

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**PETERIS PILDEGOVICS
SIA NORTH STAR**

Applicants on Annulment

v

KINGDOM OF NORWAY

Respondent on Annulment

(ICSID Case No. ARB/20/11 – Annulment Proceeding)

**NORWAY’S RESPONSE TO THE APPLICANTS’ SECOND DOCUMENT
PRODUCTION APPLICATION**

27 May 2025

A. INTRODUCTION

1. Norway refers to the Applicants' second application for document production dated 6 May 2025 (the "**Second Application**"). For the reasons set out in this response (Norway's "**Second Response**") and the accompanying Redfern Schedule, Norway objects to the Applicants' Application save in certain limited respects (where Norway has offered the document as part of its Counter-Memorial on Annulment).

B. SAVE IN LIMITED CIRCUMSTANCES, NO FURTHER DOCUMENT PRODUCTION IS REQUIRED

2. There is no further Document Production required in this case. Pursuant to the *ad hoc* Committee's Procedural Order No. 1 ("**PO-1**"), it is for the Applicants to submit a "*reasoned application*" establishing that "*special circumstances exist*" to justify yet further Document Production (see ¶14.2). As the *ad hoc* Committee stated in Procedural Order No. 3 ("**PO-3**") ¶45, these "*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*".
3. In Norway's view, no such circumstances have been identified by the Applicants. In addition to the detail contained in its responses to the Applicants' Second Redfern Schedule, Norway addresses the position in relation to Norway's privileged documents in general terms as follows.
4. *First*, the Applicants' requests miss the relevant touchstone of relevance and materiality by some margin. As the *ad hoc* Committee has set out in PO-3 ¶50:

Where, as here, the question is whether the Respondent has gained an improper advantage from COIs, the ultimate focus of the Committee must be on the existence of actual, rather than apparent, COIs, and whether the Respondent knowingly and deliberately took advantage of them in the arbitral proceedings. This focus should in turn inform any decisions of the Committee with respect to production of documents on these issues.

5. Thus, in response to the First Application, the *ad hoc* Committee considered as follows:

In relation to Glimstedt ZAB SIA:

57. *As reflected in the "Committee's Decision" column of the attached Redfern Schedule, the Committee is not persuaded that special circumstances have been sufficiently established by the Applicants at this time to justify*

ordering further documents in response to the Glimstedt-related items in the Request. In particular, the Committee considers that requests for work product and requests for access to privileged documents spanning the course of the Respondent's relationship with Glimstedt concerning this case have not been sufficiently justified. The record already contains documents such as invoices that reflect the nature of the services performed by Glimstedt during the limited period over the course of the arbitral proceedings where it acted for the Respondent. The Committee therefore considers that establishing special circumstances for Glimstedt's work product would require a much more particularized showing than the current requests reflect. The same is true for internal privileged documents. The Applicants have not justified having access to all of Glimstedt's records to be able to search for documents that may support its position. The Committee will not permit the Applicants to engage in simply trolling for documents. As reflected in the attached Redfern Schedule, certain requests have therefore been denied.

In relation to KPMG AS:

65. The Committee declines to order any further production at this time beyond those documents that the Respondent has agreed to voluntarily produce. This decision is without prejudice to the ability of the Applicants to make a subsequent production request following the submission by the Respondent of its Counter-Memorial on Annulment. As with the requests relating to Glimstedt, the Committee considers that it is reasonable to anticipate that the documents to be voluntarily produced and the Counter-Memorial will shed further light on these issues and permit the Applicants to refine any renewed requests. The Committee reiterates that it will not approve any renewed requests that are overly broad or are not directly probative as to the central COI issue as set forth earlier in this Order.

And, in relation to Wikborg Rein:

76. As to the remaining requests, the Committee considers that they are not ripe for decision in view of the proffered productions and the pendency of the Respondent's Counter-Memorial on Annulment in which, it has been represented, additional light will be shed on the COI issues. The Committee strongly encourages the Respondent to provide as much factual detail as possible in its Counter-Memorial on all third-party engagements discussed in this Order, given the appearance of COI as noted earlier and the factual nature of the ultimate questions to be decided. The current denial is without prejudice to the Applicants making a subsequent request following submission of the Counter-Memorial. As stated by the Committee with respect to Glimstedt and KPMG AS, however, the Committee considers that any such subsequent requests should be substantially narrower and more refined than the current ones.

