

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. 2

Arbitration Tribunal

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

Registry

The Permanent Court of Arbitration

17 January 2025

WHEREAS on 22 November 2024, the Arbitration Tribunal issued Procedural Order No. 1, setting forth rules of procedure further to those in the TCA, and the procedural timetable of this arbitration;

WHEREAS pursuant to paragraph 9.2 of Procedural Order No. 1, the hearing in this arbitration shall commence on 28 January 2025 and conclude by 30 January 2025, with 27 January 2025 in reserve;

WHEREAS also pursuant to paragraph 9.2 of Procedural Order No. 1, following consultation with the Parties, the Arbitration Tribunal shall issue a further procedural order for the hearing, establishing its sitting times, agenda, and all other technical and ancillary aspects;

WHEREAS on 20 December 2024, the Arbitration Tribunal circulated a version of this Order in draft form and invited the Parties' comments thereon;

WHEREAS on 14 January 2025, the Parties submitted written comments on the Arbitration Tribunal's proposed draft of this Order;

WHEREAS on 16 January 2025, the Arbitration Tribunal convened by videoconference an organisational meeting with the representatives of the Parties in respect of the terms of this Order and other matters pertaining to the hearing;

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

1. Determinations of the Arbitration Tribunal

- 1.1. This Order records the Parties' agreements concerning procedural and other technical and ancillary matters pertaining to the hearing and the decisions adopted by the Arbitration Tribunal, having taken into account the Parties' views on such matters where the Parties have been unable to reach an agreement.
- 1.2. Unless otherwise noted below, the rules applicable to hearings set out in Procedural Order No. 1 shall apply to the organisation of the hearing.
- 1.3. The defined terms used in this Order shall have the same meaning as that given to them in Procedural Order No. 1.

2. Dates, Venue, and Format of the Hearing

- 2.1. The hearing shall take place from 28 January 2025 and conclude by 30 January 2025.
- 2.2. As set out in paragraph 9.1 of Procedural Order No. 1, the hearing shall be held at the Peace

Palace, Carnegieplein 2, 2517 KJ The Hague, the Netherlands. The hearing room shall be the Great Hall of Justice. The PCA shall also make available break-out rooms for the Claimant, the Respondent, and the Arbitration Tribunal, respectively.

- 2.3. The Peace Palace is regularly open Monday to Friday between 7:00 and 22:00. Should the Parties wish to inspect the hearing rooms or make use of the break-out rooms on 25 January 2025, they are invited to inform the PCA.
- 2.4. On each hearing day, all hearing attendees will be required to present a valid photo identification (passport or EU-issued ID card) to Peace Palace security to gain access to the Peace Palace premises.

3. Hearing Schedule

- 3.1. Pursuant to Rule 27 of the Rules of Procedure, the Arbitration Tribunal shall conduct the hearing in the following manner, ensuring that the Complainant and the Respondent are afforded equal time in both opening and rebuttal argument:

Opening Argument

- (a) Argument of the Complainant;
- (b) Argument of the Respondent.

Rebuttal Argument

- (a) Reply of the Complainant;
- (b) Counter-reply of the Respondent.

- 3.2. The full schedule for the hearing shall be as set out in the **Annex** to this Order.
- 3.3. On days 1 and 2, the hearing shall take place from 10:00 to 17:00. There shall be a one-hour lunch break, as well as two fifteen-minute coffee breaks during the morning and afternoon sessions, at times to be determined by the Arbitration Tribunal. On day 3, the hearing shall commence at 9:30 and conclude at 17:00 or once the Arbitration Tribunal has concluded its questions. There shall a 2.5-hour adjournment between the Reply and Counter-reply, and a fifteen-minute coffee break after the Counter-reply.
- 3.4. The Arbitration Tribunal, in consultation with the Parties, may make modifications to the hearing schedule as it deems appropriate.

