

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

PETERIS PILDEGOVICS AND SIA NORTH STAR

(Applicants on Annulment)

and

KINGDOM OF NORWAY

(Respondent on Annulment)

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

**PROCEDURAL ORDER NO. 3
On the Applicants' Request 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

6 March 2025

I. RELEVANT PROCEDURAL BACKGROUND

1. On 8 November 2024, the *ad hoc* Committee (the “**Committee**”) issued Procedural Order No. 1 setting out, *inter alia*, the procedural calendar for this annulment proceeding at Annex B. Annex B provides that either Party might file a request for the Committee to decide on the production of documents by 4 February 2025.
2. Pursuant to the procedural calendar, on 4 February 2025, Mr. Peteris Pildegovics and SIA North Star (the “**Applicants**”) filed a request for the Committee to decide whether there should be a document production phase in this proceeding (the “**Request**”), together with Legal Authorities AL-0102 through AL-0122; the Applicants also attached thereto their Redfern Schedule.
3. On 18 February 2025, the Kingdom of Norway (“**Norway**” or the “**Respondent**”), filed a response to the Request (the “**Response**”), together with Exhibits R-0202 and R-0203 and R-0461 through R-0465 and Legal Authorities RL-0275 through RL-0285; the Respondent also attached thereto its responses to the Applicants’ Redfern Schedule, incorporated therein (referred to herein as the “**Redfern Schedule Response.**”)

II. PARTIES’ POSITIONS

A. THE APPLICANTS’ POSITION

4. The Applicants recall that the Committee, in its ruling in Procedural Order No. 1, decided to provisionally include a document production step in the procedural timetable following the submission of the Applicants’ Memorial on Annulment. The Committee directed that it would decide, based on a reasoned application from the Applicants, whether special circumstances exist that justify permitting a document production phase.¹
5. The Applicants present the following arguments in their Request: (1) there are special circumstances that justify granting the document production sought; (2) in the alternative,

¹ Request, para. 2.

that a neutral umpire be appointed to determine if the Respondent's documents are relevant to the Applicants' annulment grounds; and (3) the Applicants should be allowed to introduce a new document to this proceeding.

(1) Special Circumstances Exist that Justify Document Production

6. The Applicants argue that in the present case two types of special circumstances would justify document production.²
7. The first is the "crime-fraud" or "iniquity" exception to legal privilege, which the Applicants believe is triggered in this case in relation to documents in the possession of the Respondent with respect to third parties: KPMG AS, Wikborg Rein, and Glimstedt.³ The Applicants contend that the Respondent hired the aforementioned firms which were conflicted, allegedly misrepresented to the Tribunal whether it was in a position to submit a damages report in order to obtain bifurcation of quantum, and attempted to hire or hired investigative firms to investigate the Applicants.⁴ In the Applicants' view, they have already pleaded these allegations in these annulment proceedings but do not have access to documents in the Respondent's control.⁵ The Applicants contend that solicitor-client privilege and/or litigation privilege does not exist in respect of such documents if it is used to shield advice given to commit fraud.⁶ For support, the Applicants rely on *St. Mary's v. Canada*⁷ and domestic court decisions.
8. The second type of second special circumstances is related to enquiries where "a procedural decision mentioned in an ICSID Award cannot be found and does not appear to have been notified to the parties."⁸ The Applicants deem it necessary for the Committee to determine

² Request, para. 10.

³ Request, para. 11.

⁴ Request, para. 17.

⁵ Request, para. 18.

⁶ Request, para. 19.

⁷ Request, paras. 20-22; **AL-0014**, *St. Marys VCNA LLC v. Canada*, UNCITRAL, Report on Inadvertent Disclosure of Privileged Documents of Mr. James Spigelman, 27 December 2012, pp. 2-4.

⁸ Request, para. 13.

what happened to a decision of 5 December 2023 mentioned at paragraph 70 of the Award that is allegedly missing (the “**December 2023 Decision**”) and request relevant information from the Tribunal or the Secretariat.⁹

9. According to the Applicants, based on Articles 43 and 52(4) of the ICSID Convention read together, the Committee has the power to order the production of documents going to the first type of circumstance, while under Articles 44 and 52(4), the Committee has the general authority to decide questions of procedure not encompassed by the Convention or the Arbitration Rules, going to the second circumstance.¹⁰
10. In relation to the documents sought to be produced, it is the Applicants’ submission that the Respondent has conducted the underlying arbitration¹¹ in bad faith and perpetrating improper behavior. First, the Applicants contend that the Respondent hired three different professional advisers (KPMG AS, Glimstedt, and Wikborg Rein), with whom the Applicants or entities close to the Applicants had worked before, with the intent to obtain information in an improper manner about the Applicants.¹² Second, the Applicants submit that it was improper for the Respondent to apply for bifurcation of quantum in the underlying arbitration on the basis that it could not submit a damages report because there were too many scenarios to assess, but it then emerged during the costs submissions that there was a damages report that had been prepared but which the Respondent preferred not to submit.¹³ Third, the Applicants imply that the Respondent behaved improperly in the underlying arbitration on the basis of timesheets showing that it or its counsel had contacted

⁹ Request, paras. 27-28; 36. *See also* Request, para. 7. The Applicants refer throughout to “the procedural decision, that would have been made on 5 December **2022**, mentioned at paragraph 70 of the Award”, but this appears to be a typo; the Award states “5 December **2023**” (emphasis added).

