



ROYAL NORWEGIAN
MINISTRY OF FOREIGN AFFAIRS

Ms Lucinda A. Low

Step toe LLP
1330 Connecticut Avenue, NW
Washington DC 20036
United States of America

Prof Andrea Bjorklund

McGill University Faculty of Law
Chancellor Day Hall
3644 Peel Street
Montreal, Quebec
Canada H3A 1W9

Prof Dr Maxi Scherer

WilmerHale LLP
49 Park Lane
London W1K 1PS
United Kingdom

Your ref.: ICSID ARB/20/11

Our ref.:

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By E-mail to: lnjoroge@worldbank.org

Subject: Mr. Peteris Pildegovics and SIA North Star v the Kingdom of Norway, ICSID Case ARB/20/11 (Annulment Proceedings) – Rejoinder on Stay of Enforcement

Dear Members of the Committee,

By this letter, Norway responds to the Applicants' Reply submissions on the proposed Continued Stay of Enforcement.

The question is whether it is appropriate to suspend the Applicants' obligation to pay the sums already owing to Norway under the Award for the duration of further proceedings initiated by the Applicants during which significant additional costs will be incurred by Norway.

Postal address:
Postboks 8114 Dep
0032 Oslo

post@mfa.no

Office address:
7. juni plass 1
0251 Oslo

www.regjeringen.no/ud

Telephone:
23 95 00 00
Org. no.:
972417920

Legal Affairs Department

Not only do the Applicants not deny that they are in a difficult financial situation: they present it as a reason for not paying sums due to Norway under the Award. Non-recoupment is clearly an issue in the case of individuals and one-person companies where the risk of bankruptcy has been shown to be a real concern.¹ In those circumstances, the written confirmation of Mr Pildegovics that he will pay any part of the award not annulled does not have the value that it might have had if made by, e.g., the controlling shareholder of a company which was very obviously good for the money.²

Norway considers that there a real risk of non-payment by the Applicants. That risk is entirely one-sided given that Norway won the arbitration entirely and owes the Applicants nothing. Norway should not have to bear that risk given its success in the underlying proceedings. There is, in contrast, no real risk of non-recoupment by the Applicants in the event that the Award is annulled.

Norway considers that the sequence of demands and payments made by the Applicants in this case and in their other proceedings are relevant considerations in this context. As set out in paragraph 18 of their Reply, the Applicants have not yet made the required USD 200,000 initial call for funds in these proceedings and have instead made a part payment. By letter dated April 30 (second letter) ICSID notified the parties of the Applicants' default and invited either party to pay the outstanding amount of USD 98,000 within 15 days, i.e., by Wednesday, May 15, 2024. This is in anticipation of the receipt by ICSID of a part payment by the Applicants of USD 50,000 which was notified by the Applicants, but not yet received by ICSID at the time of writing. It also represents an extension of the deadline for default procedure pursuant to ICSID Administrative and Financial Regulation 16, compared to the deadline for payment of advance fixed by ICSID's 27 February letter.

The Request for Arbitration submitted by Mr Pildegovics' other company, *Baltjura-Serviss*, was made on 10 March 2023, while the Award in the *Pildegovics* case was pending. On 11 March 2024, the ICSID Secretary General suspended the *Baltjura-Serviss* proceedings pursuant to ICSID Administrative and Financial Regulation 16(2)(b), for non-payment of the advance requested from the claimant in that case. Norway is concerned that the Applicants may be pursuing legal proceedings without the ability to pay for them when payments fall due.

Mr Pildegovics and North Star do not appear to have attempted to secure a bond or bank guarantee for the amount of the costs award in this arbitration. Norway's position is that if the Stay is lifted, it should be on the condition that the Applicants put up sufficient security and/or bank guarantees to secure payment of the sums already owed under the Award in the *Pildegovics* case.

¹ *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

² As in *Nachingwea U.K. Limited, Ntaka Nickel Holdings Limited and Nachingwea Nickel Limited v. United Republic of Tanzania*, ICSID Case No. ARB/20/38, Decision on the Stay of Enforcement of the Award, 31 October 2023, para. 63

Norway notes that the Applicants, in their Application for Annulment paragraphs 146-149 argues that there is a mathematical error in the Tribunal's Award, leading the Tribunal to order the Claimants to pay partly double compensation to Norway. This situation arises because the arbitration costs in the case had been met by advance payments by the Parties in equal shares. At the time of the award these advances had not been fully utilised and the surplus of these funds was returned to the Parties in equal shares.

Norway underscores that it does not oppose the deduction from the amount payable of any sums that amount to double recovery, and offer now to make that deduction from the amount that the Award says is payable and seeks security only for the remaining corrected sum.

In light of the above, Norway requests that, should the Committee agree to a continued stay of enforcement, it does so on the condition that the Applicants provide sufficient security and/or a bank guarantee for the amount of EUR 809,724.07 which is the sum awarded by the Tribunal for representation cost, as well as for the arbitration costs less any sum which has been doubly awarded to Norway.

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.

For those reasons, Norway respectfully requests the *ad hoc* Committee to:

- (1) Dismiss the Applicants' application for a continuation of the provisional stay;
- (2) Declare that the provisional stay on enforcement of the Award has therefore been terminated;
- (3) Alternatively, to order that the continuation of the stay of enforcement is conditional upon the Applicants providing, within 21 days, sufficient security and/or a bank guarantee in the amount of EUR 809,724.07 plus a USD sum for arbitration costs less any amount of double recovery.

Yours sincerely

[signed]

Kristian Jervell
Director General

Copy by e-mail:

Mr Pierre-Olivier Savoie (pierre-olivier.savoie@savoiearbitration.com)

Ms Caroline Defois (caroline.defois@savoiearbitration.com)

Mr Valentin Bourgeois (valentin.bourgeois@savoiearbitration.com)

Ms Beate Strautkalne (beate.strautkalne@savoiearbitration.com)

Professor Mads Andenæs (mads.andenas@protonmail.com)

Ms Margrethe R. Norum (margrethe.norum@mfa.no)

Ms Kristina Nygård (kristina.kvamme.nygard@mfa.no)

Mr Fredrik Bergsjø (fredrik.bergsjo@mfa.no)

Professor Vaughan Lowe KC (vlowe@essexcourt.net)

Professor Alain Pellet (courriel@alainpellet.eu)

Mr Mubarak Waseem (mwaseem@essexcourt.net)

Mr Ysam Soualhi (soualhiysam@hotmail.fr)