77. Moreover, the Committee sees no basis at this time for a request for production of the Kroll report or other work product from investigative services provided by Kroll or other investigative firms (items nos. 26 and 27 of the Request). There is nothing inherently suspect about the engagement of an investigative firm in connection with a dispute of this nature. While the Applicants infer that it was prompted by information improperly

obtained, this has not been demonstrated to the Committee's satisfaction. Indeed, the retention of an investigative firm to search for information could be argued to indicate a lack of information.

6. This case is not an opportunity for the Applicants to seek documents relating to Norway's hiring of external advisors in general terms; nor is it a chance for the Applicants to go fishing for privileged material. As the *ad hoc* Committee has noted, the question is whether Norway intentionally hired outside counsel with conflicts in order to secure an unfair advantage.
7. Thus, the Applicants' requests concerning Norway's general practice of hiring firms, and its generally applicable guidelines (Request No 1), are irrelevant.
8. So too are the requests for post-engagement materials. In several requests, the Applicants seek privileged work product, including "*all drafts and final versions*" of reports produced by firms hired by Norway (see Requests Nos. 10-13) or post-engagement communications with the firms hired by Norway. These are not relevant to the reasons for the preceding decision to hire the firm.
9. *Secondly*, the Applicants do not seriously attempt to justify the implicit assertion that they are *now* entitled to request such information. They are not.
10. The allegations against Norway made in the annulment Application have not been amended by the Applicants. The allegation against Norway is that it *intentionally* retained firms with conflicts in order to obtain the confidential information concerning the Applicants and thereby gain an upper hand in the Arbitration. It is, therefore, only Norway's pre-engagement conduct with these firms, which has already been disclosed by Norway, which is relevant and material.
11. It is notable that none of the Applicants' Second Requests suggests that those documents already disclosed by Norway support the Applicants' allegation that Norway intentionally sought to gain access to confidential information concerning the Applicants. They plainly do not. The document referred to in Request No. 10 (which have been produced by Norway in response to the Applicants' First Application, and which the Applicants have designated **A-0159**) in fact demonstrates that no privileged information was sought. The document expressly states that KPMG AS's role was to undertake *inter alia*:

En overordnet integrity due diligence som vil kartlegge tvistesaker selskapene kan være involvert i, aktive granskingssaker mot selskapene. Dette gjøres gjennom mediasøk (open source)

[An overall integrity due diligence that will map disputes the companies may be involved in, active investigation cases against the companies. This is done through media searches (open source)]

(emphasis added).

12. What the Applicants now appear to say is that the very fact that the KPMG AS was acting in “*manifest*” conflict of interest in relation to Seagourmet AS is itself a reason for disclosure notwithstanding privilege in relation to material from KPMG AS, as well as from Kroll and Wikborg Rein. But:
 - 12.1. that allegation is not supported by any authority cited by the Applicants and there is no applicable exception to privilege (notably, the Applicants no longer appear to allege fraud/iniquity); and
 - 12.2. there would in any event be no justification for disclosure of material prepared by Wikborg Rein and/or Kroll. It is to be recalled that there is no pleaded allegation relating to Kroll acting in conflict of interest in any event.
13. *Thirdly*, it should be recalled that Norway has disclosed only one post-engagement privileged document – and it did so voluntarily, and without wider waiver of privilege. This was the alleged ‘report on quantum’. That document was unique: the Applicants specifically referred to that document in their Annulment Memorial, paragraphs 237-240 and alleged that it demonstrated that Norway lied to the Tribunal. Indeed, as the Applicants said in their First Application for document production at paragraph 32: “*Norway actually had a damages report ready to go*”.
14. That allegation has now been disproven by the document itself. But the fact that Norway voluntary chose to disclose that document due to the serious allegations made by the Applicants does not change the position that post-engagement documents are irrelevant to the allegations being made by the Applicants. That document was in a different category to the others, because it was said to contain evidence of the alleged fraud.

