

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' DOCUMENT PRODUCTION
APPLICATION**

18 February 2025

A. INTRODUCTION

1. Norway refers to the Applicants' application for document production dated 4 February 2025 (the "**Application**") and submitted with reference to paragraph 14(2) of the Ad Hoc Committee's Procedural Order No. 1 of 8 November 2024 ("**PO#1**").
2. In brief summary, Norway's position on the Application is as follows.
3. *First*, no document production should be ordered before Norway has submitted its Counter-Memorial on Annulment, due on 22 April 2025:
 - 3.1. Only after that stage will the *ad hoc* Committee have received Norway's full responsive case on the merits of the annulment request, and only then can the Committee properly consider what is in issue and what is *relevant* for disclosure, let alone whether special circumstances exist to justify document production in this case.
 - 3.2. This will cause no prejudice to the Applicants, who in any event have no further submissions to make until their Reply on Annulment.
 - 3.3. Furthermore, the Applicants advocate for a review of those documents by a third party (which for the avoidance of doubt Norway does not agree to at this stage).¹ It is only right that any such third party, when reviewing those documents, has a written case from the Respondent to determine whether or not a document is relevant and/or falls within a relevant exception to privilege.
4. *Secondly*, and alternatively, should the Committee nevertheless consider that document production should be ordered *now*, Norway disagrees that it should be required to disclose its privileged communications with its counsel and external advisors, for the reasons set out below. The details of Norway's position with respect to the different groups of documents and the justification for it are given in the attached Redfern Schedule.
5. Norway has not exercised its right to apply for the production of additional documents because its primary position is that the application of annulment should be decided by

¹ Application, paras. 41-42.

the Committee according to the criteria listed in ICSID Arbitration Rule 50, based on the material already on file in the underlying case. It does not believe that the Applicants have any documents relevant to the determination of their Annulment application.

6. Finally, Norway does not take any position on inquiries / production from the ICSID Secretariat and/or the Tribunal (Application, paras. 27-28; 36-40) save to note that:

6.1. the Committee must be satisfied that special circumstances exist to justify a request to the Secretariat and/or the Tribunal (which is now *functus officio*); and

6.2. the Committee might be assisted in that inquiry once it has seen Norway's submissions in its Counter-Memorial on Annulment on the relevance of those matters to the request for annulment, having regard to the applicable legal standard for annulling ICSID Awards.

B. NORWAY'S PRIMARY POSITION: NO DOCUMENTARY DISCLOSURE UNTIL NORWAY HAS SUBMITTED ITS COUNTER-MEMORIAL

7. Norway's primary position is that the Committee should only consider any document production once it has seen Norway's Counter-Memorial. There are four principal reasons for this approach.

8. *First*, PO#1 at paragraph 14.2 provides that "*the Committee will decide, based on a reasoned application from the Applicants, whether special circumstances exist that justify permitting a document production phase.*" The Committee thus "*provisionally included a document production step in the timetable*" following the Applicants' Memorial on Annulment but before Norway's Counter-Memorial.

9. In the absence of Norway's Counter-Memorial, which is only due at a later date, the Committee will have at its disposal only the Applicants' presentation of the facts when it shall assess whether special circumstances exist that could merit the inclusion of a document production phase in these proceedings.

10. In Norway's view, the Committee should only consider granting any document production requests once it has read the Counter-Memorial on Annulment. Only then will the Committee be in a position to decide whether the requisite 'special circumstances' exist. The threshold for ordering new documentary disclosure in an

annulment phase is undoubtedly high.² Self-evidently, special circumstances can only exist if the documents sought are relevant and material to the dispute to be determined between the parties. Whilst the Applicants have pleaded their case (both in their Application for Annulment and their Memorial on Annulment), Norway has not yet formally set out its case on any of the grounds of annulment. In particular, Norway has not yet commented on the Applicants' allegations regarding the conduct of Norway and its internal and external counsel.