¹⁰ Request, paras. 12 and 14.

¹¹ The Committee will use the terms “arbitral proceedings”, “underlying arbitration”, or “arbitration” to refer to the proceedings before the Tribunal that issued the award in ICSID Case No. ARB/20/11 and will use the term “annulment proceeding” or “annulment” to refer to the proceedings associated with the Application for Annulment in ICSID Case No. ARB/20/11. References to this “case” or “dispute” shall include both the arbitral proceedings and the annulment proceeding.

¹² Request, para. 31.

¹³ Request, para. 32.

investigative firms which, according to the Applicants, were investigating them and related persons.¹⁴

11. In relation to the December 2023 Decision, the Applicants request that the Committee exercise its general powers to request information and enquire as to whether and when that Decision was notified to all parties in the arbitration, as well as a copy thereof.¹⁵

(2) Appointment of a Neutral Umpire to Review the Documents to Be Produced by Norway

12. The Applicants request, as an alternative proposal to direct production of documents by the Respondent, that a neutral umpire be appointed to review the Respondent's documents and determine if they are relevant to the Applicants' grounds for annulment and thus should be produced.¹⁶ In this alternative scenario, the Applicants propose to receive a copy of the documents so that they can argue before the neutral umpire but the documents would only be used in the annulment if the neutral umpire accepts that they are relevant to the Applicants' grounds for annulment.¹⁷

(3) Applicants' Application to Introduce a New Document to the Record

13. The Applicants apply to the Committee pursuant to section 15.5 of Procedural Order No. 1 for the admission of a new factual exhibit in support of the Applicants' Document Production Request No. 7.¹⁸ The Applicants explain that this new document is an email received from eInnsyn, Norway's public document platform, on 27 January 2025, at 10:51 p.m., in respect of requests submitted by the Applicants for certain documents relating to invoices from the Glimstedt law firm in 2023.¹⁹ According to the Applicants, special circumstances justify the admission of this document, specifically that it would

¹⁴ Request, para. 33.

¹⁵ Request, para. 40.

¹⁶ Request, para. 41.

¹⁷ Request, para. 42.

¹⁸ Request, para. 43.

¹⁹ Request, para. 44.

support establishing an “iniquity” on the Respondent’s part in the conduct of the underlying arbitration.²⁰

(4) Applicants’ Request for Relief

14. In their request for relief, the Applicants request that the Committee grant their document production requests set forth in the Redfern Schedule, or in the alternative appoint a neutral umpire to determine their relevance to the Applicants’ annulment grounds, exercise its general powers in relation to the Missing Decision and admit as a new exhibit an email received from eInnsyn, Norway’s public document platform, on 27 January 2025, at 10:51 p.m., and grant any other relief the Committee deems fit.

B. THE RESPONDENT’S POSITION

15. In its preliminary observations, the Respondent maintains that the annulment application should be decided on the basis of the material already on file. The Respondent also confirms that it does not intend to request production of any new documents in connection with the annulment application.²¹
16. Additionally, the Respondent does not take a position concerning inquiries or production requests from the ICSID Secretariat and/or the Tribunal, as detailed in the Request (paragraphs 27-28; 36-40). However, the Respondent submits that the Committee (i) must be convinced that special circumstances exist to justify a request to the Secretariat and/or the Tribunal (which is now *functus officio*); and (ii) could benefit from reviewing the Respondent’s submissions in its Counter-Memorial on Annulment, in which it intends to provide additional facts relevant to the Request. This would help determine the relevance of these matters to the request for annulment, considering the applicable legal standards for annulling ICSID Awards.²²

²⁰ Request, para. 45.

²¹ Response, para. 5.

²² Response, para. 6.

17. The Respondent's key arguments are that (1) no document production should be ordered until it has submitted its Counter-Memorial on Annulment; (2) in the alternative, should the Committee allow document production now, the Respondent disagrees that it should be required to disclose its privileged communications with its counsel and external advisors; and (3) the documents referenced in the email whose admission was requested by the Applicants have already been provided to its counsel. Notwithstanding its objections, however, the Respondent offers to produce certain documents as described below and in its detailed responses to certain items set forth in the Redfern Schedule.

(1) No Document Production Until the Respondent Submits Its Counter-Memorial

18. The Respondent's primary position is that the Committee should not order any document production until the Respondent has submitted its Counter-Memorial on Annulment for the following four reasons.

19. First, the Respondent argues that the Committee will only be in a position to determine whether special circumstances exists when it has read the Counter-Memorial due in April.²³ According to the Respondent, the threshold for ordering new document disclosure in an annulment proceeding is high and the Respondent has not had an opportunity to respond to the Applicants' allegations regarding its conduct contained in the Application for Annulment and the Memorial on Annulment.²⁴

20. Second, the Respondent states that the Applicants have made serious allegations against the Respondent regarding engaging external counsel and advisors with known conflicts of interest and lying to the Tribunal. Accordingly, the Respondent requests that the Committee have the benefit of its written case on this matter before making a determination on document production.²⁵

²³ Response, para. 10.

