

PCA CASE N° 2020-07

**IN THE MATTER OF AN ARBITRATION
UNDER THE ENERGY CHARTER TREATY**

- and -

THE UNCITRAL ARBITRATION RULES

-between-

NORD STREAM 2 AG

-and-

THE EUROPEAN UNION

TERMS OF APPOINTMENT

The Arbitral Tribunal

Professor Ricardo Ramírez Hernández (Presiding Arbitrator)
Professor Philippe Sands QC
Justice David Unterhalter SC

2 April 2020

6/2

1. Parties to the Arbitration

The Claimant

Nord Stream 2 AG
Baarestrasse 52
CH-6300
Zug
Switzerland

Counsel for the Claimant

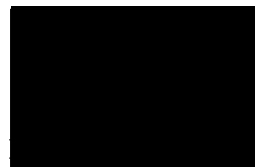
Professor Dr. Kaj Hober
3 Verulam Buildings
Gray's Inn
London WC1R 5NT
United Kingdom
E-mail: kaj.hober@outlook.com

Andrew Cannon
Lode Van Den Hende
Iain Maxwell
Hannah Ambrose
Louise Barber
Juliana Penz-Evren
Jerome Temme
Helin Laufer
Herbert Smith Freehills LLP
Exchange House
Primrose Street
London EC2A 2EG
United Kingdom
E-mail: andrew.cannon@hsf.com
lode.vandenhende@hsf.com
iain.maxwell@hsf.com
hannah.ambrose@hsf.com
louise.barber@hsf.com
juliana.penz@hsf.com
jerome.temme@hsf.com
helin.laufer@hsf.com

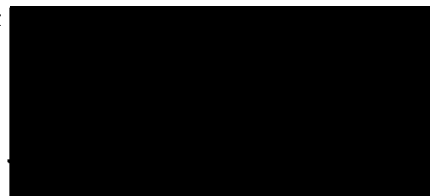
The Respondent

The European Union

Counsel for the Respondent



Legal Service of the European Commission
Rue de la Loi Wetstraat 200
1049 Bruxelles/Brussel
Belgium
E-mail:



2. Commencement of the Arbitration

- 2.1 According to the Claimant, a dispute has arisen between the Parties under the Energy Charter Treaty, dated 17 December 1994 and entered into force on 16 April 1998 (the “ECT”).
- 2.2 By a Notice of Arbitration dated 26 September 2019, the Claimant commenced arbitration proceedings against the Respondent pursuant to Article 3 of the UNCITRAL Rules and Article 26(4)(b) of the Treaty. The Notice of Arbitration was received by the Respondent on 26 September 2019.
- 2.3 In accordance with Article 3(2) of the UNCITRAL Rules, these arbitration proceedings are deemed to have commenced on 26 September 2019, the date on which the Respondent received the Notice of Arbitration.

3. Applicable Procedural Rules

- 3.1 Pursuant to Article 26(4)(b) of the ECT, this arbitration shall be conducted in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 15 December 1976 (the “UNCITRAL Rules”).
- 3.2 By agreement of the Parties, the Secretary-General of the Permanent Court of Arbitration (the “PCA”) acts as the appointing authority in this arbitration for all purposes under the UNCITRAL Rules.
- 3.3 Procedural orders shall be signed and issued by the Presiding Arbitrator alone after consultation with his co-arbitrators. The presiding arbitrator may take procedural decisions on his own, subject to revision, if any, by the full Tribunal.

4. Representation

- 4.1 The Parties have designated their representatives listed above as being authorized to act on their behalf in these arbitration proceedings.
- 4.2 To the extent they have not already done so, the Parties shall each provide copies of the powers of attorney or letters of representation granted to their representatives.
- 4.3 In the event of any change by a Party in the designation or contact details of any of its representatives, that change shall be notified promptly in writing to opposing counsel, to each member of the Tribunal, and to the PCA. The Tribunal reserves the right to exclude the participation of any representatives from any hearing or other meeting where their participation has not been duly notified sufficiently in advance of that hearing or meeting.

