

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. 19

The Arbitral Tribunal

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

24 January 2026

I. PROCEDURAL BACKGROUND

1. On 1 October 2025, the Claimant wrote to the Tribunal to draw its attention to Article 5af of Council Regulation 2025/1494 of 18 July 2025 amending Council Regulation No 833/2014 (“the **Regulation**”).¹ The Regulation prohibits the direct or indirect engagement “in any transaction in connection with the natural gas pipelines Nord Stream and Nord Stream 2”. In its communication, the Claimant requested the Tribunal to invite the Respondent to confirm that the Regulation does not in any way affect the continuation of this Arbitration.
2. On 6 October 2025, the Respondent confirmed that the European Commission considers that the Regulation “does not affect the continuation of these arbitral proceedings in any way”.
3. On 14 October 2025, the Claimant informed the Tribunal that it had, on 13 October 2025, applied to the General Court of the European Union to annul Article 5af of the Regulation on the ground of illegality. The Claimant submitted that the Regulation nevertheless remained “directly and immediately applicable”, exposing the Claimant and its staff, the Tribunal, the PCA, experts, witnesses, and counsel to the risk of breaching EU sanctions. The Claimant also argued that “[a]pplying for an authorization pursuant to Art. 5af (3) (d) is not an option.” The Claimant therefore requested the Tribunal suspend the Arbitration until the General Court of the EU provides a ruling on the Regulation’s application.
4. Later on the same day, the Respondent submitted that “the European Commission, acting as representative of the European Union in these proceedings, has confirmed and confirms once again that it considers that Article 5af of [the Regulation] does not affect the continuation of these proceedings”. It added that “the European Commission, acting as representative of the European Union, is not in a position for constitutional reasons, to provide further assurances regarding the definitive interpretation of the legal provision at issue, which can be made only by the Court of Justice of the European Union”. As a result, it requested that the Tribunal exercise its “best judgement” in determining whether to suspend the proceedings.
5. On 15 October 2025, the Claimant once again noted its concerns on the risk of application of the Regulation to the Arbitration and reiterated its request for the suspension of the proceedings.
6. On the same day, the Respondent’s communication repeated the Commission’s interpretation that the Regulation does not affect the continuation of the present proceedings. The Respondent also argued that the European Commission could not purport to bind the EU courts and therefore could not provide “the kind of absolute guarantees demanded by the Claimant”. It submitted that the interpretation of the Regulation was *sub judice* since it was under legal challenge, and it would therefore be inappropriate for the Respondent to debate its interpretation. It added that it would continue to cooperate in good faith.
7. On 22 October 2025, the Tribunal issued Procedural Order No. 18, which suspended the Arbitration and invited the Parties to address the risks posed by the Regulation, as follows:

For these reasons, the Tribunal hereby suspends the proceedings until the risk associated with Article 5af can be adequately addressed. In this vein, the Tribunal invites the Parties to seek clarity as to the applicability of Article 5af to these proceedings and engage as a matter of urgency every reasonable means, including in particular by recourse to the procedures available under the Regulation, so as to secure that the now delayed hearing on jurisdiction and merits is held as soon as possible, and to inform the Tribunal of any developments in this

¹ Council Regulation (EU) 2025/1494 of 18 July 2025 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilizing the situation in Ukraine.

regard. In any event, the Parties are invited to provide the Tribunal with an update on their efforts in this respect by no later than **1 December 2025**.