²⁴ Response, para. 10.

²⁵ Response, para. 13.

21. Third, the Respondent asserts that its concerns set forth 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.”²⁶ As such, it is the Respondent’s submission that, before ordering their production, which might be burdensome, invasive and concern confidential and/or privileged information, the Committee should first have received the Respondent’s written case.²⁷ In addition, the concerns are compounded by the Applicants’ alternative proposal that a neutral umpire be appointed to deal with the privilege claims.²⁸ For the record, the Respondent does not believe that the appointment of a neutral umpire is warranted, particularly as the reviewer would not have reviewed the Respondent’s case on annulment.²⁹
22. Fourth, the Respondent argues that contrary to the prejudice that it will suffer if document production is ordered now, the Applicants will suffer no prejudice if document production takes place after the Counter-Memorial is filed.³⁰ According to the Respondent, the Applicants could still have an opportunity in their Reply to utilize material disclosed by the Respondent.³¹ Further, the Applicants argue that there is sufficient time built into the procedural timetable to deal with document production after the Counter-Memorial in the form of alternative dates for submission of the remaining written pleadings and therefore no amendments to the timetable will be required.³²

²⁶ Response, para. 15.

²⁷ Response, para. 15.

²⁸ Response, para. 16.

²⁹ Response, para. 16.

³⁰ Response, para. 17.

³¹ Response, para. 18.

³² Response, para. 19.

(2) If Document Production Is Allowed, the Respondent Should Not Disclose Privileged Communications with External Advisors

23. In its alternative case, the Respondent submits that should the Committee be minded to order document production at this stage, the Respondent should not be required to disclose privileged information exchanged with its internal and external advisors.
24. First, the Respondent considers that neither its conduct, nor the conduct of its counsel or external advisors, has been improper in any way.³³ The Respondent proceeds to provide the following background information about its engagement of Glimstedt ZAB SIA, KPMG AS and Wikborg Rein without waiving confidentiality.
- a. Glimstedt ZAB SIA
25. With respect to Glimstedt, the Respondent asserts that there is no conflict of interest. The Respondent received a Notice of Dispute dated 27 February 2017 from UAB Arctic Fishing and SIA North Star which indicated their representation by a lawyer from Glimstedt, Bernotas & Partners, Vilnius, Lithuania. The Respondent claims that after it responded to the Notice of Dispute, there were no subsequent communications on the matter.³⁴ The Respondent further asserts that in March 2020, it received the Request for Arbitration in the current case, initiated by Peteris Pildegovics and SIA North Star. Following its receipt, the Respondent instructed the Norwegian Embassy in Riga to seek Latvian law advice from a Latvian law firm in March 2021.³⁵
26. The Respondent states that the Norwegian Embassy in Riga was instructed to identify a reputable law firm without any ties to the Claimants.³⁶ Various law firms were approached, with some declining due to potential conflicts of interest. However, Ms. Agnese Medne of Glimstedt ZAB SIA confirmed that there was no conflict of interest and was subsequently

³³ Response, para. 23.

³⁴ Response, para. 24.

³⁵ Response, para. 25.

³⁶ Response, para. 26.

engaged.³⁷ According to the Respondent, Ms. Medne provided advice on Latvian law, translated Latvian legislation, and offered information from public records, as mentioned in a letter to the then-Claimants.³⁸ Additionally, the Respondent asserts that it has not sought any assistance from Glimstedt ZAB SIA since June 2022. The last invoice from the firm for services rendered is dated 6 July 2022 and covers the period up to end of June 2022.³⁹

27. The Respondent submits that in a letter dated 23 June 2022, Ms. Medne informed the Applicants (then Claimants) that Glimstedt ZAB SIA was not involved in any conflict of interest. The Respondent chose to refrain from requesting any further advice or assistance from Glimstedt ZAB SIA in the present dispute, which was communicated to the Applicants on 24 June 2022. Since that date, the Respondent submits that no further assistance has been requested or will be requested from Glimstedt ZAB SIA in the present dispute.⁴⁰
28. Furthermore, the Respondent submits that the Claimants at the time demanded to know the nature of the information exchanged between Glimstedt and Norway and requested all related communications and documents. The Respondent declined to provide these documents. As per Procedural Order No. 9, dated 23 February 2023, the Tribunal decided that no decision was required concerning Glimstedt ZAB SIA. However, the Claimants, now Applicants, were allowed to make an application for disclosure if they wished to do so, but they never did during the course of the arbitral proceedings.⁴¹ The Respondent now submits that this is essentially a repeat of the arguments made at the time the conflict-of-interest allegations were made by the Applicants in the arbitral proceedings.⁴²

³⁷ Response, para. 27.

³⁸ Response, para. 27, referring to **A-0086**, Letter from the Respondent to the Claimants, 24 June 2022.

³⁹ Response, para. 29.

⁴⁰ Response, para. 31. Ms. Medne has apparently continued to support the Norwegian Embassy in Riga with legal matters unrelated to this case: *see* Response, para. 29.

