

Peteris Pildegovics and SIA North Star

v.

Kingdom of Norway

(ICSID Case No. ARB/20/11)

PROCEDURAL ORDER NO. 8

Members of the Tribunal

Sir Christopher Greenwood, GBE, CMG, KC, President of the Tribunal
The Honourable L. Yves Fortier, CC, OQ, KC, Arbitrator
Professor Donald M. McRae, CC, ONZM, FRSC, Arbitrator

Secretary of the Tribunal

Mr. Govert Coppens

26 October 2022

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I. BACKGROUND

1. Annex B in Procedural Order No. 1 provided the procedural calendar applicable in this case. Under the procedural calendar, the Pre-Hearing Conference was scheduled to take place “not earlier than 28 days after Norway’s Rejoinder or (if jurisdictional objections are made) the Claimants’ Rejoinder on Jurisdiction and not later than 28 days before the hearing.” The Claimants’ Rejoinder on Jurisdiction was filed on 28 July 2022 and the hearing is scheduled to commence on 31 October 2022.
2. On 29 August 2022, the Tribunal and the Parties held a pre-hearing organizational meeting by video conference from 10:00am Washington, D.C. time (being 3:00pm BST) until 11:30am Washington DC time (16:30pm BST) (the “Pre-Hearing Conference”).
3. The following participants joined the conference:

Tribunal:

Sir Christopher Greenwood, GBE, CMG, QC, President of the Tribunal
The Hon. L. Yves Fortier, CC, OQ, QC, Arbitrator
Professor Donald M. McRae, CC, ONZM, FRSC, Arbitrator

ICSID Secretariat:

Mr. Govert Coppens

On behalf of the Claimants:

Pierre-Olivier Savoie, Counsel
Pierre-Olivier Laporte, Counsel
Myriam Seers, Counsel
Caroline Defois, Counsel
Professor Alina Miron, Counsel
Professor Mads Andenas QC, Counsel
Professor Eirik Bjorge, Counsel

On behalf of the Respondent:

Mr. Kristian Jervell, Norwegian Ministry of Foreign Affairs
Ms. Margrethe R. Norum, Norwegian Ministry of Foreign Affairs
Professor Alain Pellet, Counsel

4. During the Pre-Hearing Conference, the Parties and the Tribunal discussed the agenda and the draft Procedural Order circulated to the Parties on 16 August 2022, the Claimants’ letter of 25 August 2022 and the Respondent’s letter of 26 August 2022.

5. A recording of the Pre-Hearing Conference was made and deposited in the archives of ICSID. The recording was subsequently uploaded to the Box folder established for the case to be accessed by the Members of the Tribunal and the Parties.
6. During the Pre-Hearing Conference, the Tribunal and the Parties considered the following documents:
 - the draft agenda for the Pre-Hearing Conference, circulated by the Secretary of the Tribunal on behalf of the Tribunal on 16 August 2022;
 - the draft Procedural Order No. 8, circulated by the Secretary of the Tribunal on behalf of the Tribunal on 16 August 2022;
 - the Parties' comments on the draft Pre-Hearing Conference agenda and draft Procedural Order No. 8, received on 25 and 26 August 2022, advising the Tribunal of the Parties' respective positions on the schedule of the Hearing and its organization; and
 - the Respondent's letter dated 19 August 2022 and the Claimants' letter dated 25 August 2022 regarding the termination of the Agreement Between the Government of the Kingdom of Norway and the Government of the Republic of Latvia on the Mutual Promotion and Protection of Investments.
7. The Tribunal has considered the Parties' positions and, in the present Order, sets out the procedural rules that the Parties have agreed upon and/or the Tribunal has determined will govern the conduct of the Hearing.

II. THE TRIBUNAL'S ORDER

A. HEARING SCHEDULE AND ALLOCATION OF TIME

8. The Hearing is scheduled to take place from Monday 31 October 2022 through Friday 4 November 2022. Saturday 5 November 2022 will be held in reserve but it is not anticipated that this extra day will be needed.
9. According to Procedural Order No. 1, paragraph 20.5, "In principle, each Party shall have an equal amount of time at its disposal."
10. The order and duration of the Parties' presentations and a daily schedule (including start and end times and number and length of breaks) is set forth in Annex A.

