

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

PETERIS PILDEGOVICS AND SIA NORTH STAR

(Applicants on Annulment)

v.

KINGDOM OF NORWAY

(Respondent on Annulment)

**ICSID Case No. ARB/20/11
Annulment Proceeding**

**PROCEDURAL ORDER NO. 4
On the Applicants' Second Application for Production of Documents**

Members of the ad hoc Committee

Ms. Lucinda A. Low, President of the *ad hoc* Committee
Prof. Andrea K. Bjorklund, Member of the *ad hoc* Committee
Prof. Dr. Maxi Scherer, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Ms. Leah W. Njoroge

11 June 2025

I. RELEVANT PROCEDURAL BACKGROUND

1. On 6 March 2025, the *ad hoc* Committee (the “**Committee**”) issued Procedural Order No. 3 (“**PO3**”) ruling on a 4 February 2025 request from Mr. Peteris Pildegovics and SIA North Star (the “**Applicants**”) for the Committee to decide (i) whether there should be a document production phase in this proceeding, and if so, (ii) which documents should be ordered to be produced. The Committee’s decisions on the Applicants’ specific requests were set out in the Redfern Schedule attached to PO3. At paragraph 81 of PO3, the Committee noted that its decisions were “without prejudice to the submission of further requests, taking into account the decisions set forth in this Order.” The Committee subsequently set forth a procedural timetable in the event of further requests for document production, pursuant to which the Parties made the following submissions:
 - On 6 May 2025, the Applicants filed a second request for the Committee to decide on the production of documents (the “**Second Application**”), together with a Redfern Schedule; and
 - On 27 May 2025, the Kingdom of Norway (the “**Respondent**”) filed observations on the Second Application (the “**Observations**”), together with its Responses to the Redfern Schedule.

II. PARTIES’ POSITIONS

A. THE APPLICANTS’ POSITION

2. The Applicants state that the Committee allowed the additional production of documents through its ruling in paragraph 81 of PO3. According to the Applicants, they have aimed to keep their request for additional documents targeted, specific, and justified.¹
3. In their cover letter of 6 May transmitting the Second Application, the Applicants noted that, with respect to certain documents subsequently produced by the Respondent as

¹ Second Application, p. 2.

ordered in PO3, they had “referred to some in their Redfern Schedule [accompanying the Applicants’ Second Application] and intend to revert to the Tribunal either this week or next to properly introduce those documents into the record, taking into consideration [S]ection 15.5 of Procedural Order No. 1 [(“PO1”).”

4. By letter of 15 May 2025 (the “**Applicants’ 15 May Application**”), the Applicants sought as follows:

Applicants write to the Committee to formally admit into the record, pursuant to [S]ection 15.5 of Procedural Order No.1 [...] exhibits A-0001 to A-0202, out of an abundance of caution. However, as will be seen, a request may be necessary only for 12 exhibits submitted with the Memorial on Annulment (A-0146 to A-0151, A-0155, KL-064, KL-065, PP-0229 to PP-0231), and for the 45 exhibits which constitute Norway’s document production and which have not yet been submitted into the record (A-0158 to A-0202).

B. THE RESPONDENT’S POSITION

(1) On the Second Application

5. The Respondent objects to the Second Application, “save in certain limited respects (where Norway has offered the document as part of its Counter-Memorial on Annulment).”² The Respondent argues that the Applicants have not identified any circumstances to justify further document production according to Section 14.2 of the Committee’s PO1 and paragraph 45 of PO3.³
6. However, the Respondent does not object to the production of certain documents in the interests of efficiency and economy, without further waiver of privilege and without prejudice to its position regarding their relevance and materiality.⁴ These include: (a) the documents specifically offered by Norway in its Counter-Memorial in response to Request Nos. 4 – 5; (b) other general non-privileged information (such as Norway’s framework

² Observations, para. 1.

³ Observations, para. 2.

⁴ Observations, para. 15.

agreements in Request Nos. 6 – 7); and (c) exchanges between Norway’s external counsel and Mr. Andrew Flower sought in Request No. 15.⁵

7. The Respondent refers to the Committee’s observations set forth in paragraphs 50, 57 and 65 of PO3 with respect to Glimstedt ZAB SIA, KPMG AS and Wikborg Rein in support of its position regarding the irrelevance and non-materiality of documents relating to these third parties.⁶
8. The Respondent makes three arguments in relation to its privileged documents. First, the Respondent argues that the Applicants’ request for Norway’s general practice of hiring firms (Request No. 1) and post-engagement materials (Request Nos. 10 – 13) are irrelevant to the question whether the Respondent hired outside counsel with conflicts to secure an unfair advantage.⁷
9. Second, the Respondent argues that the Applicants offer no justification of their entitlement to request such information “*now*.” The Respondent states that only Norway’s “pre-engagement” conduct with these firms, which has already been disclosed by the Respondent, is relevant and material. Further, none of the Applicants’ requests in the Second Application suggest that the Respondent’s disclosed documents support the Applicants’ allegation that the Respondent gained access to confidential information. According to the Respondent, the document referred to in Request No. 10 (which was already produced by the Respondent in response to the Applicants’ First Application and designated by the Applicants as A-0159) in fact demonstrates that no privileged information was sought as KPMG AS’s role was to investigate through open-source media searches. In the Respondent’s view, while the Applicants appear to argue that KPMG AS’s acting in “manifest” conflict of interest in is itself a reason for disclosure of privileged

⁵ Observations, para. 16.