⁴¹ Response, paras. 32-33.

⁴² Response, para. 33.

29. Notwithstanding these objections, and subject to its overarching concerns expressed in the Response, the Respondent agrees to “to produce documents and communications between the Norwegian Ministry of Foreign Affairs (the Department of Legal Affairs), the Norwegian Embassy in Riga and Glimstedt ZAB SIA before entering into its contract with Glimstedt ZAB SIA, which relate to the existence (or otherwise) of a conflict of interest or relate to ‘Norway’s intention’ in relating to retaining Glimstedt ZAB SIA.”⁴³

b. KPMG AS

30. The Respondent states that since 2015, it has entered into a series of framework agreements with KPMG AS. These agreements function as retainers, under which general terms for assistance are agreed upon, and specific services can be procured through a purchase order.⁴⁴

31. According to the Respondent, based on the framework agreement effective from August 2019, a purchase order with KPMG AS was signed in December 2020. Under this order, KPMG AS presented a report related to the Pildegovics/North Star arbitration in January 2021. The Respondent further submits that KPMG AS has not provided any additional services in the present case.⁴⁵

32. Additionally, the Respondent asserts that the Applicants refer to two matters in their Memorial. First, that KPMG Eastern and Central Europe performed a preliminary damages analysis for North Star of which it had no knowledge until receiving the Claimants’ allegations of conflict of interest, and which it has never seen. Second, that KPMG AS was the auditor from 2009 to 2014 of Seagourmet Norway AS, an entity which is not a party to the dispute, but which is in contractual relations with at least one of the Applicants.⁴⁶

⁴³ See Redfern Schedule Response, item 1, p. 7.

⁴⁴ Response, para. 34.

⁴⁵ Response, para. 34.

⁴⁶ Response, para. 35.

33. The Respondent also confirms that it has not become privy to any information privileged to either the Applicants or Seagourmet Norway through the services provided by KPMG.⁴⁷ Moreover, the Respondent submits that in Procedural Order No. 9 of 23 February 2023, the Tribunal directed it not to make any further use of entities within the KPMG network, particularly KPMG AS, in the arbitration. The Respondent confirms that it has complied and will continue to comply with this order.⁴⁸
34. Nonetheless, the Respondent, subject to its overarching objections, agrees to produce “documents and communications made between the Norwegian Ministry of Foreign Affairs and KPMG AS before entering into the Ministry’s purchase order (“avropsavtale”) with KPMG AS relating to the report detailed at ¶34 of Norway’s Response, which relate to the existence (or otherwise) of a conflict of interest or relate to ‘Norway’s intention’ in relation to the purchase order.”⁴⁹
- c. Wikborg Rein
35. The Respondent contends that it had a framework agreement with Wikborg Rein Advokatfirma AS (“**Wikborg Rein**”) for legal services from 2014 to 2018 and entered into a new framework agreement in April 2019.⁵⁰
36. According to the Respondent, it was unaware of any links between Mr. Pildegovics and/or North Star and UAB Arctic Fishing, beyond their shared representation by the same Lithuanian law firm in 2017 and later by Savoie Laporte/Savoie Arbitration, and their involvement in (allegedly) illegal snow crab harvesting.⁵¹ The Respondent states that it confirmed with Wikborg Rein that none of the lawyers involved in the Pildegovics/North Star dispute on its behalf were involved in the UAB Arctic Fishing criminal case, nor did

⁴⁷ Response, para. 36.

⁴⁸ Response, para. 37.

⁴⁹ Redfern Schedule Response, item 8, pp. 14-15.

⁵⁰ Response, para. 38.

⁵¹ Response, para. 39.

they know of its existence or access the case file.⁵² In the Respondent's opinion, it remains unclear what confidential information from that case could have impacted the Pildegovics/North Star dispute.⁵³ The Respondent submits that the Tribunal rejected the Claimants' request to exclude Wikborg Rein from the arbitral proceedings in its February 2023 Procedural Order No. 9, but the Committee decided in Procedural Order No. 1 that Wikborg Rein should be excluded from this annulment proceeding until the conflict-of-interest issue was resolved. The Respondent asserts that it has observed and continues to observe this commitment.⁵⁴

37. With respect to the Applicants' allegation that the Respondent misled the Tribunal regarding the bifurcation request whilst it had a damages report already prepared, the Respondent replies that there was no such report prepared.⁵⁵ According to the Respondent, Wikborg Rein was instructed to conduct an analysis of quantum of the Claimants' alleged claim for damages in the case and report on gaps and weaknesses in the Claimants' case as set out in their Memorial.⁵⁶ The Respondent also points out that its initial request for bifurcation of quantum was rejected by the Tribunal at the time, which it then renewed after filing the Counter-Memorial on 29 October 2021.⁵⁷
38. In relation to the other document production requests subject to privilege, the Respondent relies on that privilege in its responses thereto in the Redfern Schedule Response.
39. However, without waiving its general objections, the Respondent agrees to produce "documents and communications made between the Norwegian Ministry of Foreign Affairs and Wikborg Rein before entering into the purchase order ("avropsavtale")."⁵⁸ The

⁵² Response, para. 41.

