

Royal Norwegian Ministry of Trade, Industry  
and Fisheries

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27 February 2017, Vilnius

## NOTICE OF THE DISPUTE

Pursuant to agreement between the Government of the Republic of Lithuania and the Government of the Kingdom of Norway on the Promotion and Mutual Protection of Investments, agreement between the Government of the Republic of Latvia and the Government of the Kingdom of Norway on the Promotion and Mutual Protection of Investments (the "BITS") and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "Convention") Lithuanian company UAB "ARCTIC FISHING" and the Latvian company SIA North Star (the "Claimants") hereby submit their Notice of the dispute to the Kingdom of Norway (the "Respondent") against Respondent actions which infringe BITS requirements and cause the damages for Claimants.

Claimants are fishing companies that have invested their capital in the crab catching activities in the Norwegian continental shelf in the Barents Sea (the "Norway's administered maritime zones").

After Claimants invested their capital in Kingdom of Norway and started crab fishing in the Norway's administered maritime zones, Respondent began a campaign of harassment against Claimants for political reasons.

Respondent's ongoing harassment has harmed Claimants in many ways. As we will explain in this Notice of the dispute:

- Respondent arrested fishing vessels owned by Claimants selectively and illegally suspended Claimants fishing activities;
- Respondent refused to issue for Claimants the Norwegian authorizations of crab fishing.

Through its continuing harassment of Claimants and illegal actions, Respondent has violated the BITS. Claimants reserve their right to supplement their Notice of the dispute in response to Respondent's ongoing conduct and any future such steps against Claimants.

General information on the Claimants:

|   |                      |                |
|---|----------------------|----------------|
| 1. Surname<br>and<br>forename<br>of<br>claimants: | UAB "ARCTIC FISHING" | SIA North Star |
| 2. Represented by:                                | Justinas Poderis     |                |



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|---------------------------------|---|--|
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| 3.Address registered office     | or  | Enterprise registered in Lithuania, legal entity code 302567657, Community fleet register number LTU000000359, address Jogailos str. 4 |
|                                 |   | Enterprise registered in Latvia, legal entity code 40103765463, address Rīga, Miera iela 87A-13, LV-1013                               |
| 4.Telephone/fax/e-mail address: |   | info@arcticfishing.lt  |
|                                 |   | +371 63 420 589  |

## I. FACTUAL BACKGROUND

Until 2016 Respondent allowed Claimants to invest their capital in crab fishing activities in Norway's administered maritime zones.

The investor SIA North Star from 2014 until 2016 has purchased 6 fishing vessels designed for crab fishing in Norway's administered maritime zones. Also during this period the company invested in special equipment designated for fishing and production delivery purposes. First vessel f/v Solvita (flag Latvia, IMO 8721765) was purchased from Korea and started fishing in 2014. Three more vessels f/v Solveiga (Latvia, IMO 8520173), f/v Saldus (Latvia, IMO8423155) purchased from Korea and f/v Senator (Latvia, IMO 6812986) started catching in 2015.

The investor UAB "ARCTIC FISHING" from 2014 until 2016 has purchased 3 fishing vessels designed for crab fishing in Norway's administered maritime zones. Also during this period the company invested in special equipment designated for fishing and production delivery purposes.

All of Claimants vessels were catching legally and with knowledge and approval from Norwegian authorities to unload the production in Norway's ports.

However, on 2016 Norwegian authorities began a campaign of harassment against Claimants:

1. On 15 July 2016 UAB "ARCTIC FISHING" vessel "Jūros vilkas" (IMO 7814632) was arrested by Norwegian Coast guard (Norwegian state enforcement agency) at the port of *Batsfjord*, despite that:
  - Vessel "Jūros vilkas" (IMO 7814632) had duly authorized certificate issued by the Fisheries Service under the Ministry of Agriculture of the Republic of Lithuania (the "Lithuanian Fisheries Service") dated 2 May 2014, authorising vessel "Jūros vilkas" to fish for crab (annex No 1).
  - UAB "Arctic Fishing" had duly authorised permit of the Lithuanian Fisheries Service to catch crab. The permit authorized UAB "Arctic Fishing" to fish for crab in the 27.1.A (NEAFC) fishing area for the period of 1 January 2016 - 31 December 2016. Permit for UAB "Arctic Fishing" was cleared before the European Union competent authorities (annex No 2).