5. Appointment of the Tribunal

- 5.1 In its letter dated 8 January 2020, the Claimant appointed Justice David Unterhalter SC as arbitrator. His contact details are as follows:

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Justice David Unterhalter SC
50 Hume Road
Dunkeld
Johannesburg
South Africa 2196
E-mail: david@unterhalter.law

- 5.2 In its Response to the Notice of Arbitration dated 24 October 2019, the Respondent appointed Professor Philippe Sands QC as arbitrator. His contact details are as follows:

Philippe Sands QC
Griffin Building, Gray's Inn
London WC1R 5LN
DX400 Chancery Lane, London
United Kingdom
E-mail: philippesands@matrixlaw.co.uk

- 5.3 On 17 February 2020, the co-arbitrators appointed Professor Ricardo Ramírez Hernández as presiding arbitrator. His contact details are as follows:

Professor Ricardo Ramírez Hernández
Insurgentes Sur 1824, Piso 9
Col. Florida. C.P. 01030
Mexico City
Mexico
E-mail: ricardoramirezrh@icloud.com

- 5.4 The Parties confirm that the Tribunal has been validly constituted in accordance with the ECT and the UNCITRAL Rules.
- 5.5 The members of the Tribunal confirm that they are and shall remain impartial and independent of the Parties. Each arbitrator has provided the Parties with a signed Statement of Independence. Each of the members of the Tribunal confirms that he has disclosed, to the best of his knowledge, all circumstances likely to give rise to justifiable doubts as to his impartiality or independence and that he will promptly disclose any such circumstances that may arise in the future.
- 5.6 The Parties confirm that they have no objection to the appointment of any member of the Tribunal on grounds of conflict of interest or lack of independence or impartiality in respect of matters known to them at the date of signature of these Terms of Appointment.

6. Place of Arbitration

- 6.1 Pursuant to the UNCITRAL Rules, the Tribunal shall determine the legal place (or "seat") of the arbitration having regard to the circumstances of the case, after consultation with the Parties.
- 6.2 The Tribunal may hold meetings and hearings with the Parties at any location it considers appropriate, as decided by the Tribunal after consultation with the Parties. The Tribunal may meet at any location it considers appropriate for deliberations.
- 6.3 Irrespective of where an award is signed, it will be deemed to have been made at the legal place of arbitration.

7. Language

7.1 By agreement of the parties, English shall be the language of arbitration.

8. Case Administration

8.1 The PCA shall act as registry and shall administer the arbitral proceedings on the terms set forth in this section.

8.2 In consultation with the Tribunal, the Secretary-General of the PCA shall designate a legal officer of the International Bureau to act as Registrar and Secretary to the Tribunal.

8.3 The PCA shall maintain an archive of filings of correspondence and submissions.

8.4 The PCA shall manage Party deposits to cover the costs of the arbitration, subject to the Tribunal's supervision.

8.5 If needed, the PCA shall make its hearing and meeting rooms at the Peace Palace in The Hague or elsewhere available to the Parties and the Tribunal at no charge. Costs of catering, court reporting, or other technical support associated with hearings or meetings at the Peace Palace or elsewhere shall be borne by the Parties.

8.6 Upon request, the PCA shall carry out administrative tasks on behalf of the Tribunal, the primary purpose of which is to reduce the costs that would otherwise be incurred by the Tribunal carrying out purely administrative tasks. Work carried out by the PCA shall be billed in accordance with the PCA's schedule of fees.

8.7 The PCA's fees and expenses shall be paid in the same manner as the Tribunal's fees and expenses.

8.8 The contact details of the PCA are as follows:

Permanent Court of Arbitration
Attn.: Mr. Martin Doe, Senior Legal Counsel
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands
E-mail: mdoe@pca-cpa.org
amartinovic@pca-cpa.org

8.9 The appointment of the PCA as registry shall not affect the legal place of arbitration, the geographical location of meetings and hearings, the applicable procedural rules, or other aspects of the arbitral proceedings, which shall remain subject to the ECT, these Terms of Appointment, any agreement between the Parties, and any decisions made by the Tribunal in accordance with the applicable procedural rules.