⁵³ Response, para. 41.

⁵⁴ Response, para. 42.

⁵⁵ Response, para. 45.

⁵⁶ Response, para. 45.

⁵⁷ Response, para. 46.

⁵⁸ Redfern Schedule Response, item 14, p. 24.

Respondent has also requested that it be permitted to submit the Wikborg Rein report as an exhibit to its Counter-Memorial.⁵⁹

(3) The Respondent Has Already Provided the Applicants Access to the New Documents

40. With respect to the Applicants' request for the admission of a new document, the Respondent has already provided the Applicants access to the relevant documents referenced in that email. The Respondent clarifies that the request for access covers three invoices dated 7 February 2022, 6 March 2022 and 6 July 2022 respectively for services rendered in relation to the arbitral proceedings, from Glimstedt to the Norwegian Embassy in Riga. The Respondent further clarifies that even though the records of the documents in question were only published on eInnsyn in 2023, the invoices relate to work performed prior to June 2022, when the Respondent declined to further engage Glimstedt.⁶⁰
41. In this regard, the Respondent explains that at the time the Applicants made the Request on 4 February 2025, the requests for access of 27 January 2025 were still under review by the Norwegian Embassy in Riga and were processed on 6 February 2025.⁶¹ The Respondent states that with the exception of information related to the hourly rate, the Applicants' counsel, Prof. Mads Andenæs, was granted access to the three documents.⁶²
42. In conclusion, the Respondent requests the Committee to deny the Applicants' Request to the extent not covered by its voluntary productions.

III. ANALYSIS

43. The Committee has given careful consideration to the Parties' respective submissions. Its decisions as to particular requests are set forth in the decision column of the attached Redfern Schedule. In this Order, the Committee addresses overarching considerations in

⁵⁹ Response, para. 45 and Redfern Schedule Response, item 20.

⁶⁰ Response, para. 53.

⁶¹ Response, para. 54.

⁶² Response, para. 54.

relation to the Request in light of the Parties' submissions and elaborates on its decisions in the attached Redfern Schedule. The fact that this Order or the decisions set forth in the Redfern Schedule may not address each and every one of a Party's submissions does not mean that the Committee has not given them due consideration.

A. GENERAL

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 Procedural Order No. 1, "special circumstances" justifying document production should be present. As Section 14.2 of Procedural Order No. 1 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. Procedural Order No. 1 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. With respect to the alleged crime/fraud or iniquity exception asserted to constitute such circumstances in the present matter, the Committee sees no need to express a view at this stage as to whether such an exception does or does not exist as a general matter in investment arbitration under international rules. In any event, the Committee considers that more than a mere allegation of crime or fraud would be necessary to trigger any such exception, and that an apparent conflict of interest, without more, would not necessarily do so.

B. APPLICATION

46. The Applicants have made serious allegations against the Respondent, suggesting as noted above that it effectively committed fraud on the Tribunal in relation to the matter of bifurcation and deliberately sought to procure inside information by engaging three third-party advisors—a Latvian law firm (Glimstedt ZIB SIA), a Norwegian law firm (Wikborg Rein), and an accounting firm (KPMG AS)—that had been previously represented by the Applicants and/or related parties. It argues that such engagements gave the Respondent an improper advantage in the arbitration, thus breaching the fundamental requirement of equality of the Parties and constituting a serious departure from a fundamental rule of procedure, thereby justifying annulment of the Award in its entirety.⁶³
47. The Respondent denies engaging in such misconduct, and its Response provides details with respect to the third-party engagements to which the Committee will return in due course.
48. The Respondent has also pointed out that the conflict-of-interest (“COI”) issues that the Applicants have raised in the Request were already raised before, and considered by, the Tribunal. Specifically, Procedural Order No. 9, issued by the Tribunal on 23 February 2023, dealt with all three third parties raised by the Applicants in the current Request. The Committee will address the relevant portions of Procedural Order No. 9 below when discussing each third party.
49. The allegations of the Applicants raise apparent COI concerns. These appearance concerns are magnified by the fact that they are presented not just with respect to a single third party, but with respect to multiple third parties.
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

⁶³ The Applicants rely throughout the Request on **A-0069**, Application for Annulment, 22 February 2024, paras. 51-58; Memorial on Annulment, 21 January 20205, paras. 178-203; and First Witness Statement of Mr. Kirill Levanidov, 21 January 2025, paras. 27-42.

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.

51. With respect to fraud, the ultimate question the Committee will have to address is whether there was knowing and deliberate conduct on the part of the Respondent in the form of misrepresentation of key information, by either action or omission. With respect to document production on this issue, the question is in the Committee's view a slightly different one than that with COIs: whether there are sufficient indicators of fraud at this stage of the proceedings to justify the requested productions.
52. Following this framing, the Committee will summarize the facts currently submitted to it with respect to each third party. For temporal context, the Committee notes that the Applicants submitted their Request for Arbitration in March 2020, and the Award was rendered in December 2023.
 - a. Glimstedt ZAB SIA
53. The Glimstedt law firm has offices in several countries, including Latvia and Lithuania.
54. The Applicants' COI concerns with respect to this law firm stem from the following facts.
 - (a) On 27 February 2017, Norway received a Notice of Dispute concerning the same measures that are at issue in this case from the companies UAB Arctic Fishing of Lithuania and SIA North Star of Latvia, the latter being one of the Applicants here.⁶⁴ In this Notice, Arctic Fishing and SIA North Star were represented by lawyer Justinas Poderis of Glimstedt, Bernotas & Partners, Vilnius, Lithuania.

