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Your ref.:

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Date

19 April 2024

Subject: Mr. Peteris Pildegovics and SIA North Star v the Kingdom of Norway, ICSID Case ARB/20/11 (Annulment Proceedings) – Response to *Ad Hoc* Committee’s Letter and Norway’s Observations on Stay of Enforcement

Dear Members of the Committee,

By this letter, Norway (1) responds to the Committee’s letter dated 12 April 2024 (the ‘**Letter**’); and (2) submits its Observations on the Claimant’s application for a continued stay of enforcement of the Award.

Response to the Letter

As regards the procedure to be adopted in this arbitration, Norway notes from the Letter that the Committee is preparing a draft procedural order that will be intended to, *inter alia*, set out the calendar for these proceedings, and that will be circulated shortly to the Parties for review and comment prior to the first session. Norway will accordingly await the draft procedural order envisaged in the Letter and will comment thereon at the appropriate time: it will not at this stage

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comment on the procedural proposals made by the Applicants in their letter sent to the Committee and to Norway on 10 April 2024. Nonetheless, it may be helpful to record (i) Norway's disagreement with the Applicants' suggestion that there should be a document production phase in this Annulment Proceeding at all, and (ii) its view that, if there is to be a document production phase, there is no sensible reason for it to take place before each party has submitted a memorial addressing the substance of the application for annulment.

On receipt of the Tribunal's proposed procedural order, and at the first session, Norway will make further written and oral observations as appropriate, including on the question of document production.

Observations on the Applicants' Request for a Continued Stay of Enforcement

Norway thanks the Committee for its invitation to submit observations on the Applicants' request for a continued stay of enforcement of the Award dated December 22, 2023 in the case of *Peteris Pildegovics and SIA North Star v. Kingdom of Norway* (ICSID Case No. ARB/20/11).

Background

Norway recalls that in paragraph 626 of the 22 December 2023 Award it is stated that the Tribunal

“(1) DECIDES that it has jurisdiction over the Claimants' claims to the extent, and only to the extent, set out in Part IV.C of this Award;

(2) DISMISSES the Claimants' claims in their entirety;

(3) ORDERS the Claimants to pay the sum of USD 597,307.04 to the Respondent in respect of the arbitration costs, the Claimants to be jointly and severally liable to make this payment;

(4) ORDERS the Claimants to pay the sum of EUR 809,724.07 to the Respondent in respect of the latter's Representation Costs, the Claimants to be jointly and severally liable to make this payment; and

(5) ORDERS the Claimants to pay the Secured Overnight Financing Rate (“SOFR”) plus 2%, compounded twice yearly, from 60 days after the date of dispatch of this Award to the Parties.”

The Claimants' request for an extension of the stay on enforcement is thus made in a context where the Claimants already owe a considerable sum to Norway. Delay in enforcement of the Award benefits only the Claimants.

Norway also recalls that the Award is rendered in one of three similar pending ICSID cases initiated by Savoie Arbitration against Norway in respect of Norwegian fishing regulations.

The Request for Arbitration in the *Pildegovics* case was filed on 18 March 2020. The other two cases were filed during the proceedings in the *Pildegovics* case.

The Request for Arbitration in the case of *UAB Arctic Fishing v. Kingdom of Norway* (ICSID Case No. ARB/22/31) was made on 28 October 2022, less than 72 hours before the opening of the hearing in the *Pildegovics* case. In view of the very substantial overlap in the factual and legal basis of the cases, the parties agreed to suspend the proceedings pending the issuance of the Award in the *Pildegovics* case. That agreed suspension terminated on 5 January 2024. No further steps have been taken in that case. No tribunal has been constituted.

The notice of dispute in the case of *SIA Baltjura-Serviss v. Kingdom of Norway* (ICSID Case No. ARB/23/7) was submitted on 15 November 2022, a few days after the close of the hearing in the *Pildegovics* case. According to a letter from Savoie Laporte (the Claimant's former legal counsel) dated 26 January 2023, "the representative of the company, Baltjura-Serviss, will be its new owner, Mr. Peteris Pildegovics." Again, there is a substantial overlap in the factual and legal basis of the cases. The Request for Arbitration was made on 10 March 2023, while the Award in the *Pildegovics* case was pending. On 11 March 2024, the ICSID Secretary General suspended proceedings in the case pursuant to ICSID Administrative and Financial Regulation 16(2)(b), for non-payment of the advance requested from the Claimants. The Claimants have not told Norway why they did not pay the sums due; nor have they given any indication as to their intentions regarding the pursuit of this arbitration (or, indeed, the *Arctic Fishing* arbitration).

The request for a stay of enforcement is thus one element in a wider picture of ICSID proceedings initiated against Norway in respect of very similar legal and factual issues.

