

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. 12

The Arbitral Tribunal

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

16 October 2023

I. PROCEDURAL BACKGROUND

1. 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.

2. The Claimant consequently requested a suspension of the arbitration.
3. 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.
4. On 16 March 2022, the Tribunal issued Procedural Order No. 7, suspending the arbitration.
5. On 30 June 2022, the Tribunal issued Procedural Order No. 8, fixing a new procedural meeting for 13 October 2022, at which the Claimant would 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. The Tribunal also indicated that, for any further suspension to be granted, the Claimant would be required to provide further information demonstrating a reasonable possibility of resuming the arbitration. In the absence thereof, the Tribunal would commence the procedure for terminating the present arbitration in accordance with Article 34(2) of the Arbitration Rules of the United Nations Commission on International Trade Law 1976.
6. By e-mail of 22 July 2022, the Respondent submitted a Request for Security for Costs.
7. By e-mail of 22 August 2022, the Claimant submitted its Response to the Respondent's Request for Security for Costs.
8. On 2 September 2022, the Tribunal issued Procedural Order No. 9, deciding that that a case has not been made for urgency to determine the Respondent's Request for Security for Costs, given that the arbitration is suspended, and may not proceed further. The Tribunal further stated that should the Claimant indicate an intention to resume the arbitration or in the event of any other material change of circumstances, the Respondent may resubmit a Request for Security for Costs.
9. By e-mail of 26 October 2022, the Respondent submitted another Request for Security for Costs.
10. On 27 October 2022, the Tribunal issued Procedural Order No. 10, deciding to continue the suspension of the proceedings, pending the consideration of further submissions from the Parties, deferring its decisions on security for costs and the termination of proceedings.
11. On 14 July 2023, the Tribunal issued Procedural Order No. 11, rejecting the Respondent's application for the termination of the arbitration and accepting the Respondent's application for security for costs. The Tribunal ordered the Claimant to deposit with the PCA the amount of [REDACTED] as security for the Respondent's costs of legal representation.
12. By letter of 24 July 2023, the Tribunal requested that, by 31 July 2023, the Parties confer and revert, jointly or individually, with regard to the next steps and the timetable for the remainder of the present phase of the arbitration.
13. By letter of 31 July 2023, the Respondent submitted its proposal for the procedural calendar.

14. By letter of 12 September 2023, the Claimant provided a revised procedural calendar on the basis of the one submitted by Respondent.
15. By letter of 14 September 2023, Respondent presented its comments on the revised timetable proposed by the Claimant.
16. By letter of 4 October 2023, the PCA acknowledged receipt of the Claimant's security for Respondent's costs of legal representation in the ordered amount of [REDACTED]

II. PARTIES' SUBMISSIONS

17. Both Parties are in agreement that, once the arbitration is resumed, two additional rounds of written submissions are required to brief the Tribunal on the relevant factual developments which have occurred since the staying of the proceedings.¹
18. Respondent has proposed that these supplementary submissions should be supported by further factual evidence, witness statements and expert reports, if appropriate.²
19. According to the Respondent, the submissions should be filed sequentially, beginning with Claimant and then by Respondent, in two rounds.³ The deadline for the first procedural step in the new timetable should start running on the date on which the Tribunal issues an order resuming the proceedings, with each subsequent deadline to be counted from the deadline for the submission of the preceding submission by the other party.⁴
20. In its response, the Claimant in general agreed with the Respondent's proposals, with only slight suggested deviations:

The briefs should focus on any updates in the light of the factual developments since these proceedings were suspended. The briefs should explain any impacts those factual developments have or do not have on this case. The first round should cover Jurisdiction and Merits for each Party. The second round should give the Claimant another opportunity to respond to the Respondent's jurisdictional objections. In addition, both parties should have an opportunity to exchange any comments they may have on the merits of this case.⁵

21. Claimant's suggestions for the procedural timetable also included a note that the deadlines were presented "excluding holiday season".⁶
22. The Respondent's reply contained a general agreement to the Claimant's suggestions, with the caveat that:
 - both Parties should receive the same amount of time to file their respective first submission; and

¹ Respondent's Letter dated 31 July 2023; Claimant's Letter dated 12 September 2023; Respondent's Letter dated 14 September 2023.