8. On 7 November 2025, the Claimant argued that only the Respondent “can make suggestions to improve the situation”, and requested the Respondent produce its internal documents concerning “the drafting, proposal and discussion of Article 5af as part of the 18th EU Sanctions Package, i.e. all documents of all EU institutions, departments, committees etc., which have been involved in this work” so that the meaning of Article 5af, particularly the phrase “transactions”, could be elucidated. With respect to the “authorization by way of a derogation under Article 5af (3) (d)”, the Claimant reiterated that “applying for such an authorization is not an option in this situation”. It further pointed out that it was unclear which national authorities were empowered to deal with applications for authorization.
9. On 20 November 2025, the Respondent repeated its position that the Regulation does not affect the continuation of proceedings and denied that it could provide any “binding and irrevocable” interpretation of the Regulation, which power falls to the Court of Justice of the European Union. It clarified, however, that the “only relevant procedure available under Regulation 833/2014 is the procedure for authorizing certain types of transactions set out in Article 5af (3)(d)”.
10. On 26 November 2025, the Tribunal recalled its direction to the Parties “to seek clarity as to the applicability of Article 5af to these proceedings and engage as a matter of urgency every reasonable means, including in particular by recourse to the procedures available under the Regulation, so as to secure that the now delayed hearing on jurisdiction and merits is held as soon as possible”. The Tribunal further noted the Respondent’s position that “the only relevant procedure available under Regulation 833/2014 is the procedure for authorizing certain types of transactions set out in Article 5af (3)(d)”. Accordingly, the Tribunal requested the Respondent “to indicate, with reasons, whether it may itself initiate ‘the procedure for authorizing certain types of transactions set out in Article 5af’, even in ‘the absence of an application by the Claimant’”. The Tribunal also invited both Parties “to comment on any other options available to address ‘the risk of Article 5af being applicable to the Arbitration and its participants’”.
11. On the same day, the Respondent reiterated that there was “no risk of Article 5af being applicable to the Arbitration and its participants”, that therefore “an authorisation pursuant to Article 5af(3) of Regulation 833/2014 is not required in this case”, and that there is “no other administrative procedure” allowing for a “binding” or “irrevocable” interpretation.
12. On 1 December 2025, the Claimant replied that the Respondent had offered “no explanation” or documents showing why Article 5af did not apply to the Arbitration. The Claimant further submitted that “[n]othing prevents the EU Council from reviewing Art. 5af and from repealing or clarifying that provision at any time.”
13. On 2 December 2025, the Tribunal invited the Parties to submit any comments they may have on the other Party’s communication of the previous day.
14. On 5 December 2025, the Claimant indicated that it had “nothing to add at this point”.
15. On the same day, the Respondent reiterated that it would not offer an interpretation while the matter was *sub judice* before the General Court of the EU. The Respondent directed the Claimant to public documents concerning the preparation of Article 5af without providing any internal documents thereon, citing that the disclosure of internal documents was “unnecessary” and “may harm the security of the Union or that of one or more of its Member States”. It further asserted that the required decision making-procedure for “reviewing” Article 5af was “very complex and

time consuming” , and was “unwarranted” given that Article 5af “does not prevent the pursuit of these proceedings”.

16. On 15 December 2025, the Tribunal reiterated once again its direction to the Parties “to seek clarity as to the applicability of Article 5af to these proceedings and engage as a matter of urgency every reasonable means, including in particular by recourse to the procedures available under the Regulation, so as to secure that the now delayed hearing on jurisdiction and merits is held as soon as possible”. In this connection, the Tribunal put the following specific questions to the Respondent on the authorization procedure:
- a. What specific “transactions” are capable of authorization that would permit the Arbitration to proceed?
 - b. Who are the “competent authorities” with respect to any relevant “transactions” in relation to this Arbitration?
 - c. Who are the “interested parties” with respect to this Arbitration and do these include the Respondent, the Tribunal, and the PCA, as well as the Claimant?
 - d. Is an application from all “interested parties” (i.e., at a minimum, the Parties to this Arbitration) required, or may a single “interested party” obtain an authorization to fully address “the risk of Article 5af being applicable to the Arbitration and its participants”?
 - e. Can the European Commission, acting as the Respondent’s representative, initiate “the procedure for authorizing certain types of transactions set out in Article 5af (3)(d)”?
 - f. Can the Tribunal – or the PCA on behalf of the Tribunal – initiate the procedure to obtain an authorization?
 - g. Would multiple authorizations (potentially from multiple “competent authorities”) under Article 5af of the Regulation be required to fully address “the risk of Article 5af being applicable to the Arbitration and its participants”?

17. On 22 December 2025, the Respondent reiterated once again its position that “no transactions need to be authorized for this Arbitration to proceed”, but that it could not offer an interpretation of Article 5af while the matter was *sub judice*. It thereafter responded as follows to the Tribunal’s questions:

a) What specific “transactions” are capable of authorization that would permit the Arbitration to proceed?

As set out before, in the opinion of the European Commission, no transactions need to be authorized for the this [sic] Arbitration to proceed. If an authorization were required (quod non), it could be requested for any transaction that meets the requirements for an authorization, according to Article 5af (3).

b) Who are the “competent authorities” with respect to any relevant “transactions” in relation to this Arbitration?

If an authorization were required (quod non) the competent authorities would be those of the Member State or Member States in which each relevant transaction takes place or produces its effects, or where the requesting person or legal entity is registered or established. Annex I to Council Regulation (EU) 833/2014 lists the relevant national competent authorities for each Member State.

c) Who are the “interested parties” with respect to this Arbitration and do these include the Respondent, the Tribunal, and the PCA, as well as the Claimant?