11. As reflected in Annex A, three hours is allocated for each Party's Opening Statement on Day 1 of the Hearing and three hours for each Party's Closing Submissions on Day 5 of the Hearing. In addition, each Party will be given a further fifteen minutes for rebuttal and sur-rebuttal on Day 5. This allocation includes time for routine Tribunal questions and replies thereto but not for breaks or administrative matters, which are accounted for separately in the daily schedule. Additional time has been allocated for Tribunal questions on Days 1 and 5.
12. In the event that the Tribunal questions during a Party's presentation are extensive, the Tribunal may in the exercise of its discretion extend that Party's time for its Opening by the number of minutes that the Tribunal deems appropriate.
13. The Tribunal reserves discretion, after consultation with the Parties, to adjust the Hearing schedule as needed to accomplish the prescribed agenda and to accommodate any technical disruptions.
14. To the extent possible, the Tribunal will provide by not later than 14 October 2022 a non-exhaustive list of questions for the Parties to consider in connection with their affirmative presentations.
15. The Tribunal emphasizes that the Parties are expected to use the Hearing days efficiently and avoid unnecessary slippage (e.g., delays in returning from breaks). In the event of excess slippage, the Tribunal may revisit the length of the sitting days, or, in unusual circumstances, the time allocated to the Parties, bearing in mind principles of predictability, equal treatment and a fair opportunity for the Parties to be heard.

B. HEARING MATERIALS

1. Chronology of Facts, Dramatis Personae and List of Substantive Issues

16. Procedural Order No. 1, paragraph 20.7 provides:

At a date to be determined by the Tribunal, and in any event no later than two weeks prior to the hearing, the Parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately:

20.7.1. A chronology of relevant facts in tabular form;

20.7.2. A list and brief description of the individuals and entities who/which are part of the relevant factual background (“dramatis personae”); and

20.7.3. A list of the substantive issues required to be determined by the Tribunal.

17. By not later than 14 October 2022, the Parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a list of substantive issues each Party considers relevant for the adjudication of the case together with a brief chronology of those facts relevant to the issues to be considered at the hearing and a *dramatis personae*.

2. Demonstrative Exhibits and PowerPoint Presentations

18. The use of demonstratives is governed by paragraph 16.8 of Procedural Order No. 1, which states:

Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each Party shall number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The Party submitting such exhibits shall provide them in electronic and, if requested, hard copy to the other Party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

19. Each Party shall submit to the other Party its demonstrative exhibits not less than one hour before the start of the session (morning or afternoon) in which those exhibits are to be used. The purpose of this requirement is to enable the other Party to make a timely objection if it considers that any of the demonstrative exhibits in question contains new evidence or material which is inadmissible. In the event of such objection, the Parties shall endeavour to reach agreement and, if they are unable to do so, the matter shall be referred for decision by the Tribunal. If a Party does not use one or more of the demonstrative exhibits thus disclosed, no comment may be made regarding that exhibit or exhibits by the other Party.
20. Each Party shall provide hard copy of the demonstrative exhibits referred to in paragraph 19 to the Members of the Tribunal, the Tribunal Secretary and the Court Reporter not later than fifteen minutes before the beginning of the session concerned and shall provide electronic copies as soon as possible thereafter and, in any event, no later than close of business on the day on which the demonstrative exhibits were used.
21. The provisions on paragraphs 19 and 20 shall also apply, *mutatis mutandis* to examination and cross-examination bundles to be employed by a Party in its examination or cross-examination of each witness or expert, save that the bundle need be provided to the witness or expert only at the moment of commencement of the examination or cross-examination. A Party receiving such a bundle may not show it to the witness or expert. Where a witness or expert is testifying in a language other than English, a copy of the bundle shall also be provided to the interpreter.

3. New Evidence

22. A Party shall not introduce any new evidence, exhibits, or legal authorities except in accordance with paragraph 16.3 of Procedural Order No. 1, which provides:

Neither Party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other Party.

16.3.1. Should a Party request leave to file additional or responsive documents, that Party may not annex the documents that it seeks to file to its request.

16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such a document.

23. Any application to introduce new evidence should be made no later than 14 October 2022 unless there are exceptional reasons why that deadline cannot be met. Those reasons must be explained in the application.

4. Consolidated Hyperlinked Index

24. In accordance with paragraph 13.4 of Procedural Order No. 1, by not later than 21 October 2022 the Parties shall courier to the ICSID Secretariat at the address indicated at paragraph 7.1 or 7.3 of Procedural Order No. 1, and to each Member of the Tribunal at the addresses indicated at paragraph 13.5 of Procedural Order No. 1, a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index, readable on both Mac and PC, of all documents and authorities.

