

PCA Case No. 2024-45

**IN THE MATTER OF AN ARBITRATION
PURSUANT TO ARTICLE 739 OF THE TRADE AND COOPERATION AGREEMENT
BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY
COMMUNITY AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND**

- between -

THE EUROPEAN UNION

(“Complainant”)

- and -

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

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

PROCEDURAL ORDER NO. 1

Arbitration Tribunal

Dr. Penelope Ridings, MNZM (Chairperson)
Prof. Hélène Ruiz Fabri (Arbitrator)
Hon. Justice Mr. David Unterhalter (Arbitrator)

Registry

The Permanent Court of Arbitration

22 November 2024

WHEREAS the European Union and the European Atomic Energy Community (the “**European Union**”) and the United Kingdom of Great Britain and Northern Ireland (“**United Kingdom**”) are parties to the *Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland* concluded on 30 December 2020 (the “**Trade and Cooperation Agreement**”);

WHEREAS Article 739 of the Trade and Cooperation Agreement provides that the Complainant may request the establishment of an arbitral tribunal in certain circumstances;

WHEREAS the European Union commenced consultations pursuant to Article 739 of the Trade and Cooperation Agreement by written notice to the United Kingdom, dated 16 April 2024;

WHEREAS the Parties were unable to reach a mutually agreed solution after 30 days of consultations;

WHEREAS the European Union has invoked Article 739 of the Trade and Cooperation Agreement in a request for the establishment of an arbitration tribunal, dated 25 October 2024;

WHEREAS pursuant to Article 759 of the Trade and Cooperation Agreement, the proceedings should be conducted in accordance with Part Six, Title I as well as Annex 48 (the “**Rules of Procedure**”) and Annex 49 (the “**Code of Conduct for Arbitrators**”) of the Trade and Cooperation Agreement;

WHEREAS the Rules of Procedure set out the rules applicable to these proceedings, subject to any modifications or additions adopted by the Partnership Council pursuant to Article 759 of the Trade and Cooperation Agreement, by agreement of the Parties, or by decision of the Arbitration Tribunal pursuant to Rules 17 or 18 of the Rules of Procedure following consultation with the Parties;

WHEREAS the Arbitration Tribunal was established on 18 November 2024 with the communication to the Parties of the acceptance of Dr. Penelope Ridings;

WHEREAS Rule 11 of the Rules of Procedure provides that “[u]nless the Parties agree otherwise, they shall meet the arbitration tribunal within seven days of its establishment in order to determine such matters that the Parties or the arbitration tribunal deem to be appropriate, including ... the timetable of the proceedings”;

WHEREAS on 18 November 2024 the Arbitration Tribunal convened by videoconference an initial organisational meeting with the representatives of the Parties in respect of the terms of the Arbitration Panel’s appointment and the procedural matters addressed in this Order;

NOW, THEREFORE, having consulted the Parties, the Arbitration Tribunal issues the following Procedural Order:

1. Procedural Orders

- 1.1. The provisions of this and future Orders shall apply in addition to the Rules of Procedure and to the Terms of Appointment executed by the Parties and the Arbitration Tribunal.
- 1.2. Procedural orders made by the Arbitration Tribunal shall remain in force unless expressly amended or terminated.
- 1.3. To the extent that any question is not expressly governed by the Trade and Cooperation Agreement and the Rules of Procedure or existing procedural orders issued by the Arbitration Tribunal, the question shall be determined by the Arbitration Tribunal after seeking the views of the Parties in accordance with Rule 17 of the Rules of Procedure.

2. Procedural Timetable

- 2.1. The procedural timetable is attached as **Annex 1** to this Order.
- 2.2. Unless otherwise provided, all time limits shall specify the calendar date on which they end and shall refer to midnight at London on the day of the deadline.
- 2.3. Extensions may be agreed between the Parties or granted by the Arbitration Tribunal for justifiable reasons, provided that any such extension takes into account subsequent events on the procedural timetable and the dates fixed for any hearing or meeting, and that the request for an extension is submitted as soon as practicable after a Party becomes aware of the circumstances which prevent it from complying with the deadline.
- 2.4. In considering any request for an extension, the Arbitration Tribunal should have regard to the need to ensure the overall fairness of the procedure.