The restrictive measures in Article 5af(1) Regulation 833/2014 target transactions in connection with the natural gas pipelines Nord Stream 1 and Nord Stream 2 controlled by the Russian Government via state-owned enterprises (see recital 15 of Council Regulation (EU) 2025/1494 amending Council Regulation (EU) 2014/833). Accordingly, if an authorization were necessary (quod non), it would be in the first place for the persons or entities that own and/or control those pipelines to apply for an authorization pursuant to Article 5af(3) Regulation 833/2004. The Commission considers that other applicants would need to prove that they have a sufficient interest in relation with each specific transaction for which authorization is requested before the competent authorities in the Member States.

d) Is an application from all “interested parties” (i.e., at a minimum, the Parties to this Arbitration) required, or may a single “interested party” obtain an authorization to fully address “the risk of Article 5af being applicable to the Arbitration and its participants”?

If any transaction had to be authorized for these proceedings to proceed (quod non), an authorization for each such specific transaction could be requested only by the person or entity described in the reply to question c).

e) Can the European Commission, acting as the Respondent’s representative, initiate “the procedure for authorizing certain types of transactions set out in Article 5af (3)(d)”?

No. The European Commission’s role in any authorization process pursuant to Article 5af (3) would be to issue an opinion to the competent authorities stating whether the envisaged transaction would be prejudicial to the Union’s interests.

f) Can the Tribunal – or the PCA on behalf of the Tribunal – initiate the procedure to obtain an authorization?

The Tribunal is not a person or legal entity and cannot, therefore, request an authorization. Each of the members of the Tribunal (possibly represented by the PCA) could request an authorization for each specific transaction in which they have a sufficient interest (e.g. because they are parties to a covered transaction). The European Commission reiterates, once again, however, that it considers that the Members of the Tribunal are not parties to any such transaction.

g) Would multiple authorizations (potentially from multiple “competent authorities”) under Article 5af of the Regulation be required to fully address “the risk of Article 5af being applicable to the Arbitration and its participants”?

If an authorization were required (quod non), it could be necessary to obtain it from national competent authorities in more than one Member State. See answer to question b) above.

18. On 6 January 2026, the Claimant wrote to the Tribunal, claiming that the Respondent’s answers were “too short and too vague” and thus “not at all helpful” apart from confirming the “complexity” of the procedure referred to in Article 5af (3)(d). The Claimant requested that the Tribunal invite Respondent to provide “precise clarifications with sufficient legal explanations” (emphasis in original) to the Tribunal’s questions and “the scope of application of Article 5af (3) (d) and the irrelevance of the entire Article 5af to this arbitration”.

II. THE TRIBUNAL'S DECISION

19. The Tribunal refers to Procedural Order No. 18, under which it directed the Parties to:

seek clarity as to the applicability of Article 5af [of the Regulation] to these proceedings and engage as a matter of urgency every reasonable means, including in particular by recourse to the procedures available under the Regulation, so as to secure that the now delayed hearing on jurisdiction and merits is held as soon as possible, and to inform the Tribunal of any developments in this regard.²

20. Having carefully reviewed the communications from the Parties on the matter, and having posed a number of questions of its own accord, the Tribunal issues this order to further advance the pursuit of available solutions which could allow for the risk associated with Article 5af to be adequately addressed.

21. As an initial point, the Tribunal recalls that Article 5af of the Regulation provides as follows:

Article 5af

1. It shall be prohibited to engage, directly or indirectly, in any transaction in connection with the natural gas pipelines Nord Stream and Nord Stream 2, with regard to the completion, operation, maintenance or use of the pipelines. In addition, it shall be prohibited to engage, directly or indirectly, in any transaction in connection with the financing concerning the completion, operation or use of the pipelines.

2. The prohibitions in paragraph 1 shall not apply to transactions that are strictly necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety, maritime shipping or the environment or as a response to natural disasters.

3. By way of derogation from paragraph 1, the competent authorities may authorise transactions that are strictly necessary:

(a) for the wind-down or restructuring of a legal person, entity or body in connection with the natural gas pipelines Nord Stream and Nord Stream 2 where this is necessary to ensure that the natural gas pipelines Nord Stream and Nord Stream 2 will not be used;

(b) to claim compensation, recoveries or any other means, from any natural or legal person, entity or body in connection with the natural gas pipelines Nord Stream and Nord Stream 2;

(c) to effect and receive payments or recoveries that are due or become due under, or in connection with, court orders, financings, insurance, warrants or any other contracts or agreements in connection with the natural gas pipelines Nord Stream and Nord Stream 2 that were entered into before 20 July 2025;

(d) for a settlement, or judicial or arbitration proceedings in connection with the natural gas pipelines Nord Stream and Nord Stream 2;

(e) for regular maintenance services which are strictly necessary to prevent environmental and safety risks or a negative impact on the fisheries sector.