⁶ Observations, paras. 4 – 5.

⁷ Observations, paras. 6 – 8.

documents in relation to material from KPMG AS, as well as from Kroll and Wikborg Rein, its argument is neither supported by any authority nor any justification.⁸

10. Third, the Respondent argues that its voluntary disclosure of one specific post-engagement privileged document relating to the alleged “report on quantum” does not change its position on the irrelevance of post-engagement documents to the Applicants’ allegations. The Respondent only disclosed the document to disprove the Applicants’ allegations of fraud.⁹

(2) On the Applicants’ 15 May Application Regarding Admission of Further Documents

11. The Respondent does not formally oppose the Applicants’ 15 May Application to submit further documents into the record. The Respondent, however, rejects the Applicants’ claim that the Respondent agrees to the existence of “special circumstances” that allow the submission of further documents according to Section 15.2 of PO1.¹⁰

(3) On the Respondent’s Request Regarding Mr. Pildegovics’ Undertaking

12. The Respondent makes certain requests in relation to Mr. Pildegovics’ undertaking of 14 November 2024, referred to by the Committee in paragraph 34 of its Procedural Order No. 2 dated 20 December 2024 (“PO2”).¹¹ The Respondent requests that the Committee (a) confirm the Respondent’s understanding that “duration” for which the undertaking is “irrevocable” should continue until any sums payable as a result of the Committee’s decision are in fact paid in full, and (b) order that the Applicants, and specifically Mr. Pildegovics, give express written confirmation that the undertaking given by him

⁸ Observations, paras. 9 – 12.

⁹ Observations, paras. 13 – 14.

¹⁰ Observations, para. 20.2.

¹¹ Observations, para. 21.

individually and on behalf of Applicant SIA North Star is irrevocable until such time as all sums ordered by the Arbitral Tribunal or by the Committee have been paid.¹²

III. ANALYSIS

13. The Committee recalls its analysis in PO3 concerning the standard of “exceptional circumstances” for document production in these proceedings which it established in PO1:

44. *The Committee considers that it has the power and authority to order document production in this annulment proceeding under its general authority to manage the proceeding, but as indicated in section 14.2 of [PO1], “special circumstances” justifying document production should be present. As Section 14.2 of [PO1] also makes clear, the burden is on the Applicants, as the Party seeking document production, to establish those circumstances: “the Committee will decide, based on a reasoned application from the Applicants, whether special circumstances exist that justify permitting a document production phase.”*

45. *[PO1] does not elaborate on what those “special circumstances” might be. But it is implicit in the concept that such circumstances must go beyond the criteria that are typically considered in arbitral proceedings, such as of prima facie relevance, materiality, proportionality and burden, and custody/control. The Committee’s view is that document production is an exceptional measure in the context of annulment proceedings. Not only must the requested documents be shown to be prima facie highly relevant to the stated grounds for annulment, but they must also be shown with particularity to be necessary at the specific stage of the proceedings. ...*

14. The Committee has carefully considered the Applicants’ requests in their Second Application. Its decision on those requests is set forth in the “Committee’s Decision” column of the Redfern Schedule attached hereto. That column also contains the decisions

¹² Observations, paras. 22 – 23.

of the Committee on the requests made in the Redfern Schedule for admission of documents into the record.

15. Regarding the Applicants' 15 May Application concerning the admission of further documents into the record, the Committee accepts their admission.
16. Finally, regarding the Respondent's requests concerning Mr. Pildegovics' undertaking, the Committee confirms the Respondent's understanding that the "duration" for which the undertaking is "irrevocable" should continue until any sums payable as a result of the Committee's decision are in fact paid in full, and considers it reasonable to order confirmation of the same from Mr. Pildegovics.

IV. ORDER

17. In relation to the Applicants' Second Document Production Requests, document production and admission into the record is ordered consistent with the Committee's decisions set forth in the Redfern Schedule attached hereto.
18. The Committee further orders that Mr. Pildegovics provide express written confirmation within ten (10) days hereof that the undertaking given by him individually and on behalf of Applicant SIA North Star is irrevocable until such time as all sums ordered by the Arbitral Tribunal or by the Committee have been paid.

On behalf of the *ad hoc* Committee,

[signed]

Ms. Lucinda A. Low
President of the *ad hoc* Committee
Date: 11 June 2025