C. WITNESS AND EXPERT EXAMINATION

25. Procedural Order No. 1, paragraph 18, regulates witness and expert examination at the Hearing as follows:

18.1. Each witness shall be available for examination at the hearing, subject to the provisions of this Order.

18.2. Five weeks before a hearing, each Party shall notify the other Party, with a copy to the Tribunal, which witnesses and experts of the opposing Party it wishes to cross-examine at the hearing.

18.3. *Shortly after the Parties' notifications, the Tribunal will indicate the witnesses or experts not called by the Parties whom it wishes to question, if any. The Parties shall also notify the Tribunal and the other Party of which of its own witnesses and experts, not called by either the opposing Party or the Tribunal, that it wishes to examine at the hearing.*

18.4 *The procedure for examining witnesses and experts at the hearing shall be the following:*

18.4.1. *The Tribunal shall, at all times, have unfettered discretion over the conduct of witness or expert examination.*

18.4.2. *Before giving evidence, witnesses shall make the declaration in ICSID Arbitration Rule 35(2), and experts shall make the declaration in ICSID Arbitration Rule 35(3).*

18.4.3. *The witness statement of each witness and expert shall stand in lieu of the examination by the Party producing the witness and expert ("direct examination"), subject to the provisions below.*

18.4.4. *Witnesses giving oral testimony may first be examined in direct examination. Without leave of the Tribunal, direct examination of fact witnesses shall not exceed 15 minutes and shall be limited to the scope of prior testimony (including any corrections or updating thereof and any testimony responding to matters raised by the Rejoinder).*

18.4.5. *Experts giving oral evidence shall first give a summary of their report for no longer than 30 minutes, followed by a direct examination.*

18.4.6. *Without leave of the Tribunal, direct examination of experts shall not exceed 20 minutes and shall be limited to the scope of prior testimony (including any corrections or updating thereof and any testimony responding to matters raised by the Rejoinder).*

18.4.7. *The direct examination of witnesses and experts is followed by examination by the other Party ("cross-examination"), and subsequently by the Party producing the witness or expert ("redirect examination").*

18.4.8. *Under the control of the Tribunal, cross-examination shall generally be limited to matters raised in written and oral testimony of the witness or expert being cross-examined.*

18.4.9. *The redirect examination shall be limited to matters raised in cross-examination.*

18.4.10. *The Tribunal may pose questions during or after the examination of any witness or expert.*

18.5 *Unless the Parties agree, or the Tribunal decides, otherwise, witnesses shall not be allowed in the hearing room before giving their testimony and shall not be permitted to read the transcript before testifying. Witnesses who are Parties, or officers, officials or employees of a Party whose presence is necessary to enable*

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instructions to be given to counsel, shall be allowed in the hearing room at any time. Experts shall be allowed in the hearing room at any time unless the Tribunal decides otherwise.

18.6. A Party that does not call a witness or expert proffered by the other Party for cross-examination shall not be deemed to have agreed to the correctness of the content of the witness or expert statement.

18.7. Examination by video-conference may in exceptional circumstances be permitted at the discretion of the Tribunal.

18.8. If a witness or expert fails to appear at the hearing without justification, the Tribunal may order the statement of such witness or report of such expert to be struck from the record, or may attach such weight as it thinks appropriate in the circumstances to the witness statement or expert report.

18.9. Each Party shall be responsible for ensuring the attendance of its own witnesses and experts at the applicable hearing, except when the other Party has waived cross-examination of a witness or expert, the Tribunal does not direct his or her appearance, and the Party decides not to call the witness or expert.

18.10. Each Party shall cover the costs of appearance of its own witnesses and experts (except with respect to interpretation, addressed in §11 above). The Tribunal will decide upon the appropriate allocation of such costs in the award or at the time the arbitration is concluded.

26. Experts will testify first (on Day 2) and witnesses thereafter (on Days 3 and 4). Witnesses scheduled to appear on Day 4 should be available on Day 3.

27. The interpretation of witness or expert testimony is regulated by Procedural Order No. 1, paragraphs 11.6-11.8:

11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted, simultaneously if possible.

11.7. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.

11.8. The costs of the interpreter(s) will be paid from the advance payments made by the Parties, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs.

D. RECORDS OF THE HEARING

28. Procedural Order No. 1, paragraph 21 governs audio recording and paragraph 21.2 governs the verbatim transcript at the Hearing. These provide:

Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g)

21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Tribunal Members.

21.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.

29. Except for the court reporter who will make their own audio recording of the Hearing, attendees will not make any audio or video of the Hearing or any part of it.