⁶⁴ **A-0081**, Notice of Dispute from UAB Arctic Fishing and SIA North Star to Royal Norwegian Ministry of Trade, Industry and Fisheries, 27 February 2017.

Although Norway apparently replied to this Notice, it submits that it heard nothing further following its reply and the case did not go forward.⁶⁵

- (b) In March 2021, following the Applicants' (then Claimants') submission of the Request for Arbitration in this case (*see* paragraphs 25-26 *supra*), the Respondent confirms that the Norwegian Embassy in Riga was instructed by the Ministry of Foreign Affairs to request legal advice from a Latvian law firm. According to the Respondent, the instruction to its Embassy was to find law firms that had no conflict. Ultimately Glimstedt in Latvia was selected. The lawyer leading the engagement was Ms. Agnese Medne, a different lawyer than the one identified in the 2017 Notice of Dispute and, obviously, from a different office and jurisdiction.⁶⁶
- (c) The Parties to this dispute apparently corresponded in the course of the arbitral proceedings regarding the services provided by Glimstedt. The Applicants refer to a letter dated 21 June 2022, wherein the then-Claimants contacted Norway alleging that "Glimstedt law firm [...] ha[d] contacted the Latvian Ministry of Agriculture to obtain certain information about North Star."⁶⁷ The Respondent refers to a letter it wrote to the then-Claimants dated 24 June 2022 regarding the engagement of Glimstedt in which the Respondent described the services performed by that firm.⁶⁸ The Respondent asserts that it has received no services from Glimstedt since June 2022, and submits that the bills cited by the Applicants all date from the 2021 to mid-2022 time period.⁶⁹

⁶⁵ Response, para. 24. *See also* paragraph 25 *supra*. The Committee understands that UAB Arctic Fishing ultimately pursued a separate claim in 2022 (ICSID Case No. ARB/22/31): *see* ICSID, "Case Details: *UAB Arctic Fishing v. Kingdom of Norway* (ICSID Case No. ARB/22/31)" (available at: <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/22/31>).

⁶⁶ *See* paragraphs 26-27 *supra*.

⁶⁷ **A-0078**, Letter from the Claimants to the Respondent, 21 June 2022.

⁶⁸ **A-0086**, Letter from the Respondent to the Claimants, 24 June 2022. *See also* paragraph 26 *supra*.

⁶⁹ *See, e.g.*, **A-0026**, Glimstedt Invoice No. 209/2021, 16 April 2021; **A-0037**, Glimstedt Invoice No. 311/2022, 6 July 2022.

- (d) Glimstedt apparently formally stepped down in late 2022.⁷⁰
 - (e) In light of this, the Tribunal in the arbitral proceedings saw no need to make any ruling with regard to Glimstedt in Procedural Order No. 9. However, it granted the Applicants (then Claimants) leave to make a later application based on its order. According to the Respondent, the Applicants (then Claimants) did not do so.⁷¹
 - (f) The Respondent also submits that the requests for production of documents made in the present proceedings are the same as the Claimants made during the arbitral proceedings.⁷²
55. Seven of the 27 items in the Request before this Committee (nos. 1-7) concern Glimstedt. The Applicants seek documents relating not only to the engagement of Glimstedt by Norway and any communications speaking to COI issues but also work product of the firm and related communications. These include communications between members of Norway's legal team with Glimstedt, as well as communications within Norway's legal team on these topics, both at the time of Glimstedt's engagement by Norway, and at the time when the then-Claimants raised the issue with Respondent in late June 2022. In addition, the Applicants seek work product for the period between April 2021 and June 2022 (when Glimstedt was providing services to Norway).
56. In its Response, Norway has agreed to produce certain documents relating to the process of engaging Glimstedt, without including any documents that it considers privileged, or any documents that post-date its engagement of the law firm, including any work product. It objects to the Applicants' requests on grounds of overbreadth, irrelevance/immateriality, and privilege.

⁷⁰ Redfern Schedule, item 3, p. 6; *see also* **A-0085**, Emails between the Claimants and the Respondent, 21-24 June 2022; **A-0086**, Letter from the Respondent to the Claimants, 24 June 2022; **A-0087**, Letter from the Respondent to the Claimants, 28 June 2022.

⁷¹ Response, paras. 32-33.

⁷² Response, para. 33.