- 3.5. The Arbitration Tribunal may direct questions to either Party before or at any time during the hearing.
- 3.6. At the conclusion of the Argument of the Respondent, the Arbitration Tribunal may pose questions to the Parties, with answers to be provided either orally during the Reply or Counter-reply or in writing five days after the conclusion of the hearing. Any responses to the other Party's answers may be provided in the final submission ten days after the conclusion of the hearing.

4. Allocation of Time

- 4.1. Each Party shall be allocated a total time of 6 hours 30 minutes. 1 hour per hearing day shall be reserved for housekeeping matters and questions from the Arbitration Tribunal.
- 4.2. The Arbitration Tribunal shall apply the chess-clock method of time keeping. The PCA shall keep a record of the time used by each Party and shall circulate it to the Parties at the end of each hearing day.
- 4.3. Each Party shall be free to spend its allocated time in the manner it sees fit, so long as the total amount of time allotted to that Party and the order of events set out in the **Annex** is maintained, subject to the following:
 - (a) The EU shall be allocated a maximum of 4 hours 30 minutes to make its opening argument on the first day of the hearing, and the UK shall be allocated a maximum of 4 hours 30 minutes to make its opening argument on the second day of the hearing. The rebuttal arguments will take place on the third day of the hearing and each Party shall be allocated a maximum of 2 hours for rebuttal.
 - (b) Time spent on questions from the Arbitration Tribunal, answers to those questions, and procedural interventions by the Arbitration Tribunal shall not be counted against a Party's time. Time spent dealing with objections from a Party shall also not be counted against that Party's time, subject to the control of the Arbitration Tribunal.
 - (c) Time used for housekeeping matters or to resolve technical difficulties shall not be counted against the Parties' time.

5. Participants

- 5.1. Except as otherwise set out in Section 8 below, access to the hearing facilities and live transcripts shall be restricted to the Members of the Arbitration Tribunal, their Assistants, the Parties' representatives and advisers, PCA staff, court reporters, and any further technical support

personnel retained by the PCA in connection with the hearing.

- 5.2. In accordance with Rule 28 of the Rules of Procedure, no later than **Wednesday, 22 January 2025**, each Party shall deliver to the Arbitration Tribunal and to the other Party a list of the names of the persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives and advisers who will be attending the hearing, indicating each person's full name, title (e.g., Ms., Dr.), role (e.g., counsel, expert, legal assistant), and any affiliation with any of the Parties (e.g., CEO, Ambassador).

6. Evidence

- 6.1. In accordance with paragraph 9.4 of Procedural Order No. 1, 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.
- 6.2. As set out in paragraph 9.5 of Procedural Order No. 1, demonstrative exhibits may be shown using documents submitted earlier in accordance with such Order. Each such demonstrative exhibit shall display the number of the document from which it was taken.
- 6.3. The Parties shall provide electronic copies of any demonstrative exhibits, including slides, to be displayed during the hearing by e-mail to the other side, the PCA, and the court reporters at least 30 minutes prior to their use during the hearing. The PCA shall then forward such exhibits to the Members of the Arbitration Tribunal and all other Tribunal Assistants. In case of slides meant for use during the Parties' opening and rebuttal arguments, each Party shall also provide two paper copies of the presentation in question to the opposing Party, as well as one paper copy to each Member of the Arbitration Tribunal, each of their Assistants, the PCA, and the court reporter. In the case of any slides used during the Respondent's opening argument or the rebuttal argument of either Party, paper copies may be provided no later than an hour after the conclusion of the relevant session, but the Parties will make their best endeavours to provide paper copies before or during their presentations.

7. Transcripts and Recordings

- 7.1. Pursuant to Rule 31 of the Rules of Procedure, the Arbitration Tribunal shall arrange for a transcript of the hearing to be prepared and delivered to the Parties as soon as possible after the hearing.
- 7.2. LiveNote transcription software, or comparable software, shall be used to make the hearing

transcripts instantaneously available to the Parties and the Arbitration Tribunal in the hearing room. Further, rough transcripts shall be provided by e-mail to the Arbitration Tribunal and the Parties in the evening of each hearing day.