30. Paragraph 21.3 of Procedural Order No. 1 will apply to the arrangements for the correction of the transcripts:

21.3 The Parties shall agree on any corrections to the transcripts within 30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

31. Transcription services will be provided by Ms. Claire Hill (the “court reporter”). The court reporter may seek to clarify the record from time to time during the course of the Hearing.

E. TRANSPARENCY

32. According to Procedural Order No. 1, paragraph 20.6, the hearing shall be accessible to the public. This will be achieved by making the audio and video of the hearing public. Members of the public and anyone else not taking part in the hearing will be admitted to the hearing room only if that can be done without undue crowding or breach of safety requirements and with the leave of the Tribunal.

33. The modalities of public access to the Hearing are detailed in **Annex B**.

F. PARTICIPANTS

34. Each Party shall provide its respective List of Hearing Participants (the “List of Participants”) by a date to be determined by the Tribunal, using the template format that will be provided by ICSID.

35. Only persons mentioned on the List of Participants can access the Hearing venue.

G. IN-PERSON ARRANGEMENTS

36. The ICSID Secretariat has reserved a hearing room and break out rooms for each Party and the Tribunal at the premises of the International Dispute Resolution Centre (IDRC) in London, United Kingdom (1 Paternoster Lane, St. Paul's, London, EC4M 7BQ).
37. The ICSID Secretariat will communicate COVID-19-related restrictions regarding in-person attendance at the Hearing to the Parties and Tribunal, if any. All in person Hearing Participants are expected to abide by any applicable rules in this regard. The ICSID Secretariat will liaise with the Parties in this respect when needed.
38. The following safety measure shall apply to all persons attending the Hearing in person:
- a) All such persons must comply with the local sanitary requirements of the place of the Hearing applicable on the date of the Hearing in relation to COVID-19. As soon as possible the Tribunal Secretary will communicate the requirements to the Parties, if any, and each Party shall, by a date to be arranged, confirm to the Tribunal in writing that all intended in-person participants are in compliance with the requirements.
 - b) The Tribunal reserves the right to limit the number of persons in the Hearing room at any one time, following consultations with counsel for each Party.
39. Any further instructions issued by ICSID regarding safety precautions shall be deemed to constitute an annex to this Procedural Order.

H. POST-HEARING MEMORIALS AND STATEMENTS OF COSTS

40. Pursuant to paragraph 22.1 of Procedural Order No 1:
- At the conclusion of the hearing, the Tribunal shall decide after consulting the Parties whether the Parties will file Post-Hearing Memorials. Unless expressly allowed by the Tribunal, any such submission shall not contain any new evidence, documents, legal authorities, sources, declarations or expert reports.*
41. If the Tribunal concludes that Post-Hearing Memorials are to be filed, it will specify the length, number, sequence and content, and the deadlines for their submission.
42. Pursuant to paragraph 22.2 of Procedural Order No. 1:
- Each Party will submit its Statement of Costs within 4 weeks after the final hearing or the final exchange of Post-Hearing Memorials, if any. The Parties shall file*

supporting evidence regarding the quantification of the costs together with its Statement of Costs.

I. DATA PROTECTION

43. Should the List of Participants for the Hearing contain personal data provided to ICSID (including names and contact information, such as business email addresses and telephone numbers), this data is processed for the purpose of the legitimate interests of the Parties in resolving efficiently their dispute and, in particular, to ensure that procedural documents and Hearing arrangements are properly communicated to the Parties, their legal representatives, the Members of the Tribunal and other participants providing services for the Hearing.

For and on behalf of the Tribunal,



Sir Christopher Greenwood
President of the Tribunal
26 October 2022

ANNEX A

HEARING SCHEDULE

DAY 1 – Monday 31 October 2022

TIME	DURATION	
9:00 – 9.30	30 minutes	Introductions and Housekeeping
9.30-12.45	3 hours plus one 15-minute morning break	Claimants’ Opening Submissions
12.45 – 13.45	1.0 hour	Lunch Break
13.45 – 17.00	3 hours plus one 15-minute afternoon break	Respondent’s Opening Submissions
17.00 – 18.00	60 minutes	Tribunal Questions, if any; housekeeping

DAY 2 – Tuesday 1 November 2022¹

TIME	DURATION	
9.00 – 9.15	15 minutes	Housekeeping, if any
9.15 – 13.00	3 hours 45 minutes including one or two short breaks	Brooks Kaiser direct examination, opening statement, cross-examination and re-examination, if any, plus Tribunal questions
13.00 – 14.00	1 hour	Lunch break
15.30 – 19.15	3 hours 45 minutes including one or two short breaks	Anders Ryssdal direct examination, opening statement, cross-examination and re-examination, if any, plus Tribunal questions (Mr Ryssdal to be heard remotely)
19.15 – 19.30	15 minutes	Housekeeping, if any

¹ The Parties are asked to confer about the exact distribution of time bearing in mind that under PO1 paras. 18.4.5 and 18.4.6 the expert may make an opening statement of not more than thirty minutes and there may be direct examination of not more than twenty minutes. The Tribunal is open to a suggestion that the experts be heard in a different order should the Parties so wish.

