

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. 16

The Arbitral Tribunal

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

24 February 2025

I. PROCEDURAL BACKGROUND

1. 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 on Jurisdiction and Merits (the "**Hearing**") scheduled for 10-15 February 2025, and for the Tribunal to order a further round of written submissions.
2. On 22 January 2025, the Tribunal issued Procedural Order No. 14 postponing the 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 a new procedural calendar, including the new hearing dates and the timeline for the submission of additional written submissions by the Parties.
3. On 10 February 2025, having considered the views of the Parties on these matters, the Tribunal issued Procedural Order No. 15 setting new Hearing dates on 8-13 December 2025 and establishing the scope, format, and deadlines for the additional round of written submissions from the Parties. In a letter of the same date, the Tribunal invited the Parties to indicate their availability for a pre-hearing conference in the week of 27-31 October 2025.
4. By e-mail of 12 February 2025, the Respondent reserved

the right to request from the Tribunal, if necessary, an extension of the deadline granted to the European Union for filing its additional submission, in the event that the Tribunal granted leave to the Claimant for submitting further expert testimony in writing pursuant to paragraph 36 of Procedural Order No 15.
5. By e-mail of 13 February 2025, the Claimant confirmed its availability for the pre-hearing conference in the week of 27-31 October 2025 and requested that the Tribunal clarify and reconsider some of the decisions conveyed in Procedural Order No. 15.
6. By letter of 13 February 2025, the Tribunal invited the Respondent to submit any comments it might have on the Claimant's e-mail of 13 February 2025. The Tribunal also invited the Parties to confirm their availability for the Hearing during the week of 15-20 December 2025 or, alternatively, in the period of 10-16 December 2025, to account for a contingency regarding the Hearing dates set in Procedural Order No. 15.
7. By e-mail of 14 February 2025, the Claimant confirmed its availability for the Hearing in the period of 10-16 December 2025 and indicated that it would not be available in the week of 15-20 December 2025.
8. By letter of 17 February 2025, the Respondent objected to the Claimant's requests for clarification and reconsideration in the Claimant's e-mail of 13 February 2025. By e-mail also of 17 February 2025, the Respondent confirmed its availability both in the week of 15-20 December 2025 and during the period of 10-16 December 2025.
9. By letter of 18 February 2025, the Tribunal reiterated its request for the Respondent to provide its availability for the pre-hearing conference in the week of 27-31 October 2025. By e-mail of the same date, the Respondent confirmed its availability for the pre-hearing conference in the week of 27-31 October 2025.

II. PARTIES' SUBMISSIONS

10. The Claimant has reached out to the Tribunal with a request for “clarifications and reconsideration” with regard to certain decisions in Procedural Order No. 15.¹
11. First, the Claimant asks the Tribunal to clarify whether the period for the preparation of the Claimant’s additional written submission should begin on the date of issuance of Procedural Order No. 14, as indicated under Procedural Order No. 15, or with the date of issuance of the latter. According to the Claimant, “if the Tribunal’s assumption was that Claimant is in the process of drafting its next submission since 22 January, this assumption was with respect not correct”.²
12. Second, the Claimant avers that “there will be ample time between the end of the written phase and the hearing week” such that “it would seem sensible to use more of the time available for preparation of the written submissions”.
13. The Claimant asserts that “a time window of three, and even four months for each party can be comfortably accommodated”, noting also the Respondent’s reservation of its right to request an extension to the deadline for its additional written submission.³ The Claimant does not object to any such extension being granted to the Respondent “provided that both parties are given the same amount of time”.⁴
14. Third, the Claimant requests that the Tribunal clarify whether paragraphs 34 et seq. of Procedural Order No. 15 concerning the filing of new evidence apply to “legal authorities, e.g. arbitral awards, court decisions, scholarly writings and the like”.
15. The Respondent objects to the Claimant’s interpretation of all three points that it has raised with respect to the respective decisions of the Tribunal communicated under Procedural Order No. 15.
16. First, the Respondent argues that “the Claimant could and should have started preparing its additional submission from the date of [Procedural Order No. 14]”, which “provided expressly for the filing of additional submissions by the parties”. In any event, since at least November 2024, when the Claimant first requested leave to make an additional submission, it “must have had very clear ideas about the purpose and content of the additional submission”.⁵
17. Second, the Respondent avers that the deadline for the additional written submissions should not be extended:

The eight-week deadline granted by the Tribunal is clearly sufficient in view of the limited scope of the additional submission and the fact that [...] the Claimant has had ample time to prepare its submission.⁶
18. The Respondent suggests that “the Tribunal carefully calibrated the timing for the written phase based upon the intended scope of that submission”, with June 2025 Hearing dates in mind—which

¹ Claimant’s E-mail of 13 February 2025.

² Claimant’s E-mail of 13 February 2025.

³ Claimant’s E-mail of 13 February 2025.

⁴ Claimant’s E-mail of 13 February 2025.

⁵ Respondent’s Letter of 17 February 2025, para. 2.

