

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

PROCEDURAL ORDER NO. 8

The Arbitral Tribunal

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

30 June 2022

I. PROCEDURAL BACKGROUND

1. On 30 July 2020, the Tribunal issued Procedural Order No. 6 establishing a revised procedural calendar for the proceedings.
2. By e-mail of 1 March 2022, the Claimant informed the Tribunal as follows:

The designation of Nord Stream 2 AG as a US Specially Designated National (SDN) on 23 February 2022 and recent geopolitical developments have led to an inability on the part of the Claimant to pursue the arbitration at this time. In particular, the Claimant's bank accounts have been blocked, meaning NSP2AG is unable to make any payments or access finance.

3. The Claimant consequently requested a suspension of the arbitration.
4. By letter dated 7 March 2022, the Respondent requested that the Tribunal order the Claimant to provide a more complete description of its current circumstances, and opposed the Claimant's request for a suspension, except under certain conditions.
5. By letter dated 14 March 2022, the Claimant informed the Tribunal that its external counsel no longer represented it and reiterated its request for a suspension of the arbitration until 1 September 2022, proposing to update the Tribunal in three months as to its ability to continue the proceedings.
6. On 16 March 2022, the Tribunal issued Procedural Order No. 7, suspending the arbitration and scheduling a procedural meeting for 20 June 2022 at which the Claimant would be invited to update the Tribunal on its circumstances and ability to continue the proceedings.
7. By letter dated 8 June 2022, the Claimant informed the Tribunal that it had been granted a provisional composition moratorium until 10 September 2022 by the Cantonal Court in Zug, by which date the Cantonal Court would decide on a definitive composition moratorium, an extension of the provisional composition moratorium, or a declaration of bankruptcy. The Claimant noted that, given these circumstances, "at that point in time [it] will not be in a position to give any further substantial indication concerning its circumstances, its ability to continue the proceedings, nor on the further conduct of the proceedings, or on timing." Accordingly, it requested a continuation of the suspension of the proceedings and a postponement of the 20 June 2022 procedural meeting until a date after 10 September 2022. At the same time, the Claimant undertook to update the Tribunal and the Respondent should circumstances change substantially prior to that date.
8. By letter dated 13 June 2022, the Respondent submitted that it would be prejudiced by a suspension of the proceedings, as it would unnecessarily prolong a situation of legal uncertainty and would generate continuing legal costs for the Respondent. The Respondent also submitted that the Claimant had insufficiently explained how the proceedings before the Cantonal Court of Zug resulted in a continued inability of the Claimant to pursue the arbitration. In particular, the Respondent asserted as follows:

According to the Claimant's email of 1 March 2022, its inability to pursue the arbitration was the consequence of the U.S. sanctions and "recent geopolitical developments". In view of that, and in the absence of any other explanation, the European Union fails to understand how the outcome of the ongoing proceedings before the Cantonal Court of Zug referred to by the Claimant could have any impact on such alleged inability. [...] The Claimant should explain how its alleged current inability to pursue the arbitration might be overcome given, in particular, that there is no indication whatsoever that the U.S. sanctions imposed on the

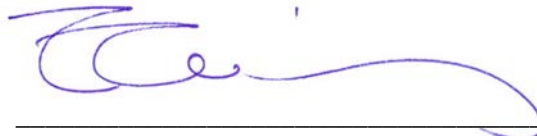
Claimant, which have caused such inability, may be lifted by the U.S. authorities within a reasonably foreseeable timeframe.

9. Accordingly, the Respondent requested that the Tribunal “order the Claimant to provide a properly substantiated justification of the reasons for the Claimant’s request to maintain the suspension.” The Respondent further requested that any further suspension be limited to a maximum additional period of four months and that the Claimant should bear any additional legal costs incurred by the Respondent as a result of the suspension, regardless of the outcome of the arbitration.
10. By letter dated 15 June 2022, the Tribunal cancelled the procedural meeting scheduled for 20 June 2022 and invited the Claimant to submit comments on the Respondent’s letter dated 13 June 2022.
11. By letter dated 20 June 2022, the Claimant informed the Tribunal that it had no additional information to provide at this stage and reiterated its request for a suspension of the arbitration until after 10 September 2022.

II. THE TRIBUNAL’S DECISION

12. Having carefully considered the circumstances and the Parties’ respective correspondence, the Tribunal has decided to continue the suspension of the proceedings.
13. The Tribunal hereby fixes a procedural meeting to be held by videoconference at **15:00 CET on Thursday, 13 October 2022**, at which the Claimant shall be invited to update the Tribunal regarding its circumstances and ability to continue the proceedings, and the Parties may thereafter make submissions on the further conduct of the proceedings.
14. For any further suspension to be granted, the Claimant will be required to provide, by no later than **Thursday, 13 October 2022**, further information demonstrating a reasonable possibility of resuming the arbitration. In the absence thereof, the Tribunal shall commence the procedure for terminating the present arbitration in accordance with Article 34(2) of the UNCITRAL Rules.

So ordered by the Tribunal.



Professor Ricardo Ramírez Hernández
(Presiding Arbitrator)

On behalf of the Tribunal