DAY 3 – Wednesday 2 November 2022²

TIME	DURATION	
9.00 – 9.15	15 minutes	Housekeeping, if any
9.15 – 12.30	3 hours, 15 minutes (including one or two short breaks)	Peteris Pildegovics direct examination, cross-examination and re-examination if any, plus Tribunal questions
12.30 – 13.30	1.0 hour	Lunch Break
13.30 – 16.45	3 hours, 15 minutes (including one or two short breaks)	Kirill Levanidov direct examination, cross-examination and re-examination if any, plus Tribunal questions
16.45 – 17.00	15 minutes	Short Break
17.00 – 18.00	1 hour	Evidence of Mr Knutsen and/or Mr Pettersen if possible (Mr Pettersen to be heard remotely)

DAY 4 – Thursday 3 November 2022³

TIME	DURATION	
[9.00] – [12.30]		Evidence of Mr Knutsen and/or Mr Pettersen if needed (Mr Pettersen to be heard remotely)

DAY 5 – Friday 4 November 2022

TIME	DURATION	
9.00 – 9.15	15 minutes	Housekeeping, if any
9.15 – 10.45	1.5 hours	Claimants' Closing Submissions
10.45 – 11.00	15 minutes	Short Break

² The Parties are asked to confer about the exact distribution of time bearing in mind that under PO1 paras. 18.4.3 and 18.4.4, the witness statement of each witness stands for the direct examination and that a direct examination of not more than fifteen minutes is permitted in respect of each witness. The Tribunal is open to a suggestion that Mr Pildegovics and Mr Levanidov be heard in a different order should the Parties so wish. The Tribunal hopes that either Mr Knutsen or Mr Pettersen (or both) might be examined on Day 3 if the whole day is not required for Mr Pildegovics and Mr Levanidov. The Tribunal notes that the witness statements of both Mr Knutsen and Mr Pettersen are very short.

³ If both Mr Knutsen and Mr Pettersen have been examined on Day 3, Day 4 will be left free. Otherwise, the Tribunal will complete witness testimony on the morning of Day 4.

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11.00 – 12.30	1.5 hours	Claimants' Closing Submissions
12.30 – 13.30	1.0 hour	Lunch Break
13.30 – 15.00	1.5 hours	Respondent's Closing Submissions
15.00 – 15.15	15 minutes	Short Break
15.15 – 16.45	1.5 hours	Respondent's Closing Submissions
16.45 – 17.00	15 minutes	Short Break
17.00 – 17.15	15 minutes	Claimants' Rebuttal Submissions
17.15 – 17.30	15 minutes	Respondent's Rebuttal Submissions
17.30 – 18.00	30 minutes	Housekeeping including decision on post-hearing briefs

Day 6 – Saturday 5 November 2022⁴

[In reserve]

⁴ In view of the discussion at the Pre-Hearing Conference and the draft schedule set out above, the Tribunal does not consider it likely that the reserve day will be needed.

ANNEX B

HEARING TRANSPARENCY AND CONFIDENTIAL INFORMATION

1. This protocol is established to ensure:
 - a) public access to the Hearing by livestream;
 - b) appropriate logistical arrangements;
 - c) the protection of “Confidential Information” as defined in Procedural Order No. 1, paragraph 23; and
 - d) an efficient and minimally disrupted Hearing.

2. To achieve these aims:
 - a) the Hearing will be made public using livestream that can be interrupted to enable the protection of Confidential Information;
 - b) The Tribunal may, also on its own motion, indicate portions of the Recording and transcript of the Hearing that are to be redacted to ensure the safeguard of Confidential Information;
 - c) Any measure (beyond redactions to the transcript and regarding the livestream of the Hearing) designed to safeguard “Confidential Information” shall be the subject of a separate procedural request to be submitted by the interested Party;
 - d) Physical attendance by third persons at the hearings is not permitted except with the leave of the Tribunal and in accordance with the provisions of paragraph 32 of this Order.