11. *Secondly*, and on that same point, the Applicants in both their Memorial on Annulment and in their application for production of documents make very serious allegations against Norway (including its internal and external counsel) for allegedly consciously and repeatedly hiring external advisors with conflicts of interest and for lying to the Tribunal. These allegations are unfounded, but they are not new. However, despite making these very serious allegations against Norway for trying to gain an improper advantage in the proceedings through hiring external advisors with inside knowledge of the Applicants' business, the Applicants have not identified a single sentence or piece of information in Norway's more than 600 pages of written pleadings in the case that indicates access to any such information.
12. The Applicants variously describe the behaviour of Norway as “[having] *perpetrated iniquity after iniquity. Those iniquities border on fraud, or at least deceit*”;³ “*apparently improper, if not fraudulent*”;⁴ “*misrepresenting to the Tribunal whether it was in a position to submit a damages report*”;⁵ “*conducting its litigation of the underlying arbitration in bad faith*”.⁶ The Memorial on Annulment goes further, alleging that

² **AL-0034** *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Decision on the Argentine Republic's Application for Annulment of the Award, 29 June 2010, para. 18; **RL-0283-ENG** *RSM Production Corporation v. Grenada*, ICSID Case No. ARB/05/14, Decision on the Application of RSM Production Corporation for a Preliminary Ruling, 7 December 2009, para. 21; **RL-0284-ENG** *Kılıç İnşaat İthalat İhracat Sanayi ve Ticaret Anonim Şirketi v. Turkmenistan*, ICSID Case No. ARB/10/1, Decision on Annulment, 14 July 2015, para. 96; **RL-0285-ENG** *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30, Decision on Annulment, 22 January 2025, para 913.

³ Application, para. 29.

⁴ Application, para. 16.

⁵ Application, para. 17. See also Memorial on Annulment para. 233.

⁶ Application, para. 29.

“Norway simply lied to the Tribunal”.⁷ At the procedural hearing, counsel for the Applicants referred to Norway having committed a “*misrepresentation to the Tribunal*”,⁸ having “*lied to the Tribunal*”,⁹ and committing a “*fraud to [sic: on] the Tribunal*”.¹⁰

13. Norway strongly denies those serious allegations and will address them and explain the circumstances of the approaches to external advisors fully in its Counter-Memorial on Annulment. Before deciding whether any document production is appropriate, the Committee should first have the benefit of Norway’s full written case on these matters.
14. Indeed, Norway considers that, once it has set out its case on these issues in its Counter-Memorial, many of these issues are likely to fall away because, as will be demonstrated, there is no case (*prima facie* or otherwise) that Norway or its internal or external advisors have engaged in improper conduct, and there are therefore no grounds for document production. To order production of those documents now, before Norway has even addressed the serious allegations put to it, is to put the cart before the horse.
15. *Thirdly*, the concerns set out above are all the more acute where the documents that the Applicants seek are—by definition, as the Applicants recognise—confidential and privileged to Norway.¹¹ Before ordering any such production (which will be burdensome, invasive and necessarily reveal information which is confidential to Norway and concerns the legal advice it has received in the course of these proceedings) the Committee must have sight of Norway’s written case.
16. These concerns are compounded by the fact that the Applicants put forward the possibility of dealing with privilege claims by having a third party review the documents to establish whether they fall within the alleged ‘crime/fraud’ exception to privilege. Norway does not agree that any third-party reviewer is necessary, particularly

⁷ Memorial on Annulment, para. 234.

⁸ First Session – Audio Recording at 01:17:03; again at 01:29:04; again at 01:30:12.

⁹ First Session – Audio Recording at 01:28:24; again at 01:28:50.

¹⁰ First Session – Audio Recording at 01:28:30; again at 01:30:20.

¹¹ In the First Session, the Applicants suggested that privilege might not apply because of waiver in submitting costs schedules to the underlying Tribunal. That argument does not feature in the Application or the Requests, which proceed on the (correct) basis that the documents sought are privileged, and the point therefore has been abandoned.

a reviewer who would not have had sight of Norway's full case on the merits of the annulment application. The exercise of determining whether documents tend to reveal some fraud or iniquity on the part of Norway, so as to demand their disclosure despite privilege, is not an exercise that can be undertaken without having sight of what Norway says *actually happened*.

