

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. 18

The Arbitral Tribunal

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

22 October 2025

I. PROCEDURAL BACKGROUND

1. On 22 January 2025, following a request from the Claimant the Tribunal issued Procedural Order No. 14 postponing the Hearing on Jurisdiction and Merits (the “**Hearing**”) scheduled for February 2025. The Tribunal undertook to engage with the Parties separately on new Hearing dates and a timeline for additional written submissions by the Parties.
2. On 10 February 2025, having considered the Parties’ views on the matter the Tribunal issued Procedural Order No. 15 setting new Hearing dates from 8-13 December 2025.
3. On 24 February 2025, the Tribunal issued Procedural Order No. 16 revising the Hearing dates to 10-16 December 2025, excluding the weekend but with Saturday, 13 December 2025 in reserve, after confirming the Parties’ availability. Procedural Order No. 16 further reflected the date for the Pre-Hearing Conference as 27 October 2025 (the “**Pre-Hearing Conference**”).
4. 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 which prohibits direct or indirect engagement “in any transaction in connection with the natural gas pipelines Nord Stream and Nord Stream 2”. The Claimant submitted that the Regulation “does not, cannot and must not in any way affect the continuation of these arbitral proceedings” and requested the Tribunal to invite the Respondent to confirm that the Regulation does not in any way affect the continuation of this Arbitration.
5. 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”.
6. By letter of 10 October 2025, the Tribunal enclosed draft Procedural Order No. 18 on Hearing arrangements as well as the Pre-Hearing Conference agenda with connection details. It invited the Parties to provide their respective lists of participants for the Pre-Hearing Conference by 17 October and, to the extent possible, a joint list of any remaining points of disagreement with respect to the draft Procedural Order No. 18 or proposed changes to the agenda by 22 October 2025.
7. On 13 October 2025, the Respondent supplied its list of participants in the Pre-Hearing Conference.
8. By letter of the same day, the Tribunal enclosed the proposed layout for the Hearing room and a cost estimate for transcription services. It further invited the Parties to provide their comments on the logistical arrangements for the Hearing.
9. On 14 October 2025, the Claimant informed the Tribunal that it had, the day prior thereto, submitted an application for annulment of Article 5af of the Regulation to the General Court of the EU, and submitted that the Regulation places it in the “position that it is compelled to ask for a suspension of the arbitration” until the General Court of the EU provides a ruling on the Regulation’s application. The Claimant resultantly requested the Tribunal suspend the Arbitration.
10. 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

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 destabilising the situation in Ukraine.

again that it considers that Article 5af of [the Regulation] does not affect the continuation of these proceedings”. It added that the European Commission is not in a position, “for constitutional reasons”, to provide further assurance regarding the definitive interpretation of the provision, which it submitted can only be interpreted by the Court of Justice of the European Union. As a result, it requested the Tribunal exercise its “best judgement” in determining whether to suspend the proceedings.

11. On 15 October 2025, the Claimant informed the Tribunal that it would not be “meaningful to convene [the Pre-Hearing Conference] to prepare for [the Hearing] in December this year. In the light of Art. 5af (3) (d) of the Regulation adopted by the Council of the European Union, we do not see how it could be possible to have the hearing in December. The risk, which Respondent has created by adopting this provision, to the integrity of this arbitration and to the participants in these proceedings, must first be eliminated.” The Claimant requested that the Tribunal take “the appropriate procedural measures” to reflect the situation and reiterated that a suspension of the proceedings, including a postponement of the Hearing, was “unavoidable”.
12. Subsequently, on 15 October 2025, the Respondent reiterated the Commission’s interpretation that the Regulation does not affect the continuation of the present proceedings. It added that “no evidence has been provided that either the European Commission or the authorities of the EU Member States that are primarily responsible for the implementation and enforcement of Regulation 833/2014 have taken any action pursuant to Article 5af in view of preventing or interfering in any possible way with the pursuit of these proceedings by the Claimant”. The Respondent again requested the Tribunal exercise its best judgement in deciding whether to suspend proceedings.
13. On 16 October 2025, the Claimant retorted that the lack of proof of past application of Article 5af of the Regulation “does not say anything about a potential future application by any relevant authority”. The Claimant reiterated the position expressed in its previous communications and added that as long as the Regulation remains in force, it poses a risk to the Arbitration.
14. On 20 October 2025, the Respondent provided a list of the Claimant’s witnesses and experts that it wishes to cross-examine at the Hearing.
15. On the same day, the Claimant provided a list of the Respondent’s experts that it wishes to cross-examine at the Hearing.

