

C-134

# Latvian investor renews threat against Norway

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*Snow Crab is a delicacy in Canada, South Korea and Japan (Credit: Shutterstock/horikko)*

A Latvian businessman has for a second time threatened to bring a treaty claim against Norway after his vessel was seized while trawling for snow crabs, it has emerged.

Peteris Pildegovics and his company SIA North Star issued a second notice of dispute under the Latvia-Norway bilateral investment treaty in March 2019, two years after the first notice.

GAR has obtained a redacted version of the [second notice](#) from the Norwegian ministry of foreign affairs via a freedom of information request.

The claimants are using Parisian boutique Savoie Arbitration, Montreal-based lawyer Pierre-Olivier Laporte, Mads Andenas QC of Brick Court Chambers, Alina Miron of the University of Angers and Eirik Bjorge of the University of Bristol.

It is unclear if Norway has yet instructed external counsel.

Counsel declined to comment on the current status of the dispute. A Norwegian government website indicates that Savoie Arbitration sent a letter relating to a BIT to the ministry in December last year.

According to the notice, North Star has been harvesting snow crabs in Norwegian waters since 2014, with Pildegovics also buying Norwegian company Sea & Coast as a local agent.

In 2016, North Star's trawler The Senator, one of four vessels in the company's fleet, was fined by the Norwegian coastguard for harvesting snow crabs in waters where Norway exercises its jurisdiction, south-east of Svalbard, an Arctic Ocean archipelago that forms part of the Kingdom of Norway. Snow crabs are considered a delicacy in countries including Canada, Japan and South Korea.

The following year, the trawler was boarded by the Norwegian coastguard while allegedly deploying crab traps within a 200-mile fishery protection zone around Svalbard. The trawler's Russian captain, Rafael Uzakov, presented a Latvian permit issued under EU regulation and argued that he was in international waters but the coastguard said that a Norwegian permit was required as the trawler was on the Norwegian continental shelf, and ordered the vessel brought ashore.

North Star and Uzakov were fined and, after refusing to pay, faced criminal proceedings. After a first instance court ruled against them, North Star issued a first notice of dispute under the BIT in 2017.

North Star and Uzakov failed in two appeals, culminating in [a ruling](#) by Norway's Supreme Court against them in February last year.

A central issue in the court proceedings was whether snow crabs are a sedentary or migratory species. North Star and Uzakov argued they were migratory and, as such,

trawling of the crabs should be subject to regional fisheries accords signed by the EU, Norway, Russia and others.

However, the Norwegian courts at every level found that the snow crab is a sedentary species, meaning it is classified as a sea bottom resource of the continental shelf. The courts found this gives Norway the exclusive right to exploit the crabs under the United Nations Convention for the Law of the Sea – meaning fishermen from EU member states must ask permission of the Norwegian government before trawling for the crabs.

North Star and Uzakov also argued that Norway had to provide access to the waters under the 1920 Svalbard Treaty, which grants Norway sovereignty over the archipelago while allowing parties from other signatory states to engage in commercial activities on or around it. The Supreme Court nonetheless ruled that the conduct of North Star and Uzakov was illegal under Norwegian law.

Pildegovics and North Star issued their second notice of dispute a month after the ruling, citing several new alleged breaches of the BIT by Norway.

The claimants argue that Norway's actions are arbitrary and discriminatory and constitute a "harassment campaign" against North Star and other EU investors that have been affected by the restrictions, destroying the value of their investments.

They say that all branches of the Norwegian government have prevented EU investors operating on any level of the snow crab production chain despite Norwegian law requiring such access, also alleging that Russian fishermen have been given more favourable treatment.

The Norwegian courts, they argue, have rendered arbitrary and inconsistent rulings that amount to a denial of justice.

They also argue that the Supreme Court had announced that it would not consider arguments concerning the Svalbard Treaty but then “spent a significant part of its judgment explaining why the Svalbard Treaty did not apply to the case.” This, they allege, showed the court had “pre-judged the issue and was intent on finding against North Star in any way possible.

The claimants cite BIT provisions concerning promotion and protection of investments; most favoured nation treatment; and expropriation and compensation. They also seek to import protections from Norway’s treaties with Russia, Romania and Peru.

While the amount of damages sought has been redacted, they are said to be “very substantial.” Pildegovics has estimated the annual loss of income arising from the Senator’s continued detention to be around €20 million.

Reuters suggests the Supreme Court judgment also had implications for Norway’s claim to oil and gas in the Svalbard region, which is also defined as a sea bottom resource. If Norway had lost the case, the news outlet says the EU could have staked a claim over the snow crab, making it harder for the state to control access to the potential energy resources under the Arctic seabed.

If filed, this would be the first known investment arbitration that Norway has faced. Tidal, the online music service co-owned by US rapper Jay-Z, [threatened to bring a BIT claim](#) against the state last year over a criminal investigation into alleged manipulation of streaming figures.

Peteris Pildegovics and SIA North Star v Norway

[Counsel to Pildegovics and North Star](#)

- Savoie Arbitration

Partner Pierre-Olivier Savoie and associate Justine Touzet in Paris

- Pierre-Olivier Laporte in Montreal
- Mads Andenas QC of Brick Court Chambers
- Alina Miron of the University of Angers
- Eirik Bjorge of the University of Bristol

[Counsel to Norway](#)

Not disclosed

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