

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. 5
DOCUMENT PRODUCTION**

The Arbitral Tribunal

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

12 July 2021

I. PROCEDURAL BACKGROUND

1. Pursuant to Procedural Order No. 1, each Party may request the production of documents from the other Party. In accordance with the procedural calendar set out in Procedural Order No. 4, the Parties exchanged their respective document production requests, followed by their responses to the other Party's requests, and replies to the other Party's objections.
2. By respective e-mails of 21 June 2021, the Parties' submitted their outstanding document production requests in the form of Redfern Schedules. The Claimant also submitted a letter setting forth additional comments on the Parties' document production requests.
3. By e-mail of 23 June 2021, the Respondent requested that the Tribunal disregard the Claimant's additional letter or, in the alternative, allow the Respondent to submit a reply. By e-mail of 24 June 2021, the Claimant objected to the Respondent's application.
4. By letter of 25 June 2021, the Tribunal invited the Respondent to submit any comments the Respondent may have on the Claimant's letter dated 21 June 2021 and e-mail of 24 June 2021, without prejudice to the Tribunal's decision on whether to disregard the submissions made by the Parties separately from their respective Redfern Schedules.
5. By letter of 28 June 2021, the Respondent submitted its comments on the Claimant's letter dated 21 June 2021 and e-mail of 24 June 2021.
6. The Tribunal notes that for the purposes of this decision it has not found it necessary to refer to any of the submissions made by the Parties separately from their respective Redfern Schedules.

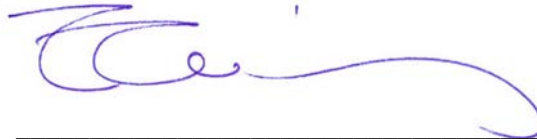
II. DECISION

7. Paragraph 5.2(d) of Procedural Order No. 1 provides that "[t]he Tribunal shall rule on any outstanding requests, and may for this purpose refer to the *IBA Rules on the Taking of Evidence in International Arbitration 2010*."
8. Having carefully considered the Parties' requests, objections, and replies, the Tribunal's decisions on the outstanding document production requests are set out in the Redfern Schedules appended to this Order as **Annex A** (Claimant's Redfern Schedule) and **Annex B** (Respondent's Redfern Schedule).
9. The Tribunal grants certain requests only in part, finding that these requests were overbroad and that the relevance and materiality of the remainder of the requested category has been insufficiently established at this stage.
10. The Tribunal has generally rejected the Respondent's objections based on privilege under Article 9.2(b) of the IBA Rules due to the failure identify the specific document(s) or portion(s) thereof containing privileged information, as well as the legal basis for the assertion of privilege. Similarly, the Tribunal has rejected certain objections based on political or institutional sensitivity under Article 9.2(f) of the IBA Rules due to the failure to identify the precise information that is considered politically or institutionally sensitive as well as the legal basis upon which it should be so classified.
11. Notwithstanding the foregoing, where a Party asserts legal privilege in relation to a particular document or part thereof that is responsive to a request that has been accepted by the other Party

or granted by the Tribunal, the Party claiming privilege shall provide a privilege log, setting forth for each such document the following information:

- (a) the author(s);
 - (b) the recipient(s), specifying which of the recipients are direct recipients and which were copied;
 - (c) the subject matter of the document or portion thereof claimed to be privileged;
 - (d) the date; and
 - (e) the basis for the claim of privilege.
12. The Tribunal has further taken note of the Respondent's argument that certain documents originating from an EU Member State may not be fully within its control. To the extent that any documents may not be in the Respondent's sole possession, custody, or control, the Respondent is ordered "to use its best efforts . . . to obtain [and produce such] Documents" in accordance with Article 3.10 of the IBA Rules.
13. The Parties are ordered to produce the documents indicated in the Annexes to this Procedural Order by **Monday, 2 August 2021**.

So ordered by the Tribunal.



Professor Ricardo Ramírez Hernández
(Presiding Arbitrator)

On behalf of the Tribunal