17. *Fourthly*, and contrary to the prejudice Norway will suffer (as set out above) if documentary production is ordered *now*, the Applicants will suffer *no prejudice* if any document production takes place after Norway has submitted its Counter-Memorial on the Annulment in April 2025.
18. The Applicants have no written pleading until their Reply, which is due several weeks after the Counter-Memorial, and would therefore anyway have no chance to deploy any material that might be disclosed until that stage. They therefore lose nothing if the Committee's review of their Redfern Schedule is undertaken with the benefit of sight of Norway's Counter-Memorial.
19. Further, the Procedural Timetable annexed to PO#1 already has built into it sufficient time to deal with document production at a later, post-Counter-Memorial stage: it has alternative dates for the submission of the remaining written pleadings, subject to the position on document production. As such, no further amendment to the Procedural Timetable ought to be required.
20. Norway's primary position is thus that no special circumstances exist in this case that justify adding a document production phase to the procedural calendar, and certainly not at this stage. However, should the Committee decide to include a document production phase now, Norway opposes the requests for documents as far as they are covered by Attorney-Client privilege: its policy is to release such documents only when it is required by the Norwegian Freedom of Information Act or court orders. This alternative submission is explained in the following section, C.

C. NORWAY'S ALTERNATIVE SUBMISSION

C.1. Summary

21. If, contrary to the submissions made above, the Committee decides nevertheless to order a document production phase now, then Norway relies on the following arguments. In Section C.2, Norway describes the facts leading to its instruction of the relevant firms. In Section C.3, Norway responds to allegations that it lied to the Tribunal regarding the preparation of a damages report. In Section C.4, Norway addresses privilege. In Section C.5, Norway responds to the Applicants' requests for three specific documents.

C.2. Factual Background to Norway's Instruction of Various Firms

22. Primarily, it is for law firms who are instructed to ensure that they conduct a check to avoid conflicts of interest before accepting any work from a client. The firms about which the Applicants complain are large and well-reputed firms that had (and must be assumed to have had) all relevant internal processes in place to avoid conflicts of interest.
23. Norway considers that neither its conduct, nor the conduct of its counsel or external advisors, has been improper in any way. Whilst this will be addressed in detail in Norway's Counter-Memorial, Norway offers the following factual account (without any waiver of privilege) of its instruction of Glimstedt ZAB SIA, KPMG AS, and Wikborg Rein.

Glimstedt ZAB SIA

24. As set out in a letter to the Claimants on 24 June 2022,¹² Norway received a letter dated 27 February 2017 titled *Notice of Dispute* from the companies UAB Arctic Fishing of Lithuania and SIA North Star of Latvia,¹³ represented by lawyer Justinas Poderis of Glimstedt, Bernotas & Partners, Vilnius, Lithuania. The exhibits referred to in that Notice of Dispute were never received. On 21 April 2017, Norway responded by registered mail to Mr Poderis, Glimstedt, Bernotas & Partners, Lithuania, rejecting the

¹² **A-0086** Letter of 24 June 2022 from Norway to the Claimants.

¹³ **A-0081** Notice of Dispute of 27 February 2017.

claim. The February 2017 Notice of Dispute was never followed up, and Norway received no further communications on the matter.

25. Three years later, in March 2020, Norway received the Request for Arbitration in the present case, brought by Peteris Pildegovics and SIA North Star. During this *Pildegovics / North Star* arbitration, Norway required legal advice regarding certain matters of Latvian law. In March 2021, (four years after the *UAB Arctic Fishing* Notice of Dispute that never went further) the Norwegian Embassy in Riga was instructed by the Ministry of Foreign Affairs to request legal advice from a Latvian law firm.
26. The instruction to the Embassy was to identify and recommend to the Ministry a well-recognised law firm without any connection to the Claimants. The Embassy contacted several law firms in Latvia, some of which rejected the instruction on the ground of a potential conflict of interest. Norway will, subject to the Committee's permission (PO#1, paragraph 15.5) submit this instruction as an exhibit.
27. Ms Agnese Medne of Glimstedt ZAB SIA confirmed that there was no conflict of interest and was accordingly instructed. Norway has already set out to the Claimants in some detail the nature of the services requested from Ms Medne. Thus, the 24 June 2022 letter from the Respondent to counsel for the Claimants stated that Ms Medne:¹⁴

