

PCA CASE Nº 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. 15

The Arbitral Tribunal

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

10 February 2025

I. PROCEDURAL BACKGROUND

1. On 16 October 2023, the Tribunal issued Procedural Order No. 12 resuming the proceedings at the request of the Claimant, after a year-and-a-half suspension of the arbitration, and establishing a Procedural Calendar providing for two additional rounds of supplementary submissions from the Parties.
2. By letter of 21 March 2024, the Tribunal fixed the Hearing on Jurisdiction and Merits (“**Hearing**”) for the period of 10-14 February 2025.
3. On 15 January 2025, the Tribunal held a virtual pre-hearing conference with the Parties. At the pre-hearing conference, the Claimant gave a briefing on its composition proceedings and explained that the Cantonal Court of Zug had extended the Claimant’s composition moratorium. The Parties also presented their respective arguments on the Claimant’s requests to postpone and lengthen the Hearing, and for the Tribunal to order a further round of written submissions.
4. On 22 January 2025, the Tribunal issued Procedural Order No. 14 postponing the February 2025 Hearing, allowing the Parties to submit an additional round of written submissions (strictly on the Respondent’s ECT Article 24(3) Defence and the 2024 CJEU Decision) and rejecting the Claimant’s request to extend the length of the hearing. The Tribunal noted that it would engage the Parties separately to discuss the new Procedural Calendar, including the new Hearing dates and the timeline for the submission of additional written submissions by the Parties.
5. In the letter enclosing Procedural Order No. 14, the Tribunal proposed to reschedule the Hearing to the week of 23-28 June 2025 (Monday through Friday, with Saturday, 28 June 2025 held in reserve) and informed the Parties that, subject to a reasoned indication regarding their unavailability for these new dates, it would proceed to confirm these new hearing dates.
6. By e-mail of 23 January 2025, the Claimant informed the Tribunal that it could not confirm its availability in the proposed June dates due to prior professional commitments of one of its representatives and requested that the Tribunal propose alternative hearing dates. The Claimant also noted that it was “still a bit sceptical to handle the hearing in 5 to 6 days” but offered its availability to discuss the new Procedural Calendar.
7. By letter of 24 January 2025, the Tribunal stated as follows:

The Tribunal is unconvinced that the reasons cited by the Claimant would justify postponing the Hearing further, unless the Respondent is also unavailable and joins the Claimant in its request for the Tribunal to identify Hearing dates alternative to 23-28 June 2025 (with Saturday, 28 June 2025 held in reserve).

[...]

As regards the duration of the Hearing, the Tribunal’s determination under Procedural Order No. 14 is final and therefore no longer subject to discussion.
8. The Tribunal also invited the Respondent to provide its availability for the Hearing during the 23-28 June 2025 dates.
9. By e-mail of 27 January 2025, the Claimant reiterated that it would be “highly problematic” for the Tribunal to maintain the June hearing dates as this would cause the Claimant to “need to attempt to find other counsel to represent it at the hearing”. The Claimant expressed its doubt

about whether this was possible. The Claimant proposed a number of alternative hearing dates for the Tribunal's and the Respondent's consideration.

10. By letter of 27 January 2025, the Respondent announced that it was unable to take a position on the proposed June hearing dates. Before doing so, the Respondent requested that the Tribunal provide:

a clearer understanding of the scope and nature of those written submissions, as well as their timing, so as to ensure that the European Union will have an adequate opportunity to respond to the Claimant's additional written submission and prepare for the hearing.
11. The Respondent argued that any additional written submissions should be targeted and succinct and requested that the Tribunal confirm a number of parameters shall apply to the additional written submissions.
12. By letter of 28 January 2025, the Tribunal invited the Claimant to provide any comments it might have on the Respondent's letter of 27 January 2025.
13. By e-mail of 30 January 2025, the Claimant commented on the parameters for the additional written submissions proposed by the Respondent, objecting to any limitations on the content and format thereof, aside from their focus being limited to the Respondent's ECT Article 24(3) Defence and the 2024 CJEU Decision. The Claimant announced that it would "rely on those arguments and documents which it deems necessary to present its case". The Claimant also suggested three months for each Party to file its additional submission.
14. By e-mail of 30 January 2025, the Respondent provided its comments on the Claimant's e-mail of the same date. The Respondent explained that it took issue with the Claimant's contention that it has "an unlimited right to 'rely on those arguments and documents which it deems necessary to present its case'". The Respondent argued that, in order to maintain efficiency and fairness to both Parties, the Tribunal should establish a disciplined schedule of submissions which avoids the re-opening of points of fact which should have been addressed at previous stages. The Respondent reiterated its request for the Tribunal to impose strict parameters on the additional submissions as per the Respondent's letter of 27 January 2025.
15. By letter of 31 January 2025, the Tribunal renewed its request for the Respondent to indicate its availability during the week of 23-28 June 2025, as well as the other potential Hearing dates proposed by the Claimant in its e-mail of 27 January 2025. The Tribunal also invited the Claimant to provide any comments it might have on the Respondent's e-mail of 30 January 2025.
16. By letter of 5 February 2025, the Respondent provided its availability for the Hearing, but again insisted that the Tribunal first determine the content, format and deadlines for the additional written submissions. The Respondent also informed the Tribunal of the limited availability of some of its experts during some of the potential Hearing periods.
17. By e-mail of 5 February 2025, the Claimant argued that it is of utmost importance for it to be given a full opportunity to present its case and that "there are no time constraints". This also means, in the Claimant's view, that its proposed way forward in these proceedings would lead to "absolutely no downside for Respondent". The Claimant also outlined the matters it wishes to address in its additional written submission and explained that it would "provide supporting documentation in the form of arbitral awards, case law and scholarly writings" and, potentially, also updated reports by some of its experts.

