfern Schedule, the Respondent argued that this document concerned [REDACTED]
[REDACTED], and that it was "protected under inhouse litigation privilege".¹¹

24. In PO 6, the Tribunal noted the Parties' conflicting claims about whether attorney-client privilege under Lithuanian law extended to advice given by inhouse lawyers. The Tribunal then granted the Claimant's request for production of Document D-2, "in the sense that it orders the Respondent to make its best efforts to produce the document and/or to substantiate the protection of inhouse counsel advice in a privilege log".¹²

25. In its privilege log, Lithuania submitted that [REDACTED]
[REDACTED]
[REDACTED]

¹⁰ Respondent's privilege log in respect of Request No. 10 (Attachment 3 (Annex D) to the Claimant's submission of 20 February 2026) p. 2.

¹¹ Claimant's Redfern Schedule, p. 97-98.

¹² Procedural Order No. 6, para. 25-26.

[REDACTED]. Moreover, it argued, the document “constitute[d] LTG’s confidential information in accordance with its confidentiality policy”.¹³

26. In its comments on Lithuania’s privilege log, Belaruskali argued that the Respondent had failed to demonstrate that [REDACTED] was protected by attorney-client privilege, despite the Tribunal’s invitation. In addition, according to Belaruskali, it was “unclear how information which relates [REDACTED] [REDACTED] may be deemed confidential for the purpose of the present arbitration proceedings”.¹⁴

27. [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

28. In its comments on the Claimant’s Redfern Schedule, the Respondent had sought to prevent the disclosure of D-2 on grounds of in-house litigation privilege. It appears that in the meantime, [REDACTED] [REDACTED]. As the Tribunal has no reason to doubt LTG’s representation on this point, it follows that the Respondent is entitled to withhold this document from production on grounds of attorney-client privilege. Moreover, in any event, the recent exchanges between the Ministry and LTG demonstrate that the Respondent has meanwhile made sufficient “best efforts” to obtain D-2 from LTG.¹⁷

29. For these reasons, the Claimant’s request for disclosure of Document D-2 is denied.

¹³ Respondent’s privilege log in respect of Request No. 10 (Attachment 3 (Annex D) to the Claimant’s submission of 20 February 2026) p. 2.

¹⁴ Respondent’s privilege log in respect of Request No. 10 (Attachment 3 (Annex D) to the Claimant’s submission of 20 February 2026) p. 2-3.

¹⁵ [REDACTED]
¹⁶ [REDACTED]

¹⁷ See PO6, para. 12: “[w]ith respect to documents that LTG did not produce despite the Respondent’s request, the Tribunal finds that the Respondent has made sufficient efforts to obtain these documents”.

IV. THE RESPONDENT'S REQUESTS

30. Lithuania seeks a ruling from the Tribunal ordering the disclosure of all 107 documents listed in Belaruskali's privilege log.
31. The documents at issue are responsive to Lithuania's document production Request No. 4, which sought the disclosure of the following documents:

For the period 24 June 2021 (the date of the June 2021 EU Sanctions) to 8 August 2024 (the date of the [REDACTED]):

- i. All contracts (and any related amendments) entered into between Belaruskali (and/or its subsidiaries or affiliates) and [REDACTED] (and/or its subsidiaries or affiliates); and
 - ii. Original Documents sufficient to show all payments made pursuant to any of the Documents responsive to part (i) of this request.
32. Each of the 107 responsive documents is related to a contract concluded between Belaruskali and [REDACTED] of which the Respondent has submitted a copy that it found in the public domain (R-247). The 107 documents concern, besides the [REDACTED] itself, various annexes, additional agreements, payment orders, acceptance certificates, and reconciliation statements.
33. In its privilege log, Belaruskali argued that the responsive documents are "protected by commercial confidentiality".¹⁸ The Claimant referred to Article 9(2)(e) of the IBA Rules and to [REDACTED], in which Belaruskali and [REDACTED] agreed "not to disclose any confidential information provided to each other in connection with this Agreement".
34. In its comments dated 19 February 2026 addressed to Lithuania, Belaruskali noted that "it [was] willing to disclose the requested documents if, and as soon as, [REDACTED] provides its consent for disclosure".¹⁹ Belaruskali further alleged that it had sought [REDACTED] consent by letters of [REDACTED] and [REDACTED], which remained unanswered.

¹⁸ Claimant's privilege log (Annex 1 to Respondent's submission of 20 February 2026), Comments dated 6 February 2026, para. 5.

¹⁹ Claimant's Comments dated 19 February 2026 (Annex 2 to Respondent's submission of 20 February 2026) para. 13.

35. According to the Claimant, the Respondent's statement that it had found some of the responsive documents online did not detract from their confidential nature. Rather, Belaruskali assumes that the documents were leaked or "otherwise illegally obtained", which "should prevent the Respondent from using such documents" and from arguing that their availability online removes their confidentiality.²⁰
36. In its submission of 20 February 2026, the Respondent opposed the Claimant's confidentiality claim on various grounds. First, according to Lithuania, [REDACTED] applies to information exchanged in the course of contract performance but not to the contractual documentation itself.²¹ Second, in any event, Lithuania submits that "a contractual confidentiality provision cannot serve as a basis to conceal evidence of corruption", especially where such evidence is "relevant and material to Lithuania's defences".²² In the Respondent's view, the Claimant has "made no showing of compelling circumstances that would prevent disclosure" nor has it explained why disclosure "would cause Belaruskali demonstrable harm".²³ Finally, Lithuania notes that some of the responsive documents appear to be in the public domain, which means that they can no longer be considered confidential.²⁴
37. The Tribunal notes that under Article 9(2)(e) of the IBA Rules, grounds of commercial confidentiality may bar the disclosure of documents if the Tribunal determines these grounds to be compelling.
38. The Claimant relies on [REDACTED] to substantiate its confidentiality claim. That provision contains the contract parties' agreement not to disclose "any confidential information". However, it does not specify what type of information qualifies as "confidential". The Claimant has identified no contractual basis for its assertion that "all information related to the Contract" should be deemed confidential. If that were correct, [REDACTED] could have simply referred to "any information", as opposed to "any confidential information".
39. In any event, in and of itself a contractual confidentiality clause does not constitute a ground for non-disclosure. It follows from Article 9(2)(e) of the IBA Rules, as discussed in paragraph 33 of PO6, that a ground of commercial confidentiality must be "compelling" in order to justify non-disclosure. This requires a balancing of the competing interests at