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.
58. The Committee also considers that given the factual nature of the COI and fraud inquiries, its assessment would benefit not only from the agreed production but also from any additional facts that the Respondent may provide in its Counter-Memorial on Annulment. The Committee agrees with the Respondent that the current procedural calendar for this matter permits inclusion of a document production request following that submission. Thus, with respect to certain requests as noted in the attached Redfern Schedule the denial of the Applicants’ requests relating to Glimstedt is without prejudice to a later request. However, the Committee expects that the Applicants, if they choose to take advantage of this opportunity, will substantially refine any further requests relating to Glimstedt consistent with this Order.
59. The Applicants also seek admittance into evidence of an email received on 27 January 2025 from eInnsyn, Norway’s public document platform that purports to show that Norway’s

embassy in Riga received three invoices from Glimstedt in 2023.⁷³ Norway does not object to the admittance of the email and states that a member of the Applicants' counsel team has already been provided access to the three documents referenced in the email, with redactions for the hourly rate. Given the Respondent's lack of objection to the Applicants' request, no further decision on this request is needed from the Committee at this time.

b. KPMG AS

60. The Applicants' concerns with respect to the KPMG AS firm stem from a report that KPMG AS apparently provided services to Norway in June 2021, during the course of the arbitral proceedings while another KPMG member firm, KPMG Eastern and Central Europe, was engaged by SIA North Star to provide a preliminary damages assessment in respect of the present case in 2018 and did in fact provide such an assessment.⁷⁴ It is the Committee's understanding that KPMG AS and KPMG Eastern and Central Europe are distinct entities within the KPMG group.
61. According to Norway, it has had a succession of framework agreements with KPMG AS since 2015, prior to this dispute.⁷⁵ The work of KPMG AS in connection with this dispute, the details of which are unknown, was done pursuant to a purchase order issued in December 2020. KPMG AS invoiced Norway for the work in January 2021.⁷⁶
62. The Request contains six items (nos. 8-13) relating to KPMG AS. These cover, in summary, documents relating to the retainer by Norway of KPMG AS, both communications with KPMG AS and within Norway's legal team, as well as KPMG AS's work product. The time periods for which documents are sought are broad, covering the initial hiring (or potential hiring) period between 27 February 2017 (the time of the Notice of Dispute that was not pursued (*see* paragraph 25 *supra*) and 28 January 2021, and the period between 13 December 2022 (when the Applicants raised the issue of a potential

⁷³ See Redfern Schedule, item 7.

⁷⁴ See **A-0102**, Letter from the Claimants to the Tribunal, 31 January 2023.

⁷⁵ See paragraph 30 *supra*.

⁷⁶ **A-0053**, KPMG AS Invoice No. 4589774, 28 January 2021.

conflict during the course of the arbitral proceedings in this case) and 23 February 2023 (when the Tribunal issued Procedural Order No. 9).

63. In Procedural Order No. 9, 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 submitted that it has complied with this order and will continue to refrain from seeking services from KPMG AS in this annulment proceeding.
64. Norway has agreed to produce communications relating to the engagement of KPMG AS in connection with this matter, covering the period between November and December 2020. However, Norway objects to the production of any work product on grounds of privilege, overbreadth, and irrelevance/immateriality to the question of whether KPMG AS was engaged for an improper purpose.
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.

c. Wikborg Rein

66. The Request contains twelve items (nos. 14-25) relating to the Wikborg Rein law firm.
67. Wikborg Rein was retained by Norway to advise it in this dispute in May 2021, when a purchase order was issued to the firm pursuant to an April 2019 framework agreement with Wikborg Rein for the acquisition of legal services entered into force. The firm’s

engagement therefore preceded this dispute,⁷⁷ but services relating to this matter post-dated the Request for Arbitration.

68. According to the Respondent, Wikborg Rein was instructed to conduct “an analysis of quantum of the Claimants’ alleged claim for damages in the case”, and report on gaps and weaknesses in the Claimants’ case as set out in their Memorial.” Based on invoices previously produced, its work appears to have covered the period between May 2021 and September 2022. It did not serve as counsel on record in the arbitral proceedings, but worked in the background.
69. The Applicants’ COI concerns arise from the fact that Wikborg Rein apparently represented UAB Arctic Fishing, an entity which, while not an applicant in these proceedings, jointly submitted a Notice of Dispute in respect of the measures at issue in the present case with Applicant SIA North Star on 27 February 2017, as well as in Norwegian court proceedings in 2017 involving issues which are similar or identical to issues in this case.⁷⁸ The Applicants argue that Norway made arguments in the present case which may have taken advantage of information learned by the law firm through its earlier representation of UAB Arctic Fishing. They do not provide any specifics regarding such information but submit that Norway should be presumed to have received confidential information given that the Notice of Dispute in the present case referenced earlier was sent at the same time the firm was defending UAB Arctic Fishing. They further complain about Wikborg Rein’s apparent suggestion (gleaned from time entries previously produced) that Norway hired an investigative firm, Kroll, to investigate the Applicants and related persons.
70. As with Glimstedt and KPMG, there is prior history of consideration of the role of Wikborg Rein in these proceedings. In Procedural Order No. 9, the Tribunal rejected the Claimants’

⁷⁷ The Respondent has submitted that Norway had an earlier framework agreement with Wikborg Rein Advokatfirma AS for the acquisition of legal services from 2014 to 2018: Response, para. 38.

⁷⁸ **A-0102**, Letter from the Claimants to the Tribunal, 31 January 2023, pp. 6 *et seq.*

request for an order that Wikborg Rein be excluded as counsel or advisor for Norway in the arbitration.