- On 14 July 2016 vessel “Jūros vilkas“ obtained the permission from Norwegian state authorities to unload the crab catch at the port of Batsfjord. The permission clearly indicates that crab has been caught legally in accordance with the permit conditions (annex No 3).
2. In September 2016 SIA North Star vessel “Senator” (IMO 6812986) was arrested by Norwegian Coast guard (Norwegian state enforcement agency), despite that:
    - Vessel had duly authorized certificate issued by the Latvian authorities, authorising vessel “Senator“ to fish for crab.
    - The company had duly authorised permit to catch crab.
  3. On 16 January 2017 SIA North Star vessel “Senator” (IMO 6812986) was arrested again by Norwegian Coast guard (Norwegian state enforcement agency) (annex No 4), despite that:
    - The vessel “Senator” had duly authorized licence issued by the Latvian Government authorising vessel to fish for crab;
    - Vessel’s fishing licence was based on the EU Regula approved by the Council of Ministers on 13-12-2016. Also, it is noted that European Commission adopted regulation (EU) 2017/127 fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters (the “Regulation”). The Regulation has authorised 4 Lithuanian vessels and 11 Latvian vessels to catch crab in Svalbard zone which is administered by Respondent as one of the Norway’s administered maritime zones.
  4. Respondent started to ignore all Lithuanian Fisheries Service requests to allow UAB “ARCTIC FISHING” vessels to catch crab in accordance with Norwegian internal legislation (annex No 5).

## II. LEGAL BASIS FOR CATCHING OF SNOW CRAB

### 1. NEAFC Convention

In general, utilisation of the fishery resources of the North-East Atlantic area, including Norway’s administered maritime zones, falls under the scope of the Convention on Future Multilateral Cooperation in Northeast Atlantic Fisheries<sup>1</sup> (the “NEAFC Convention”).

Article 1(1):

*“The Convention Area” means the areas (see map in Annex 7):*

*(a) within those parts of the Atlantic and Arctic Oceans and their dependent seas which lie north of 36° north latitude and between 42° west longitude and 51° east longitude, but excluding:*

*(i) the Baltic Sea and the Belts lying to the south and east of lines drawn from Hasenøre Head to Gniben Point, from Korshage to Spodsbjerg and from Gilbjerg Head to the Kullen and*

*(ii) the Mediterranean Sea and its dependent seas as far as the point of intersection of the parallel of 36° latitude and the meridian of 5°36’ west longitude*

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<sup>1</sup> Adopted on 18 November 1980 and entered into force in 1982. It replaced the earlier 1959 North-East Atlantic Fisheries Convention.

*(b) within that part of the Atlantic Ocean north of 59° north latitude and between 44° west longitude and 42west longitude.”*

Pursuant to Article 7(e-f) of the NEAFC Convention, the North East Atlantic Fisheries Commission (the “NEAFC”) has exclusive competence to establish binding total allowable catches within and their allocation to Contracting Parties of the NEAFC Convention also to regulate the amount of fishing effort as well as its allocation to Contracting Parties of the NEAFC Convention.

## **2. Svalbard treaty**

Pursuant to the Treaty of Paris of 1920<sup>2</sup> (the “Svalbard treaty”) Norway undertook the non-discrimination obligation towards persons of the contracting states, including EEA member states, concerning right to engage in fishing.

Article 1:

*“The High Contracting Parties undertake to recognise, subject to the stipulations of the present Treaty, the full and absolute sovereignty of Norway over the Archipelago of Spitsbergen, comprising, with Bear Island or Beeren-Eiland, all the islands situated between 10° and 35° longitude East of Greenwich and between 74° and 81° latitude North, especially West Spitsbergen, North-East Land, Barents Island, Edge Island, Wiche Islands, Hope Island or Hopen-Eiland, and Prince Charles Foreland, together with all islands great or small and rocks appertaining thereto <...>”.*

Article 2:

*“Ships and nationals of all the High Contracting Parties shall enjoy equally the rights of fishing and hunting in the territories specified in Article 1 and in their territorial waters.*

*Norway shall be free to maintain, take or decree suitable measures to ensure the preservation and, if necessary, the reconstitution of the fauna and flora of the said regions, and their territorial waters; it being clearly understood that these measures shall always be applicable equally to the nationals of all the High Contracting Parties without any exemption, privilege or favour whatsoever, direct or indirect to the advantage of any one of them. <...>”*

Article 3:

*“The nationals of all the High Contracting Parties shall have equal liberty of access and entry for any reason or object whatever to the waters, fjords and ports of the territories specified in Article 1; subject to the observance of local laws and regulations, they may carry on there without impediment all maritime, industrial, mining and commercial operations on a footing of absolute equality.*

*They shall be admitted under the same conditions of equality to the exercise and practice of all maritime, industrial, mining or commercial enterprises both on land and in the territorial waters, and no monopoly shall be established on any account or for any enterprise whatever.*

*Notwithstanding any rules relating to coasting trade which may be in force in Norway, ships of the High Contracting Parties going to or coming from the territories specified in Article 1 shall have*

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<sup>2</sup> Treaty between Norway, The United States of America, Denmark, France, Italy, Japan, the Netherlands, Great Britain and Ireland and the British Overseas Dominions and Sweden Concerning Spitsbergen Signed in Paris 9 February 1920.