- 7.3. 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 the hearing.
- 7.4. No other participants, other than the court reporter and the technical support personnel retained by the PCA, shall record any part of the hearing, unless the Arbitration Tribunal grants express leave to this effect.

8. Transparency and Records of the Hearing

- 8.1. Pursuant to paragraph 11.5 of Procedural Order No. 1, 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.
- 8.2. Members of the public may follow the hearing at the Peace Palace, subject to the following:
 - (a) Any members of the public wishing to follow the hearing at the Peace Palace shall be requested to register in advance with the PCA. Only those members of the public who have received advance confirmation from the PCA will be granted access to the Peace Palace.
 - (b) In view of the limited capacity of the venue, only registered members of the diplomatic corps and general public will be allowed to be present in the hearing room. Seats will be allocated in order of registration, on a first-come-first-served basis.
 - (c) Registered representatives of the press may follow the hearing via live-stream on a screen, in a separate viewing room on the Peace Palace premises. Should the number of registrants exceed the number of available seats, the PCA will allocate seats on a first-come-first-served basis.
 - (d) On the first day of the hearing, press photographers and camera operators will be permitted in the hearing room before the hearing begins. No photography will be permitted in the hearing room once the hearing has begun, and photographers and camera operators will be asked to leave the hearing room beforehand.
- 8.3. In principle, the entire hearing will be open to the public. However, upon a request from either

Party, the Arbitration Tribunal may hold selected portions of the hearing in closed session when necessary to protect Confidential Information. In order to minimize any disruptions, the Parties shall display their best efforts to indicate to the Arbitration Tribunal as soon as possible which part of their oral arguments must be held in closed session. When preparing for oral arguments, the Parties shall also strive to ensure that all questions that must be briefed in closed session are addressed together.

- 8.4. In accordance with paragraph 11.6 of Procedural Order No. 1, transcripts of any parts of the hearing 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 the 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.

9. Post-Hearing Matters

- 9.1. Pursuant to paragraph 9.6 of Procedural Order No. 1, each Party may deliver a supplementary written submission concerning any matter that arises during the hearing, including in response to any questions from the Arbitration Tribunal no later than **Monday, 10 February 2025**.
- 9.2. In accordance with Rule 31 of the Rules of Procedure, the Parties may comment on the hearing transcript and the Arbitration Tribunal may consider those comments. Accordingly, the Arbitration Tribunal shall consult the Parties on the need, scope, and schedule for the submission of corrections and redactions to the transcript at the conclusion of the hearing.

Date: 17 January 2025

For the Arbitration Tribunal:



Dr. Penelope Ridings, MNZM
Chairperson

Annex (paragraph 3.2)

INDICATIVE HEARING SCHEDULE

Tuesday, 28 January 2025	
Opening argument of the European Union	
10:00 - 11:30	EU's opening argument
11:30 - 11:45	<i>15-minute morning break</i>
11:45 - 13:00	EU's opening argument
13:00 - 14:00	<i>Lunch break</i>
14:00 - 15:30	EU's opening argument
15:30 - 15:45	<i>15-minute afternoon break</i>
15:45 - 17:00	EU's opening argument
Wednesday, 29 January 2025	
Opening argument of the United Kingdom	
10:00 - 11:30	UK's opening argument
11:30 - 11:45	<i>15-minute morning break</i>
11:45 - 13:00	UK's opening argument
13:00 - 14:00	<i>Lunch break</i>
14:00 - 15:30	UK's opening argument
15:30 - 15:45	<i>15-minute afternoon break</i>
15:45 - 17:00	UK's opening argument
Thursday, 30 January 2025	
Rebuttal arguments	
9:30 - 11:30	EU's rebuttal argument
11:30 - 14:00	<i>Lunch break</i>
14:00 - 16:00	UK's rebuttal argument
16:00 - 16:15	<i>15-minute afternoon break</i>
16:15 - 17:00 (or until the Tribunal has concluded its questions)	Tribunal questions, if any