II. THE PARTIES’ SUBMISSIONS

A. The Claimant’s Position

16. In its initial communication to the Tribunal, the Claimant stated that Article 5af of the Regulation “does not, cannot and must not in any way affect the continuation of these arbitral proceedings”.² It reasoned that the rationale of the Regulation is “to prevent the establishment of natural gas supplies through Claimant’s pipeline” whereas the Claimant’s purpose, as confirmed by the Cantonal Court of Zug, is to perform “safeguarding measures” rather than to transport natural gas, rendering Articles 5af(1) and 5af(3)(d) inapplicable to the Claimant.³

² Claimant’s E-mail of 1 October 2025. *See also* Claimant’s E-mail of 14 October 2025.

³ Claimant’s E-mail of 1 October 2025.

17. However, “upon further reflection and analysis, as well as consultations with sanctions experts, [the Claimant submits that] it has become abundantly clear that this arbitration is at risk”.⁴ The Claimant reasons that the language of Article 5af “is wide and leaves no room for differentiations”,⁵ which necessitated that it apply to the General Court of the EU to annul Article 5af on the grounds that it is, *inter alia*, “illegal”.⁶
18. According to the Claimant, Article 5af is “directly and immediately” applicable⁷ and, until it is set aside, “remains in force and must be respected”.⁸ For these reasons, the Regulation “exposes Claimant and its staff to risks” of non-compliance,⁹ as well as “everyone else who is involved in transactions with Claimant concerning this arbitration”, including the Tribunal, the PCA, the experts, witnesses and counsel.¹⁰ The Claimant avers that “the suspension of these arbitral proceedings, including a postponement of the hearing is unavoidable” and “the blame is entirely on Respondent” because “it is Respondent, which has adopted the Regulation, not Claimant”.¹¹
19. While the Regulation provides for an authorization mechanism, should the Arbitration continue without first receiving that authorization, an objection of non-compliance with the Regulation may be raised “at some point during the arbitration”, and may also affect enforcement of an arbitral award, according to the Claimant.¹² According to the Claimant, “[a]pplying for an authorization pursuant to Article 5af(3)(d) is not an option”.¹³ Such authorizations, the Claimant argues, are “impractical and unheard of” in international arbitration.¹⁴ The Claimant submits that the Arbitration should not be subject to such a retrospective authorization, for this would be contrary to “fundamental principles of rule of law”.¹⁵ As to timing, the Claimant avers that it is “highly unlikely” that an authorization would be granted before the Hearing and no process for acceleration is available.¹⁶
20. As to the Respondent’s assurances that the Arbitration proceedings are not affected, the Claimant submits that they are merely “informal statement[s]” with no bearing on a legislative act (such as the Regulation) issued by the Council of the EU.¹⁷ Further, the Respondent’s language is “vague and non-committal” and is limited to the continuation of the Arbitration without regard for future impact of Article 5af, including at the enforcement stage.¹⁸
21. On the lack of evidence that the EU Commission and authorities has so far applied the Regulation to the Claimant, the Claimant avers that this has no bearing on potential future action by these

⁴ Claimant’s E-mail of 15 October 2025.

⁵ Claimant’s E-mail of 14 October 2025.

⁶ Claimant’s E-mail of 14 October 2025.

⁷ Claimant’s E-mail of 14 October 2025. *See also* Claimant’s E-mail of 15 October 2025.