*the right to put into Norwegian ports on their outward or homeward voyage for the purpose of taking on board or disembarking passengers or cargo going to or coming from the said territories, or for any other purpose.*

*It is agreed that in every respect and especially with regard to exports, imports and transit traffic, the nationals of all the High Contracting Parties, their ships and goods shall not be subject to any charges or restrictions whatever which are not borne by the nationals, ships or goods which enjoy in Norway the treatment of the most favoured nation; Norwegian nationals, ships or goods being for this purpose assimilated to those of the other High Contracting Parties, and not treated more favourably in any respect.”*

Article 7:

*“With regard to methods of acquisition, enjoyment and exercise of the right of ownership of property, including mineral rights, in the territories specified in Article 1, Norway undertakes to grant to all nationals of the High Contracting Parties treatment based on complete equality and in conformity with the stipulations of the present Treaty. <...>”*

According to provisions of the Svalbard treaty cited above, all Parties to the Treaty are granted with an equal and non-discriminatory access to resources, in particular with respect to fishing activities, including fishing for sedentary species on the continental shelf around Svalbard archipelago.

### **3. Regulation**

Regulation states that: *“As regards the fishing opportunities for snow crab around the area of Svalbard, the Treaty of Paris of 1920 grants an equal and non-discriminatory access to resources for all parties to that Treaty, including with respect to fishing. The Union's view of this access as regards fishing for snow crab on the continental shelf around Svalbard has been set out in a note verbale to Norway dated 25 October 2016, in respect of a Norwegian regulation of the fishing for snow crab on its continental shelf, which in the Union's view disregards the specific provisions of the Treaty of Paris and in particular those laid down in Articles 2 and 3 thereof”*. The Regulation has authorised 4 Lithuanian vessels and 11 Latvian vessels to catch crab in Svalbard zone.

### **III. RESPONDENT'S BITS BREACHES**

In accordance with the article 1 of the BITS the term “territory” *inter alia* includes territorial sea, as well as the continental shelf over which the state concerned exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas.

Consequently, Respondent illegal actions in the Norway's administered maritime zones fall under the scope of the BITS.

Claimants also have “investments” within the meaning of Article 1 of the BITS and Article 25(1) of the Convention. Although Article 25 of the Convention does not itself provide a definition of “investment,” significant, long-term interests in property, fishing equipment and delivery of the production, such as Claimants' interests in Kingdom of Norway, are all understood to constitute investments under any reasonable definition. Under ICSID jurisprudence, these are investments within the meaning of Article 25(1).

Respondent's acts concerning Claimants' investments in Norway have violated the legal protections afforded to Claimants under the BIT. Respondent's measures have violated a number of the BITS' provisions, including the following:

First, Respondent has violated its obligation under BITS to provide “fair and equitable treatment” to Lithuanian and Latvian investors in Kingdom of Norway.

Second, Respondent has violated its obligation under the article 3 of BITS to provide full protection and security to Claimants’ investments. According to BITS, Lithuanian and Latvian investments in Norway shall enjoy full and complete protection and security.

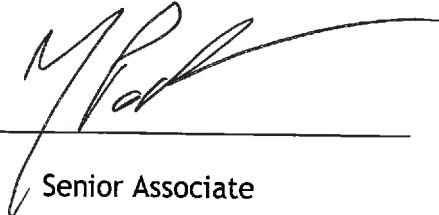
Third, Respondent has violated its obligation not to expropriate Claimants’ investments without compensation.

Fourth, Respondent has violated its obligation not to discriminate against Lithuanian and Latvian investors in favour of Kingdom of Norway nationals or nationals of third states, for instance Russian investors.

#### **IV. REQUESTS**

Due to above considerations, we hereby request the Kingdom of Norway to discontinue the discriminatory and illegal actions against Claimants and to initiate negotiations in accordance with BITS requirements.

On behalf of UAB “ARCTIC FISHING” and SIA North Star

A handwritten signature in black ink, appearing to read 'J. Poderis', is written over a horizontal line. The signature is fluid and cursive.

Senior Associate

Justinas Poderis