

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. 9

The Arbitral Tribunal

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

2 September 2022

I. PROCEDURAL BACKGROUND

1. By e-mail of 1 March 2022, the Claimant informed the Tribunal as follows:

The designation of Nord Stream 2 AG as a US Specially Designated National (SDN) on 23 February 2022 and recent geopolitical developments have led to an inability on the part of the Claimant to pursue the arbitration at this time. In particular, the Claimant's bank accounts have been blocked, meaning NSP2AG is unable to make any payments or access finance.

2. The Claimant consequently requested a suspension of the arbitration.
3. On 16 March 2022, the Tribunal issued Procedural Order No. 7, suspending the arbitration and scheduling a procedural meeting for 20 June 2022 at which the Claimant would be invited to update the Tribunal on its circumstances and ability to continue the proceedings.
4. By letter dated 8 June 2022, the Claimant informed the Tribunal that it had been granted a provisional composition moratorium until 10 September 2022 by the Cantonal Court in Zug, by which date the Cantonal Court would decide on a definitive composition moratorium, an extension of the provisional composition moratorium, or a declaration of bankruptcy. The Claimant requested a continuation of the suspension of the proceedings and a postponement of the 20 June 2022 procedural meeting until a date after 10 September 2022.
5. By letter dated 15 June 2022, the Tribunal cancelled the procedural meeting scheduled for 20 June 2022.
6. On 30 June 2022, the Tribunal issued Procedural Order No. 8, fixing a new procedural meeting for 13 October 2022, at which the Claimant would be invited to update the Tribunal regarding its circumstances and ability to continue the proceedings, and the Parties may thereafter make submissions on the further conduct of the proceedings. The Tribunal also indicated that, for any further suspension to be granted, the Claimant would be required to provide further information demonstrating a reasonable possibility of resuming the arbitration. In the absence thereof, the Tribunal would commence the procedure for terminating the present arbitration in accordance with Article 34(2) of the UNCITRAL Rules.
7. By e-mail of 22 July 2022, the Respondent submitted a Request for Security for Costs (the "**Request**").
8. By e-mail of 22 August 2022, the Claimant submitted its Response to the Respondent's Request for Security for Costs (the "**Response**").

II. THE TRIBUNAL'S DECISION

9. The Respondent's Request seeks security for costs as an interim measure under Article 26 of the UNCITRAL Arbitration Rules to address the "risk that the Claimant will not have sufficient funds to reimburse the costs and expenses incurred by the European Union for the purposes of its defence in this arbitration."¹ The Respondent argues that it has met the criteria in order to justify an interim measure ordering security for costs, namely (i) a *prima facie* case of entitlement to costs,² (ii) the threat of imminent irreparable harm,³ and (iii) the proportionality of the measure

¹ Request, ¶¶ 4, 40.

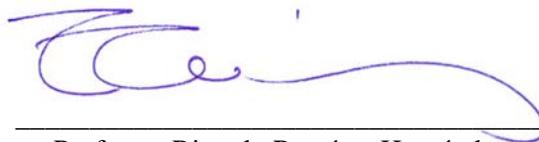
² Request, ¶¶ 48-55.

³ Request, ¶¶ 56-63.

requested.⁴ The Respondent accordingly seeks an order of security for the costs incurred and to be incurred in these proceedings and in its defence of the Claimant's claims, in the amount of at least EUR 5.65 million.⁵

10. In its Response, the Claimant argues that the Request is premature⁶ and, in addition, that the Respondent has not made out a *prima facie* case on the merits leading to an entitlement of costs.⁷
11. The Tribunal notes that the Respondent acknowledges that it must demonstrate an urgent need for security for costs in the sense that it "cannot wait for the issuance of the award since it is probable that there will be a not adequately compensated damage if the order for security for costs is not granted."⁸ The Respondent asserts that "[g]iven the ongoing debt restructuring proceedings and their possible outcomes, the European Union runs a risk of not having its defence costs and administrative fees repaid by the Claimant, should the order for security for costs not be granted by the Tribunal."⁹
12. Under these circumstances, where the arbitration is suspended, and may not proceed further, the Tribunal does not see that a case has been made for urgency to determine the Request. Minimal costs are being expended while the proceedings are suspended. Nor is the position of the Respondent as an unsecured, non-privileged creditor, with respect to costs already incurred, likely to change materially before the procedural meeting on 13 October 2022, or between that date and any future orders on the procedure to be followed, including a decision on costs, should the Claimant fail to satisfy the Tribunal of a reasonable possibility of resuming the arbitration. The Tribunal accordingly dismisses the Respondent's Request.
13. Should the Claimant indicate an intention to resume the arbitration or in the event of any other material change of circumstances, the Respondent may resubmit its Request, amended as may be required.

So ordered by the Tribunal.



Professor Ricardo Ramírez Hernández
(Presiding Arbitrator)

On behalf of the Tribunal

⁴ Request, ¶¶ 64-76.

⁵ Request, ¶¶ 79-88.

⁶ Response, p. 1.

⁷ Response, pp. 2-8.

⁸ Request, ¶ 46(ii).

⁹ Request, ¶ 58.