⁸ Claimant’s E-mail of 14 October 2025. *See also* Claimant’s E-mail of 16 October 2025.

⁹ Claimant’s E-mail of 14 October 2025. *See also* Claimant’s E-mail of 15 October 2025.

¹⁰ Claimant’s E-mail of 14 October 2025. *See also* Claimant’s E-mail of 15 October 2025.

¹¹ Claimant’s E-mail of 15 October 2025.

¹² Claimant’s E-mail of 14 October 2025.

¹³ Claimant’s E-mail of 14 October 2025.

¹⁴ Claimant’s E-mail of 14 October 2025.

¹⁵ Claimant’s E-mail of 1 October 2025.

¹⁶ Claimant’s E-mail of 14 October 2025.

¹⁷ Claimant’s E-mail of 14 October 2025.

¹⁸ Claimant’s E-mail of 14 October 2025.

entities.¹⁹ Additionally, the burden of proof for providing such evidence should not rest on the Claimant.²⁰

22. In sum, the Claimant requests that the arbitral proceedings be suspended and the Hearing postponed.²¹

B. The Respondent's Position

23. The Respondent has repeatedly conveyed that “the European Commission considers that article 5af of Regulation 833/2014 does not affect the continuation of these arbitral proceedings”.²² Nevertheless, “for constitutional reasons”, the Respondent submits that it cannot provide further assurance regarding the “definitive interpretation” of the legal provision, which can only be made by the Court of Justice of the European Union.²³
24. The Respondent expresses that it is “fully confident” that the EU courts will confirm the European Commission’s position on the Regulation.²⁴ This notwithstanding, the European Commission does not purport to bind the EU courts.²⁵ Moreover, the Respondent submits that since the matter is before the EU courts, it is *sub-iudice*, making further parallel discussion inappropriate.²⁶
25. The Respondent also notes that the Claimant’s interpretation of the Regulation in later communications contradicts the earlier.²⁷
26. Furthermore, the Respondent “recalls that this is the second time that the Claimant requests the suspension of these proceeding” and argues that the Claimant seeks to use “every possible excuse in order to delay” this Arbitration.²⁸
27. Finally, the Respondent notes that the Regulation was adopted nearly three months prior to the Claimant’s communications, yet the Claimant has not provided any evidence that the Regulation has been interpreted and applied in the manner expressed by the Claimant nor that any action against the Claimant has been taken under the Regulation.²⁹
28. Ultimately, the Respondent “leaves to the Tribunal’s best judgement” the decision on whether to suspend the proceedings.³⁰

¹⁹ Claimant’s E-mail of 16 October 2025.

²⁰ Claimant’s E-mail of 16 October 2025.

²¹ Claimant’s E-mail of 14 October 2025. Claimant’s E-mail of 15 October 2025.

²² Respondent’s E-mail of 6 October 2025. *See also* Respondent’s E-mail of 14 October 2025, and Respondent’s E-mail of 15 October 2025.

²³ Respondent’s E-mail of 14 October 2025.

²⁴ Respondent’s E-mail of 15 October 2025.

²⁵ Respondent’s E-mail of 15 October 2025.

²⁶ Respondent’s E-mail of 15 October 2025.

²⁷ Respondent’s E-mail of 14 October 2025.

²⁸ Respondent’s E-mail of 14 October 2025.

²⁹ Respondent’s E-mail of 15 October 2025.

³⁰ Respondent’s E-mail of 15 October 2025. *See also* Respondent’s E-mail of 14 October 2025.