“has at the request of Norway provided advice on Latvian law and translations of Latvian legislation, including on contract, company and bankruptcy law, and information from public records on inter alia registered mortgages on vessels and the legal protection proceedings that were initiated by SIA North Star. As referred to in your letter, she has also on Norway's behalf requested a copy of a commercial fishing rights lease agreement from the Latvian Ministry of Agriculture. At no time has she provided any confidential or privileged [i.e., confidential or privileged to the Applicants] information of any kind”.

28. Notably, although the Applicants mention this letter in their Memorial, they omit this important paragraph.
29. Norway has not requested any assistance from Glimstedt ZAB SIA in these proceedings since June 2022. The last invoice from the law firm for assistance rendered before the

¹⁴ **A-0086** Letter of 24 June 2022 from Norway to the Claimants.

date of the letter, is dated 6 July 2022. Ms Medne has continued to assist the Norwegian Embassy in Riga in legal matters not related to this case.

30. In a letter of 23 June 2022, when the Claimants' (now Applicants') concerns were raised, Ms Medne had informed them that Glimstedt ZAB SIA was not acting in the conflict of interest when providing legal aid to Norway in relation to the ICSID case.
31. Although in Norway's view, Glimstedt ZAB SIA was not conflicted, Norway decided unilaterally as a courtesy to the Claimants (now Applicants) imminently to abstain from requesting any future advice or assistance from the Latvian law firm Glimstedt ZAB SIA on the ICSID dispute. This was communicated to the Claimants in the letter of 24 June 2022.¹⁵ Norway has since that date not requested, and will not request, any further assistance from Glimstedt ZAB SIA in the present dispute.
32. The Claimants asserted in their response, also dated 24 June 2022, that they had a right to know "*exactly what information transpired between [Glimstedt] and Norway*" and to see "*all communications and documents [...] in any way linked to the present dispute.*" Those documents were requested from Norway, but Norway declined to provide them. In its Procedural Order No. 9,¹⁶ dated 23 February 2023, the Tribunal decided that no decision was required with regard to Glimstedt ZAB SIA. However, the Tribunal gave the Claimants (now Applicants) the following opportunity: "*If the Claimants wish to make an application for disclosure in light of the present decision, they are free to do so.*"
33. The Claimants, now Applicants, never made any such application to the Tribunal for disclosure of documents. The allegations remain now as they did then. The Applicants' current application for document production appears in essence to be a re-run of the arguments made before the Tribunal rendered its Procedural Order No. 9 and an attempt to engage in a fishing expedition for documents whose disclosure they did not request when the Tribunal was seized of the conflict of interest issue. Instead, the Applicants have only taken renewed interest in the production of documents (and also raised the temperature of their rhetoric) following the Tribunal's Award.

¹⁵ **A-0086** Letter of 24 June 2022 from Norway to the Claimants.

¹⁶ **A-0067** Procedural Order No. 9 of 23 February 2023.

KPMG AS

34. Norway has since 2015 had a succession of framework agreements with KPMG AS. These framework agreements work as retainers under which the general terms for assistance are agreed, and concrete services in a particular case can be procured through a simplified procedure with the use of a purchase order (“avropsavtale”). Based on the framework agreement which entered into force in August 2019, a purchase order (“avropsavtale”) was signed by the Legal Affairs Department of the Norwegian Ministry of Foreign Affairs and KPMG AS in December 2020, under which KPMG presented a report relating to the *Pildegovics / North Star* arbitration in January 2021. KPMG have not provided any further services to Norway in the present case.
35. In their Memorial, the Applicants refer to two matters:
- 35.1. First, they state that KPMG Eastern and Central Europe (not KPMG AS) had performed a preliminary damages analysis for North Star in respect of the case. Norway had no knowledge of this analysis until its existence was brought to Norway’s attention through the Claimants’ allegations of conflict of interest, and has never seen that analysis.
- 35.2. Secondly, they state that KPMG AS was auditor of Seagourmet Norway AS for the years 2009 to 2014. Seagourmet Norway AS is not a party to the dispute.
36. Norway confirms that it has not become privy to any information privileged to either the Applicants or to Seagourmet Norway through the services provided by KPMG.
37. In its Procedural Order No. 9 of 23 February 2023, the Tribunal directed Norway not to make any further use of entities within the KPMG network and in particular KPMG AS in the present arbitration. Norway has complied and will continue to comply with this order.