² Respondent's Letter dated 31 July 2023, para. 5.

³ Respondent's Letter dated 31 July 2023, paras. 6-7.

⁴ Respondent's Letter dated 31 July 2023, para. 9.

⁵ Claimant's Letter dated 12 September, p. 1.

⁶ Claimant's Letter dated 12 September, p. 2.

- “Christmas/End of Year [...], Easter [...] and Summer”,⁷ should be considered “holiday periods”.⁸

23. In its subsequent communications, the Claimant did not contest the Respondent’s proposed modifications.

III. THE TRIBUNAL’S DECISION

A. Lifting of the suspension of the proceedings

24. The Tribunal acknowledges receipt of the PCA’s letter dated 4 October 2023 confirming that the Claimant had deposited the [REDACTED] ordered under Procedural Order No. 11 as security for Respondent’s legal costs.

25. The Claimant having deposited the security for costs in the amount ordered, the Tribunal hereby lifts the suspension of the proceedings.

B. Parties’ supplementary submissions

26. The Tribunal takes note of the Parties’ agreement on the need to file additional submissions to brief it on the relevant factual developments which occurred since the beginning of the stay of the proceedings. Accordingly, the Parties may submit the following filings:

- Claimant’s Supplementary Memorial on Jurisdiction and Merits;
- Respondent’s Supplementary Counter-Memorial on Jurisdiction and Merits;
- Claimant’s Supplementary Rejoinder on Jurisdiction and Merits; and
- Respondent’s Supplementary Reply on Merits.

27. These submissions may be supported by factual evidence, witness statements and expert reports, if appropriate. Provisions of Procedural Order No. 1 on “Evidence and Legal Authorities”⁹ shall apply *mutatis mutandis*.

C. Procedural Calendar

28. The Tribunal also notes of the Respondent’s remark that “in order to ensure equality of treatment between the parties”, it should be accorded five months instead of four to file its Counter-Memorial on Jurisdiction and Merits, to match the time granted to Claimant for filing its Memorial on Jurisdiction and Merits.¹⁰ As a result, the Tribunal has equalized the time limits for both Parties’ first submissions to a period of four months, which it deems sufficient in light of these filings’ supplementary character.

29. The current stage of the arbitration shall resume in accordance with the procedural calendar attached to this Procedural Order as Annex I, prepared on the basis of the Parties’ suggestions and the decision in the preceding paragraph.

⁷ Respondent’s Letter dated 14 September 2023, para. 5.

⁸ Respondent’s Letter dated 14 September 2023, para. 5.

⁹ Procedural Order No. 1, Section 6.

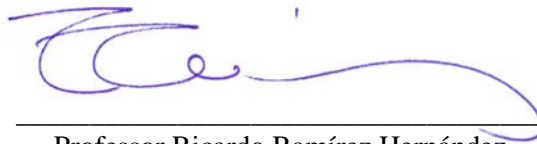
¹⁰ Respondent’s Letter dated 31 July 2023, para. 5.

30. Following the Parties' further agreement on the need to account for "holiday periods", in calculating the deadlines, the Tribunal has discounted the following periods:

- 23 December 2023–5 January 2024 (fourteen days); and
- 25 March–1 April 2024 (eight days).

31. In addition, the Tribunal has also endeavoured to avoid deadlines falling in the month of August.

So ordered by the Tribunal.



Professor Ricardo Ramírez Hernández
(Presiding Arbitrator)

On behalf of the Tribunal

Annex 1: Procedural Calendar

<u>Event</u>	<u>Date</u>
Claimant's Supplementary Memorial on Jurisdiction and Merits	Tuesday, 27 February 2024
Respondent's Supplementary Counter-Memorial on Jurisdiction and Merits	Thursday, 4 July 2024
Claimant's Supplementary Rejoinder on Jurisdiction and Merits	Monday, 2 September 2024
Respondent's Supplementary Reply on Merits	Monday, 4 November 2024
Parties to notify each other of the names of the witnesses of the other Party not required to be available for cross-examination at the Hearing	TBD
Pre-hearing procedural conference in advance of Hearing on Jurisdiction and Merits	TBD
Hearing on Jurisdiction and Merits	January-March 2025 (exact dates TBD)