²⁰ Claimant's Comments dated 19 February 2026 (Annex 2 to Respondent's submission of 20 February 2026) para. 10-11.

²¹ Respondent's submission of 20 February 2026, para. 22.

²² Respondent's submission of 20 February 2026, para. 10-11.

²³ Respondent's submission of 20 February 2026, para. 26.

²⁴ Respondent's submission of 20 February 2026, para. 27-28.

issue, including the Claimant's interest in complying with its contractual obligations and the Respondent's interest in proving its case.

40. As to the Claimant's interests, Belaruskali has argued that "express contractual obligations" should not be "nullif[ied]", "circumvent[ed]" or "undermine[d]".²⁵ It further referred to "possible negative consequences of such circumvention, such as, for example, claims from [REDACTED] [sic] in connection with the disclosure of confidential information".²⁶
41. Lithuania, by contrast, has sought disclosure of the documents to substantiate its allegations that the amounts paid under the [REDACTED] were "artificially and corruptly inflated", which, in Lithuania's view, supports a finding of inadmissibility or a reduction of damages, if any.²⁷
42. When assessing the Parties' competing interests, the Tribunal is not persuaded that Belaruskali's interest in complying with a contractual confidentiality clause, even if considered applicable to all 107 documents, should prevail over Lithuania's interest in proving its case in this arbitration.
43. In this context, the Tribunal notes that [REDACTED] has allegedly not responded to Belaruskali's requests for consent to disclose raised in letters of [REDACTED] and [REDACTED]. As a result, [REDACTED] neither consented nor objected to the requested disclosure. More importantly, its silence seems to suggest that [REDACTED] did not find the matter of particular concern.
44. Moreover, the Tribunal recalls that this arbitration is governed by a confidentiality regime that acknowledges "the legitimate interests of the Parties in protecting the confidentiality of certain categories of information".²⁸ Accordingly, Procedural Order No. 5 (PO5) stipulates that documents produced by one Party to the other Party "shall not be made public, unless otherwise agreed by the Parties".²⁹ This means that any disclosure of information made pursuant to a document production order must remain limited to the participants in these proceedings. The Respondent acknowledged as much when it noted, in the context of its own document production, that the confidentiality obligations

²⁵ Claimant's Comments dated 19 February 2026 (Annex 2 to Respondent's submission of 20 February 2026) para. 9, 11.

²⁶ Claimant's Comments dated 19 February 2026 (Annex 2 to Respondent's submission of 20 February 2026) para. 9.

²⁷ Respondent's submission of 20 February 2026, para. 4, 11, 16.

²⁸ Procedural Order No. 5, para. 1.21.

²⁹ Procedural Order No. 5, Annex I, para. 7. See also Article 3(13) of the IBA Rules.

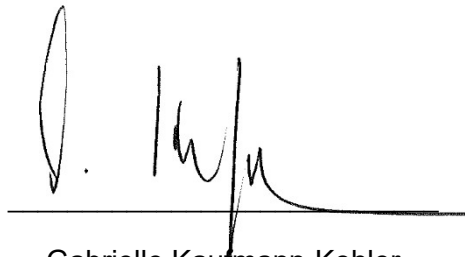
applicable in this arbitration “prohibit the use or disclosure of any materials produced in this arbitration in any other forum”.³⁰

45. On this basis, the Tribunal grants the Respondent’s request for disclosure of the documents listed in the Claimant’s privilege log. However, this ruling does not extend to the documents that the Respondent has identified as publicly available (entries nos. 1-4, 9, and 13-14). The Respondent has submitted these documents as Exhibits R-247 to R-250,³¹ while contending that “following Belaruskali’s refusal to comment on the authenticity of the said documents, their authenticity should be presumed”.³² Since these documents are now in the possession of Lithuania, their production by Belaruskali is no longer warranted based on Article 4.2.3 of Procedural Order No. 1.³³

V. ORDER

The Tribunal:

- i. orders the Claimant to produce the documents listed in its privilege log, with the exception of entries 1, 2, 3, 4, 9, 13, and 14, by **12 March 2026**;
- ii. denies all other requests for disclosure dated 20 February 2026.

A handwritten signature in black ink, consisting of a large, stylized initial 'G' followed by a series of loops and a long horizontal stroke extending to the right.

Gabrielle Kaufmann-Kohler
(Presiding Arbitrator)

On behalf of the Tribunal

³⁰ Respondent’s Comments dated 6 February 2026 (Attachment 1 to the Claimant’s submission of 20 February 2026) para. 14.

³¹ Respondent’s submission of 20 February 2026, para. 27.

³² Respondent’s submission of 20 February 2026, para. 30.

³³ Article 4.2.3 requires a requesting Party to “specify that the documents requested are not in the possession, custody or control of the requesting Party”.