3. Written Submissions

- 3.1. There shall be one round of written submissions, comprising a memorial by the Complainant, and a counter-memorial by the Respondent.
- 3.2. Pursuant to Rule 18 of the Rules of Procedure and following consultation with the Parties, the deadlines for the Parties' written submissions set out in Rule 12 of the Rules of Procedure are amended and the deadlines set out in the Annex 1 shall apply.
- 3.3. The Parties shall include with their written pleadings all of the evidence on which they intend to rely in support of the fact allegations and legal arguments advanced therein. The Parties shall also append to their written pleadings the international, EU or national legal authorities or source

documents (such as laws, decrees, or judicial decisions) cited in their submissions and on which they rely.

- 3.4. The Arbitration Tribunal shall not consider any evidence that has not been introduced as part of the written submissions of the Parties, unless the Arbitration Tribunal grants leave on the basis of a reasoned request justifying why such documents were not submitted earlier together with the Parties' written submissions or showing other exceptional circumstances. Should such leave be granted to one Party, the other Party shall have an opportunity to submit evidence in response.

4. Amendments to Written Submissions

- 4.1. Pursuant to Rule 5 of the Rules of Procedure: “[m]inor errors of a clerical nature in a request, notice, written submission or other document related to the arbitration tribunal proceedings may be corrected by delivery of a new document clearly indicating the changes.”

5. Pleas as to the Jurisdiction of the Arbitration Tribunal and/or the Admissibility of Any Claim

- 5.1. The Arbitration Tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement, and to any plea going to the admissibility of any claim.
- 5.2. A plea that the Arbitration Tribunal does not have jurisdiction, or that a claim is inadmissible, shall be raised no later than the counter-memorial. Without prejudice to the foregoing sentence, the Respondent shall endeavour to advise at the time of drawing up the procedural timetable if it contemplates raising an objection of lack of jurisdiction or admissibility. A Party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, a Tribunal member. A plea that the Arbitration Tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The Arbitration Tribunal may, in either case, admit a later plea if it considers the delay justified.

6. Default

- 6.1. If, within the period of time fixed by the Arbitration Tribunal, without showing sufficient cause:
 - (a) The Complainant has failed to communicate its Memorial, the Arbitration Tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the Arbitration Tribunal considers it appropriate

to do so;

- (b) The Respondent has failed to communicate its Counter-Memorial, the Arbitration Tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the Complainant's allegations.

6.2. If a Party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the Arbitration Tribunal may proceed with the arbitration.

6.3. If a Party, duly invited by the Arbitration Tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the Arbitration Tribunal may make its interim report and final ruling on the evidence before it.

7. Format and Filing of Written Submissions

7.1. The Parties' written submissions shall be prepared in accordance with the following terms:

- (a) Paragraphs of written submissions shall be numbered consecutively, and all written submissions shall include a table of contents.
- (b) To facilitate filing, citations, and word processing, all written submissions shall be provided in a non-scanned, searchable Adobe Acrobat (PDF) format. Written submissions shall, if possible, be hyperlinked.
- (c) Excel spreadsheets or other calculations shall be provided in their native electronic format (i.e., in Excel format rather than PDF).
- (d) Evidence and legal authorities shall be provided in a searchable Adobe Acrobat (PDF) format to the greatest extent possible.
- (e) The Parties shall identify each exhibit submitted to the Arbitration Tribunal with a distinct number. Each exhibit submitted by the Complainant shall begin with a letter "C" followed by the applicable number (i.e., C-0001, C-0002, etc.); each exhibit submitted by the Respondent shall begin with a letter "R" followed by the applicable number (i.e., R-0001, R-0002, etc.). The Parties shall use sequential numbering throughout the proceedings.
- (f) Each document shall be saved under a separate file name specifying its exhibit number.
- (g) A numerical, chronological (or other logically ordered) list describing each of the exhibits relied upon by a Party by exhibit number, date, type of document, author and recipient (as

applicable) shall accompany each submission.