II. PARTIES' SUBMISSIONS

18. The Claimant requests that the Hearing be held during dates alternative to the ones proposed by the Tribunal in the Letter Enclosing Procedural Order No. 14, i.e., 23-28 June 2025,¹ because its counsel will not be available in June or July 2025.² The Claimant argues that moving ahead with the Hearing during a period when its counsel is unavailable would be “highly problematic” for it and has expressed its doubt about whether it is possible for it to find other counsel to represent it at the Hearing and for the new counsel to prepare within a few months.³
19. As regards the parameters of the additional written submissions, the Claimant

welcomes the directions given by the Tribunal to focus the third round of supplementary written submissions on Respondent’s Article 24(3) ECT defence and on the General Court’s judgment of 27 November 2024

and agrees with the Respondent’s suggestion to limit the additional submissions to one sequential round.⁴
20. The Claimant disagrees, however, that any further limitations should be placed on the content and length of these submissions and avers that any additional restrictions would “constitute limitations of Claimant’s right to present its case”.⁵ According to the Claimant, presently “there are no time restraints” and there is “absolutely no downside for Respondent with the proposed way forward in this arbitration”.⁶ Accordingly, the Claimant explains that it will “rely on those arguments and documents which it deems necessary to present its case”.⁷
21. The Claimant proposes three months as the timeframe for each of the Parties to file their respective additional submission.⁸
22. With regard to the submission of additional supporting documents, the Claimant has announced that it “will provide supporting documentation in the form of arbitral awards, case law and scholarly writings” and is considering whether to file updated reports of some of its experts.⁹
23. The Respondent submits that it is “unable, at this stage, to take position on the proposed date for the hearing”¹⁰ and explains that it “would like to have a clearer understanding of the scope and nature of those written submissions, as well as their timing” before pronouncing itself on the Hearing dates.¹¹ The Respondent explains that its counsel and representatives will be available, in principle, during six of the periods for the Hearing proposed by the Claimant, while underlining

¹ Letter to the Parties Enclosing PO No. 14 of 22 January 2025.

² Claimant’s E-mail of 23 January 2025.

³ Claimant’s E-mail of 27 January 2025.

⁴ Claimant’s E-mail of 5 February 2025; Claimant’s E-mail of 30 January 2025.

⁵ Claimant’s E-mail of 30 January 2025.

⁶ Claimant’s E-mail of 5 February 2025.

⁷ Claimant’s E-mail of 30 January 2025.

⁸ Claimant’s E-mail of 5 February 2025; Claimant’s E-mail of 30 January 2025.

⁹ Claimant’s E-mail of 5 February 2025.

¹⁰ Respondent’s Letter of 27 January 2025, para. 5.

¹¹ Respondent’s E-mail of 30 January 2025; Respondent’s Letter of 27 January 2025, paras 5, 9.

that it “is not in a position, at this stage, to give its agreement to any of the proposed dates”.¹² At the same time, the Respondent also explained:

The EU’s expert Mr. Carlos Lapuerta, of Brattle, will be unavailable in the week of 23 June 2025 due to a prior scheduled hearing. Nevertheless, should the Tribunal be minded to hold the hearing in that week, both Mr. Lapuerta and Ms. Hesmondhalgh, testifying together regarding the Brattle Report, could be available for examination by videoconference in the period shortly after the hearing.