III. THE TRIBUNAL'S DECISION

29. The Tribunal herein rules on the Claimant's requests to suspend the proceedings until the General Court of the EU has ruled on the Claimant's application for annulment of Article 5af of the Regulation, and consequently, to postpone the Hearing.
30. The Claimant substantiates its requests by emphasizing the "risk [...] to the integrity of this arbitration and to the participants in these proceedings"³¹ allegedly created by the potential application of Article 5af of the Regulation. According to the Claimant, this provision is broad enough to apply to these proceedings, and thereby renders the suspension of the proceedings, and a postponement of the Hearing "unavoidable".³²
31. The Respondent avers that "the European Commission considers that article 5af of Regulation 833/2014 does not affect the continuation of these arbitral proceedings"³³ but specifies that "[t]he 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."³⁴ Ultimately, the Respondent "leaves to the Tribunal's best judgement the decision whether to suspend again the proceedings until the General Court has ruled on the Claimant's application for annulment of Article 5af".³⁵ The Respondent does not appear to directly address the Claimant's request for the postponement of the Hearing.
32. 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;

³¹ Claimant's E-mail of 15 October 2025.

³² Claimant's E-mail of 15 October 2025.

³³ Respondent's E-mail of 6 October 2025. *See also* Respondent's E-mail of 14 October 2025, and Respondent's E-mail of 15 October 2025.

³⁴ Respondent's E-mail of 14 October 2025.

³⁵ Respondent's E-mail of 14 October 2025. *See also* Respondent's E-mail of 15 October 2025.

(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 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.

33. On a preliminary note, the Tribunal agrees with the Respondent that the interpretation of Article 5af presented by the Claimant "in its email of 14 October 2025 contradicts the Claimant's previous interpretation set out in its email of 1 October 2025", with which the Respondent had already indicated its concurrence.³⁶ However, the Respondent has also expressed the view that "it would be inappropriate for the parties to engage in a parallel debate of the same legal question before this Tribunal",³⁷ an approach that would render difficult any analysis of Article 5af by this Tribunal. In addition, the Respondent also appears not to raise any express objections to the Claimant's requests; rather, it "leaves it to the Tribunal's best judgment to decide whether to suspend the proceedings".³⁸
34. In view of the lack of a clear and binding assurance from the Respondent on the non-application of Article 5af of the Regulation to this Arbitration and its participants, and the Respondent's reluctance to offer a clear interpretation of Article 5af of the Regulation, the Tribunal is reluctantly but necessarily bound to recognise, as the Claimant submits, that there exists a real risk of Article 5af being applicable to the Arbitration and its participants, and that the consequences of this risk materializing would be significant. With this in mind, the Tribunal is reluctant to order the Parties to continue these proceedings while the existence of such a real risk remains. Thus, the Tribunal is inclined to agree with the Claimant's request to suspend the proceedings.
35. Nevertheless, the Claimant's request for suspension, as formulated, appears to be predicated upon the assumption that the risk will persist until the General Court of the EU has ruled on the Claimant's application for annulment of Article 5af of the Regulation. The Tribunal does not

³⁶ Respondent's E-mail of 14 October 2025.

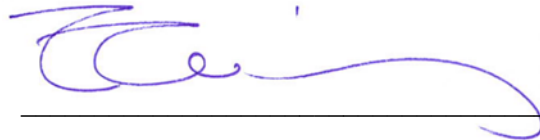
³⁷ Respondent's E-mail of 15 October 2025.

³⁸ Respondent's E-mail of 15 October 2025. *See also* Respondent's E-mail of 14 October 2025.

discount the possibility that this obstacle may be addressed through other potential avenues, and at a much earlier date.

36. 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 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**.
37. Nevertheless, considering the limited time to resolve this issue prior to the Hearing scheduled for 10-16 December 2025, and the risk of significant wasted costs if it cannot be so resolved in time, the Hearing is hereby cancelled, and new dates for a hearing on jurisdiction and merits will be set at a later date.
38. The Tribunal notes that the cancellation of the Hearing at the scheduled dates also carries significant costs. The Tribunal may decide in due course to issue an award of costs taking into account the particular circumstances of this cancellation, whether together with other decisions on costs or separately.

So ordered by the Tribunal.



Professor Ricardo Ramírez Hernández
(Presiding Arbitrator)

On behalf of the Tribunal