- (h) The Parties shall identify each legal authority submitted to the Arbitration Tribunal with a distinct number. Each legal authority submitted by the Complainant shall begin with the letters “CLA” followed by the applicable number (i.e., CLA-0001, CLA-0002, etc.); each legal authority submitted by the Respondent shall begin with the letters “RLA” followed by the applicable number (i.e., RLA-0001, RLA-0002, etc.). The Parties shall use sequential numbering throughout the proceedings.
- (i) Any legal authorities relied upon by a Party shall be clearly referenced in the written submissions. An alphabetical (or other logically ordered) list of the legal authorities relied upon by a Party shall accompany each submission.

7.2. The Parties’ submissions shall be transmitted in the following manner, in electronic format only:

- (a) On the date of submission, the submitting Party shall send an electronic copy of its submission (but without the accompanying documentary exhibits, evidence, and legal authorities) by e-mail to the Legal Adviser of the Foreign, Commonwealth & Development Office of the United Kingdom (when the submitting Party is the European Union) and to the Legal Service of the European Commission (when the submitting Party is the United Kingdom), copying the Registry. Emails to the following addresses shall constitute compliance with this provision: [REDACTED] for the Complainant and [REDACTED] for the Respondent.
- (b) For any simultaneous submissions, each side will submit electronic copies of all documents only to the Registry. The Registry will then distribute such copies to the Arbitration Tribunal and to opposing counsel once submissions from both Parties have been received.
- (c) Within 24 hours of any submission, the party making that submission shall upload to a designated platform accessible by both Parties, the Registry and the Members of the Tribunal all documentary exhibits, evidence, and legal authorities accompanying it, and send an email notification that it has done so.
- (d) In advance of the hearing, and at a date to be determined in due course, the Parties shall upload to a designated platform accessible by the Registrar and the Members of the Arbitration Tribunal a complete set of the pleadings, documentary exhibits, evidence, and legal authorities and procedural order(s).

8. Evidence and Legal Authorities

- 8.1. Each Party shall have the burden of proving the facts relied on to support its claim or defence.
- 8.2. At any time during the arbitral proceedings the Arbitration Tribunal may require the Parties to produce documents, exhibits or other evidence within such a period of time as the Arbitration Tribunal shall determine. Subject to Annex 48 of the Trade and Cooperation Agreement, the Arbitration Tribunal may use, as a guideline, the IBA Rules on the Taking of Evidence in International Arbitration 2020, when considering matters of evidence, including the production of documents.
- 8.3. The Arbitration Tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence adduced.
- 8.4. All documents, including both originals and copies, submitted to the Arbitration Tribunal shall be deemed to be authentic unless a Party disputes, within a reasonable time, the authenticity or completeness of a document, or the Party submitting the evidence concedes that a document is not authentic or indicates respects in which it is incomplete.
- 8.5. All documents shall either be submitted to the Arbitration Tribunal in complete form or the Parties shall indicate the respects in which any document is incomplete.

9. Hearings

- 9.1. Pursuant to Rule 23 of the Rules of Procedure, the hearing shall be held in London, unless the Parties agree otherwise. The Parties have agreed that the hearing shall be held at the Peace Palace in The Hague. The Tribunal may meet at any location it considers appropriate for deliberations.
- 9.2. In accordance with Rule 23 of the Rules of Procedure, and having consulted with the Parties, the hearing shall commence on 28 January 2025 and conclude by 30 January 2025, with 27 January 2025 in reserve. In due course and following further consultation with the Parties, the Arbitral Tribunal shall issue a further procedural order for the hearing, establishing its sitting times, agenda, and all other technical and ancillary aspects. This may include holding a pre-hearing organisational meeting at a date determined by the Tribunal after consultation with the Parties.
- 9.3. The hearing shall be video and audio recorded. The Parties and members of the Arbitration Tribunal shall be provided with copies of the video and/or audio recordings, as the case may be. The Registry shall hold the master recording of all hearings. Hearings other than hearings confined to procedural or organisational matters shall be transcribed in English using LiveNote or a similar software making the transcript available on a real-time basis. At the end of each day

of hearings, or as soon as practicable, the Parties shall be provided with the transcript of that day's proceedings.