The EU’s expert Prof. Miguel Maduro will be available in the week of 23 June 2025. As regards the dates proposed by the Claimant, Prof. Miguel Maduro will be teaching in the United States in the autumn. He will be available to attend the hearing in person during the week of 8-13 December but may need to testify by videoconference in the other weeks.¹³

24. The Respondent requests that the Tribunal confirm a set of “strict parameters” for the additional written submissions to ensure that they are targeted and succinct and do not allow the Claimant to essentially allow it to reopen fully briefed issues using “still further evidence”:¹⁴

i. the submissions shall be limited to one additional submission by each party, with the Claimant filing first;

ii. the submissions shall be strictly limited to any comment on Article 24(3) of the ECT that could not have been submitted in the principal or supplemental rounds of submissions; or to comments on the significance of the judgement of the EU’s General Court to the present proceedings. The latter comments shall not seek to re-argue any factual or legal findings of the General Court. As the General Court has now issued its decision on the merits, it would be procedurally improper to transform the Tribunal into a “court of interim appeal” from findings of fact or law made in that other forum.

iii. any additional documents may only be submitted based upon a prior application for leave setting out the reasons why the party concerned could not reasonably have submitted the referenced document in a prior round, in accordance with article 6(4) of Procedural Order No. 1, and taking account of the limitations set out at point ii.

iv. in light of the limited and targeted nature of the submissions, as provided above, no additional witness or expert testimony shall be admitted.

v. the submissions shall be page limited. The European Union would propose a 25 page limit.

25. The Respondent disputes the Claimant’s “unlimited right to ‘rely on those arguments and documents which it deems necessary to present its case’”.¹⁵ According to the Respondent, the Tribunal¹⁶

has a responsibility to ensure that the proceedings advance in an efficient manner and in a manner that is fair to both parties. From the perspective of the Respondent, this must include establishing a disciplined schedule of submissions that notably avoids re-opening issues of fact when the time to comment on them is well past.

¹² Respondent’s Letter of 5 February 2025, paras 3, 6-8. These dates are 29 September-4 October, 6-11 October, 3-8 November, 10-15 November, 1-6 December and 8-13 December.

¹³ Respondent’s Letter of 5 February 2025, paras 4-5.

¹⁴ Respondent’s Letter of 27 January 2025, paras 6-8.

¹⁵ Respondent’s E-mail of 30 January 2025.

¹⁶ Respondent’s E-mail of 30 January 2025.

III. THE TRIBUNAL'S DECISION

26. The Tribunal recalls its decision in Procedural Order No. 14:¹⁷

In the interest of time, the Tribunal issues the current order vacating the 10-15 February 2025 Hearing dates and will engage the Parties separately to discuss the new Procedural Calendar, including the new Hearing dates and the timeline for the submission of additional written submissions by the Parties.

27. Accordingly, and taking into consideration the positions expressed by the Parties, the Tribunal addresses two issues:

- a) new Hearing dates; and
- b) the parameters and deadlines for the additional written submissions by the Parties.

A. New Hearing Dates

28. The Claimant has indicated that it would be highly problematic for it if the Hearing were to proceed on the 23-28 June 2025 dates proposed by the Tribunal in the letter enclosing Procedural Order No. 14 as one of its counsel will be unavailable at that time, and has proposed a number of alternative dates.¹⁸
29. The Respondent has insisted that the Tribunal should, before fixing new hearing dates, first set strict parameters for the additional written submissions.¹⁹ The Respondent has nevertheless indicated that it is available in the periods of 23-28 June, 29 September-4 October, 6-11 October, 3-8 November, 10-15 November, 1-6 December, and 8-13 December 2025.²⁰ The Respondent has noted, however, that one of its experts is unavailable in the week of 23 June 2025 and that another of its experts is only available to testify in person in the weeks of 23-28 June 2025 and 8-13 December 2025.²¹
30. Having carefully considered all the circumstances and the views of the Parties, the Tribunal hereby fixes the Hearing dates for 8-13 December 2025. While the Respondent has indicated that it is otherwise available for the week of 23 June 2025, one of its key experts is not available in that week, such that another hearing would be required in order to allow for the examination of that expert (and any closing submissions taking into account his testimony). Meanwhile, out of the alternative dates under consideration, another of the Respondent's experts is only available to attend in person in the week of 8-13 December 2025. Accordingly, taking into account also the Claimant's availability, that latter week appears to be the most appropriate.

B. Additional Submissions

31. The Tribunal concurs with the Respondent that the additional written submissions, due to their exceptional nature, must adhere to certain limits.

¹⁷ Procedural Order No. 14, para. 64.

¹⁸ Claimant's e-mail of 27 January 2025.

¹⁹ Respondent's E-mail of 30 January 2025; Respondent's Letter of 27 January 2025, paras 5, 9.

²⁰ Respondent's Letter of 5 February 2025, paras 3, 6-8. These dates are 29 September-4 October, 6-11 October, 3-8 November, 10-15 November, 1-6 December and 8-13 December.

²¹ Respondent's Letter of 5 February 2025, paras 4-5.