Wikborg Rein Advokatfirma AS

38. Norway had a framework agreement with Wikborg Rein Advokatfirma AS for the acquisition of legal services, from 2014 to 2018. In April 2019 a new framework agreement with Wikborg Rein for the acquisition of legal services entered into force. Based on that agreement a purchase order (“avropsavtale”) was signed by the Legal

Affairs Department of the Norwegian Ministry of Foreign Affairs and Wikborg Rein on 25 May 2021, related to the present dispute.

39. Norway was not aware of any links between Mr Pildegovics and/or North Star and the Lithuanian company UAB Arctic Fishing, other than that SIA North Star and UAB Arctic Fishing were apparently being represented by the same Lithuanian law firm in 2017, and that they later seemed to be both represented by Savoie Laporte, later Savoie Arbitration. Both companies have also been involved in illegal harvesting of snow crab on the Norwegian continental shelf and have been convicted in Norwegian courts for illegal crabbing.
40. UAB Arctic Fishing's 27 February 2017 Notice of Dispute was never pursued beyond the initial letter. There is no indication of any close connection between Mr Pildegovics and/or North Star on the one hand and UAB Arctic Fishing on the other in the submissions made by the Claimants in the present dispute. There are a number of references to the criminal case against UAB Arctic Fishing in the Claimants' Memorial, but then only as references to a matter of fact.
41. Leaving that aside, Norway has confirmed with Wikborg Rein that none of the lawyers involved in the present *Pildegovics / North Star* dispute were involved in the *UAB Arctic Fishing* criminal case, nor did any of them know about its existence or at any time accessed that case file. Nor is it clear what confidential information could have been found in that case that would have had any bearing on the *Pildegovics / North Star* dispute.
42. In the Tribunal's February 2023 Procedural Order No. 9, the Tribunal rejected the Claimants' request for an order that Wikborg Rein be excluded as counsel or advisor for Norway in the present arbitration. In PO#1 in these annulment proceedings, the Committee decided that out of an abundance of caution and without prejudging the merits of the Applicants allegation, it would not be appropriate for Wikborg Rein to be involved in these proceedings while the issue of conflict of interest is still pending. In its letter to the Committee dated 12 November 2024, Norway confirmed that it will not involve Wikborg Rein in any capacity in these proceedings until the Committee has considered the conflict-of-interest issue related to Wikborg Rein's possible involvement. Norway has observed and continues to observe that commitment.

43. Norway considers that its conduct in these matters is in no way improper and resents the Applicants' unfounded accusations.

C.3. Damages Report

44. A key plank of the Applicants' Memorial and requests for document production concern an allegation that Norway "*misled the Tribunal to gain bifurcation of damages*". See the Memorial at paragraphs 233-241.
45. The Application at paragraph 32 alleges that "*Norway actually had a damages report ready to go*". That is simply untrue. Norway seeks the Committee's permission pursuant to PO#1 paragraph 15.5 to introduce the report as a new exhibit. The document confirms that Wikborg Rein were simply instructed to conduct "*an analysis of quantum of the Claimants' alleged claim for damages in the case*" and report on gaps and weaknesses in Claimants' case as set out in their Memorial. It was not a damages report of any sort, and Norway at no stage commissioned any substantive submission on quantum setting out what it considered to be a 'correct' approach to damages in this case. Norway's position was, and is, that no damages were payable because no liability could be established.
46. On 1 June 2021, in Procedural Order No. 3,¹⁷ the Tribunal rejected the request for bifurcation of the quantum phase which Norway had made in April 2021, but expressed its preparedness to consider a renewed request from either Party after the filing of the Respondent's Counter-Memorial. Norway did make a renewed request, along with the submission of its Counter-Memorial on 29 October 2021. As paragraph 28 of the Award recalls,¹⁸