- 9.4. No new evidence may be presented at the hearing except with leave of the Arbitration Tribunal. Should the Arbitration Tribunal grant leave to a Party to present new evidence in the course of the hearing, it will grant the other Party the opportunity to introduce new evidence to rebut it.
- 9.5. Demonstrative exhibits may be shown using documents submitted earlier in accordance with this Order. Each such demonstrative exhibit shall display the number of the document from which it was taken. Hard copies and electronic copies of all such exhibits shall be provided to the Arbitration Tribunal, the Registrar, and the opposing Party.
- 9.6. Each Party may deliver a supplementary written submission concerning any matter that arises during the hearing within 10 days after the date of the hearing.

10. Language and Translations

- 10.1. Pursuant to Rule 44 of the Rules of Procedure, the language of the arbitration is English. Accordingly, any decision by the Arbitration Tribunal, including any interim report, ruling, or procedural order, and any correspondence sent on the Arbitration Tribunal's behalf by the Registry shall be communicated to the Parties in English only.
- 10.2. Any submissions or correspondence from the Parties shall be communicated in English.
- 10.3. Any expert reports, witness statements, exhibits, legal authorities, or other accompanying documentation originally written in any language other than English shall be submitted in the original language, together with a translation into English.
- 10.4. Whenever a Party considers that the content of a lengthy document is not relevant in its entirety, the translation may be limited to all relevant passages together with such other portions of the document necessary to put such passages into proper context. The Arbitration Tribunal may, however, require a more extensive or complete translation upon the reasoned request of a Party or on its own initiative.
- 10.5. Informal translations will be accepted as accurate unless contested by the other Party, in which case the Parties will attempt to reach agreement on the translation. In the event that the Parties are not able to reach agreement, either Party may request the Arbitration Tribunal to require a certified translation. The Arbitration Tribunal will determine whether a certified translation is required.

11. Confidentiality and Transparency

- 11.1. Pursuant to Rule 35 of the Rules of Procedure, each Party and the Arbitration Tribunal shall treat as confidential any information submitted by the other Party to the Arbitration Tribunal that the other Party has designated as confidential. When a Party submits to the Arbitration Tribunal a written submission which contains confidential information, it shall also provide, within 15 days, a submission without the confidential information which shall be disclosed to the public.
- 11.2. The existence of this arbitration shall be public. The Registry shall identify on the PCA Case Repository the names of the Parties, the members of the Arbitration Tribunal, their assistants and the agents and counsel for the Parties. The Parties shall have an opportunity to review the content of any website relating to the case prior to the publication by the Registry.
- 11.3. The Registry shall publish the Parties' pleadings as well as any non-confidential documentary evidence submitted with the pleadings on the PCA Case Repository in accordance with Rule 35 of the Rules of Procedure and paragraph 11.1 above.
- 11.4. Pursuant to Rule 37 of the Rules of Procedure, the Arbitration Tribunal shall hold the relevant parts of the session in private when the submission and arguments of a Party contains confidential information. The Parties shall maintain the confidentiality of the Arbitration Tribunal hearings when the hearings are held in closed session.
- 11.5. Prior to any hearing, the Arbitration Tribunal shall issue an order with respect to the form by which the proceedings will be open to the public, the modalities of such public access, and the modalities for the protection of Confidential Information. This may include arrangements for streaming the hearing online, with a short delay to ensure the effective protection of Confidential Information.
- 11.6. Transcripts of any parts of hearings that are open to the public shall be public and promptly be made publicly available on the PCA Case Repository, after the Parties have had an opportunity to make any necessary corrections and redactions to the transcripts. Transcripts of any non-public parts of hearings shall be made publicly available with the publication of a final ruling, after each Party has had an opportunity to redact Confidential Information within 14 days after the last day of the hearing to which they relate.
- 11.7. Any Party may designate information contained in the Arbitration Tribunal's interim reports, rulings, and procedural orders as Confidential Information by submitting a redacted version of the interim report, ruling, or procedural order excluding the Confidential Information within 7 days of the issuance of the interim report, ruling, or procedural order. If more than one Party