9. Procedural meeting

9.1 Further procedural details, and in particular the procedural calendar and the determination of the place of arbitration, shall be discussed and, as far as possible, agreed at a procedural meeting to be held with the Parties in person or by telephone conference call.

9.2 The results of the procedural meeting shall be included in a further procedural order.

10. Communications

10.1 The Parties and their representatives shall not engage in any oral or written communications with any member of the Tribunal *ex parte* in connection with the subject matter of the arbitration.

10.2 The Parties shall send all communications for the attention of the Tribunal by e-mail simultaneously to opposing counsel, to each member of the Tribunal, and to the PCA.

10.3 The Parties shall also send hard copies of communications if so requested by any member of the Tribunal or the PCA.

10.4 The Parties shall send copies of correspondence between them to the Tribunal and the PCA only if such correspondence relates to a matter where the Tribunal is required to take action or to abstain from acting or if it gives notice of a relevant event of which the Tribunal and the PCA should be apprised.

11. Deposit

11.1 The parties shall cover the direct costs of the arbitration in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs. Advances for the costs of the arbitration shall be made to a deposit held by the PCA.

11.2 The PCA will review the adequacy of the deposit from time to time and, at the request of the Tribunal, may invite the Parties to make supplementary deposits.

11.3 Any transfer fees or other bank charges associated with the management of the deposit will be charged by the PCA to the deposit. No interest will be paid to the Parties on the deposit.

11.4 The unused balance held on deposit at the end of the arbitration shall be returned to the Parties as directed by the Tribunal.

12. Tribunal's Fees and Expenses

12.1 Each member of the Tribunal shall be remunerated at the rate of USD 400 per hour for all work carried out in connection with the arbitration, plus Value Added Tax (VAT), if applicable.

12.2 The members of the Tribunal shall be remunerated in the amount of 50% of their fees for each day reserved for a hearing or meeting, based on an eight hour day, in respect of any hearing or other meeting for which they are asked to reserve more than one day and that is cancelled, or postponed by more than one week, at the request of one or both of the Parties within four weeks from the first day of such hearing or meeting.

12.3 The members of the Tribunal shall be reimbursed for all disbursements and charges reasonably incurred in connection with the arbitration, including but not limited to travel expenses, telephone, delivery, printing, and other expenses.

12.4 The members of the Tribunal may bill for reimbursement of disbursements and charges as and when they are incurred, and may submit to the PCA periodic bills in respect of fees.

12.5 All payments to the Tribunal shall be made from the deposit administered by the PCA.

13. Immunity of the Tribunal

- 13.1 The Parties shall not seek to hold any member of the Tribunal or official of the PCA liable in respect of any act or omission in connection with any matter related to this arbitration.
- 13.2 The Parties shall not require any member of the Tribunal or official of the PCA to be a party or witness in any judicial or other proceedings arising out of or in connection with this arbitration.

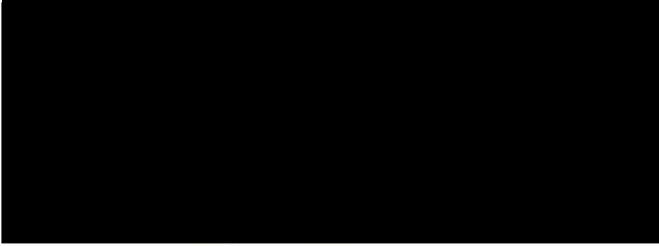
14. Signature of the Terms of Appointment

- 14.1 These Terms of Appointment may be signed in counterparts, collectively forming one composite signed document.

[signature page follows]

CLAIMANT

RESPONDENT



The European Union

Date: 6/04/2020

Date:

TRIBUNAL

Justice David Unterhalter SC
Arbitrator

Professor Philippe Sands QC
Arbitrator

Date:

Date:

Professor Ricardo Ramírez Hernández
Presiding Arbitrator

Date:

A small, handwritten signature or set of initials in blue ink located in the bottom right corner of the page.