71. However, this Committee decided in its Procedural Order No. 1, 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 COI issue is still pending.
72. In its letter to the Committee dated 12 November 2024, Norway confirmed that it would not involve Wikborg Rein in any capacity in these proceedings until the Committee had considered the COI issue related to Wikborg Rein's possible involvement. It submits that it "has observed and continues to observe that commitment."
73. The documents the Applicants seek include communications related to the engagement of the Wikborg Rein, including any documents relating to COI issues, both between Respondent and the firm and within Norway's legal team; and work product of the law firm as reflected in the invoices issued for its work,⁷⁹ including the so-called "report on quantum", the "Kroll report", and the "cash flow report" and drafts of, communications regarding, and exhibits to, those reports. The time periods covered in addition to the invoice periods of May 2021 to September 2022 are 27 February 2017 to 7 May 2021 (when it was retained) and between 13 December 2022 (when the Applicants (then Claimants) raised the issue of COI) and 23 February 2023 (the date of Procedural Order No. 9).
74. While objecting to these requests on grounds of privilege, overbreadth, and insufficient relevance/materiality, Norway has agreed to produce documents relating to Wikborg Rein engagement in this matter. It denies that the firm prepared a report on quantum but asks for

⁷⁹ **A-0029**, Wikborg Rein Invoice No. 10403545, 15 June 2021; **A-0030**, Wikborg Rein Invoice No. 10405825, 3 September 2021; **A-0031**, Wikborg Rein Invoice No. 10406886, 13 October 2021; **A-0032**, Wikborg Rein Invoice No. 10409032, 21 December 2021; **A-0033**, Wikborg Rein Invoice No. 10409358, 31 December 2021; **A-0034**, Wikborg Rein Invoice No. 10410459, 31 December 2021; **A-0035**, Wikborg Rein Invoice No. 10412179, 15 March 2022; **A-0036**, Wikborg Rein Invoice No. 10415136, 28 June 2022; **A-0040**, Wikborg Rein Invoice No. 10417510, 15 September 2022; **A-0041**, Wikborg Rein Invoice No. 104178252, 6 October 2022.

leave pursuant to section 15.5 of this Committee's Procedural Order No. 1 to introduce Wikborg Rein's work product as an exhibit to its Counter-Memorial on Annulment.⁸⁰

75. The Committee considers that the proffered documents (including Wikborg Rein's work product) are relevant and material and will shed light on the alleged conflict of interest. The Committee therefore accepts the Respondent's offer and grants leave to it to introduce the firm's work product as an exhibit to its Counter-Memorial on Annulment on the basis that doing so does not represent a waiver of privilege more broadly.
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.

⁸⁰ See paragraph 39 *supra*; Response, para. 45.

C. OTHER

78. In light of the Committee's decisions on the requests, the Committee sees no need to consider the appointment of a neutral umpire at this time.
79. In relation to the decision of 5 December 2023 referenced in the Award, which the Applicants indicate was never notified to the Parties, the Committee notes that it is common practice for arbitral tribunals to defer communications regarding their decisions to the award, particularly if the matters to be decided have been introduced late in the proceeding, as was the case in the underlying arbitration. The Committee understands that paragraph 70 of the Award was intended to communicate a decision of the Tribunal that was made earlier that month. Although the Award could have been more artfully drafted in this respect, the Committee is satisfied that there is no further decision of the Tribunal to be unearthed.

IV. ORDER

80. The Committee's decisions on the Applicants' specific requests are set out in the Redfern Schedule attached to this Order. The Respondent is ordered to produce the documents it has agreed to voluntarily produce (other than the Wikborg Rein report, which the Committee understands will be exhibited with the Counter-Memorial on Annulment) by no later than two weeks from the date hereof (*i.e.*, by 20 March 2025).
81. As noted in this Order, the Committee's decisions at present are without prejudice to the submission of further requests, taking into account the decisions set forth in this Order. Should the Applicants wish to make a further request, they should do so within two weeks of the Respondent's submission of its Counter-Memorial on Annulment (*i.e.*, by 6 May 2025). The Respondent would then have two weeks to respond to any further request (*i.e.*, by 20 May 2025). In the case of a dispute, the Committee would endeavor to rule on it within two weeks (*i.e.*, by 3 June 2025). The deadline for the Applicants' Reply on Annulment would be extended by four weeks as foreseen in this Committee's Procedural Order No. 1 (*i.e.*, from 3 June 2025 to 1 July 2025) and the deadline for the Respondent's Rejoinder on Annulment would be extended to a date six weeks from the Reply (*i.e.*, to

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12 August 2025). The prehearing conference will be scheduled in August 2025 approximately a month prior to the hearing, and the hearing dates of 22 to 24 September 2025 shall be maintained.

82. The Committee's order set forth in section 23.1 of its Procedural Order No. 1 with respect to Respondent's engagement of Wikborg Rein remains in place.

On behalf of the *ad hoc* Committee,

[signed]

Ms. Lucinda A. Low
President of the *ad hoc* Committee
Date: 6 March 2025