Before issuing such an authorisation, the competent authorities shall provide the Commission with a draft thereof. Within 30 days of receipt of that draft, the Commission may issue an

² Procedural Order No. 18, para. 36.

opinion to the competent authorities stating that the envisaged transaction would be prejudicial to the Union's interests. The Commission shall inform the Council of such an opinion.

4. Operators shall inform the competent authority of the Member State where they are incorporated or under whose law they are constituted of any transaction concluded pursuant to paragraph 2 within two weeks of its conclusion. The Member State concerned shall inform the other Member States and the Commission of any information received pursuant to this paragraph within two weeks of its receipt.

5. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted pursuant to paragraph 3 within two weeks of the authorisation.

22. The Tribunal tends to agree with the Claimant that the Respondent is uniquely positioned to provide guidance on the proper interpretation of a Regulation adopted by the Respondent (irrespective of the specific roles of different constitutive bodies of the Respondent in the legislative process). Likewise, it appears reasonable to the Tribunal that the Respondent ought to be able to take more concrete steps to assist with ensuring compliance with its own Regulation.
23. While the Respondent has stated that there is “no risk of Article 5af being applicable to the Arbitration and its participants”, and therefore “an authorisation pursuant to Article 5af(3) of Regulation 833/2014 is not required in this case”,³ it has likewise repeatedly stated that it cannot guarantee that there is no risk of the Regulation applying to this Arbitration or its participants as “such a ‘binding and irrevocable’ interpretation can be issued only by the European Court of Justice”.⁴ It follows that it is simply not possible for the Tribunal or the Claimant to enjoy warranted clarity and rely on the non-application of the Regulation.
24. The Tribunal has previously stated that it “does not discount the possibility that this obstacle may be addressed through other potential avenues, and at a much earlier date” than the ruling of the General Court of the EU on the Claimant’s application for annulment of Article 5af of the Regulation.⁵ The Tribunal therefore asked the Parties to “engage as a matter of urgency every reasonable means, including in particular by recourse to the procedures available under the Regulation, so as to secure that the now delayed hearing on jurisdiction and merits is held as soon as possible”.
25. In response, the Respondent pointed to “the procedure for authorizing certain types of transactions set out in Article 5af (3)(d)”.⁶ The Tribunal agrees that a meaningful clarification might be obtained through the process of requesting an authorization pursuant to Article 5af(3). Therefore, the Tribunal is of the view that a means should be found to make an application for authorization.
26. However, when requested by the Tribunal to clarify the operation of this procedure, and to assist the Tribunal to avail itself of this procedure, the Respondent’s answers have been limited and wanting. As the Claimant puts it:

First, in response to the Tribunal’s question as to which specific transactions require an authorization, Respondent’s answer is: “any transaction that meets the requirements for an authorization, according to Article 5af(3)”. Simply referring to Article 5af(3) with no further explanation and clarification is imprecise and circular, at best. *Secondly*, Respondent’s answer to the Tribunal’s question as to who must apply for authorizations is generic and

³ Respondent’s e-mail of 1 December 2025.

⁴ Respondent’s e-mail of 1 December 2025.

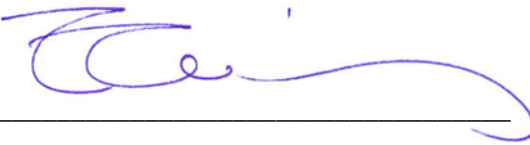
⁵ Procedural Order No. 18, para. 35.

⁶ Respondent’s e-mail of 20 November 2025.

unclear. Which parties of a transaction must apply for an authorization? Is it Respondent “in the first place” and who would be “other applicants” in this arbitration? Such questions of high practical relevance require clear and specific answers. *Finally*, we understand from Respondent’s answers, that the procedure referred to in Article 5af (3) (d) requires multiple authorizations in various Member States. Respondent notably does not further specify what this means in practice for this arbitration.⁷

27. The Parties are reminded of their duty to cooperate with the Tribunal so as to progress these proceedings and that, under Article 40 of the UNCITRAL Rules, the Parties’ conduct during the course of proceedings may be a relevant consideration in the Tribunal’s allocation of costs.
28. With the foregoing in mind, the Tribunal requests the Respondent to provide a more detailed and particularized answer to whether and how the PCA, acting on its own or on behalf of the Members of the Tribunal, could obtain one or more authorizations under Article 5af(3)(d) sufficient to allow for the risk associated with Article 5af to be adequately addressed. The Respondent should, for this purpose, assume that such risk exists and that the authorization(s) should cover each and every relevant transaction that is reasonably taken in connection with this Arbitration, both with respect to the Tribunal and the Claimant.

So ordered by the Tribunal.



Professor Ricardo Ramírez Hernández
(Presiding Arbitrator)

On behalf of the Tribunal

⁷ Claimant’s e-mail of 6 January 2026.