⁶ Respondent’s Letter of 17 February 2025, para. 3.

according to the Respondent means that the subsequent deferral of the Hearing to the December 2025 dates should have no impact on the submission deadlines.⁷

19. The Respondent also argues that the extension would considerably complicate its preparations, given “that a large part of the time accorded to the European Union would within the summer period, during which the EU representatives, counsel and experts, as well as their supporting staff, will take their annual leave at different points”.⁸ The Respondent adds that it would also “cut down substantially the overall time available for hearing preparation, which the European Union considers of fundamental importance for its defence”.⁹
20. The Respondent acknowledges that it had “indicated that it may request an extension of the deadline for filing its additional written submission, if this became necessary for preparing adequate counterevidence in response to the expert evidence which the Claimant may be allowed to submit”. However, in its view, the Claimant “does not face similar difficulties and has provided no reason justifying its request for an extension”.¹⁰
21. Third, the Respondent asserts that paragraph 6.4 of Procedural Order No. 1, to which paragraph 35 of Procedural Order No. 15 refers, “covers, by its own terms, any form of evidence including therefore exhibits of legal authorities”, with no justification, in the Respondent’s view, for exempting legal authorities from this rule.

III. THE TRIBUNAL’S DECISION

22. The Tribunal herein rules on the Claimant’s three requests for “clarifications and reconsideration”¹¹ of certain decisions under Procedural Order No. 15, which requests the Respondent has objected to.
23. With respect to the Claimant’s request that the Tribunal clarify whether the period for the preparation of the Claimant’s additional written submission should begin with the date of issuance of Procedural Order No. 14, or with the date of issuance of Procedural Order No. 15, the Tribunal confirms that the relevant date is the former. The Claimant was aware – as of the date of issuance of Procedural Order No. 14 – that additional written submissions would be allowed by the Tribunal, and that their scope would cover “the Respondent’s ECT Article 24(3) Defence and the November 2024 CJEU Decision”.¹² The Claimant’s suggestion that it could simply wait until the new Procedural Calendar had been fixed is not reasonable.
24. In respect of the deadlines for the filing of the additional written submissions, the Tribunal notes the Respondent’s expression of concern with respect to the deadlines set by the Tribunal:

[t]he European Union is very concerned, however, that the deadline set out in Procedural Order No 15 for filing the EU submission, i.e. eight weeks from the filing of the Claimant’s

⁷ Respondent’s Letter of 17 February 2025, para. 4.

⁸ Respondent’s Letter of 17 February 2025, para. 5.

⁹ Respondent’s Letter of 17 February 2025, para. 5.

¹⁰ Respondent’s Letter of 17 February 2025, para. 6.

¹¹ Claimant’s E-mail of 13 February 2025.

¹² This wording was later repeated verbatim under Procedural Order No. 15, para. 32:

The Tribunal notes that the Parties agree as to:

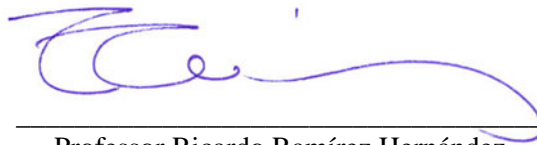
[...]

- the general scope that these submissions should cover (strictly limited to the Respondent’s ECT Article 24(3) Defence and the 2024 CJEU Decision). (emphasis added)

submission, may not give the European Union sufficient time for preparing the necessary expert counter-evidence.¹³

25. In order to account for the concerns expressed by both Parties, the deadline for the filing of the additional written submissions is extended to twelve weeks for both Parties, as reflected in the updated Procedural Calendar attached as Annex 1 to this Order.
26. Concerning the Parties' queries on the possibility of supporting the additional written submissions with new legal authorities, the Tribunal is inclined to allow their submission, with the expectation that the Parties will limit themselves to those key new authorities that are appropriate in number and proportionate to the limited scope and length of these submissions. At this late stage, the proceedings would not be assisted by the submission of a substantial number of new authorities that could have been presented at an earlier stage.
27. As regards the update to the Hearing dates, the Tribunal notes that both Parties are available on 10-16 December 2025 and thus hereby sets the Hearing for this period, excluding the weekend, but with Saturday, 13 December 2025 in reserve.
28. Annex 1 reflects the foregoing decisions in an updated Procedural Calendar for the remainder of the current phase of the Arbitration.

So ordered by the Tribunal.



Professor Ricardo Ramírez Hernández
(Presiding Arbitrator)

On behalf of the Tribunal

¹³ Respondent's E-mail of 12 February 2025.

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, 16 April 2025 (twelve weeks from the issuance of Procedural Order No. 14)
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
Respondent's Supplementary Counter-Memorial on ECT Article 24(3) and the 2024 CJEU Decision	Wednesday, 9 July 2025 (twelve weeks from the deadline for the submission of Claimant's Supplementary Memorial on ECT Article 24(3) and the 2024 CJEU Decision)
Notification of witnesses	20 October 2025
Pre-hearing procedural conference in advance of the Hearing on Jurisdiction and Merits	27 October 2025 at 17:30 CET
Hearing on Jurisdiction and Merits	10-16 December 2025 (with Saturday, 13 December in reserve)