C. NEVERTHELESS, NORWAY HAS VOLUNTEERED CERTAIN FURTHER DOCUMENTS

15. Without prejudice to the above, Norway has not objected to the production of certain further documents in its response to the Second Redfern. It has done so to put these matters to rest once and for all, in the interests of efficiency and economy and without any further waiver of privilege, and without prejudice to its position regarding their relevance and materiality.
16. These documents include: (a) the documents specifically offered by Norway in its Counter-Memorial in response to Requests 4-5; (b) other general non-privileged information (such as Norway's framework agreements at Requests 6-7); and (c) exchanges between Norway's external counsel and Andrew Flower sought in Request 15 – without prejudice to Norway's position on their relevance.

D. THE APPLICANTS' APPLICATION REGARDING ADMISSION OF FURTHER DOCUMENTS

17. Norway refers to the Applicants' letter of 15 May 2025 regarding the admission of further documents to the record.
18. PO-1 paragraph 15.2 provides as follows:

Neither party shall be permitted to submit additional or responsive documents after the filing of its last written submission, unless the Committee determines that special circumstances exist based on a timely and reasoned written application followed by observations from the other party.

19. Norway's position is as follows:
20. Norway has always complied with PO-1's order that further documents may only be submitted once the *ad hoc* Committee has determined that special circumstances exist, based on a reasoned request. It is for this reason that Norway specifically sought permission to submit the so-called 'damages report' in its Counter-Memorial. It is only because the *ad hoc* Committee granted that permission (PO-3, paragraph 75) that Norway submitted it in its Counter-Memorial.
- 20.1. By contrast, the Applicants have been submitting documents following the adoption of PO-1, including several accompanying their Memorial, without any

apparent attempt to comply with the conditions set in PO-1. The Applicants' letter of 15 May 2025 is something of an afterthought.

- 20.2. Norway will not, however, formally oppose the application. If the *ad hoc* Committee is satisfied that the requisite special circumstances exist, Norway will not oppose their inclusion in the record. However, Norway rejects the Applicants' claim, in their letter of 15 May 2025 (page 4, sixth paragraph), that "*Norway agrees "special circumstances" exist*".

E. NORWAY'S REQUEST REGARDING MR PILDEGOVICS' UNDERTAKING

21. The Committee will recall its observation in paragraph 34 of Procedural Order No. 2 that

Mr. Pildegovics, has already provided an undertaking, on a joint and several basis, in response to the Committee's Decision on the Request for a Continuation of the Stay of Enforcement of the Award, which covers the costs of these proceedings as well as interest accrued on the Award.

22. That observation refers to Mr Pildegovics' undertaking of 14 November 2024, which is stated to be "*irrevocable for the duration of these annulment proceedings*". That undertaking can only have any practical application to the costs of these proceedings and interest accrued on the Award if it continues to be irrevocable until any sums that become payable as a result of the Committee's decision on the application for annulment are in fact paid in full. It is in that sense that "*the duration of these annulment proceedings*" must be understood.
23. Norway accordingly requests that the Committee (a) confirm that this understanding is correct, and (b) order that the Applicants, and specifically Mr Pildegovics, give express written confirmation that the joint and several undertaking given by him individually and by him on behalf of Applicant SIA North Star, recorded in the document of 14 November 2024, is irrevocable until such time as all sums ordered by the Arbitral Tribunal or by the *ad hoc* Committee to be paid by the Applicants to Norway have been paid.

F. CONCLUSION

24. For the reasons set out above, Norway respectfully requests the Committee to deny the Applicants' Second Application for Document Production save insofar as Norway has not objected to a request to produce documents or has offered the document as part of its Counter-Memorial on Annulment, and to make the order sought above.

27 May 2025

Respectfully submitted on behalf of the Kingdom of Norway

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