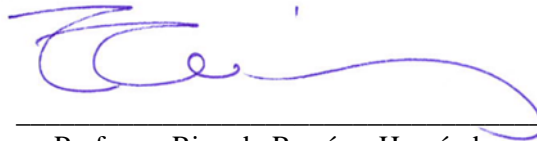
32. The Tribunal notes that the Parties agree as to:
- the number of additional submissions (one round, or one per Party),
 - their sequential, rather than simultaneous, submission (by the Claimant first, followed by a responsive submission by the Respondent), and
 - the general scope that these submissions should cover (strictly limited to the Respondent's ECT Article 24(3) Defence and the 2024 CJEU Decision).
33. With regard to the further limitations on the scope of the additional submissions proposed by the Respondent,²² the Tribunal does not consider these to be necessary or warranted.
34. With respect to the submission of new evidence at this stage of the proceedings, the Tribunal recalls para. 6.4 of Procedural Order No. 1, which reads:
- Following the submission of the Reply and Rejoinder, the Tribunal shall not consider any evidence that has not been introduced as part of the written submissions of the Parties, unless the Tribunal grants leave on the basis of a reasoned request justifying why such documents were not submitted earlier together with the respective Party's written submissions or showing other exceptional circumstances. Should such leave be granted to one side, the other side shall have an opportunity to submit counter-evidence.
35. If a Party considers that its additional submission should be buttressed by evidence hitherto unadmitted by the Tribunal, it is invited to follow this procedure.
36. In respect of the submission of further witness and expert testimony, the Tribunal considers that the limited nature of the additional written submissions does not warrant any new witness or expert testimony in writing. Should a Party wish to adduce further testimony, whether factual or expert, arising from the additional written submissions, it must make application to the Tribunal by no later than two weeks before the submission deadline, indicating what testimony it seeks leave to adduce, how it arises from the additional written submissions, and why its admission is sought.
37. As regards the maximum length of the additional submissions, the Tribunal tends to agree with the Respondent that setting a limit would be helpful to contain the already extensive case record. In the Tribunal's view, however, the 25-page limit proposed by the Respondent would not necessarily be sufficient for the Parties to adequately address the Respondent's ECT Article 24(3) Defence and the 2024 CJEU Decision. The Tribunal considers that 20 pages on each of these topics, with a total maximum of 40 pages per submission, would constitute an appropriate maximum length of the additional written submissions.

²² See Respondent's letter of 27 January 2025, para. 8(ii):

ii. the submissions shall be strictly limited to any comment on Article 24(3) of the ECT that could not have been submitted in the principal or supplemental rounds of submissions; or to comments on the significance of the judgement of the EU's General Court to the present proceedings. The latter comments shall not seek to re-argue any factual or legal findings of the General Court. As the General Court has now issued its decision on the merits, it would be procedurally improper to transform the Tribunal into a "court of interim appeal" from findings of fact or law made in that other forum.

38. Taking into account the dates of the Hearing and the parameters of the additional written submissions delineated above, each Party shall have eight weeks to file its respective additional written submission.
39. Attached as Annex 1 to this order is the Procedural Calendar for the remainder of the current phase of the Arbitration.
40. Given the extraordinary extension of the moratorium on the composition proceedings of the Claimant²³ and the potential impacts of those proceedings on the current Arbitration,²⁴ the Claimant is invited to provide periodic updates at the dates indicated in the Procedural Calendar.

So ordered by the Tribunal.



Professor Ricardo Ramírez Hernández
(Presiding Arbitrator)

On behalf of the Tribunal

²³ Cantonal Court of Zug decision dated 9 January 2025 regarding the composition moratorium/agreement, English translation submitted by the Claimant on 16 January 2025.

²⁴ Procedural Order No. 14, paras 56-58.

Annex 1: Procedural Calendar

<u>Event</u>	<u>Date</u>
Update from the Claimant concerning its composition proceedings (following the 9 March 2025 deadline for making payment of amounts owed to small creditors)	Wednesday, 12 March 2025
Claimant's Supplementary Memorial on ECT Article 24(3) and the 2024 CJEU Decision	Wednesday, 19 March 2025 (eight weeks from the issuance of Procedural Order No. 14)
Respondent's Supplementary Counter-Memorial on ECT Article 24(3) and the 2024 CJEU Decision	Wednesday, 14 May 2025 (eight weeks from the deadline for the submission of Claimant's Supplementary Memorial on ECT Article 24(3) and the 2024 CJEU Decision)
Update from the Claimant concerning its composition proceedings (following the 9 May 2025 deadline to obtain consent from a sufficient number of creditors to enter into a composition agreement)	13 May 2025
Notification of witnesses	20 October 2025
Pre-hearing procedural conference in advance of the Hearing on Jurisdiction and Merits	TBD
Hearing on Jurisdiction and Merits	8-13 December 2025