submits a redacted version of the interim report, ruling, or procedural order, the Parties shall attempt to agree and submit a joint redacted version within 14 days of the issuance of the interim report, ruling, or procedural order.

- 11.8. Any interim report, ruling, or procedural order of the Arbitration Tribunal shall be public and made publicly available on the PCA Case Repository promptly upon the completion of the process for redaction of any Confidential Information in paragraph 11.7 above, unless both Parties agree otherwise.
- 11.9. The Registry, on the instructions of the Arbitration Tribunal and after consultation with the Parties, may issue periodic press releases concerning the status of the proceedings.
- 11.10. Nothing in the Rules of Procedure or this order shall preclude a Party from disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential.

12. Amicus Curiae Submissions

- 12.1. Pursuant to Article 751(3) of the Trade and Cooperation Agreement, “[t]he arbitration tribunal shall consider amicus curiae submissions from natural persons of a Party or legal persons established in a Party in accordance with Annex 48.”
- 12.2. In accordance with Rule 40 of Annex 48, the Parties agree that the arbitration tribunal may receive unsolicited written submissions from natural persons of a Party or legal persons established in the territory of a Party that are independent from the governments of the Parties, provided that they:
- (a) are received by the arbitration tribunal within 10 days of the date of the establishment of the arbitration tribunal;
 - (b) are concise and in no case longer than 15 pages, including any annexes, typed at double space;
 - (c) are directly relevant to a factual or a legal issue under consideration by the arbitration tribunal;
 - (d) contain a description of the person making the submission, including for a natural person his or her nationality and for a legal person its place of establishment, the nature of its activities, its legal status, general objectives and its source of financing;
 - (e) specify the nature of the interest that the person has in the arbitration proceedings; and are drafted in English.
- 12.3. In accordance with Rule 41 of Annex 48, amicus curiae submissions received by the arbitration tribunal in accordance with the paragraphs above shall be delivered to the Parties for their

comments in a consolidated format. The Parties may submit comments within 10 days of the delivery of the consolidated format to the arbitration tribunal.

12.4. In accordance with Rule 42 of Annex 48, the Arbitration Tribunal shall list in its report all the submissions it has received pursuant to Rule 40. The Arbitration Tribunal shall not be obliged to address in its report the arguments made in such submissions, however, if it does, it shall also take into account any comments made by the Parties pursuant to Rule 41.

Date: 22 November 2024

For the Arbitration Tribunal:

A handwritten signature in black ink, appearing to read "Penelope J. Ridings". The signature is written in a cursive, flowing style.

Dr. Penelope Ridings, MNZM
Chairperson

Annex 1 (paragraph 3.2)

PROCEDURAL TIMETABLE

Description	Party / Arbitration Tribunal	Final date / period
Memorial	Complainant	Monday, 9 December 2024
Counter-Memorial	Respondent	Thursday, 9 January 2025
Pre-Hearing Organisational Meeting	Parties and Arbitration Tribunal (or Chairperson)	TBD
Hearing	All	28-30 January 2025, with 27 January 2025 in reserve
Supplementary Written Submissions <i>[if any]</i>	Parties	Monday, 10 February 2025
Interim Report	Arbitration Tribunal	TBD
Request to Review Aspects of the Report <i>[if any]</i>	Parties	TBD
Comments on other Party's Request to Review the Report <i>[if any]</i>	Parties	TBD
Final Ruling <i>[if any]</i>	Arbitration Tribunal	TBD