Burden of Proof and Application of Relevant Test

The Committee is empowered by Article 52(5) of the ICSID Convention to stay enforcement of the award "if it considers that the circumstances so require"; and Rule 54 of the 2006 ICSID Arbitration Rules states that the Party which requests a stay of enforcement of an award "shall specify the circumstances that require the stay". In the *ESPF* case, the Committee said that it was "of the view that ... the moving party seeking to continue the provisional stay ... bears the burden of establishing the circumstances that – as specified in Article 52(5) – "require" the continued stay of enforcement."¹ Other ICSID decisions take the same view.²

In deciding whether to stay enforcement, it has been said that "the ultimate test involves a balancing of the Parties respective interests and risks of harm."³ Factors such as the ability and

¹ *ESPF Beteiligungs GmbH, ESPF Nr. 2 Austria Beteiligungs GmbH, and InfraClass Energie 5 GmbH & Co. KG v. Italian Republic*, ICSID Case No. ARB/16/5, Decision on the Continuation of the Provisional Stay of Enforcement of the Award, 9 July 2021, para. 45

² See, e.g., *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Decision on the Argentine Republic's Request for a Continued Stay of Enforcement of the Award (Rule 54 of the ICSID Arbitration Rules), 5 March 2009, para. 27; *Ioannis Kardassopoulos and Ron Fuchs v. Republic of Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Decision of the *ad hoc* Committee on the Stay of Enforcement of the Award, 12 November 2010, ¶ 26; *SGS Société Générale de Surveillance S.A. v. Republic of Paraguay*, ICSID Case No. ARB/07/29, Decision on Paraguay's Request for the Continued Stay of Enforcement of the Award, 22 March 2013, para. 86; *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Decision on the Stay of Enforcement of the Award, 22 February 2018, para. 99.

³ *ESPF Beteiligungs GmbH, ESPF Nr. 2 Austria Beteiligungs GmbH, and InfraClass Energie 5 GmbH & Co. KG v. Italian Republic*, ICSID Case No. ARB/16/5, Decision on the Continuation of the Provisional Stay of Enforcement of the Award, 9 July 2021, para. 49

willingness of an award debtor to pay,⁴ the financial situation of the debtor to pay,⁵ the presence or absence of a dilatory purpose,⁶ and the seriousness of the request for a stay⁷ have been taken into account. Each case turns on its particular facts.

The Applicants in this case have not alleged their inability to make the payments now due, or any special harm to them if they were now to comply with the Award. They have not established any circumstances that "require" the continued stay of enforcement. On the other hand, there are concerns as to the ability of the Applicants to pay the sums that they now owe. Notably, SIA North Star applied for legal protection proceedings in relation to a potential bankruptcy in October 2021 [R-0203] of the original underlying record, which Norway appends to this Letter for the Committee's benefit.

In these circumstances, Norway does not give its consent to an extension of the stay on enforcement.

As the Committee will be well aware, where extensions to stays of execution have been ordered by ICSID committees, it has often been on condition that the award debtor provide some security for the eventual payment of the award.⁸ It has been said that , "[t]he conditioning of a stay of enforcement is justified when there are legitimate fears of nonenforcement" including "regarding the financial situation of the Applicants."⁹ While Norway's preference and request is that the stay on execution not be extended in this case, if the Committee were to decide that the conditions for the exercise of its discretion to order a stay under Article 52(5) of the ICSID Convention were met, Norway would not oppose an extension that is subject to conditions such as the establishment of an escrow account or the provision of a bond, which would ensure payment of the debt if the request for annulment is ultimately rejected.

In short, Norway has a duty to protect public monies and to take appropriate steps to ensure that debts owed to it are paid promptly or are at least properly secured. It accordingly requests that the Committee either (i) reject the Claimants' request for a stay or (ii) extend the stay subject to the provision of security for payment in the event that the annulment request is refused, on terms decided by the Committee.

⁴ *ESPF Beteiligungs GmbH, ESPF Nr. 2 Austria Beteiligungs GmbH, and InfraClass Energie 5 GmbH & Co. KG v. Italian Republic*, ICSID Case No. ARB/16/5, Decision on the Continuation of the Provisional Stay of Enforcement of the Award, 9 July 2021, paras. 54-56 ; *Victor Pey Casado and Foundation President Allende v. Republic of Chile*, ICSID Case No. ARB/98/2, Second Annulment Proceeding, Decision on the Request for the Stay of the Enforcement of the Award, 15 March 2018, AL- 0008 (Pey Casado), paras. 74-75..

⁵ *Libananco Holding Co. Limited v. Republic of Turkey*, ICSID Case No. ARB/06/8, Annulment Proceeding, Decision on Applicant's Request for Continued Stay of Enforcement of the Award, 7 May 2012, AL-0002, para. 61

⁶ *SGS Société Générale de Surveillance S.A. v. Republic of Paraguay*, ICSID Case No. ARB/07/29, Decision on Paraguay's Request for the Continued Stay of Enforcement of the Award, 22 March 2013, para. 94; *ESPF Beteiligungs GmbH, ESPF Nr. 2 Austria Beteiligungs GmbH, and InfraClass Energie 5 GmbH & Co. KG v. Italian Republic*, ICSID Case No. ARB/16/5, Decision on the Continuation of the Provisional Stay of Enforcement of the Award, 9 July 2021, para. 53

⁷ *Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/1, Decision on Stay of Enforcement of the Award, 4 December 2014, para. 84.

⁸ Practice is reviewed in *Schreuer's Commentary on the ICSID Convention* (3rd ed., 2022), paras 52-761 – 52-790.

⁹ *Churchill Mining Plc and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Annulment Proceeding, Decision on the Request for Continued Stay of Enforcement of Award, 27 June 2018, para. 37.

For the avoidance of doubt, Norway wishes to make it clear that it considers the request for annulment to be both legally and factually baseless. It will make its response to the request at the appropriate time.

Yours sincerely,

[signed]

Kristian Jervell
Director General

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