"On 6 December 2021, the Tribunal issued Procedural Order No. 5 ("PO 5") concerning the Renewed Request for Bifurcation. The Tribunal granted the Respondent's request, considering inter alia the significant number of different permutations of the arguments on quantum in case the Claimants' case is only partially successful on jurisdiction and liability. The Tribunal was further satisfied that issues of quantum were not so interwoven with jurisdiction or liability that they could not sensibly be left for a subsequent phase."

¹⁷ **A-0061** Procedural Order No. 3 of 1 June 2021.

¹⁸ **A-0068** Award of 22 December 2023.

47. Norway also refers to its 29 October 2021 Renewed Request for Bifurcation,¹⁹ which set out its arguments for such bifurcation, alongside this report.

C.4. Norway's Position on the Remaining Requests

48. Norway responds to each of the Document Production Requests in its attached response to the Applicants' Redfern Schedule.

49. However, as is common ground, the Applicants seek documents which are privileged to Norway and concern communications between Norway and its counsel and external advisors. In relation to such documents, Norway asserts and relies upon that privilege, and does not consider that there is a sufficient reason to go behind that privilege in this case.

50. Norway does not consider that the Applicants have made out any or any *prima facie* case to go behind any privilege on the basis of iniquity or fraud (and the same will be made clear in its Counter-Memorial).

C.5. Applicants' Application to add an additional Document into the Record

51. Finally, the Applicants request in their Application at §VI that the Committee “[a]dmit as a new exhibit an email received from *eInnsyn*, Norway's public document platform, on 27 January 2025, at 10:51pm, showing that Norway's embassy in Riga appears to have received three different invoices from the law firm *Glimstedt* in 2023”.

52. The request for access covered three invoices, including details of the service rendered in relation to the ICSID process, from *Glimstedt ZAB SIA* to the Norwegian Embassy in Riga.

53. It should be noted that it is clearly stated in *eInnsyn* that even if records of the documents in question were published on *eInnsyn* in 2023, the dates of the documents

¹⁹ **R-0465-ENG** Request for Bifurcation of 29 October 2021.

are 7 February 2022²⁰, 6 March 2022²¹ and 6 July 2022²² respectively. This is information available for anyone making a request for access in *eInnsyn*, including the Applicants. The three invoices are related to services rendered by Glimstedt ZAB SIA prior to 24 June 2022 when Norway decided to abstain from requesting any future advice or assistance from the law firm on the ICSID dispute.

54. At the time of the Application for document production on 4 February 2025, the requests for access of 27 January 2025 were still under review by the Norwegian Embassy in Riga. The requests were processed on 6 February 2025. With the exception of information related to the hourly rate, Prof Mads Andenæs was granted access to the three documents.

²⁰ The Embassy's document no 23/322-14, document date 7 February 2022, journal date 9 January 2023, published 16 January 2023.

²¹ The Embassy's document no 23/322-16, document date 6 March 2022, journal date 9 January 2023, published 16 January 2023.

²² The Embassy's document no 23/322-8, document date 6 July 2022, journal date 9 January 2023, published 16 January 2023.

D. CONCLUSION

55. For the reasons set out above, Norway respectfully requests the Committee to deny the Applicants' Application of 4 February 2025 for Document Production.

18 February 2025

Respectfully submitted on behalf of the Kingdom of Norway

KRISTIAN JERVELL

MARTIN SØRBY

FREDRIK BERGSJØ

KRISTINA NYGÅRD

Norwegian Ministry of Foreign Affairs

PROFESSOR VAUGHAN LOWE KC

PROFESSOR ALAIN PELLET

MUBARAK WASEEM

YSAM SOUALHI

Counsel for the Kingdom of Norway